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Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

OPPOSITION OF AMERITECH
TO PETITIONS FOR CLARIFICATION AND
RECONSIDERATION FILED BY VARIOUS PARTIES

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Introduction and Summary

Ameritech supports the goals of the Rules adopted by the Commission in the *First Report and Order* implementing Section 251 of the Telecommunications Act of 1996 (the "1996 Act")[1]. In most cases, these Rules strike a balance between state and federal regulation that is consistent with the provisions of the 1996 Act. They leave to state commissions issues that are properly state matters, and defer for future consideration by the Commission matters within its jurisdiction but as to which there is inadequate evidence in the record of this proceeding.

Ameritech is filing these comments because many of the petitions for reconsideration filed with the Commission seek changes to the Rules that are not authorized by the statute and do not constitute sound telecommunications policy. The Commission should reject attempts by petitioners to impose national rules that micro-monage the implementation of the pro-competitive policies of the 1996 Act by the industry at the state level in direct conflict with the de-regulation intent of the 1996 Act, and the provisions of Section 251. These proposals are in fact counterproductive to the development of efficient competition, and would stifle the evolution of true market-based competition.

At the same time, Ameritech believes the pricing sections of the Rules exceeded the Commission's authority and the terms of the 1996 Act. Therefore, Ameritech has sought judicial review of those limited portions and is participating in the consolidated review of the *First Order* now pending in the United States Court of Appeals for the Eighth Circuit.

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996), *to be codified at* 47 USC §§ 151 *et seq.*

Ameritech's participation in this reconsideration stage of the proceeding on pricing issues is intended in part to protect its interest in the event that the Commission's pricing Rules, which are currently stayed by the court, are upheld. Accordingly, Ameritech recommends that the Commission take no action on its pricing Rules until the court acts. In no way does the fact that Ameritech addresses a pricing issue herein constitute an admission that the Commission has jurisdiction to decide the issue.

Ameritech urges the Commission to reject each of the requests for clarification or reconsideration addressed in these comments. Many of the requests would have the Commission depart from the wording or intent of the 1996 Act, either by imposing unnecessary or burdensome additional requirements on incumbent LECs, by ignoring actual economic costs and setting prices that reflect unauthorized subsidies based on dubious policy considerations favoring one set of competitors over another, or by usurping regulatory functions that the Commission has already correctly found are properly the province of the states.

A number of petitioners revisit unbundling issues fully considered in the earlier stages of this proceeding, including subloop and AIN unbundling. However, these petitioners do not present additional evidence beyond speculation and a repeat of what was already considered and found inadequate by the Commission. With regard to two newly alleged "network elements" - billing and collection services and so-called common transport - the Commission cannot and should not order unbundling because these are not network elements within the terms of the Act, and both services are already available.

There are also several proposed procedural modifications related to unbundling. These include the imposition of (a) an arbitrary deadline for development of standards for

access to operational support systems, (b) a specific service interval for changing a customer's local service from an incumbent LEC to another carrier, and (c) a requirement for further access of competing carriers to incumbent LECs' databases. Each of these is unnecessary and unwarranted, and should be rejected.

Several of the proposals for reconsideration of the pricing Rules seek to shift to incumbent LECs and their customers the burden of non-recurring costs that are caused by the dictates of the Act and the requests of competing carriers. Other requests seek to provide economic cost advantages to resellers to the detriment of facilities-based callers. The Act and the Fifth Amendment require that the incumbent LECs be made whole for these costs, and the dubious policy considerations relied on by the petitioners cannot change the law. These proposals also should not be adopted on policy grounds because they would inhibit economic efficiency and stifle true competition. The Commission should also affirm its rejection of the Hatfield model for calculating the forward-looking economic costs that form the basis for the pricing of unbundled network elements. The Commission should also decline to adopt a new imputation rule that is allegedly justified by policy considerations unrelated to actual costs, but which would directly conflict with the requirements of the Act.

These comments also address petitions for reconsideration of those portions of the Rules regarding (a) reciprocal compensation for certain types of switching, (b) promotional offerings by incumbent LECs, (c) payment to paging providers for terminating calls, and (d) access to the roofs of buildings owned by incumbent LECs as right-of-way. In each instance, the Commission fully considered the evidence, and no party has provided any basis to disturb the Commission's conclusions on the issues.

I. Access to Unbundled Network Elements

A. Establishing Local Exchange Service is Not Comparable to Installing Network Elements

Consolidated Communications Telecom Services, Inc. ("CCTS") asks the Commission to require that an incumbent LEC switch an existing customer to a new LEC based upon the same interval that the incumbent LEC uses to establish new service for its retail customers, regardless of the circumstances.[2] CCTS' proposal is best addressed through negotiations based upon actual circumstances.[3]

The key for comparing service intervals is a function-to-function comparison of the activities required to provision and establish the service. In many cases, switching a customer to a new LEC requires significant additional and more complex activities than are required to establish new service for a retail customer. As the Commission recognized when it applied the PIC change interval to switching existing customers to a new LEC (¶ 421),[4] intervals that are applicable to installations that require just software changes do not apply when "physical modifications" are involved. Moreover, as the Commission has also recognized, the states are in the best position to resolve disputes between carriers regarding the details of the implementation of the Commission's Rules. Therefore, the Commission should decline to adopt a hard and fast rule that new installations and switches are subject to

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2 CCTS Petition at 4.

3 Indeed, on October 29, 1996, Ameritech and CCTS reached a negotiated interconnection agreement that has successfully resolves this and other operational issues.

4 Paragraph citations in the text refer to the paragraphs of the *First Report and Order.*

the same intervals regardless of the circumstances, and instead permit the parties and the states to implement the Commission's nondiscriminatory principles at the local level.

In many cases, the switch of a customer to a new carrier involves installation of new network elements such as loop transmission. Provisioning of network elements involves significantly more complex and additional work activities, when compared to establishing a retail service.[5] First, since Ameritech is only providing a component of the service, it must coordinate the installation of its component with the new LEC so that the end user maintains continuity of service and receives one integrated service. In many cases, the new LEC controls the engineering, administration and service installation, which can affect its timing. Coordination with another carrier requires that incumbent LECs engage in significant additional activities beyond those necessary when it is the sole carrier involved in providing the service.

Second, the unbundling of network elements normally involves the separation of facilities necessary to unbundle the network element from the incumbent LEC's network, and the provision of non-standard arrangements. This customization and separation may require more discrete steps and manual processing, so that much of the automation involved in providing retail and resold service is lost.

Third, provisioning and establishment of network elements often requires not only software changes, but also physical work to separate unbundled network elements from

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[5] The exception is cases where Ameritech may be required to offer a rebundled service that is equivalent to a bundled retail service. In such cases, Ameritech offers and will continue to offer comparable installation intervals.

existing systems and facilities. Indeed, such physical work is required virtually 100% of the time when central office network elements are being unbundled, and is frequently required for network elements that involve outside plant facilities. In contrast, most standard retail service installations only require software changes, since the existing network is already configured to provide an end-to-end service.[6]

For the above reasons, any comparison between installation of network elements, and installation of retail local exchange service is simply not valid, and each type of installation should be subject to its own nondiscriminatory service intervals that reflect the tasks involved.

B. The *First Report and Order* Did Not Require Incumbent LECs to Provide "Common Transport" As a Network Element or to Otherwise Price Unbundled Transport on a Usage Basis

WorldCom requests clarification that incumbent LECs are obligated under the Rules to provide usage-based pricing for unbundled transport, including shared transport, on a network element basis. In fact, WorldCom goes so far as to say that requesting carriers

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[6] For instance, in most cases where an end user moves into a previously occupied apartment, the line equipment and local loop were left in place and the telephone company only has to assign a new telephone number and program the computer-controlled switch to begin processing calls. This would also be true if the line were resold by another telecommunications services provider. On the other hand, if the new tenant wishes to subscribe to a different local exchange switch, at a minimum the wiring in the central office will have to be physically disconnected and reterminated on the collocated equipment of the other service provider. Even more coordination is required if the end user's existing number is to be disconnected, number portability invoked and the local loop reterminated on the new provider's equipment.

should have this option "regardless of whether the traffic is tandem-based."[7] This, essentially, is a request that the Commission re-define the unbundled transport network element so it is not unbundled at all, but is instead bundled with switching -- a sort of "public switched transport service." It is further a request that the Commission establish a rate structure for transport that is in direct conflict with how transport costs are incurred. What WorldCom seeks as a network element is already available to it as the common transport portion of switched access service. The Commission should reject this request for "clarification" because it is contrary to the concept of a network element in the 1996 Act and the pricing principles established by the Commission in the *First Report and Order*.

First, WorldCom's proposal is not a transport network element under the Act. In prescribing rules and regulations for the provision of unbundled network elements, the Commission adopted "the concept of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities." (¶ 258) The Commission specifically distinguished between network elements and services. (See, e.g., ¶ 338) It also determined that when incumbent LECs provide access to unbundled network elements, they must provide the facility or functionality of a particular element to requesting carriers separate from the facility or functionality of other elements, for a separate fee. (¶ 260) A requesting carrier may have the option of combining an unbundled network element with another unbundled network element, but each network

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[7] WorldCom labels this service "tandem-switched transport" (Petition at 1-2) and requests this usage-based pricing of interoffice transmission and switching even when the traffic is not tandem routed. WorldCom also erroneously describes "shared transport" as "common transport" (id. at 3, 7) as if shared transport were a service rather than a network element.

element that is combined must be capable of being provided on an unbundled basis in the first instance. Finally, the Commission specifically noted that a carrier purchasing unbundled network elements by definition faces a greater business risk than a reseller because the buyer of an unbundled element must pay for the cost of that facility even though end-user customers may not demand a sufficient number of services using that element for the carrier to recoup its cost. (¶ 334) WorldCom's proposal conflicts with each and every one of the above principles. No facility is dedicated or unbundled from the incumbent LEC's network, the transport portion of the service cannot function without switching, and the requesting carrier assumes no risk.

Among the specific unbundling requirements established by the Commission is the requirement that incumbent LECs provide access to interoffice transmission facilities unbundled from other network elements, including switching.[8] Given that incumbent LECs are obligated to provide interoffice transmission facilities unbundled from other network elements including switching, the Commission clearly intended that unbundled "shared" interoffice facilities will provide requesting carriers the option of sharing dedicated interoffice

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[8] "Interoffice transmission facilities" are defined as LEC "transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier. The incumbent LEC shall "provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier,or use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier." 47 CFR § 51.319(d)(2)(i). Notably, the definition of interoffice transmission facilities does not include a switching component.

facilities by subdividing among them.[9] That it is not technically feasible for the incumbent LEC to measure usage of separate users on unbundled interoffice facilities is reflected in the Commission's description of the pricing rate for shared interoffice transmission.

Capacity on an interoffice transmission facility that includes tandem and/or local switching is the common transport portion of switched access service. If the Commission grants WorldCom the relief it seeks in its Petition, then the critical balance the Commission sought to craft in its *First Report and Order* will be completely undermined because there will be no functional distinction between network elements as defined in the Act and services which are provided by incumbent LECs. The Commission expressly and explicitly rejected such a prospect in its September 27 Order on Reconsideration.[10]

Second, WorldCom's proposal is inconsistent with the manner in which incumbent LECs incur transport costs. Requesting carriers may have the option under the Commission's Rules to combine incumbent LEC interoffice transmission facilities with

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9 The Local Exchange Carrier Coalition (LECC) properly concludes that shared transmission facilities not associated with switching must be considered dedicated facilities. LECC Petition at 33. Because network elements, including interoffice transmission facilities, must be provided on an unbundled basis (e.g. separated from switching), shared transmission facilities are dedicated facilities, as LECC concludes.

10 The Commission rejected the notion that "the *First Report and Order* could be interpreted to permit carriers to use unbundled switching elements, rather than standard access arrangements, to originate and terminate interexchange traffic to end users." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-98, FCC 96-394 (Sept. 27, 1996) (¶ 10).

incumbent LEC switching.[11] However, defining a single network element to include switching and unbundled interoffice transmission facilities would be contrary to the statutory requirement that incumbent LECs offer network elements (in this case, interoffice transmission facilities) on an unbundled basis, i.e. unbundled from the switch. In order to be an unbundled network element, interoffice transmission facilities must be dedicated to one carrier for its exclusive use, or "shared" among more than one carrier for their exclusive use. But, in any event, the cost of interoffice transmission facilities is not usage sensitive, since facilities or capacity are dedicated to a particular carrier or carriers. Therefore, incumbent LECs should not be compelled to charge for either dedicated or shared transport on a usage sensitive basis.[12] In short, what WorldCom wants to purchase is not a network element.

Moreover, transmission facilities cannot be provided by the incumbent LEC on a common usage sensitive basis. That is to say, the inter-office transmission facility does not -- and cannot -- distinguish the traffic carried on any of its individual circuits. It is not until

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11 In this event, the price of the combined network elements cannot reasonably be expected to be less than the sum of the parts. WorldCom apparently believes that network facilities which it contends are network elements and which cost hundreds of dollars per month should be priced on a usage sensitive basis at pennies per minute, with no risk to WorldCom.

12 The incumbent LEC should be permitted to apply a flat rate charge for the shared interoffice facility because that is the basis upon which the incumbent LEC incurs the costs for that interoffice facility. Rate structure is also addressed in the Commission's Rules. The cost of dedicating transmission links shall be recovered through flat-rate charges (47 C.F.R. § 51.509)(c)), and the costs of shared transmission facilities between tandem switches and end offices may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs (§ 51.509(d)).

the traffic carried on the interoffice facility actually hits a switch that circuit specific de-multiplexing occurs, i.e. individual message are recognized.[13] The switch then routes specific traffic to the appropriate destination. This is equally true whether the unbundled interoffice transmission facility is used by one requesting carrier or "shared" among two or more requesting customers or carriers.

C. Further Unbundling of AIN is Not Warranted

MCI seeks to re-argue the unbundling of advanced intelligent network (AIN) databases and capabilities, again based upon its still unsupported assertion that such arrangements are somehow technically feasible.[14] Simply saying over and over again that a particular configuration is technically feasible does not make it so.

The Commission declined to require unbundling of AIN capabilities beyond access to the incumbent LEC's call-related databases, Service Management System (SMS) and Service Creation Environment (SCE), even though MCI and others had made the same arguments in their comments that they make now. (¶ 471) Nonetheless, MCI asks the Commission to conclude that direct access to AIN triggers and interconnection of third party AIN Signal Control Points ("SCPs") are technically feasible "without the need for additional mediation functions."[15] However, based on a reasoned analysis of this same evidence, the Commission

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13 Electronic equipment may perform a higher level of de-multiplexing before the signal hits the switch, but individual and discrete circuits are not identified, and traffic on those individual and discrete circuits is not routed, apart from the switching function. Indeed, that identification and routing is an integral part of the switching function.

14 MCI Petition at 24-28.

15 MCI Petition at 24.

already correctly found that the record does not support a conclusion that further unbundling of AIN is technically feasible at this time.[16] Although MCI presents no new evidence upon which the Commission could reconsider its position on AIN unbundling, and nothing in MCI's petition changes the correctness of the Commission's original conclusion.[17]

D. Unbundled AIN Trigger Access is Not Technically Feasible

Despite having lost the issue earlier in this proceeding, as well as in every industry forum where it has raised the issue, MCI claims yet again that direct access to AIN triggers by its SCPs is technically feasible.[18] Incredibly, MCI seeks reconsideration without adding any evidence to the record. For this reason alone, MCI's unsupported plea must be rejected.

In rejecting MCI's earlier arguments on this point, the Commission considered all the relevant evidence amassed over a five-year period (¶ 501) and explicitly stated that "in view of this record and the record complied in the *Intelligent Networks* docket, we cannot

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16 In reaching this conclusion, the Commission stated that "[b]ecause of the screening . . . and associated network reliability concerns that were raised in the record. . . , we do not require that [incumbent LECs to] permit requesting carriers to link their own STPs directly to the [incumbent LEC] switch or call-related databases." ¶ 480. The Commission further cautioned that "we take this conservative course here because of the real evidence in the record." Id., at n. 1114.

17 The only purported "evidence" offered by MCI is a mischaracterization of the "Manhattan Trial," which MCI alleges demonstrated the technical feasibility of direct access to AIN triggers (MCI at 25). This trial actually demonstrated the feasibility of achieving local numbers portability by accessing a single third-party service control point ("SCP") in response to an AIN trigger, as the RBOCs do today in providing 800 database access to third parties. As MCI well knows, the Manhattan trial involved neither multi-party access to AIN triggers nor the need for mediation -- the two key topics being studied by the industry fora in which both MCI and Ameritech participate.

18 MCI Petition at 24-25.

make a determination of the technical feasibility of such interconnection." (¶ 502) The Commission declined, however, to preempt state commission consideration, noting that the Illinois Commerce Commission ("ICC") had already begun to address this specific point. (Id.)

Findings on technical feasibility by state commissions to date have been consistent with the Commission's view. After considering evidence submitted by MCI, AT&T, Ameritech[19] and others, the ICC refused to find the arrangement sought by MCI to be technically feasible, instead deferring this topic to a separate proceeding to further develop the record.[20] Similarly, a Michigan Public Service Commission MPSC arbitration panel's recent consideration of this topic has yielded a proposed finding that "granting (AT&T) direct, unmediated access to Ameritech's AIN triggers would pose serious threats to

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19 See "Direct Access to AIN Triggers," a white paper filed July 26, 1996 by Ameritech-Illinois in AT&T Communications of Illinois, Petition for a total Local Exchange Wholesale Service Tariff from Illinois Bell Telephone Company Pursuant to Section 13-505.5 of the Illinois Public Utilities Act, ICC Docket Nos. 95-0458 and 95-0531. This paper generally explains why direct, unmediated access to AIN triggers is not technically feasible in a manner which eliminates the risk of serious customer service and network problems. Aspects of the issue considered by the ICC include network security and management issues, unpredictable features interactions, the serious and widespread nature of recent network failures (including several in AT&T's SS7 network), billing integrity, and customer privacy concerns.

20 AT&T Communications of Illinois, Inc., petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangement with Illinois Bell Telephone Company, consolidated dockets 96AB-003 and 96AB-004, initial brief of the ICC staff, filed October 21, 1996 at 22.

Ameritech's network integrity and reliability."[21] In short, all evidence made available since the *First Report and Order* supports the Commission's finding, and undercuts MCI's unsubstantiated argument. No further Commission action is warranted at this time.

E. The Commission Should Reaffirm its Approach to Development of Standards for Access To Operations Support Systems ("OSS") Functions

1. It is Premature and Counter-productive to Impose an Arbitrary Deadline for Development of National Standards

MCI seeks to have the Commission impose an arbitrary deadline for completion of national guidelines for access to OSS.[22] Ameritech supports the approach adopted by the Commission -- the voluntary development of national standards for OSS access. However, Ameritech is concerned that imposition of a one year deadline for completion of that development would be both premature and counter-productive. An arbitrary deadline could hinder local efforts to establish access arrangements by January 1, 1997, and could also result in guidelines that are flawed. At this stage, the Commission need only reaffirm that incumbent LECs are required to focus on meeting the January 1, 1997 deadline for developing local access arrangements to OSS, and that it will continue to encourage and monitor national industry efforts to develop national standards. (¶ 525)[23]

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21 AT&T Communications of Michigan, Inc., Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Michigan Bell Telephone Company d/b/a Ameritech Michigan, MPSC Cases No. U-11151 and U-11152, Notice of Decision of Arbitration Panel, issued Oct. 28, 1996, at 36-7.

22 MCI Petition at 39-40.

23 Sprint questions the reasonableness of the January 1, 1996 implementation date for access to OSS functions and suggests the deadline be deferred for (continued...)

MCI acknowledges that the Commission has ordered implementation of interim arrangements by incumbent LECs for access to OSS by January 1, 1997, but basically disputes that there is any "showing of a national movement" toward national standards, and asks that the Commission intervene by establishing an one year deadline for completion of national standards. MCI's assertion that one year is a feasible period for developing national OSS standards is not convincing. MCI presents no evidence of the feasibility of a one year period, nor any assessment of the nature of the standards involved. Moreover, no analyses of the work involved, the complexity of the task, or the time frames which have been required to develop past national standards of a similar nature are put forward. MCI simply has not demonstrated any factual basis for any deadline.

2. There is No Basis to Impose Additional Reporting Requirements

WorldCom asks the Commission to reconsider its decision not to impose special OSS reporting requirements on incumbent LECs. WorldCom requests that incumbent LECs be required to file quarterly reports with the Commission demonstrating, on a quantitative and qualitative basis, that requesting carriers are obtaining nondiscriminatory access to OSS functions.[24] The Commission rejected similar requests in the *First Report and Order* because

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[23](...continued)
two years. Ameritech neither supports or opposes Sprint's petition, except to seek a clarification that any such extension will not foreclose action by carriers to proceed with providing access to their OSS, to the extent feasible, by January 1, 1997.

[24] WorldCom Petition at 8-10. Worldcom also seeks compliance reports on December 1, 1996 and when an incumbent LEC purports to be in compliance with the non-discriminatory provision of the Commission's Rules. Such reports are preventive and unnecessary. Specifications for access to
(continued...)

"the record is insufficient at this time to adopt such requirements, and we may reexamine this issue in the future." (¶ 311)

WorldCom ignores the Commission's rigorous requirements governing nondiscriminatory access. The Commission's Rules mandate nondiscriminatory access equal in quality to that the incumbent LEC provides to itself and provide ample enforcement authority.[25] After acknowledging the concerns of new LECs, the Commission crafted comprehensive rules regarding nondiscriminatory access. Additional reporting requirements would burden incumbent LECs without meeting any proven need or providing any offsetting benefit.

WorldCom presents no new evidence that the Commission's Rules will not prevent discrimination or that existing reports do not suffice to provide the industry and the Commission with all the information they need to detect any discrimination that might occur. The fact of the matter is that OSS access is still under development, and it is premature to speculate whether additional or more detailed reports will be necessary to detect discrimination.

3. Specifications for Performance Standards Should be Developed Through Negotiations

WorldCom next asks the Commission to impose OSS performance standards on interconnection agreements. The Commission should reject this proposal for two reasons. First, it is premature to determine what standards may be applicable for access to OSS functions since they are still under development at the local level. Second, the terms and

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[24](...continued)
these OSS will already be provided, and any carrier that believes that it is being discriminated against will be free to seek arbitration or file a complaint on the issue.

[25] See *First Order* at ¶ 124-129.

conditions of the interconnection agreements under § 252 of the Act are to be negotiated by the parties under the oversight of state regulators. The specific terms of access to OSS functions, like other terms of such agreement are best left to private negotiations in the first instance, as envisioned in Sections 251 and 252 of the Act. Moreover, different interconnectors may desire higher or lower performance levels, and will be willing to pay accordingly. If incumbent LECs refuse to negotiate in good faith, state regulators can impose fair terms through the arbitration process. In fact, the issue of performance standards is pending in several arbitrations in the Ameritech region.[26] As the Commission observed in the *First Report and Order* (at ¶ 391), the states are in the best position to develop implementation requirements.

F. There is No Basis to Mandate Sub-loop Unbundling at this Time

In its *First Report and Order*, the Commission correctly declined to include sub-loops as an unbundled network element, and properly left it to the state commissions to determine which requests for sub-loop unbundling are feasible based upon the specific circumstances of the request. (¶ 391) The Commission concluded "that, at this stage, based on the current record evidence, the technical feasibility of sub-loop unbundling is best addressed at the state level on a case-by-case basis at this time." (Id.) The Commission also noted that it intends to revisit the specific issue of sub-loop unbundling sometime in 1997. (Id.)

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[26] See, e.g., Michigan Public Service Commission Case Nos. U-11151 and U-11152, supra.

Nevertheless, several petitioners ask the Commission to pre-empt the states by ordering sub-loop unbundling now.[27] These parties do not present any new evidence, but rather support their requests with the same arguments which the Commission considered and rejected in the *First Report and Order*. Because there has been no new information presented in this reconsideration stage of the proceeding that demonstrates that sub-loop unbundling is suddenly technically feasible in all cases and that the associated network reliability and administrative issues have disappeared, the Commission should reject the requests to mandate further unbundling of the loop at the federal level.[28]

G. Billing and Collection Is Not an Unbundled Network Element

Pilgrim, for the first time, asks the Commission to define billing and collection as a network element.[29] Pilgrim argues that there is "great expense" involved in the creation of a

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27 MCI Petition at 16-20; ALTS Petition at p. 11.

28 Ameritech spells out in detail in its Comments (at 38-42) the technical, network integrity, administrative and operational issues associated with sub-loop unbundling. For example, sub-loop unbundling is infeasible for 27% of Ameritech loops that are directly connected via undivided copper cable. Also, given the current local network configurations, significant joint planning, network architecture, operations support systems, administrative, operational and cost issues must be overcome before sub-loop unbundling will become viable as an offering. Further, new LECs have not yet even described in detail the arrangements they may seek, and no firm demand for these arrangements has yet arisen. In this regard, Ameritech attached to its Comments an analysis by Bellcore entitled Issues Concerning the Providing of Unbundled Sub-loop Elements by Ameritech that substantiated Ameritech's concerns and discusses these issues in more detail.

29 Pilgrim Petition at 2-4. Pilgrim argues that the Commission has already mandated the provision of access to incumbent LEC billing and collection services, citing to § 51.313(c) of the Rules. Ameritech submits that the rule requires only that incumbent LECs provide access to their billing

(continued...)

billing and collection system, and unless the Commission mandates that incumbent LECs provide billing and collection as network elements, it "would effectively prevent the entry on competitively neutral terms to new competitive carriers."[30] However, Pilgrim is mistaken; billing and collection is already competitive and readily available to it from sources besides incumbent LECs.[31] Pilgrim does not have to invest in its own separate stand-alone billing system, but rather can contract with other entities that provide billing services.

Moreover, as the Commission found more than a decade ago, billing and collection is "a financial and administrative service," and thus clearly not a network functionality.[32] For that reason, it also cannot be a network element. Rather, what constitutes a network element under the Act is "information sufficient for billing and collection" and not billing and collection itself.[33]

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[29](...continued)
systems so that other carriers can get the information they need to bill their own services. The Commission did not require that incumbent LECs provide billing services to other carriers.

[30] Section 3(a)(45) of the 1996 Act.

[31] See, In the Matter of Detariffing of Billing and Collection Services, CC Docket No. 85-88, Report and Order, 102 FCC 2d 1150, 1170-1171 (released January 29, 1986).

[32] Id. at 1168-1169.

[33] Section 3(a)(45) of the Act.

II. Pricing of Interconnection and Unbundled Elements

A. The Commission Should Not Adopt Any Changes to Its Treatment of Non-recurring Charges That Would Preclude Cost Recovery From the Cost Causers

Various parties seek to have the Commission change its Rules in order to compel state commissions to establish non-recurring rates for interconnection, collocation, and network elements that would not reflect the actual economic forwarding looking non-recurring costs of developing and establishing these services.[34] All such requests should be rejected as violating § 252(d)(1) and the cost based pricing principles required by the Act.

Ameritech understands that the USTA will demonstrate in detail the legal reasons why those requests must be denied. Ameritech agrees with that analysis and will not repeat it here. To the extent that the Commission is authorized under the Act to prescribe costing and pricing rules, it should stay the course and continue to permit the state commissions to authorize recovery of applicable one time costs of these services from the cost-causer as envisioned by § 252(d). The petitioners have not demonstrated that the state commissions will not properly discharge their duties under the Act, nor have they presented any support for the proposition that the Commission has the jurisdiction to preempt the states or that, even if it does, there is any justification for it to do so. The states have extensive experience in reviewing cost studies for local services, and are able to judge the validity of specific cost studies in contested cases and arbitration proceedings. As such, the state commissions are in the best position to judge whether a specific cost study is correctly calculated and adequately supported upon the record before it.

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[34] See, e.g., AT&T Petition at 15; ALTS Petition at 3-6.

B. The Commission Should Not Establish Rules that Inhibit the Ability of the State Commissions to Permit Recovery of Non-Recurring Costs Through Non-Recurring Rates

AT&T argues that the Commission should not permit incumbent LECs to recover their costs of upgrading their networks to provide wholesale services, unbundled network elements, and other facilities now required in a multiple LEC market.[35] AT&T's proposal would allow new LECs to avoid a substantial portion of the costs of developing and establishing network elements, capabilities and facilities that they request. To justify its proposal, AT&T argues that the Commission's finding that the prices for interconnection, collocation and network elements are to be based upon the most efficient technology in some way precludes the recovery of costs required to reconfigure the network for multiple carrier uses.[36] AT&T acknowledges that its ideal network differs in many respects from the embedded networks of any LEC, but argues that the costs of "upgrading" to "most efficient" status may not be considered in determining prices.

However, AT&T does not present any evidence that these costs of upgrading an incumbent LEC network to provide unbundled services, collocation and interconnection are not real costs, are not required to serve requesting carriers, or are not forwarding looking costs. In fact, AT&T does not even attempt to show that these costs result from the use of obsolete technologies. The fact is, incumbent LECs will incur these costs because they are required by the Act to meet a new set of unbundling and interconnection duties, and to respond to the service requests of carriers such as AT&T. As such, these costs clearly come

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[35] AT&T Petition at 11-15.

[36] Id. at 11.

within the scope of § 252(d)(1) as costs of "providing the interconnection or network element" and the incumbent LECs have a legal right to recover them. Denial of recovery of costs incurred to meet this statutory mandate would also raise significant Constitutional questions regarding due process and confiscation of property.[37] The AT&T proposal should be seen for what it is -- a transparent attempt to evade responsibility for costs that AT&T will cause.

Another example of an attempt to have the Commission prescribe rules that would compel state regulators to set non-recurring rates below non-recurring TELRICs is AT&T's proposal that certain non-recurring costs be recovered on an alleged "competitively neutral basis."[38] This proposal is yet another transparent attempt by AT&T to shift the bulk of the costs caused by its requests for unbundled network elements back to incumbent LECs and their customers. Such a shift is in direct conflict with the provisions of § 252(d) and the economic cost-based pricing principles that AT&T allegedly supports. Moreover, AT&T presents no evidence that Congress intended to authorize such a competitively neutral cost recovery for the non-recurring costs of providing network elements under § 252(d). To the contrary, § 252(d)(1) clearly requires that the incumbent LEC shall recover the cost "of providing the interconnection or network element" from the requesting carrier. Thus, AT&T's proposal should be rejected as being in direct conflict with the Act.

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[37] See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 430-434 (1982).

[38] AT&T Petition at 11.