

ITEM IX – SERVICE PROVIDER NUMBER PORTABILITY

	<u>L.N.C.^{13/}</u>	<u>Per Month^{13/}</u>
A. SPNP-Remote		
Service Ordering Charge, per occasion ^{11/}	\$38.44	
per number ported, including		
additional call paths	\$19.75	\$2.86
per additional call path ^{12/}	\$10.30	TBD
 B. SPNP-Direct		
Service Ordering Charge, per occasion ^{11/}	\$38.44	
Service Establishment Charge		
per SPNP-Direct trunk group,		
per switch	\$56.53	-
SPNP-Direct Channel Termination		
charges, per SPNP-Direct VG		
channel termination	\$34.56	\$18.16
per SPNP-Direct DS1		
channel termination	\$280.20	\$119.28
SPNP-Direct Number Charges,		
per number ported	\$ 3.23	\$.030

^{11/} Line Connection charges apply.

^{12/} Service Ordering charges for additional call capacity for a ported number are not applicable if ordered coincident with its specific ported number. If ordered subsequent to SPNP-Remote Service or with an unrelated ported number, Service Ordering charges apply per occasion.

^{13/} Service Coordination Fee Charges apply.

^{13/} Rates suspended pending commission approval of a competitively neutral cost recovery mechanism.

	<u>USOC</u>	<u>L.N.C.^{12/}</u>	<u>Per Month^{12/}</u>
SPNP-Direct Transport Charges,^{14/ 15/}			
per SPNP-Direct VG transport	UNMDT	\$0.00	\$0.00 ^{16/}
per SPNP-Direct VG w/o transport ^{16/}	UNMDC	"	"
per SPNP-Direct DS1 transport	UNMDF		
per SPNP-Direct DS1 w/o transport ^{16/}	UNMD1	\$0.00	0.00
Subsequent additions, deletions or rearrangement of SPNP-Direct trunk terminations in addition to above charges			
per occasion	REAJD	21.35	0.00

^{14/} Service ordering charges, as shown in Part 3, Section of this tariff apply.
^{15/} Line connection charges, as shown in Part 3, Section 1 of this tariff, apply.
^{16/} Rates for unbundled PBX ground start loops apply, as specified in Section 2 of this tariff.
^{17/} SPNP Direct DS1 Transport is provisioned at the rates and charges for DS1 service as specified in Part 15, Section 3 of this tariff.

Where SPNP Direct is provisioned.

EXHIBIT PS-1

RATE TABLE - MICHIGAN

E911 SERVICES PROVIDED:

Automatic Number Identification (ANI), Automatic Location Identification (ALI) and selective routing (SR), charge per 1000 Access Lines^{14/} serviced by the E911 Network: TBD

The per 1000 Access Lines charge will include the following number of trunks per trunk group between the Ameritech Central Office and Ameritech Control Offices deemed sufficient to accommodate traffic:

Access Lines	Trunks provided at no additional charge
01-1,500 =	TBD
1,501-7,500 =	TBD
7,501-18,500 =	TBD
18,501-33,500 =	TBD

Should Exchange Carrier desire more trunks than those described above, Exchange Carrier shall acquire such additional trunks from Ameritech at rates, terms and conditions provided in Ameritech's tariffs.

Optional Manual Update: Update of the ALI/DMS data base from paper copies of service order activity furnished by Exchange Carrier, charge per updated record: TBD

Address and Routing File
TBD

E9-1-1 Control Office TBD
Software Enhancement -
Connection Charge

SERVICES PROVIDED

A. Exchange Area(s) covered by Agreement:

Ameritech shall provide E911 Service described in Section 3.9 and Schedule 3.9 and selected by Requesting Carrier in the Exchange Area(s) in which both of the following conditions are met: (1) Requesting

^{14/} Or fraction thereof. The minimum charge will be based upon 100 Access Lines. Number of Access Lines applicable will include all lines contained within the ALI/DMS data base, including those that are outside of the Customer's geographical boundary jurisdiction, but within Requesting Carrier's exchange boundary and set for routing via the E911 network.

Carrier is authorized to provide local exchange services in such Exchange Area(s), and (2) Ameritech is the 911 service provider in such Exchange Area(s).

B. Requesting Carrier Updates:

If Requesting Carrier elects to furnish daily updates to the Customer information contained within the Requesting Carrier database, Ameritech will provide Requesting Carrier with the proper address to which updates should be sent.

AA008535E8 3406015 LSD1 12544-1

Tandem Switching

Belcore TR-TSY-000540, Issue 2R2, Tandem Supplement, 6/1/90
GR-905-CORE
GR-1429-CORE
GR-2863-CORE
GR-2902-CORE

Performance Standards

Belcore FR-64, LATA Switching Systems Generic Requirements (LSSGR)
Belcore TR-NWT-000499, Issue 5, Rev 1, April 1992, Transport Systems Generic Requirements (TSGR): Common Requirements
Belcore TR-NWT-000418, Issue 2, December 1992, Generic Reliability Assurance Requirements For Fiber Optic Transport Systems
Belcore TR-NWT-000057, Issue 2, January 1993, Functional Criteria for Digital Loop Carriers Systems
Belcore TR-NWT-000507, Issue 5, December 1993, LSSGR - Transmission, Section 7
Belcore TR-TSY-000511, Issue 2, July 1987, Service Standards, a Module (Section 11) of LATA Switching Systems Generic Requirements (LSSGR, FR-NWT-000064)
Belcore TR-NWT-000393, January 1991, Generic Requirements for ISDN Basic Access Digital Subscriber Lines
Belcore TR-NWT-000909, December 1991, Generic Requirements and Objectives for Fiber In The Loop Systems
Belcore TR-NWT-000505, Issue 3, May 1991, LSSGR Section 5, Call Processing
Belcore LSSGR TR-TSY-000511
Belcore TR-NWT-001244, Clocks for the Synchronized Network: Common Generic Criteria
ANSI T1.105-1995

Network Interface Device

Belcore Technical Advisory TA-TSY-000120, "Customer Premises or Network Ground Wire"
Belcore Generic Requirement GR-49-CORE, "Generic Requirements for Outdoor Telephone Network Interface Devices"
Belcore Technical Requirement TR-NWT-00239, "Indoor Telephone Network Interfaces"
Belcore Technical Requirement TR-NWT-000937, "Generic Requirements for Outdoor and Indoor Building Entrance"

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the petition of)	
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)	
for arbitration to establish an interconnection)	Case No. U-11151
agreement with Ameritech Michigan.)	
_____)	

In the matter of the petition of)	
AMERITECH MICHIGAN for arbitration)	
to establish an interconnection agreement with)	Case No. U-11152
AT&T Communications of Michigan, Inc.)	
_____)	

At the November 26, 1996 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shca, Commissioner
Hon. David A. Svanda, Commissioner

ORDER APPROVING AGREEMENT ADOPTED BY ARBITRATION

I.

HISTORY OF PROCEEDINGS

On August 1, 1996, AT&T Communications of Michigan, Inc., (AT&T) filed a petition for arbitration with the Commission regarding the terms, conditions, and prices for interconnection and related arrangements with Ameritech Michigan pursuant to Section 252(b) of the federal Telecommunications Act of 1996 (the FTA), 47 USC 252(b). In accordance with the proce-

dures adopted by the Commission's July 16, 1996 order in Case No. U-11134, AT&T filed proposed direct testimony and exhibits in conjunction with its petition for arbitration.

On August 2, 1996, Ameritech Michigan filed a petition for arbitration requesting that the Commission arbitrate issues related to collocation of AT&T's equipment on Ameritech Michigan's premises, AT&T's costs for local traffic termination, and AT&T's obligations under Section 251 of the FTA. Subsequently, the separate petitions filed by AT&T and Ameritech Michigan were consolidated into a single arbitration proceeding and an arbitration panel consisting of Administrative Law Judge Robert E. Hollenshead and Commission Staff members Ann R. Schneidewind and Louis R. Passariello was assigned to preside over the arbitration proceedings.

On August 14, 1996, the parties first met with the arbitration panel to establish a procedural framework for addressing disputed issues. Following the initial meeting, each party met separately with the arbitration panel to discuss the merits of the issues to be considered in the arbitration proceeding.

On August 26, 1996, Ameritech Michigan filed its response to AT&T's petition. On August 27, 1996, AT&T filed a response to Ameritech Michigan's petition.

On September 13, 1996, AT&T submitted a marked up version of the proposed arbitration agreement that sets forth all of the terms agreed to by the parties as well as each party's proposed contract language for all of the disputed portions of the contract.

On September 17, 1996, each party submitted a proposed decision to the arbitration panel. Ameritech Michigan also submitted a marked up agreement along with a list of annotations concerning differences in the contracts.

On September 24, 1996, the parties made oral presentations to the arbitration panel in support of their positions. On September 25, 1996, the parties rebutted the other party's presentations.

On October 1, 1996, AT&T submitted supplemental information regarding resolved issues. On October 2, 1996, the parties jointly submitted a version of the proposed interconnection agreement including both resolved contract language and proposed language of both Ameritech Michigan and AT&T in disputed areas.

On October 28, 1996, the arbitration panel issued its decision. In so doing, the arbitration panel identified 55 issues that the parties had been unable to resolve through negotiations. For each issue, the panel stated its decision and the rationale underlying its determination.

On November 7, 1996, Ameritech Michigan filed its objections to the decision of the arbitration panel. On November 8, 1996, AT&T filed its objections.¹

II.

DISCUSSION

The arbitration panel's decision identified and proposed resolutions for 55 contested issues.² It now appears that 18 of the issues are no longer contested.

¹AT&T's objections were filed one day late because its courier was delayed by a motor vehicle accident.

²In its July 16, 1996 order in Case No. U-11134, the Commission directed that the arbitration panel should limit its decision on each issue to selecting the position of one of the parties on that issue unless the result would be clearly unreasonable or contrary to the public interest.

In their separate objections, neither Ameritech Michigan nor AT&T raised any objections to the arbitration panel's disposition of issues 5, 9, 13, 19, 29, 37, 39, 40, 46, 47, 50, and 51. In addition, the objections raised with regard to issues 11, 12, 14, 17, 18, and 20 are limited to merely pointing out that these matters were resolved by an October 21, 1996 agreement that was apparently not submitted to the arbitration panel until the day before the panel's decision was originally scheduled to be released, which accounts for the panel's failure to acknowledge these agreements in its decision. Finally, an examination of the objections reveals that some of the remaining issues were at least partially resolved by the parties' last minute agreement.

In analyzing the remaining contested issues, the Commission has chosen to group the issues by their subject matter rather than to proceed sequentially through them. Additionally, to further expedite the Commission's decision process, determinations reached by the arbitration panel regarding issues not discussed in the body of this order are considered by the Commission to have been properly and finally resolved for the reasons set forth in the arbitration panel's October 28, 1996 decision.

Pricing Provisions

Issues 1, 2, and 49 of the arbitration panel's decision concern pricing issues that were not resolved through negotiation between the parties. Issue 1 involves the establishment of interim prices for reciprocal compensation, transiting, unbundled network elements/combinations,

collocation, and structures (poles, ducts, conduits, and rights-of-way issues).³ Issue 2 concerns the size of the discount from retail prices that should be applicable to AT&T's wholesale purchases of network services from Ameritech Michigan that will be resold to AT&T's retail customers. Issue 49 concerns whether the interim rates contained in the arbitration agreement should be replaced on a prospective or retroactive basis by permanent rates that will be established in a future proceeding.

With regard to Issues 1, 2, and 49, the arbitration panel rejected Ameritech Michigan's positions in favor of AT&T's positions on most elements of the issues. However, the arbitration panel's determinations regarding the pricing of dedicated transport, switched transport, signaling and database services, operator and directory services, and collocation rejected the positions of both Ameritech Michigan and AT&T in favor of existing FCC interstate access rates.

With regard to Issue 1, Ameritech Michigan argues that the arbitration panel's decision improperly ignored Ameritech Michigan's reformulated cost studies, which Ameritech Michigan attempted to present to the panel on September 24, 1996. The Commission finds that the reformulated cost studies were properly rejected.

The schedule in this proceeding included a September 17, 1996 deadline for the parties to submit their positions regarding all contested provisions of the interconnection agreement. On that date, Ameritech Michigan submitted its positions on the contested pricing issues, which it

³The Commission is aware that various aspects of Issue 1 are no longer in dispute because neither party raised an objection to the arbitration panel's decision. These matters include the arbitration panel's determination that the existing Federal Communications Commission (FCC) interstate access rates should be applied on an interim basis for dedicated transport, switched transport, signaling and database services, and operator and directory services. Therefore, the arbitration panel's findings on these matters should be incorporated by the parties into their interconnection agreement.

had developed on the basis of previous total service long run incremental cost (TSLRIC) studies. However, the TSLRIC studies underlying Ameritech Michigan's arbitration pricing positions had been rejected in the Commission's September 12, 1996 order in Cases Nos. U-10860, U-11155, and U-11156. Indeed, in rejecting Ameritech Michigan's TSLRIC studies, the Commission found that they were inconsistent with the costing principles established in Case No. U-10620.

At the September 24, 1996 oral presentation to the arbitration panel, Ameritech Michigan attempted to submit cost studies that had been reformulated in response to the Commission's September 12, 1996 order in Cases Nos. U-10860, U-11155, and U-11156 with regard to all unbundled network elements and interconnection and call termination services. The arbitration panel refused to consider the reformulated studies, stating that it would not accept any information submitted after the filing deadline.

"Baseball-style" arbitration exposes both parties to the same risks. Each party to the arbitration process was aware that its position on an issue would be rejected if the other party's position were found to be more reasonable. Accordingly, each participant should have been motivated to abandon unrealistic positions in favor of more reasonable ones. Ameritech Michigan is solely responsible for determining its negotiation and arbitration stances. Ameritech Michigan not only prepared the flawed cost studies, it also chose to base its negotiation and arbitration positions on those studies. As such, Ameritech Michigan has no one but itself to blame for the predicament caused by the Commission's September 12, 1996 rejection of those studies.

The Commission finds that the arbitration panel's refusal to permit the introduction of Ameritech Michigan's reformulated cost studies was neither arbitrary nor capricious. As early

as January 19, 1996, Ameritech Michigan was placed on notice that its cost studies were of questionable validity.⁴ Despite being forewarned, Ameritech Michigan chose to base its negotiation stance and arbitration positions on questionable data. Given the strict time limitations specified in the FTA for arbitration proceedings, the Commission is persuaded the arbitration panel acted properly in rejecting Ameritech Michigan's September 24, 1996 attempt to drastically revise its positions in this proceeding.⁵ Accordingly, the Commission finds that the arbitration panel acted properly in refusing to consider Ameritech Michigan's reformulated cost studies.

Having properly rejected Ameritech Michigan's reformulated cost studies, the arbitration panel was faced with adoption of one of the two positions advocated by the parties in their September 17, 1996 filings. The panel opted for AT&T's price estimates, which were based on cost information supplied by Ameritech Michigan that was adjusted by AT&T, instead of the price estimates that were supported by Ameritech Michigan's discredited cost studies. In so doing, the arbitration panel clearly indicated that AT&T's price estimates should be relied upon as an interim measure. In reaching its conclusions, the arbitration panel observed that the statutory pricing requirements for local interconnection services are governed by state and federal

⁴In a proposal for decision issued on January 19, 1996 in Case No. U-10860, an administrative law judge found that portions of Ameritech Michigan's TSLRIC studies were so flawed that they should not provide the basis for establishment of rates for interconnection arrangements between providers of basic local exchange service.

⁵Indeed, as recognized by the arbitration panel, it would have been unfair to allow Ameritech Michigan to unilaterally revise its positions on the issues without affording AT&T additional time to do likewise.

laws that provide similar standards.⁶ The FCC's approach calls for a portion of common costs to be included in the pricing of interconnection items. Under Michigan law, until January 1, 1997 common costs are not considered. [See Section 352 of the Michigan Telecommunications Act, 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq; MSA 22.1469(101) et seq. (the MTA)]. However, because Section 352 of the MTA also provides that, effective January 1, 1997, prices shall be determined pursuant to a just and reasonable pricing standard with regard to interconnection services, the only clearly defined difference between the state and federal methodologies will have a very limited effect on rates.

Moreover, the panel proposed that if the Commission's ultimate determinations in Cases Nos. U-11155 and U-11156, or on Ameritech Michigan's Advice No. 2438(B), support any different pricing conclusions for services addressed in this proceeding, such changes should be incorporated into the interconnection agreement. Additionally, the arbitration panel made a similar recommendation with respect to any changes that result from the FCC or the Commission revisiting the topic of pricing of local interconnection services in the near future.

In light of the arbitration panel's recommendations, the Commission is not persuaded that the panel's findings violate state or federal law or unconstitutionally take Ameritech Michigan's property without just compensation. The interim rates adopted by the arbitration panel are its best estimate of Ameritech Michigan's costs as determined by TSLRIC data. The Commission seriously doubts Ameritech Michigan's claim that approval of the arbitration panel's decision

⁶The arbitration panel found that the only significant difference between the state and federal methodologies in the pricing of local interconnection services involves the treatment of common costs.

will jeopardize its financial integrity. Certainly, there is nothing in this proceeding to support that contention. Accordingly, Ameritech Michigan's objections to Issue 1 are rejected.

The only Issue 1 pricing concern raised by AT&T involves collocation prices. The arbitration panel determined that Ameritech Michigan's existing FCC tariff rates for collocation should be incorporated into the interconnection agreement. AT&T maintains that its proposal for collocation prices was developed on the basis of Ameritech Michigan's actual costs of providing collocation. According to AT&T, use of the existing interstate tariffed rates for collocation is unreasonable because those rates were developed by the FCC through use of a fully distributed cost methodology that incorporates excessive overhead loadings. AT&T stresses that the FCC suspended Ameritech Michigan's most recent collocation tariffs because the rates appeared to be excessive. In any event, AT&T urges the Commission to specify that the rate that is adopted should be applied only on an interim basis. According to AT&T, Ameritech Michigan's costs of collocation should be subject to review, with the interim rates being replaced as soon as more competitive prices are determined through properly conducted cost studies.

The Commission finds that AT&T's objection to the use of Ameritech Michigan's existing interstate rates for collocation should be rejected. It makes little sense to adopt a new rate for collocation when an existing tariffed rate exists for essentially the same service. Accordingly, AT&T's objection to the collocation pricing issue is rejected.

With regard to Issue 2, which involves a determination of the wholesale discount applicable to purchases by AT&T for resale to its retail customers, Ameritech Michigan argues that the arbitration panel's determination to adopt AT&T's proposed 25% discount is flawed. According to Ameritech Michigan, the arbitration panel misunderstood Ameritech Michigan's method-

ology, which it claims is superior to AT&T's unsupported estimate. Indeed, stressing that AT&T's initial position called for a discount in excess of 40%, Ameritech Michigan argues that its rates should be adopted by the Commission because they are supported by its avoided cost study, not guesswork.

The Commission finds that the arbitration panel should not have adopted AT&T's 25% wholesale discount rate. In reaching its determination, the arbitration panel recognized that "the most reliable discount probably lies somewhere between Amcritech's 13% and AT&T's 41.1% based on its Avoided Cost Model." Decision of the Arbitration Panel, p. 26. The Commission is persuaded that, after citing potential flaws in the approaches taken by the parties and in light of the parties' adherence to extreme positions, the arbitration panel should have abandoned the inflexible "baseball-style" arbitration selection process, which it was allowed to do pursuant to the directives in the July 16, 1996 order in Case No. U-11134, in favor of a more acceptable option on this issue. Indeed, in its First Report and Order,⁷ the FCC proposed a wholesale rate discount in the range of 17% to 25%. Accordingly, implementation of a 25% discount rate constitutes adherence to a rate at the highest end of the range of rates, despite evidence that the majority of the wholesale discount rates considered appropriate by the FCC actually fell between 18.74% and 21.11%⁸.

⁷First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, 61 Fed. Reg. 45476 (1996) (codified in 47 CFR pts. 1, 20, 51, and 90), stayed in part pending appeal in Iowa Utilities Board v Federal Communications Comm., decided October 15, 1996 (CA 8, Docket No. 96-3321 et al.).

⁸First Report and Order, *supra*, paragraph 933, page 470.

The Commission finds that it would be more appropriate to use a wholesale discount rate of 22% in the interconnection agreement. A discount rate of 22% is reasonable because it is temporary and because it lies closer to wholesale discount rates that were previously determined in two states that explicitly applied Section 252(d)(3) of the FTA in reaching their decisions.⁹ Accordingly, the Commission finds that the discount rate of 22% is appropriate and should be incorporated into the interconnection agreement.¹⁰

Finally, Issue 49 involves an effort by the parties to predetermine whether changes in the contract prices should be applied retroactively or prospectively.¹¹ Ameritech Michigan urges adoption of contract language that would make price changes fully retroactive to the effective date of the contract. On the other hand, AT&T proposes to reserve each party's rights and remedies with respect to the collection of rates or charges on a retroactive or prospective basis.

In its objections, Ameritech Michigan concedes that Congress and the FCC have authority to direct whether or not a subsequent change should be applied retroactively or prospectively. Accordingly, Ameritech Michigan insists that it is necessary to incorporate language in the arbitration agreement that determines whether prices will be applied retroactively or prospectively in the event that the pricing rules are changed by a statute or an order that is silent on the

⁹See paragraph 898 of the First Report and Order, *supra*, page 457, wherein the FCC noted that the states of Georgia and Illinois derived average wholesale discounts of 18.74% and 20.07%, respectively.

¹⁰AT&T also proposed use of volume discounts, which were rejected by the arbitration panel based on its finding that volume discounts have no basis or relationship to possible avoided costs. The Commission agrees with this determination.

¹¹This issue applies to two sections of the arbitration agreement. Section 29.3 refers to contract price changes that are made to conform with a change in the FTA or the FCC's pricing rules. Section 29.5 specifically relates to the replacement of interim prices by permanent rates.

subject. The Commission disagrees. There is no basis for Ameritech Michigan's position that new rates should always be applied retroactively to the effective date of the interconnection agreement, whether established by legislative or regulatory action. Adoption of AT&T's proposal with regard to the retroactivity of rate changes ensures the parties an opportunity to address whether rates should be applied retroactively or prospectively at the time the rate change is being determined. Accordingly, the Commission finds that the arbitration panel's decision on Issue 49 should be approved.

Availability of Interconnection Service or Network Elements

Issue 54 concerns an effort by the parties to incorporate their interpretations of Section 252(i) of the FTA, which requires a local exchange carrier to make available any interconnection, service, or network element provided under an agreement approved pursuant to Section 252 of the FTA to which it is a party to any other requesting telecommunication carrier upon the same terms and conditions as those provided in the agreement.

AT&T insists that Section 252(i) should be interpreted to mean that AT&T is entitled to retain (1) any unrelated term or condition of its interconnection agreement and (2) any provision of the agreement that relates to the processes, procedures, and systems for interconnection services that were implemented by the parties in the event that AT&T elects to adopt an individual interconnection, service, or network element arrangement contained in an agreement between AT&T and a third-party. On the other hand, Ameritech Michigan argues that the interconnection agreement should contain a provision that denies AT&T the right to avail itself of any arrangement in an agreement between Ameritech Michigan and a third-party if Ameritech Michigan demonstrates to the Commission that it would incur greater costs to provide the

arrangement to AT&T than Ameritech Michigan incurred to provide the arrangement to the third-party.

Each party offered language supporting its position on this issue to be incorporated as Section 30.13 of the interconnection agreement. The arbitration panel found that AT&T's proposed language should be adopted. Ameritech Michigan objects. According to Ameritech Michigan, the law and common sense require that AT&T must adopt the terms and conditions of an entire interconnection, service, or network element arrangement in another agreement as a package. Ameritech Michigan insists that Section 252(i) should not be interpreted to allow AT&T to pluck an individual term or condition from another interconnection agreement and simply plug it into its own interconnection agreement. In the alternative, Ameritech Michigan argues that the Commission could adopt neither party's language and allow them to pursue their differing interpretations of Section 252(i).

The Commission is persuaded that Ameritech Michigan's alternative resolution of this issue is appropriate and should be adopted. The proper interpretation of Section 252(i) of the FTA is a major issue that does not need to be addressed at this time. This is particularly true in light of the expedited nature of the interconnection agreement approval process. Therefore, Section 30.13 of the interconnection agreement should be excised.

Transiting

Transiting refers to the delivery of traffic between AT&T and a third-party local exchange carrier (LEC) by Ameritech Michigan through use of Ameritech Michigan's switches and local/intraLATA trunks. Ameritech Michigan insists that nothing in the FTA or the FCC's First Report and Order requires it to provide transiting service. While Ameritech Michigan is willing

to negotiate with AT&T for the provision of transiting service at commercially reasonable rates, terms, and conditions that have short-term applicability, it disagrees with the arbitration panel's determination that Ameritech Michigan is required by the FTA to provide transiting service to AT&T indefinitely.

The Commission finds that Ameritech Michigan's objection to the arbitration panel's determination regarding Issue 4 should be rejected. As the arbitration panel recognized, absent transiting, new competitors would face a significant barrier to entry due to their inability to simultaneously interconnect with every other LEC. Further, given that an important purpose of the FTA is to encourage the development of competition in local exchange markets, the Commission is not persuaded that the FTA should be interpreted to allow Ameritech Michigan to refuse to perform transiting services. Indeed, nothing in the FTA suggests that Ameritech Michigan may refuse to resell any element, function, or group of elements and functions to AT&T for use in the transmission, routing, or other provision of the telecommunications service simply because a direct interconnection with AT&T and another telecommunications provider might obviate the necessity for Ameritech Michigan to perform transiting service. For a competitive marketplace to flourish, new entrants must be able to provide service to customers in an economically viable manner. Because Ameritech Michigan's proposed language creates a barrier to competition, the Commission finds the arbitration panel properly rejected it.

Directories

Issues 22 and 23 of the arbitration panel's decision concern matters related to telephone directories. In Issue 22, the parties were unable to agree whether Ameritech Michigan's obligation pursuant to Section 251(b)(3) of the FTA, which requires nondiscriminatory access to

directory listings, extends to both Ameritech Michigan's white and yellow pages directories. Additionally, the parties could not agree whether Ameritech Michigan has an obligation to deliver yellow pages directories to AT&T subscribers and whether AT&T has a right to have its customer contact information published in the informational pages at the beginning of Ameritech Michigan's directories. Issue 23 relates to whether AT&T should deal directly with Ameritech Michigan or the publisher of Ameritech Michigan's directories.

Subject to one exception, the arbitration panel adopted AT&T's positions on these issues.¹² After reviewing Ameritech Michigan's objections to the arbitration panel's determinations, the Commission finds that two revisions are appropriate.

First, the Commission finds that the arbitration panel's determination regarding Section 15.1 of the interconnection agreement should be reversed. AT&T had proposed that primary listings of AT&T's customers should be included in Ameritech Michigan's white and yellow pages directories. Ameritech Michigan proposed that such listings should be limited to its white pages directories.

In Section 251(b)(3) of the FTA, a duty is imposed on all I.ECs to permit competitive providers to have nondiscriminatory access to directory listings. In Section 271(c)(2)(B)(viii), Congress indicated that a Regional Bell Operating Company (RBOC) can comply with the so-called competitive checklist requirements if its interconnection agreement includes a provision permitting the customers of competing carriers to have white pages directory listings in the RBOC directories. The Commission finds that Section 271(c)(2)(B)(viii) undermines AT&T's

¹²The arbitration panel found that Section 15.2.5 of the contract language proposed by AT&T should be amended to specify that Ameritech Michigan's obligation to distribute directories extends only to AT&T's resale customers.

argument that the FTA requires Ameritech Michigan to permit access to both its white and yellow pages directories. Accordingly, Ameritech Michigan's position on Section 15.1 of the arbitration agreement should be adopted.

Second, the Commission finds that the arbitration panel's determination regarding Section 15.2.5 of the interconnection agreement should be reversed. The arbitration panel adopted AT&T's proposed language for this section. Ameritech Michigan argued that the FTA does not require Ameritech Michigan to deliver yellow pages directories to AT&T's customers. The Commission agrees. Because there is no obligation under either the FTA or the MTA requiring Ameritech Michigan to publish yellow pages directories, the Commission agrees that it should not compel Ameritech Michigan to distribute its yellow pages directories to the customers of competing LECs. Obviously, the parties are free to reach an agreement on this issue. Therefore, the Commission agrees with Ameritech Michigan that inclusion of AT&T's proposed language for Section 15.2.5 of the interconnection agreement should be rejected.¹³

However, the Commission is not persuaded that Ameritech Michigan's objection to the inclusion of information about AT&T services, including addresses and telephone numbers for customer service, in the informational pages at the beginning of Ameritech Michigan's white and yellow pages directories should be adopted. The arbitration panel recommended adoption of AT&T's proposed language. For the reasons stated in the panel's decision, the Commission agrees.

¹³Rejection of AT&T's proposed language for Section 15.2.5 of the interconnection agreement renders Ameritech Michigan's objection to Issue 23 moot.

Access to Ameritech Michigan's Real Property

Issue 24 involves a dispute over Section 16.1.1 of the interconnection agreement. The arbitration panel adopted AT&T's proposal on this issue. According to the arbitration panel, the term "right-of-way" should not be interpreted to be limited to real estate owned by third-parties. Rather, the arbitration panel expressed its belief that Section 224(f)(1) of the FTA requires Ameritech Michigan to grant AT&T access to any property owned, leased, or otherwise controlled by Ameritech Michigan.

In its objections, Ameritech Michigan argues that the arbitration panel's acceptance of AT&T's language for Section 16.1.1 of the interconnection agreement goes too far. According to Ameritech Michigan, the term "right-of-way" has a clear meaning under the law and is limited to its existing rights-of-way over the land of third-parties. Therefore, Ameritech Michigan insists that nothing in the FTA obligates it to create new rights-of-way across its own property. Indeed, Ameritech Michigan insists that Congress could not have intended to grant requesting carriers access to all land owned by incumbent LECs simply because such land might be suitable for distribution facilities. Rather, Ameritech Michigan argues that Section 16.1.1 of the arbitration agreement should be limited to ensure access to only "poles, ducts, conduits, and other rights-of-way," not the broader "pathways" contemplated by AT&T's position.

Section 251(b)(4) of the FTA requires all telecommunication carriers to afford access to their poles, ducts, conduits, and rights-of-way to competitors on rates, terms, and conditions that are consistent with Section 224 of the FTA. However, Section 224(c)(1) of the FTA provides that the FCC shall lack jurisdiction with respect to the determination of the rates,

terms, and conditions for access to poles, ducts, conduits, and rights-of-way in any case where such matters are regulated by a state.

Section 361 of the MTA sets forth Michigan's current regulatory scheme for access to structure, which is remarkably similar to the statutory scheme set forth in Section 224 of the FTA. Accordingly, the Commission finds that its decision should be guided by federal and state law on this issue.

Subject to one modification, the Commission is persuaded that the arbitration panel's adoption of AT&T language for Section 16.1.1 of the contract is appropriate. According to AT&T's proposal, the term "rights-of-way" is defined to include "easements, licenses, or any other right, whether based upon grant, reservation, contract, law or otherwise, to use property suitable for distribution facilities but does not include property owned or leased by Ameritech Michigan which is not used or suitable for distribution facilities such as business offices or corporate offices." The Commission agrees with Ameritech Michigan that this definition should be revised slightly to clarify that Ameritech Michigan is not obligated to create new rights-of-way across its own property. Accordingly, Section 16.1.1 of the arbitration agreement should define "rights-of-way" to include easements, licenses, or any other right, whether based upon grant, reservation, contract, law or otherwise, to use property if the property is used for distribution facilities.

Indemnification and Limitation of Liability

Issues 41, 42, 43, and 44 are related to the concepts of indemnification and limitation of liability. The arbitration panel adopted AT&T's proposals with regard to Issues 41, 42, and 44, but opted for Ameritech Michigan's language on Issue 43. Both Ameritech Michigan and

AT&T raise objections to the arbitration panel's decisions. With regard to Issue 41, Ameritech Michigan maintains that its proposal for Section 25.1(a) is more appropriate because it is not limited to circumstances where the conduct that caused the loss was within the scope of employment of the individual whose conduct caused the loss. According to Ameritech Michigan, the problem with AT&T's proposal is that it constitutes nothing more than an attempt to specify in the contract the circumstances under which a company might incur a loss to a third-party. Ameritech Michigan insists that a better approach is to ensure that Ameritech Michigan's duty to indemnify AT&T exactly parallels AT&T's exposure to its customer due to the conduct of Ameritech Michigan's employee.

With regard to Issue 42, Ameritech Michigan argues that the panel's adoption of AT&T's proposed language for Section 12.7 of the agreement constitutes an attempt to force Ameritech Michigan to demonstrate fault in circumstances where the acts are in the exclusive control and knowledge of AT&T.

In Issue 43, AT&T maintains that its proposed language in Section 26.3.1 of the interconnection agreement is intended to make Ameritech Michigan's liability to AT&T coextensive with AT&T's liability to its own customers. Additionally, AT&T maintains that Ameritech Michigan's position is nonsensical in situations where the damages arise out of conduct that is not associated with a service rendered for a fee.

Finally, Issue 44 involves Ameritech Michigan's argument that the language proposed for Section 6.5.2 should contain a \$10,000 limitation on liability in recognition that neither party is being compensated for services rendered under Article VI of the interconnection agreement.