Ameritech asserts that transport on a per customer basis is a service and not an unbundled element. The FCC Interconnection Order refers to services versus elements in its discussion of common costs. Specifically, the FCC wanted to avoid pricing facilities in a manner that would treat facilities as common to multiple services like interstate access service and local exchange service which would require an allocation of the cost of a facility between services (at 678). The services that are referred to are retail services. Ameritech attempts to claim that the efficiency of its transport network represents a service. However, the interoffice transport network is one portion of a number of retail services including local exchange service, or exchange access service. While the Interconnection Order refers to services and elements, there are no references in the Interconnection Order where the interoffice transport network is referred to as a service. The Interconnection Order does refer to interoffice transport as a functionality, which will be discussed in greater detail below.

Ameritech asserts that there should be risk to a new entrant that it may not be able to achieve sufficient demand when it purchases unbundled transport and supports its assertion with a reference to paragraph 334 of the Interconnection Order. However, the context of that reference is entirely different from the instant situation. That paragraph refers to risk that end-user customers will not demand a sufficient number of services. An example would be end-users' demand for services like vertical features of call waiting or call forwarding provided through the use of the unbundled line card. Paragraph 441, which specifically refers to unbundled transport, gives the explanation that competing carriers are not expected to duplicate Ameritech's transport network.

The FCC identifies how it views the unbundling of the transport functionality in paragraph 258, which says, "Carriers seeking other elements, especially shared facilities such as common transport, are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis. Paragraph 444 states that the FCC does not require physical partitioning of a particular piece of transport equipment, but instead permits competitors to use the functionality in the same manner that incumbent LECs now permit IXCs to use such functionality, which is on a minute of use basis. The concept of functionality is codified in the following rule: "An incumbent LEC shall provide a requesting telecommunications carrier access to the facility or functionality of a requested network element separate from access to the facility or functionality of other network elements, for a separate charge." (47CFR § 51.307(d)) In the context of the narrative of the Interconnection Order, it is reasonable to interpret this as meaning that access to facilities is provided where facilities are dedicated to a single end user and access to functionalities is provided where facilities are shared among more than one end user.

In rebuttal testimony, Ameritech characterizes just such access to the functionality of Ameritech's more efficient network as a risk free "virtual partnership" and a "sweetheart deal." Ameritech claims it saddles the incumbent with the ownership and operation of a multibillion dollar network, while new entrants would not need to invest a single capital dollar. However, Ameritech's complaint is applicable to the provision of any unbundled network elements. The Act, in making it a duty for incumbent LECs to provide unbundled network elements, determined that new entrants would be able to purchase the use of Ameritech's network on an unbundled basis without the investment of any capital dollars. The cost of the unbundled elements includes a return which fully compensates Ameritech for the investment of its capital. Unbundling is the

action the Act determined was required to open local markets to competition. It is unreasonable for Ameritech to define network elements in a way that provides only two means of competing with Ameritech, resale and facilities-based competition and to define unbundling in a way that provides no meaningful difference from facilities-based competition.

The Act clearly spells out three means of competition: (1) resale, (2) unbundled network elements and (3) facilities-based competition. The Act clearly provides two ways to use the incumbent's networks: (1) unbundled network elements based on cost and (2) resale based on a discount off of the retail price. Providing unbundled network elements in addition to resold serves a couple of important purposes. One is that it provides a competitive restraint on incumbents' retail rates. With unbundled network elements priced based on cost, if Ameritech raises its retail rates excessively, competitors can chose to purchase unbundled elements and charge lower rates. In rural areas where facilities-based competition will be inefficient, unbundled network elements will serve as an important restraint on retail rate increases. Ameritech's arguments that rebundling unbundled network elements is the same as resale is a disguised attempt to eliminate a useful restraint against its own unilateral ability to raise retail rates.

In addition, unbundled network elements can also be used to provide multiple retail services in different proportions than Ameritech provides retail services. The unbundled network elements used in providing local service are also used to provide the other retail services of exchange access and vertical features like call forwarding. If new entrants choose to make greater use of facilities than Ameritech, such as providing more vertical features, then they can do so using unbundled network elements. The availability of unbundled network elements

encourages more efficient use of facilities or offering new services with existing facilities. However, if providers just want to match Ameritech's offering, resale is available.

Ameritech is capable of computing the cost of transport on a per customer or per minute of use basis. Ameritech makes this computation in calculating the cost of reciprocal compensation which entails both switching and transport for terminating its competitor's calls. Ameritech uses capacity costing in that calculation. Capacity costing explains that if a facility is purchased which will exhaust, meaning its utilization will increase over time from one unit to the maximum units it can serve, then the cost of the facility can be equally assigned based on the capacity of the equipment. The addition of each customer pushes forward the time that an additional facility will need to be put into service. The costs can then be broken down on a customer demand basis. The limits Ameritech has applied (such as channels of fractions of channels) to the degree to which costs can be divided are not necessary or desirable. Cost can be divided by each unit of demand.

The FCC describes trunk ports as usage sensitive costs. (para. 799-814, September 27, 1997, Order on Reconsideration, at 6) "Usage sensitive" is another means of saying the facility fills to capacity and additional units are added based on demand. It is reasonable to interpret that the FCC's reference to costs as usage sensitive indicates that the costs can be divided by each unit of demand.

Unbundling on a per customer line or per minute basis is a reasonable degree of unbundling to require. It is consistent with the Wisconsin statutory definition of "basic network function," s. 196.015(1), Wis. Stats. "Basic network function" is defined as "the smallest disaggregation of local exchange transport, switching, and loop functions that is capable of being

separately listed in a tariff and offered for sale." Accordingly, there is no federal or state support basis for approving only the limited extent of unbundling that Ameritech does offer.

There is a pervasive consistency of logic to requiring transport to be unbundled to the level of minutes of use or per customer line. These are the units in which Ameritech sells to its end users. They are the smallest units into which Ameritech is capable of disaggregating its costs. They are the units in which the FCC describes the transport functionality. They are the units that provide the greatest usefulness for unbundled network elements. Therefore, it is reasonable to require the extent of unbundling should be a per line or per minute of use basis.

There should be consistency of the units in which unbundled elements are offered between different unbundled elements. Unbundled trunk ports on a per customer-line basis are of limited usefulness to competing providers when other interoffice transport elements are not offer a per customer-line basis. The FCC defined the trunk port as part of unbundled local switching but it must be combined with other transport elements to provide unbundled transport. It is a barrier to combining unbundled elements if the units in which local transport are offered do not match the units in which unbundled switching are offered. Ameritech's offering of transport in such sized increments represents an unreasonable restriction on combining unbundled elements. Incumbent LECs are required to provide unbundled elements in a manner that allows requesting carriers to recombine such elements and may impose only reasonable terms and conditions per § 251(c)(3).

In effect, such a mismatch in sizes makes the purchase of transport contingent upon obtaining aggregates of unbundled loops and unbundled switching. This does not meet the requirement to provide transport unbundled from local switching as required by checklist

requirement (v). Ameritech also places restrictions on whether unbundled local switching is even available dependent upon the purchase of additional trunk groups. This will be further discussed in issue 6 of this section, "Provider of exchange access services." Making the purchase of switching contingent upon the purchase of transport violates the requirement to provide transport unbundled from switching.

In summary, the following is what this Commission means in its requirement that Ameritech must offer common transport. One meaning is that unbundled transport should be offered in a manner that corresponds to the rate structure for interstate access transport, but with rates based on costs. This means that all transport elements are offered on a minute of use basis. In this way a single customer can be served through combining unbundled network elements by purchasing only the transport minutes of use that customer generates.

However, the FCC also provides in paragraph 810, (stayed pricing rule) that a "combination of a flat-rated charge for line ports, which are dedicated to a single new entrant and either a flat-rate or per minute usage charge for the switching matrix and for trunk ports, which constitute shared facilities, best reflects the way costs for unbundled local switching are incurred and is therefore reasonable." In a like manner, the interoffice mileage and tandem termination are also shared facilities. Accordingly, an option for common transport on a flat-rated basis will be allowed. Flat-rated common transport shall offer all transport rate elements on a end user customer-line basis.

Ameritech's current common transport proposal requires providers to couple the transport with dedicated ports on each end. Each link of common transport is therefore route specific, and must be designated in the competitor's custom routing tables. Common transport, in the access

environment, does not have this type of restriction. Instead, common access transport can be used to transport calls at times when a provider's dedicated facilities are at capacity. In such cases, the calls carried over common access transport are routed according to Ameritech routing tables, until those calls reach the tandem or toll provider's point of presence. Likewise, to provide reasonable terms, with the efficiency of Ameritech's network, Ameritech's unbundled common transport must also use Ameritech's routing tables, and flow through Ameritech ports, instead of requiring unbundled ports and predefined routes. Common transport should not be route specific.

Ameritech included a provision in its common transport option that competitors cannot have more than 23 channels worth of common transport over a particular route. Ameritech is imposing terms such that competitors could not rely solely on common transport when the provider has enough traffic to justify dedicated transport. While this is a reasonable concern, the solution would require dedicated ports and would prevent a competitors' customers from completing calls when its network exceeds its normal capacity. This restriction prevents competitors from using common transport to handle true overflow situations. Such an outcome is not reasonable. Instead, Ameritech should develop an additional charge which applies when the competitor exceeds dedicated transport capacity, along the lines of the FGD blocking charge in the access tariff. Such a surcharge would provide a financial incentive for providers to avoid excessive peak capacity overflow onto unbundled common transport. If Ameritech wishes to impose such an overflow surcharge, it must file the tariff change along with cost support and justification. This tariff would be subject to Commission review in any refiling of the Statement

The FCC rules require that dedicated transport be offerred as well as shared transport (herein called common transport) per § 51.319(d)(1). The tariffs offered by Ameritech for DS-1, DS-3 and various OCs with dedicated ports, and mileage charges meet this requirement. It is reasonable to require that some form of dedicated transport (unbundled or facilities) be used when the nature of the traffic must be identified. This order adopts the use of dedicated ports to identify toll traffic under item number 6, Provider of Exchange Access Service below. Common transport by defintion does not include dedicated ports, so it is reasonable to limit the use of common transport to the transport of local calls. If the definition of the provider of access is revisited at a future point in time, it would be reasonable to revisit this limitation as well.

Therefore, it is reasonable to require that Ameritech offer common transport, with transport defined as having the same efficiency as Ameritech's transport network, on a per-customer-line basis or a per-minute-of-use basis. The Commission finds this is the unbundled transport necessary to comply with § 251 and § 252(d), and the regulations thereunder. If future FCC action on reconsideration preempts state authority and requires a different definition of unbundled transport, the Commission will revisit this issue..

3. Customized routing functions

When an Ameritech customer places a call, that call is routed according to Ameritech's routing table. Calls to customers served by the same switch are connected to the called party's port. Calls within the same calling area are routed to the appropriate interexchange trunk port, and then on to trunks leading to the correct switch. Calls covering longer distances are routed over trunks leading to the tandem switch, or to toll providers' points of presence. All of this is controlled by Ameritech's routing tables.

If competitors use their own transport networks, they will need routing tables to route calls onto those networks. Ameritech has referred to the creation of such routing tables as "customized routing." In its initial filing, Ameritech proposed making customized routing available only through the *bona fide* request process.

In its first order, the Commission determined that customized routing was a standard part of unbundled service, and should therefore be available without a *bona fide* request process. In its March 3, 1997, filing, Ameritech has complied with this requirement.

No objection was raised regarding the pricing of customized routing service, so it is presumed reasonable at this time. Further review of the pricing and costing may be appropriate in a future filing of the Statement.

4. Vertical features

The FCC rules require an incumbent LEC to provide access to unbundled elements along with all of the unbundled network element's features functions and capabilities, in a manner that allows the requesting carrier to "provide <u>any</u> telecommunications service that can be offered by means of that network element." (47 CFR § 51.307(c)) Ameritech's original offerings provided only that it will make available those features Ameritech offers to its own customers. Ameritech's offering makes other vertical features available, but only through the BFR process. In purchasing unbundled local switching, a competing carrier has already paid the cost of all vertical features the switch is capable of offering. The BFR process creates excessive delays in accessing those features -- delays that would not be required in all situations. Therefore, in its February 20, 1997, oral decision the Commission concluded that vertical features, including

those not currently offered by Ameritech, must be made generally available without a BFR process.

In its March 3, 1997, Statement, Ameritech replaced the BFR process with a Switch Feature Request process which provides a response in no more than 60 days instead of the maximum 120 days under a BFR. In comments, Ameritech asserts that the process is necessary because network personnel need time to determine if the software is loaded on the switch. If the software is loaded it would still need to be tested to determine if it can function without affecting other existing switch features. Ameritech would also need to determine if right to use fees would be required by the switch vendor to activate the feature.

While AT&T alleges the process is still BFR under the tariff, the most recent filing simply imposes a maximum 60 day request period for implementation of a switch feature request. This revision makes the full features of the switch available to the CLECs in a nondiscriminatory manner relative to Ameritech's own internal processes for activation of switch features. What is missing from the offering is the provision of adequate information for a potential requester to do an independent prior evaluation of the cost and ease of addition of switch features. This tariff offering should clearly state that a customer of Ameritech's unbundled switching service shall be supplied with access to the list of features for each of its switches, the status of the feature, and adequate information on the applicable right to use fees.

No objection was raised regarding the pricing of filling switch feature request orders, so it is presumed reasonable at this time. Further review of the pricing and costing may be appropriate once the above switch feature information is made available for parties to do an independent analysis of the effect of the pricing.

5. Collocation of remote switching modules

Relevant Provisions of the Act

§ 271(c)(2)(B) Competitive Checklist.

(i) Interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1)

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing.

§ 251(c)(2) Interconnection.

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

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

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

§ 251(c)(6) Collocation.

The duty to provide, on rates, terms, and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier . . .

§ 252(d) Pricing Standards.

(1) Interconnection and network element charges.--Determinations by a State commission of the just and reasonable rate for interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--

(A) shall be--

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
(ii) nondiscriminatory, and
(B) may include a reasonable profit.

§ 252(f) Statements of Generally Available Terms.

(2) State commission review.
A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a state commission form establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications quality standards or requirements.

Selected descriptions in the body of 96-325, FCC Interconnection Order in CC Docket No. 96-98:

579. We believe that section 251(c)(6) generally requires that incumbent LECs permit the collocation of equipment used for interconnection or access to unbundled network elements. Although the term "necessary," read most strictly, could be interpreted to mean "indispensable," we conclude that for the purposes of section 251(c)(6) "necessary" does not mean "indispensable" but rather "used" or "useful." This interpretation is most likely to promote fair competition consistent with the purposes of the act. (We note that this view is consistent with the findings of the Colorado Commission). Thus, we read section 251(c)(6) to refer to equipment used for the purpose of interconnection or access to unbundled network elements. Even if the collocator could use other equipment to perform a similar function, the specified equipment may still be "necessary" for the interconnection or access to unbundled network elements under section 251(c)(6). We can easily imagine circumstances, for instance, in which alternative equipment would perform the same function, but with less efficiency or greater cost. A strict reading of the term "necessary" in these circumstances could allow LECs to avoid collocating the equipment of the interconnectors' choosing, thus undermining the procompetitive purposes of the 1996 Act.

580. Consistent with this interpretation, we conclude that transmission equipment, such as optical terminating equipment and multiplexers, may be collocated on LEC premises. . . . . State Commissions may designate specific additional types of equipment that may be collocated pursuant to section 251(c)(6).

581. . . . We find that section 251(c)(6) does not require collocation of equipment necessary to provide enhanced services. At this time we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used

> for the actual interconnection or access to unbundled network elements.[footnote 1417] We recognize, however, that modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is in dispute, that state commissions will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements. We also reserve the right to reexamine this issue at a later date if it appears that such action would further achievement of the 1996 Act's procompetitive goals. . . .
>
> > 1417 If switching equipment is located at the collocated space, generally the only equipment used for interconnection or access to unbundled elements is the cross-connect equipment. The switching equipment generally performs other functions.

AT&T and other parties have sought in this docket to achieve what has not yet been granted in an arbitration proceeding: the ability to collocate remote switches in Ameritech's end offices. This request goes beyond the specific requirements of the FCC's interconnection order. However, the FCC left both exemption for individual pieces of equipment and additional categories of equipment to the states and left open the possibility of collocation of switches to further the procompetitive goal of the 1996 Act. The reopenings the FCC left for itself and states under federal law provides a ready basis for a decision by this Commission based on both the Act and state law. The Wisconsin Legislature passed a similarly procompetitive piece of legislation called 1993 Wisconsin Act 297 (the Wisconsin Act). The following provisions were new under that legislation and apply directly to the collocation issue:

> 196.219(3) Prohibited Practices. A telecommunications utility may not do any of the following with respect to regulated services:
>
> (a) Refuse to interconnect within a reasonable time with another person to the same extent that the federal communications commission requires the telecommunications utility to interconnect. The public service commission may require additional interconnection based on a determination, following notice and opportunity for hearing, that additional interconnection is in the public interest and is consistent with the factors under s. 196.03(6).

So, the discretion the FCC has given the Commission can be exercised under the following statutory factors:

> 196.03(6) In determining a reasonably adequate telecommunications service or a reasonable and just charge for that telecommunications service, the commission shall consider at least the following factors in determining what is reasonable and just, reasonably adequate, convenient and necessary or in the public interest:
>
> (a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219.
>
> (b) Promotion of consumer choice.
>
> (c) Impact on the quality of life for the public, including privacy considerations.
>
> (d) Promotion of universal service.
>
> (e) Promotion of economic development, including telecommunications infrastructure deployment.
>
> (f) Promotion of efficiency and productivity.
>
> (g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

Staff Witness Richter testified that in addition to a legal analysis, the Commission should apply a public policy analysis to the issue of collocation, including the following four criteria:

- relative benefit/harm to incumbents and new entrants
- economic efficiencies
- technological efficiencies
- regulatory objectives

The Commission presents a legal and public policy analysis below and concludes that Ameritech should be required to accommodate some collocation of RSMs.

Using the six factors of s. 196.03(6), stats., and the public interest as guidelines, the Commission is able to provide a more comprehensive decision on this issue in this docket than it has been able to exercise in other proceedings. For instance, a commission ruling regarding a very large potential provider like AT&T should not be considered conclusive on of the issue for providers of all types and sizes. Further, even a potentially large competitor will not likely be

able to enter the local market with a ubiquitous overwhelming local market share, and thus at some central offices may physically configure its network more like that of a small provider. Even the arbitration panel decision cited by Ameritech witness Edwards at hearing acknowledges the efficiency of RSM collocation for market entry. The decision relies on the availability of entry options to deny AT&T's request. The only harm cited in the excerpt quoted in testimony is a potential to use up collocated space. On cross-examination, Edwards added that he had concerns for powering requirements and the central office environment. The concerns he expresses regarding RSMs could be equally valid for other equipment that is allowed for collocation, and therefore cannot be taken as completely counterbalancing the positive aspects of RSM collocation.

With regard to the criteria in s. 196.03(6), stats., above, Witness Sherry for AT&T provides considerable testimony on the economic and technological efficiencies gained by collocation of RSMs. Such collocation avoids unnecessary transport of intra-office calls and allows remote testing of loops served with digital loop carrier systems. Witness Easter of US Exchange added that RSM collocation reduces a new entrant's cost of rapid service deployment using unbundled elements. Prominent among his points is avoidance of the cost of establishing a separate point of presence near each Ameritech central office.

RSM collocation generally allows parity of interconnection with Ameritech for service to its loops. While such parity is not required per se under the Act for collocation, such a discriminatory interconnection policy vis a vis Ameritech's interconnection of its own network components may be sufficient cause for Commission investigation and remedial action under

state law (s. 196.219(h), Wis. Stats.) This proceeding, with hearing, suffices as such an investigation.

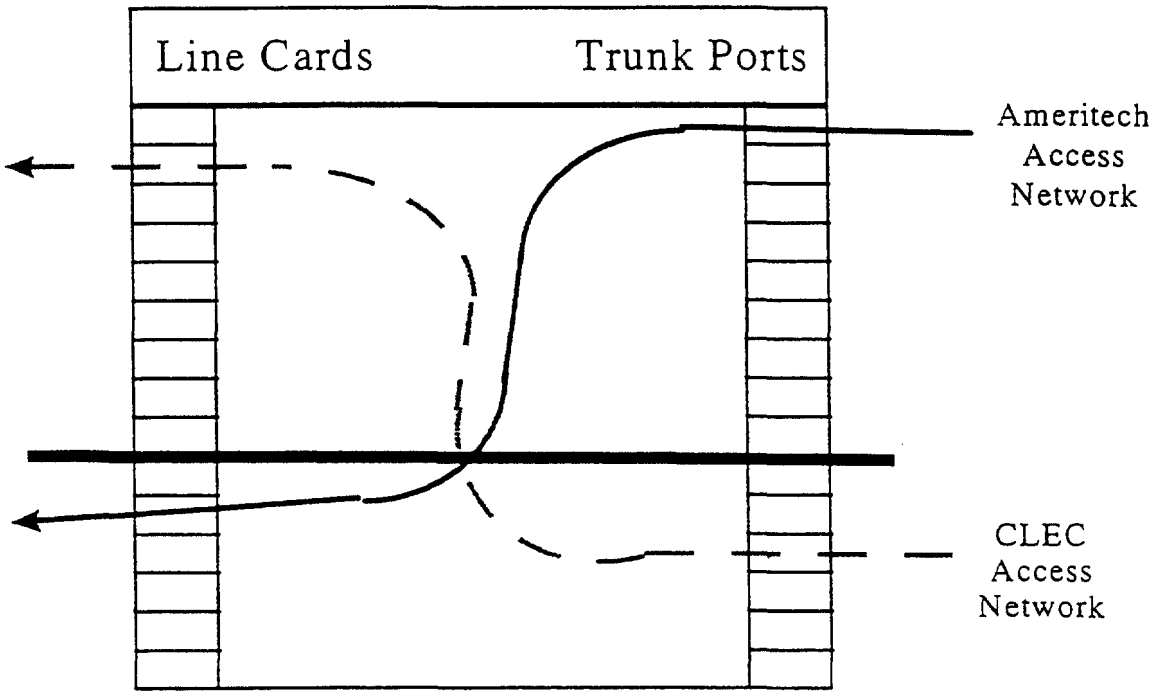
The evidence presented in the record leads the Commission to believe that there are competitive benefits to RSM collocation which would produce positive results for factors (a) promotion of competition, (b) more rapidly introducing customer choice, (e) promotion of infrastructure deployment, (f) introduction of efficiency and productivity in telecommunications networks and (g) promotion of competition in more diverse locations by lowering the cost of entry. Further, the Commission is not aware of any reasons why items (c) impact on the quality of life for the public, and (d) promotion of universal service, would be negatively impacted by RSM collocation in a manner or to a degree separately identifiable from the general tension of competition with quality of life and universal service issues.

The Commission finds no conclusive federal prohibition of RSM collocation or a requirement of collocation of RSMs. Further, there is no prohibition of state discretion regarding this issue, and the Commission is not barred from application of state law. State law provides the underpinnings for the conclusion, based on evidence at hearing that RSM collocation will overall provide a public benefit. This benefit derives fundamentally from economic and technological efficiencies that are achieved to promote market entry. Therefore, Ameritech's concern for availability of collocation space may be mitigated by limiting the RSM collocation to RSMs of small capacity. This would force entrants with significant market share in the central office service area to vacate central office space to establish nearby points of presence, thus making the space available to other entrants.

Ameritech shall allow collocation of RSMs of a capacity suited to market entry. Reasonable limits on collocated RSM capacity will be allowed in the tariffs, where such limits will not constrain market entry, are supportable by space, power or CO environmental limitations, and allow a reasonable accommodation of market share growth.

6. Provider of exchange access service

Access revenues constitute a significant portion of a local exchange carrier's total revenues. If competitors are unable to provide access services, and therefore do not have an opportunity to tap into this revenue stream, the competitor is unlikely to be able to succeed (see Exhibit 45.) In the hearings, parties agreed on two basic access charge issues. The first was that if a toll call travels over Ameritech's access network, and terminates on the line card (port) serving an Ameritech customer, Ameritech charges access for that call. The second was that if a toll call travels over a CLEC's access network, and terminates on the line card (port) serving a customer of that CLEC, the CLEC charges access for that call. Parties do not agree on who gets the access charges for toll calls which travel over one company's access network, and terminate on the line card serving another provider's customer. These situations are shown in the following diagram.



Under Ameritech's current offering, Ameritech believes it can collect access payments on all access traffic terminating (placed) to a customer served by a line card (unbundled port) purchased by a CLEC competitor and traveling over Ameritech's access network. (Such a call is shown by the line from Ameritech's access network to Customer B.) Ameritech also collects access payments on all access traffic traveling over a competitor's access network, and terminating to a line card serving an Ameritech customer. (The line from the CLEC's Access Network to customer A.) In effect, Ameritech gets access revenues in all cases where parts of the call are handled both by Ameritech and by the competitor. Since access revenues represent the entire profit margin for most services, as shown by Exhibit 45, any arrangement under which Ameritech retains these revenues in all cases in which access is provided jointly is unreasonable. Accordingly, the Commission finds that Ameritech's position regarding access charges

unreasonable and discriminatory and therefore in violation of § 251(c)(3). A reasonable position on access charges must provide some form of parity where portions of access service are provided both by Ameritech and by the competitor.

In testimony, two alternatives to Ameritech's approach to assigning access revenues were advanced. In the first, the provider supplying the line card to the customer receives the access revenues for access calls to and from that line card, regardless of whether Ameritech or the competitor actually provided the access services. If the access services were provided by Ameritech, the competitor would charge for access, and would pay Ameritech unbundled service rates for switching and transport used in providing that access. The second option is for the access revenues to accrue to whichever provider provided the access services. Under this option, if an access call was transported to an end office switch over a competitor's access network, and terminated on a line card serving an Ameritech customer, the competitor would pay Ameritech only the charge for unbundled local switching. All three options, Ameritech's and each of the alternatives, are described in greater detail below.

The FCC has issued pricing and interconnection rules regarding the application of access charges and the use of unbundled network elements. The FCC pricing rules have, however, been stayed by the federal courts following arguments that the FCC overstepped its authority in setting those rules, bacause unbundled services are local, not interstate, in nature. However, the interconnection rules have not been stayed. It can be argued that the identification of the provider of access is a rule related to the application of access charges which have been stayed. This Commission asserts that it retains authority to set rates and conditions for intrastate services, including unbundled transport, and to eliminate unreasonable restrictions on the use of

unbundled services. If the FCC prevails in court, or if this Commission is otherwise preempted by FCC actions, this issue will be reopened, as described below.

Ameritech claims its terms and conditions, which do not let a competing LEC become the exchange access provider to any of Ameritech's local service customers, are based on the FCC's September 27, 1997, Order on Reconsideration. In that order, the FCC concludes that because the unbundled local switching element includes dedicated facilities, the line card, a requesting carrier is effectively precluded from using unbundled local switching to substitute for access services. According to the FCC, the loop and the line card are dedicated facilities which are used to provide both exchange access and local service (at 1), and therefore a CLEC purchasing the line card becomes the provider of access services.

Yet in Ameritech's offering when the competing provider purchases the unbundled local switching, which includes the line card, the competing provider does not become the recipient of access revenues. This represents a discriminatory term or condition in Ameritech's offering. If the Order on Reconsideration is applied in a uniform manner, the provider of the line card (unbundled line-side port) should in all circumstances be the provider of both local and exchange access service. Ameritech applies this requirement only to its own local service customers. Ameritech creates a different requirement for its competitors. Ameritech requires the purchase of a second and third set of transport-side trunks ports to be the provider of access service. But even when dedicated transport-side ports are purchased, the CLECs are only allowed to use these facilities to serve their own local service customers. Ameritech, using the same investment in dedicated transport-side ports, allows itself to provide access to the CLECs' local service customers. As staff witness Jahn characterized Ameritech's conditions which limit termination

of access, they result in a "heads I win, tails you lose" situation. These conditions are an unreasonable restriction on the use of unbundled services, and create a barrier to competition and are therefore a violation of both § 251(c)(3) and state statutes.

If the pricing rules were not stayed, a clear violation of the FCC's rules could also be identified. 47 CFR § 51.515(a) requires that "Neither the interstate access charges described in part 69 nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchasers of elements that offer telephone exchange or exchange access services." Ameritech's collection of access revenue related to a CLECs' local service to customers is in clear violation of this rule. Conversely, this is the only pricing rule that would be consistent with Ameritech's assertion that competing providers may not provide access service to Ameritech's own local service customers.

Ameritech's reliance on the Order on Reconsideration regarding providing access services to its own local service customers, while claiming Ameritech is also the recipient of access related to its competitor's local service customers is discriminatory. It relies on the Order on Reconsideration for its own local customers and violates the Order on Reconsideration for its competitor's local service customers.

The FCC's orders appear to most closely support the first alternative position; that the access revenues accrue to whichever provider supplies the port to the customer. If the Commission were to adopt the FCC treatment of access, then that provider would charge access to the toll provider for all toll calls made from that port. If the supplier of the port is a competitor using unbundled services, then the competitor would charge access rates to the toll provider, and the competitor would then pay Ameritech for the component parts of that access on an unbundled

basis. While this plan would eliminate a major problem with the Ameritech proposal – namely that Ameritech would have an unfair advantage through control of the access bottleneck -- it would cause other problems. The most significant is that it will prevent the market from controlling access rates.

The FCC proposal merely transfers the access bottleneck, it does not remove it. By requiring access revenues to follow the port, the proposal prevents toll providers from seeking cheaper alternatives for delivering calls to that line. If access charges are a bottleneck, providers have no incentive to reduce those charges. Instead, the providers have an incentive to *raise* access rates as high as possible. The competitor must charge enough to their retail customers to cover their total costs, *minus the amount of revenue the provider gets from access charges.* The higher the competitor raises its access charges, the lower the retail rates and the more attractive the provider.

Traditionally, the only competitive pressure on access charges came through the threat of bypass: the toll provider would offer the customer lower toll prices if the customer would agree to accept a separate line for toll service, thereby avoiding (bypassing) the access charges. In the new competitive environment, however, many customers will get both his or her toll service and local service from the same provider, and will therefore have no incentive to accept a bypass line. Under the FCC plan, the FCC would probably have to apply some form f control or caps to interstate access rates on all providers. The Wisconsin Commission, however, cannot rely on such controls. The Wisconsin Commission has limited control over access rates for Ameritech and GTE North, potentially limited jurisdiction over new CLECs, and no direct jurisdiction over the access rates of companies certified as carriers under s. 196.499, Wis. Stats., such as AT&T

and MCI. Furthermore, the Commission has a statutory mandate to rely on competition where possible and to the maximum extent possible, instead of regulatory solutions.

Therefore, it is reasonable for the Commission to reject the proposal that access rates must accrue to the provider that supplies the port to the end user.

The second alternative proposal, that access revenues accrue to the provider of the access services, would allow the market to control access prices. Under such a proposal, all CLECs would be allowed to terminate access calls to any line card served by a switch on which the CLEC has bought unbundled trunk side ports through which the CLEC has connected its access network. The CLEC would pay Ameritech for the unbundled ports, and would pay unbundled local switching for the call. Ameritech's unreasonable restriction of a CLECs ability to terminate access calls to its customers using unbundled services would be eliminated. Under this proposal, the toll provider could choose between Ameritech's and the CLEC's access service for terminating calls. Both would be allowed to compete for access service, and the toll providers would be able to choose the access provider with the best quality for the price. Under such a proposal, the market would control both access price and the quality of access service. Further, providers would have an incentive to improve perennial problem areas, such as Carrier Access Billing Systems (CABS) and routing problems.

Under this alternative, the Commission will not need to control access rates , a least for Ameritech and for competitors using unbundled services. The market will do that if the Commission rejects the proposal that access revenues accrue to the provider of the line card, and requires Ameritech to eliminate its unreasonable restriction on the use of unbundled servicesfor

termination of toll calls transported over the CLEC's access networks on another provider's line cards.

It is therefore reasonable for the Commission to require that Ameritech allow competitors to use unbundled ports, when connected to a competitor's access network, to terminate calls to any port served by that switch. The charges that should apply for that termination include the monthly charges for the unbundled port, any applicable cross-connect and/or transport charges, and the per-minute unbundled local switching element. Where a CLEC is providing access using such ports, the CLEC may charge access charges to the toll provider. Ameritech may not charge access to the toll provider or the CLEC for toll calls transported over the CLEC's access network.

In order for the CLEC to provide access services, it must have an access network, either using its own facilities or facilities leased from Ameritech on a monthly basis. As discussed on the section on common transport, the CLECs may not provide access services using common (shared) transport. If the access services are being provided over Ameritech's network, Ameritech receives the access revenue, by billing the toll provider. For toll calls terminated over the Ameritech access network to customers served by ports supplied by a CLEC, Ameritech will only charge a CLEC for carrying the call if the CLEC is also the toll carrier.

This decision has an impact on shared or common transport. As described above, Ameritech must offer shared transport on a per minute basis, using Ameritech routing tables and network, for transport of local calls. CLECs may use this service for local calls for both primary transport and to handle overflow from dedicated transport. The CLECs may not use shared transport for carrying toll calls, however, and receive access revenues. If CLECs choose to use

the Ameritech access network, either on a primary or overflow basis, Ameritech gets the access revenues associated with those calls. CLECs receive access revenues only for calls transported over the CLECs' own access networks.

7. Usage development and implementation charge

This issue was addressed in the hearings held between March 31, 1997, and April 3, 1997. An Ameritech witness testified that this charge was based on costs incurred to reprogram switching and billing systems to provide data needed for unbundled elements. However, this charge is to recover costs that are isolated and charged only to competing providers. It is almost like creating a rate element called "Cost Study Development" to make new entrants pay for the cost of developing rates for all unbundled elements because Ameritech did not need to incur these costs until it was required to set unbundled rates. However, like cost studies, it is discriminatory to make only competing providers responsible for this cost. Such costs should be included in each associated unbundled rate element and spread over all usage in a competitively neutral manner. Accordingly, it is reasonable for the Commission to conclude that costs for usage development and implementation should be reflected in the associated unbundled rate elements and not reflected as a separate charge.

vii. Nondiscriminatory Access to 9-1-1, Directory Assistance, and Operator Services

1. Ameritech's terms, conditions, and/or charges must be adjusted so that new entrants' 9-1-1 service costs can be recovered in a manner not disadvantageous to new entrant companies.