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**Before the**
**Federal Communications Commission**
**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 |

# Third Order on Reconsideration and Further Notice of Proposed Rulemaking

Adopted: August 18, 1997 Released: August 18, 1997

**FNPRM Comment Date:** October 2, 1997
**FNPRM Reply Date:** October 17, 1997

By the Commission: Chairman Hundt issuing a separate statement.

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## I. INTRODUCTION

1. In this Order, we address two petitions for reconsideration or clarification of the *Local Competition and Order*[1] regarding the obligation of incumbent local exchange carriers (LECs) to provide unbundled access to interoffice transport facilities on a shared basis.[2] We intend to address petitions for reconsideration of other aspects of the *Local Competition Order* in the future.

2. In the *Local Competition Order*, which established rules to implement sections 251 and 252 of the Communications Act of 1934 (the Act),[3] as amended by the Telecommunications Act of 1996,[4] the Commission required incumbent LECs "to provide unbundled access to shared transmission facilities between end offices and the tandem switch."[5] In this reconsideration order, we first explain that the *Local Competition Order* required incumbent LECs to provide requesting carriers with access to the same transport facilities, between the end office switch and the tandem switch, that incumbent LECs use to carry their own traffic. We further explain that, when a requesting carrier takes unbundled local switching, it gains access to the incumbent LEC's routing table, resident in the switch. Second, we reconsider the requirement that incumbent LECs only provide "shared transport"[6]

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *further recon pending*, *aff'd in part and vacated in part sub. nom. CompTel v. FCC*, 11 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC and consolidated cases*, No. 96-3321 *et al.*, 1997 WL 403401 (8th. Cir., Jul. 18, 1997) (*Iowa Utilities Bd.*).

[2] 47 C.F.R. § 51.319(d).

[3] 47 U.S.C. § 251.

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), *codified at* 47 U.S.C. §§ 151 *et seq.*

[5] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440.

[6] Section 51.319(d) of the Commission's rules requires that incumbent LECs provide access on an unbundled basis to interoffice transmission facilities shared by more than one customer or carrier. 47 C.F.R. § 51.319(d). In this reconsideration order, we refer to such shared interoffice transmission facilities as "shared

between the end office and tandem. For the reasons discussed below, we conclude that incumbent LECs should be required to provide requesting carriers with access to shared transport for all transmission facilities connecting incumbent LECs' switches -- that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. Third, we conclude that incumbent LECs must permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table and transport links that the incumbent LEC uses to route and carry its own traffic. By requiring incumbent LECs to provide requesting carriers with access to the incumbent LEC's rounting table and to all its interoffice transmission facilities on an unbundled basis, requesting carriers can route calls in the same manner that an incumbent routes its own calls and thus take advantage of the incumbent LEC's economies of scale, scope, and density. Finally, incumbent LECs must permit requesting carriers to use shared transport as an unbundled element to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is also providing local exchange service.

3. We also issue a further notice of proposed rulemaking seeking comment on whether requesting carriers may use shared transport facilities in conjunction with unbundled switching, to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service. Moreover, we seek comment on whether requesting carriers may use dedicated transport facilities to originate or terminate interexchange traffic to customers to whom the requesting carrier does not provide local exchange service.

## II. BACKGROUND

### A. Local Competition Order

4. Sections 251(c)(3) and 251(d)(2) of the Act set forth standards for identifying unbundled network elements that incumbent LECs must make available to requesting telecommunications carriers.[7] Section 251(c)(3) requires incumbent LECs to provide requesting carriers with "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point."[8] Section 251(d)(2) provides that, in identifying unbundled elements, the "Commission shall consider, at a minimum, whether--

> (A) access to such network elements as are proprietary in nature is necessary; and

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transport."

[7] 47 U.S.C. §§ 251(c)(3) and (d)(2).

[8] 47 U.S.C. § 251(c)(3).

> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[9]

5. In the *Local Competition Order*, the Commission, pursuant to sections 251(c)(3) and 251(d)(2), identified a minimum list of seven network elements to which incumbent LECs must provide access on an unbundled basis. These network elements included local switches, tandem switches, and interoffice transmission facilities. With respect to interoffice transmission facilities, the Commission required incumbent LECs to provide requesting telecommunications carriers access to both dedicated and "shared" interoffice transmission facilities.[10] The Commission defined "interoffice transmission facilities" as:

> incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.[11]

The Commission stated that "[f]or some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period, [and for] other elements, especially shared facilities such as common transport, [carriers] are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis."[12] In

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[9] 47 U.S.C. § 251(d)(2).

[10] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440. 47 C.F.R. § 51.319(d)(2) states:

> The incumbent LEC shall:
>
> (i) 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;
>
> (ii) provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;
>
> (iii) permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including, but not limited to, the requesting telecommunications carrier's collocated facilities . . . .

47 C.F.R. § 51.319(d)(2).

[11] 47 C.F.R. § 51.319(d)(1).

[12] *Local Competition Order*, 11 FCC Rcd at 15631, para. 258.

defining the network elements to which incumbent LECs must provide access on an unbundled basis, the Commission adopted the statutory definition of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities.[13] The Commission concluded that "the definition of the term network element includes physical facilities, such as a loop, switch, or other node, as well as logical features, functions, and capabilities that are provided by, for example, software located in a physical facility such as a switch."[14] The Commission found that:

> the embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. Accordingly, incumbent LECs must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services.[15]

The Commission also determined that "we should not identify elements in rigid terms, but rather by function."[16]

6. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit issued a decision affirming certain of the Commission's rules adopted in the *Local Competition Order*, and vacating other rules.[17] With respect to issues relevant to this reconsideration decision, the court affirmed the Commission's authority to identify unbundled network elements pursuant to section 251(d)(2), and generally upheld the Commission's decision regarding incumbent LECs' obligations to provide access to network elements on an unbundled basis.[18] The order we issue today is consistent with the court's decision.

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[13] The Act defines the term "network element" as:

> a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

47 U.S.C. § 3 (29).

[14] *Local Competition Order*, 11 FCC Rcd at 15632, para. 260.

[15] *Local Competition Order*, 11 FCC Rcd at 15632, para. 260.

[16] *Local Competition Order*, 11 FCC Rcd at 15631-32, para. 259.

[17] *Iowa Utilities Bd. v. FCC*, 1997 WL 403401 (8th Cir. July 18, 1997). *See* n.1 *supra*.

[18] *Iowa Utilities Bd.* at *22-24.

## B. Petitions

7. Parties contend that the *Local Competition Order* is not clear with respect to incumbent LECs' obligation to provide access to shared transport as a network element. Although only two petitions for reconsideration, filed by WorldCom, Inc. (WorldCom) and the Local Exchange Carriers Coalition (LECC), seek clarification or reconsideration of what incumbent LECs must provide pursuant to section 251(c)(3) with regard to "shared transport," several parties addressed that issue in oppositions to petitions for reconsideration and replies. Moreover, since the record closed in the reconsideration proceeding, some parties have made numerous *ex parte* presentations in this docket regarding their views on the proper definition of shared transport as a network element.

8. The record indicates that one basis for confusion is the discrepancy between our rule defining interoffice transmission facilities under section 251(c)(3), 47 C.F.R. § 51.319(d), and the rule that establishes the rate structure standard for shared transport, 47 C.F.R. § 51.509(d). The Eighth Circuit vacated the Commission's rule, 47 C.F.R. § 51.509(d), which established the rate structure standard for shared transport.[19] Although the discrepancy between our rule defining interoffice transmission facilities and the rate structure rule no longer exists, we nevertheless believe that it is useful to clarify the Commission's rules regarding shared transport. The definition of interoffice transmission facilities includes transmission facilities "dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers[20] owned by incumbent LECs or requesting telecommunications carriers, or *between switches* owned by incumbent LECs or requesting telecommunications carriers."[21] The rule setting forth the rate structure for shared transport, which has been vacated by the Eighth Circuit, addressed only "[s]hared transmission facilities *between tandem switches and end offices*."[22] In the *Local*

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[19] *Iowa Utilities Bd.* at *9, n.20.

[20] A wire center, or serving wire center, is defined as a telephone company central office designated by the telephone company to serve the geographic area in which the interexchange carrier or other person's point of demarcation is located. 47 C.F.R. § 69.2(rr).

[21] *See* 47 C.F.R. §51.319(d) (emphasis added). Switches include both end office and tandem switches.

[22] 47 C.F.R. § 51.509(d) (emphasis added). That rule (now vacated) stated:

> (d) Shared transmission facilities between tandem switches and end offices. 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.

47 C.F.R. § 51.509(d).

*Competition Order*, we promulgated no rules mandating the rate structure for shared transport *between end offices*. WorldCom requests that the Commission clarify that incumbent LECs must offer a usage option for shared transport regardless of whether the traffic is routed through the tandem.[23] LECC requests that the Commission clarify that shared transmission facilities must be provided to a requesting carrier only "in conjunction with" both a local switching and tandem switching capability.[24]

9. More fundamentally, parties ask the Commission to clarify, or reconsider, the definition of shared transport. WorldCom asks the Commission to clarify that section 251(c)(3) requires incumbent LECs to provide shared transport as a network element pursuant to a usage option whereby the requesting carrier pays a single, usage based rate for the routing functionality between the end office and the serving wire center (SWC).[25] LECC, on the other hand, asserts that "transmission facilities are 'shared' only if they are associated with switching capability. If they are not so associated, such facilities presumably must be considered dedicated facilities."[26]

10. In support of WorldCom's petition, various competitive carriers argue that the Commission was clear in the *Local Competition Order* that "shared transport," as defined by the Commission, requires incumbent LECs to make available to requesting carriers access to all transport links between any two incumbent LEC switches (*i.e.*, between two end office switches, between an end office switch and a tandem switch, or between two tandem switches) on a per minute of use basis.[27] AT&T notes that, in defining unbundled network elements, the Commission stated that the definition includes "all the features, functions, and capabilities that are provided by means of such facility or equipment" and that "carriers seeking . . . shared facilities, such as common transport, are essentially purchasing access to a

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[23] WorldCom Petition at 2, 6-7. *Accord* CompTel Opposition at 3-4 (FCC should establish a usage option for all transport over shared facilities between two incumbent LEC end offices); Sprint Opposition at 6-7 (shared transport to take traffic directly from one end-office switch to another is the most economical means of handling the traffic).

[24] LECC Petition at 33. *Cf.* NYNEX Opposition at 10 (traditionally, shared facilities are only provided by an incumbent LEC between its central offices and its tandems, and not between its central offices and the switching facilities of another carrier).

[25] Worldcom Petition at 2-5. *See also* MCI Opposition at 18; Sprint Opposition at 6.

[26] LECC Petition at 33.

[27] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, Jan. 28, 1997 (AT&T Jan. 28 *Ex Parte*), *citing Local Competition Order*, 11 FCC Rcd at 15633, 15631, paras. 262, 258; Letter from Leonard S. Sawicki, Director FCC Affairs, MCI, to William F. Caton, Acting Secretary, FCC, June 17, 1997 (MCI June 17 *Ex Parte*).

functionality of the incumbent's facilities on a minute-by-minute basis."[28] WorldCom claims that the 1996 Act and the Commission's rules make clear that carriers taking unbundled local switching have the right to use the incumbent LEC's entire interoffice network on a cost based, nondiscriminatory basis to complete local calls. WorldCom asserts that several incumbent LECs, such as NYNEX and Bell Atlantic, have made this form of transport available.[29]

11. Ameritech argues that the network element "interoffice transport" must be unbundled from switching and must be a discrete facility or piece of equipment used in the provision of telecommunications services.[30] Ameritech contends that the Commission's requirement to provide unbundled shared interoffice facilities means that requesting carriers have the option of sharing dedicated interoffice facilities by subdividing those facilities among themselves, but that requesting carriers do not have the right to share the links used to transport Ameritech's own traffic.[31] Ameritech claims that unbundled transport can be provided in two ways: (1) dedicated transport, which is a discrete network element used exclusively by a single carrier and billed to that carrier; and (2) shared transport, which is a discrete network element jointly used by two or more requesting carriers, with the bill being pro-rated as directed by sharers.[32] Ameritech contends that, although requesting carriers may have the option of combining unbundled network elements, the definition of the term "network element" requires that the element must be able to be used separate from the rest of the incumbent LEC's network or facilities.[33]

12. Several incumbent LECs argue that the competitive carriers' definition of shared transport is inconsistent with the definition of an unbundled network element. Ameritech and BellSouth argue that shared transport, as proposed by competitive carriers, constitutes a

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[28] AT&T Jan. 28 *Ex Parte*.

[29] Letter from Linda L. Oliver, Counsel for WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, Apr. 16, 1997 (WorldCom Apr. 16 *Ex Parte*).

[30] Letter from James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, May 23, 1997 (Ameritech May 23 *Ex Parte*). *See also* Letter from Cyndie Eby, Executive Director - Federal Regulatory, US West, Inc., to William F. Caton, Acting Secretary, FCC, Feb. 27, 1997 (US West Feb. 27 *Ex Parte*) (a network element is a facility that is dedicated to the exclusive use of a lawful interconnector).

[31] Ameritech Opposition at 8-9.

[32] Ameritech Jan. 28 *Ex Parte*.

[33] Ameritech Opposition at 7-8.

service rather than an unbundled element.[34] According to Ameritech, such a definition bundles two elements -- transport and switching.[35] Ameritech also argues that the competitive carriers' position is contrary to the basic concept of unbundled network elements because unbundled elements are billed on a per facility/per month basis, which is consistent with the purchase of facilities as opposed to services.[36] Ameritech contends that competitive LECs are requesting "common transport" service rather than the network element "shared transport." Ameritech claims that the term "common transport" is used to describe basic network connectivity, where incumbent LECs are responsible for transporting the call to the destination. Ameritech contends that it is currently offering "common transport" service as switched access service and wholesale usage service. Ameritech argues that these services are not network elements; rather, the switched access and wholesale usage services use many separate components of the existing public switched network in combination. Ameritech claims that "common transport" is thus inextricably intertwined with switching, and is not "transport unbundled from switching."[37] Ameritech also argues that the Commission's rules applicable to the provision of unbundled switching only require that incumbent LECs offer the features "the switch is capable of providing."[38] Ameritech claims that the switch does not include the routing instructions, which are a proprietary product of Ameritech, and are not a feature of the switch.[39]

13. Ameritech contends that competitive LECs are trying to "game" the statutory pricing scheme by attempting to purchase minutes of use of Ameritech's entire network, as opposed to a specific transport facility within the network. According to Ameritech, competitive carriers would thus be able to purchase unbundled elements while avoiding the concomitant risk that the leased facility will be underutilized. This, according to Ameritech,

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[34] Ameritech Opposition at 7; BellSouth Opposition at 5. *See also* Bell Atlantic Opposition at 20 (the Commission's unbundled rules require services to be unbundled into separate network elements).

[35] Ameritech Opposition at 7.

[36] Letter from James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, Feb. 3, 1997 (Ameritech Feb. 3 *Ex Parte*).

[37] Ameritech Jan. 28 *Ex Parte*.

[38] Letter From James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, May 9, 1997 (Ameritech May 9 *Ex Parte*) attaching Supplemental Rebuttal Testimony of David H. Gebhardt at 6-7 (Gebhardt Supplemental Rebuttal Testimony).

[39] Gebhardt Supplemental Rebuttal Testimony at 6.

is contrary to the FCC's intent.[40] Bell Atlantic contends that WorldCom is requesting a single usage-sensitive rate for both dedicated and tandem switched transport. Bell Atlantic opposes this request on the ground that it seeks reinstatement of the "equal charge per unit of traffic" rule[41] that the Commission abandoned years ago.[42] BellSouth claims that per minute-of-use pricing for shared transport would be inconsistent with the 1996 Act because, pursuant to Section 252(d)(1), pricing for an unbundled element shall be "based on the cost . . . of providing" the element.[43] BellSouth contends that the "common" transport option that WorldCom requests would consist of "common" transport between an incumbent LEC's local end office and tandem plus dedicated transport between the incumbent LEC's tandems and the serving wire center. BellSouth argues that the costs of the dedicated transport are not usage-sensitive.[44] In addition, several incumbent LECs object to WorldCom's petition on the ground that it would enable requesting carriers, in effect, to obtain access service without having to pay access charges.[45]

14. AT&T contends that Ameritech's proposal for "shared transport" is merely dedicated transport with a billing option that would enable carriers to resell portions of the

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[40] Ameritech Feb. 3 *Ex Parte*, *citing Local Competition Order*, FCC Rcd at 15668-69, para. 334. *See also* Ameritech Opposition at 7-8 (citing the Commission's statement that carriers purchasing network elements by definition face a greater risk than a reseller but under WorldCom's proposal, requesting carriers assume no additional risk).

[41] The "equal charge per unit of traffic rule" was established in the Modification of Final Judgment (MFJ) in *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *affirmed sub. nom.*, *Maryland v. United States*, 103 S. Ct. 1240 (1983). The rule required that until Sept. 1, 1991:

> Charges for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers within an exchange area, shall be equal, per unit of traffic delivered or received, for all interexchange carriers.

MFJ, Appendix B, Section B.

[42] Bell Atlantic Opposition at 20; Bell Atlantic Reply at 10. Bell Atlantic claims, however, that, if WorldCom seeks merely to route *local calls* made by customers of competitive carriers that purchase unbundled switching over the incumbent's network in common with local calls made by customers of the incumbent, then Bell Atlantic is willing to provide such transport and will route competitive carrier's local calls between offices exactly the way Bell Atlantic routes its own local calls. Bell Atlantic Reply at 10.

[43] BellSouth Reply at 6, *citing* 47 U.S.C. § 252(d)(1).

[44] BellSouth Reply at 6.

[45] Ameritech Opposition at 7; USTA Opposition at 16-17; LECC Reply at 9.

dedicated transport and have Ameritech act as the billing agent.[46] AT&T argues that shared transport, as defined by Ameritech, would not provide a viable transport option for competitive carriers. AT&T claims that competitive carriers cannot properly engineer a transport network because they do not have access to data about existing traffic patterns and levels. Consequently, AT&T alleges that, under Ameritech's shared transport proposal, competitive carriers will be forced to route their traffic to tandems even when it would be more efficient to route such traffic directly to end offices. AT&T claims that this will lead to poor utilization of incumbent LEC interoffice transport facilities and will require the inefficient deployment of additional transport facilities between incumbent LEC end offices and the tandems.[47] AT&T also argues that usage sensitive pricing for shared use of interoffice transport facilities is consistent with other network elements such as unbundled switching, tandem switching, signalling, and call related databases, which are either partly or entirely priced on a per minute-of-use or per query basis.[48] In contrast to Ameritech's position regarding the routing table, NYNEX claims that the shared transport unbundled element being offered by NYNEX allows competing carriers to use the same end office routing tables and functions that are used by NYNEX to route its own traffic.[49] Also, WorldCom claims that, when a carrier purchases unbundled local switching, it purchases all "features and functions, including functions integral to call routing" including the routing table.[50]

15. MCI and AT&T assert that the per minute-of-use option for shared transport is critical when providing local exchange service via unbundled local switching.[51] AT&T states that the Commission, in the *Local Competition Order*, recognized that the unbundling requirements of the 1996 Act provided competitive carriers with the opportunity to share the economies of scale and scope of the incumbent LEC. AT&T contends that access to shared

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[46] AT&T Jan. 28 *Ex Parte*.

[47] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, Dec. 12, 1996 (AT&T Dec. 12 *Ex Parte*).

[48] AT&T Jan. 28 *Ex Parte*. *See also* WorldCom May 21 *Ex Parte*.

[49] Letter from G. R. Evans, Vice President Federal Regulatory Affairs, NYNEX, to William F. Caton, Acting Secretary, FCC, July 18, 1997 (NYNEX July 18 *Ex parte*).

[50] Letter from Linda L. Oliver, Counsel for WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, May 21, 1997 (WorldCom May 21 *Ex parte*) attaching Surrebuttal Testimony of Joseph Gillan at 16. (Gillan Surrebuttal Testimony). *See also* WorldCom Opposition at 3 (shared transport is necessary to permit a requesting carrier using the local switching element to use the same routing options for its local traffic that the incumbent LEC uses for its own traffic).

[51] MCI June 17 *Ex Parte*; AT&T Jan. 25 *Ex Parte*.

transport on a cost-based, per minute-of-use basis is critical to preserving such scale and scope economies for competitive carriers.[52] MCI claims that competing carriers will need access to unbundled local switching and shared transport in less densely populated areas, because they are likely to build their own facilities early on only in urban centers. MCI contends that transport thus needs to be priced on a per minute-of-use basis because, in less densely populated areas, new entrants may have insufficient customer volume to justify flat-rated, dedicated transport.[53] MCI notes that other incumbent LECs, including NYNEX and BellSouth, are offering shared transport on a per minute-of-use basis.[54] MCI further notes that Ameritech's proposed non-recurring charges associated with Ameritech's shared and dedicated transport make the use of flat-rated shared and dedicated facilities even more uneconomic.[55] MCI contends that in Illinois Ameritech, in connection with its unbundled local switching proposal, is attempting to impose monthly trunk port charges of $147.56 for each digital trunk port and a nonrecurring charge of $729.39 for each trunk port. MCI claims that, if Ameritech is successful in forcing new entrants to use dedicated trunking in connection with unbundled local switching at these rates, there is little likelihood that use of unbundled local switching will be a viable entry strategy where traffic volumes do not justify flat-rated transport.[56]

16. AT&T and WorldCom also argue that, contrary to Ameritech's contention, defining shared transport consistent with the competitive carriers' interpretation would not eliminate the difference between resale and unbundled elements.[57] AT&T claims that the

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[52] AT&T Jan. 28 *Ex Parte*, *citing Local Competition Order*, 11 FCC Rcd at 15508-09, para. 11 ("incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly . . . [t]he local competition provisions of the [1996] Act require that these economies be shared with entrants"); *Id.* at 15624, para. 242 ("National requirements for unbundled elements will allow new entrants . . . seeking to enter local markets on a national or regional scale to take advantage of economies of scale in the network design").

[53] MCI June 17 *Ex Parte*. AT&T claims that competitive carriers will not have the volume of traffic to justify purchasing dedicated transport. Letter from Judy Argentieri, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, Jan. 6, 1997 (AT&T Jan. 6 *Ex Parte*). *Accord* WorldCom Apr. 16 *Ex Parte*; CompTel Opposition at 2-3 (a usage option for tandem-switched transport is necessary to prevent harmful discrimination against new entrants who must rely upon tandem-switched transport compared with larger carriers whose traffic volumes justify purchasing dedicated transport).

[54] MCI June 17 *Ex Parte*.

[55] MCI June 17 *Ex Parte*.

[56] MCI June 17 *Ex Parte*.

[57] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, May 14, 1996 (AT&T May 14 *Ex Parte*); Letter from Linda L. Oliver, Counsel for WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, May 23, 1997 (WorldCom May 23 *Ex parte*).

Commission, in the *Local Competition Order*, identified three differences between the purchase of unbundled elements and resale, and all three differences continue to be valid.[58]

17. WorldCom contends that the Act and the Commission's rules make clear that the requesting carrier, purchasing unbundled local switching, is the sole provider of the local switching portion of interexchange access, regardless of the method of transport chosen by the interexchange carrier (IXC) to reach the unbundled local switch.[59] WorldCom suggests that NYNEX and Bell Atlantic do not contest this.[60] AT&T contends that, when a requesting carrier purchases the unbundled local switch and the unbundled loop, that requesting carrier is entitled to bill an IXC for the access services associated with those unbundled network elements when the competitive carrier's local customer initiates or receives an interexchange call carried by that IXC. AT&T also claims that the requesting carrier has the right to offer transport services to the IXC; it is, however, the IXC's decision as to which carrier it uses to provide access transport services.[61]

18. Responding to LECC's petition, WorldCom argues that, by tying the provision of shared transmission facilities to both local switching and tandem capabilities, the clarification sought by LECC is overbroad and would unnecessarily constrain the ability of requesting carriers to purchase access to shared transmission facilities between two end offices as a

[58] AT&T May 14 *Ex Parte*. First, according to AT&T, network element purchasers bear the risk if elements, such as the loop and the switch, are not profitably utilized by customers. Carriers purchasing end-to-end rebundled unbundled elements face the risk that their users will generate substantial switch usage costs on local calls (free usage), without generating significant interLATA traffic and associated revenue. Second, competitive carriers buying the end-to-end unbundled elements can use their elements to create services the incumbent does not offer, and thus increase competitive options to consumers. Finally, use of rebundled unbundled network elements fosters the growth of facilities-based competition because competitors can gradually introduce their own facilities in place of elements purchased from incumbents. AT&T contends that most large competitive carriers would prefer to own their own networks because it reduces their vulnerability to discrimination by the incumbent, and gives them greater control over their costs, network quality, and ability to provide new services in response to consumer demand. *Id. See also* WorldCom May 23 *Ex Parte* (combinations of network elements provide new entrants an entirely different competitive entry strategy than resale. Such combinations of network elements permit new entrants the opportunity to provide new service and price pressures on incumbent LECs).

[59] WorldCom Apr. 16 *Ex Parte*.

[60] WorldCom Apr. 16 *Ex Parte*.

[61] Letter from Bruce K. Cox, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, FCC, filed July 11, 1997.

network element.[62] WorldCom further contends that such a transport regime would require that each requesting carrier that purchases dedicated trunks between end offices establish customized routing using new line class codes. According to WorldCom, this would lead to rapid line class code exhaustion.[63]

## III. DISCUSSION

19. On July 18, 1997, the United States Court of Appeals for the Eighth Circuit affirmed in part and vacated in part the Commission's *Local Competition Order*. We note, as a predicate to our discussion below, that the court affirmed the Commission's rulemaking authority to identify unbundled network elements. The court held that section 251(d)(2) of the Act expressly gave the Commission jurisdiction in this area.[64] We thus conclude that the Commission has authority to address, in this reconsideration order, the issues raised by petitioners concerning the extent to which "shared transport" should be provided as an unbundled element.

20. WorldCom filed a petition for clarification, and LECC filed a petition for reconsideration of the *Local Competition Order*; both petitions concerned the definition of shared transport as an unbundled network element. WorldCom filed a petition for clarification pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.429, which set forth rules regarding petitions for reconsideration. In its petition WorldCom also stated that, "[s]hould the Commission not regard this petition as a request for clarification of the *Local Competition Order*, WorldCom requests that it be regarded as a petition for reconsideration."[65] We believe WorldCom's filing is more properly addressed as a petition for reconsideration, and treat it as such in this decision.

21. Parties disagree about what we required in the *Local Competition Order* with respect to shared transport. In addition, parties ask us to clarify or reconsider our decision regarding the provision of shared transport under section 251(c)(3). We first restate what we required in the *Local Competition Order*, and then reconsider certain aspects that may have been unclear or that were not addressed in the *Local Competition Order*. We then respond to

[62] WorldCom Opposition at 3-5 (network cost and efficiency of both the incumbent and the requesting carrier would suffer because additional and unnecessary dedicated trunk groups would have to be created, raising the costs for competitors, and the incumbent's own trunk groups would operate less efficiently as new entrant's traffic is removed from trunk groups already sized to handle this traffic load).

[63] WorldCom Opposition at 5.

[64] *Iowa Utilities Bd.* at *32, n.10.

[65] WorldCom Petition at 1, fn 1.

arguments raised by parties that advocate a different approach to the provision of shared transport than our rules require.

22. We believe that the petitions for reconsideration have raised reasonable questions about the scope and nature of an incumbent LEC's obligation to offer shared transport as an unbundled network element, pursuant to section 251(c)(3) and our implementing regulations. We address these issues below. We also believe, however, some parties have argued that certain aspects of the rules adopted last August were ambiguous which, in our view, were clear. Specifically, in the *Local Competition Order*, we expressly required incumbent LECs to provide access to transport facilities "shared by more than one customer or carrier."[66] The term "carrier" includes both an incumbent LEC as well as a requesting telecommunications carrier. We, therefore, conclude that "shared transport," as required by the *Local Competition Order* encompasses a facility that is shared by multiple carriers, including the incumbent LEC. We recognize that the *Local Competition Order* did not explicitly state that an incumbent LEC must provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same facilities that an incumbent LEC uses for its traffic. We find, however, that a fair reading of our order and rules does not support the claim advanced by Ameritech that a shared network element necessarily is shared only among competitive carriers and is separate from the facility used by the incumbent LEC for its own traffic. Indeed, only Ameritech and US West suggest that the *Local Competition Order* could be interpreted to require sharing only between multiple competitive carriers.[67] Moreover, the fact that we required incumbent LECs to provide access to other network elements, such as signalling, databases, and the local switch, which are shared among requesting carriers and incumbent LECs is consistent with our view that transport facilities "shared by more than one customer or carrier" must be shared between the incumbent LECs and requesting carriers. Furthermore, with respect to local switching, we expressly rejected, in the *Local Competition Order*, a proposal that incumbent LECs could, or were required to, partition local switches before providing requesting carriers access to incumbent LEC switches under section 251(c)(3). We stated that "[t]he requirements we establish for local switch unbundling do not entail physical division of the switch, and consequently do not impose the inefficiency or technical difficulties identified by some commentators."[68] We thus required that shared portions of incumbent LEC switches would be shared by all carriers, including the incumbent LEC. Although we do not believe that the *Local Competition Order* was unclear as to this aspect of an incumbent LEC's obligation to provide shared transport, we take this opportunity to state explicitly that the *Local Competition Order* requires incumbent LECs to offer

[66] 47 C.F.R. § 51.319(d)(2)(i).

[67] *See* Ameritech Jan. 28. *Ex Parte*; US West Feb. 27 *Ex Parte*.

[68] *Local Competition Order*, 11 FCC Rcd at 15708, para. 416.

requesting carriers access, on a shared basis, to the same interoffice transport facilities that the incumbent uses for its own traffic.

23. We also conclude that the *Local Competition Order* was not ambiguous as to an incumbent LEC's obligation to offer access to the routing table resident in the local switch to requesting carriers that purchase access to the unbundled local switch.[69] The *Local Competition Order* made clear that requesting carriers that purchase access to the unbundled local switch may obtain customized routing, unless it is not technically feasible to provide customized routing from that switch. In those instances, a requesting carrier is limited to using the routing instructions in the incumbent LEC's routing table.[70] In so holding, we necessarily accepted the view that requesting carriers that take unbundled local switching have access to the incumbent LEC's routing table, resident in the switch. We find nothing in the *Local Competition Order* that supports the contention that requesting carriers that obtain access to unbundled local switching, pursuant to section 251(c)(3), do not obtain access to the routing table in the unbundled local switch.

24. The *Local Competition Order* did not clearly define certain aspects of incumbent LECs' obligation to provide access to shared transport under section 251(c)(3). In particular, we did not clearly and unambiguously (1) identify all portions of the network to which incumbent LEC must provide interoffice transport facilities on a shared basis; and (2) address whether requesting carriers may use shared transport facilities to provide exchange access service to IXCs for access to customers to whom they also provide local exchange service. We do so here on reconsideration.

### A. Incumbent LECs' obligation regarding shared transport

25. We conclude that the obligation of incumbent LECs to provide requesting carriers with access to shared transport extends to all incumbent LEC interoffice transport facilities, and not just to interoffice facilities between an end office and tandem. Thus, incumbent LECs are required to provide shared transport between end offices, between tandems, and between tandems and end offices).[71]

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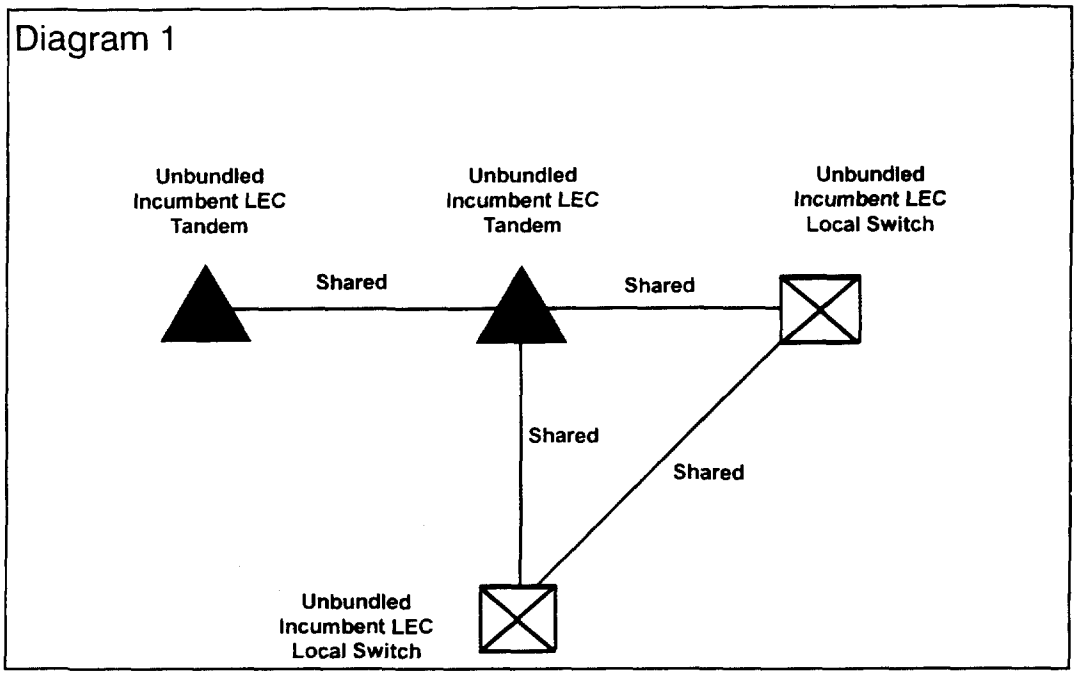
[69] Both end office and tandem switches contain routing tables, which provide information about how to route each call. The routing instructions notify the switch as to which trunks are to be used in transporting a call. Depending upon the availability of circuits, a call may be routed directly from the end office of the calling party to the called party's end office, or routed through a tandem switch.

[70] *Local Competition Order*, 11 FCC Rcd at 15706, para. 412.

[71] *See* Diagram 1.




26. The *Local Competition Order* expressly required "incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch."[72] Parties disagree, however, about whether incumbent LECs are required to provide shared transport between end offices. As noted above,[73] there is a discrepancy between the rule that establishes the general obligation to provide shared transport as a network element, and the rule vacated by the court that purports to establish the pricing standard for shared transport.[74] To the extent that incumbent LECs already have transport facilities between end offices, and between tandems, the routing table contained in the switch most likely would

[72] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440. The Commission also stated in its rules that shared transmission facilities must be made available between "tandem switches and end offices." 47 C.F.R. § 51.509(d).

[73] *See supra* para. 9.

[74] 47 C.F.R. §§ 51.319(d) and 51.509(d). We note that the Eighth Circuit has held that the Commission lacked jurisdiction to adopt the pricing standard set forth in section 51.509(d), and accordingly vacated that section of the Commission's rules.

route calls between such switches.[75] We therefore conclude that there is no basis for limiting the use of shared transport facilities to links between end office switches and tandem switches. Limiting the definition of shared transport in this manner would not permit requesting carriers to utilize the routing tables in the incumbent LECs' switches. To the contrary, such a limitation effectively would require a requesting carrier to design its own customized routing table, in order to avoid having its traffic transported over the same interoffice facilities, connecting end offices, that the incumbent LEC use to transport its own interoffice traffic. Moreover, in the *Local Competition Order*, we held that it is technically feasible to provide access to interoffice transport facilities between end offices and between end offices and tandem switches.[76] No new evidence has been presented in this proceeding to convince us that our earlier conclusion regarding technical feasibility was incorrect.[77]

27. We further clarify in this order that incumbent LECs are only required to offer *dedicated* transport between their switches, or serving wire centers, and requesting carriers' switches. Our *Local Competition Order* was not absolutely clear as to whether incumbent LECs must provide dedicated or shared interoffice transport between incumbent LEC switches, or serving wire centers, and switches owned by requesting carriers. In the *Local Competition Order*, we required incumbent LECs to "provide access to *dedicated transmission*

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[75] In fact, incumbent LECs would have to *modify* their routing tables in order to prevent calls from being routed between end offices or between tandems.

[76] *Local Competition Order*, 11 FCC Rcd at 15719, paras. 442 and 443.

[77] Among incumbent LECs, only Ameritech, in various *ex parte* submissions, asserts that its switches are unable to "provide precise usage data or originating carrier identity for terminating local usage, or to identify terminating access usage with the called number." In essence, Ameritech contends that it is unable to accurately bill for the use of shared transport, including exchange access. Letter from James K. Smith, Director Federal Relations, Ameritech, to William F. Caton, Acting Secretary, FCC, July 15, 1997 (Ameritech July 15 *Ex Parte*) attaching Reply Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan at 22-23 (Ameritech 271 Michigan Application Reply). As we held in our *Local Competition Order*, however, a determination of technical feasibility does not include consideration of billing concerns. 47 CF.R. §51.5. *Accord Iowa Utilities Bd.* at *21. Moreover, as noted above, Ameritech is the only party to contend that it is not currently able to measure and bill for shared transport. In contrast, Bell Atlantic, NYNEX, and PacTel have stated that they offer shared transport in conjunction with unbundled local switching. Letter from Patricia E. Koch, Assistent Vice President - Government Relations - FCC, Bell Atlantic, to William F. Caton, Acting Secretary, FCC, August 4, 1997. Letter from G.R. Evans, Vice President Federal Regulatory Affairs, NYNEX, to William F. Caton, Acting Secretary, FCC, July 18, 1997; Letter from M.E. Garber, Senior Counsel, Pacific Telesis, to William F. Caton, Acting Secretary, FCC, Mar. 3, 1997. In any event, we note that Ameritech has stated in another proceeding that it has proposed a settlement mechanism as an interim solution until it develops a long-term solution. Ameritech 271 Michigan Application Reply, CC Docket No. 97-137, at 22. Ameritech has also stated that it "is operationally capable of furnishing the 'platform' (unbundled local switching and shared transport) upon request." Ameritech 271 Michigan Application Reply, CC Docket No. 97-137, at 23. We thus find no evidence that it is not technically feasible to provide shared transport.

*facilities* between LEC central offices or between end offices and those of competing carriers."[78] This could be read to suggest that incumbent LECs are only required to provide dedicated (but not shared) interoffice transport facilities between their end offices, or serving wire centers, and points in the requesting carrier's network. The rule that defines interoffice transmission facilities, however, is less clear, and could be read to require incumbent LECs to provide shared transport between incumbent LECs' switches, or serving wire centers, and requesting carriers' switches.[79]

28. We therefore clarify here that incumbent LECs must offer only *dedicated transport*, and not shared transport, between their switches, or serving wire centers, and requesting carriers' switches, as set forth in the *Local Competition Order*. We also note that the *Local Competition Order* expressly limited the requirement to provide unbundled interoffice transport facilities to *existing* incumbent LEC facilities.[80]

29. On reconsideration, we further clarify that incumbent LECs are not required to provide shared transport between incumbent LEC switches and serving wire centers.[81] We stated above that shared transport must be provided between incumbent LEC switches. Serving wire centers are merely points of demarcation in the incumbent LEC's network, and are not points at which traffic is switched. Traffic routed to a serving wire center is traffic dedicated to a particular carrier. We thus conclude that unbundled access to the transport links between incumbent LEC switches and serving wire centers must only be provided by incumbent LECs on a *dedicated* basis.[82]

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[78] *Local Competition Order*, 11 FCC Rcd at 15718, para. 440 (emphasis added).

[79] 47 C.F.R. 51.319(d)(1) states:

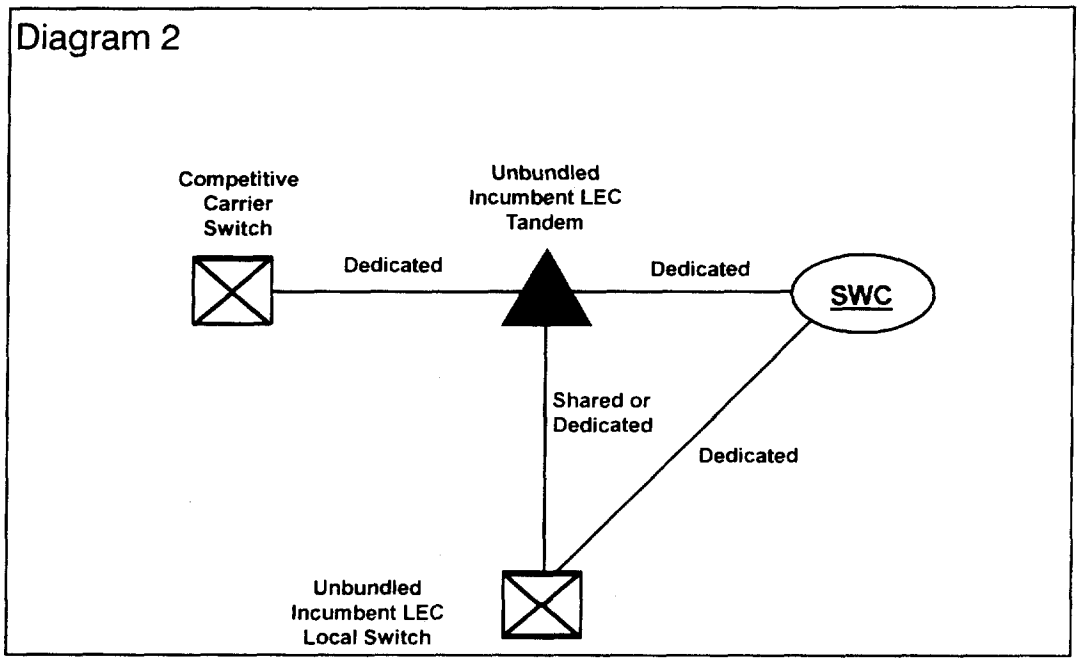
> Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

47 C.F.R. 51.319(d)(1).

[80] *Local Competition Order*, 11 FCC Rcd at 15722, para. 451.

[81] We note that this clarification finds some support in the *Local Competition Order*, where we concluded that: "[t]his requirement [that incumbent LECs provide access to dedicated transmission facilities] includes, at a minimum, interoffice facilities between end offices and serving wire centers . . ." *Local Competition Order* at 15718, para 440.

[82] *See* Diagram 2.




30. Finally, we note that, traditionally, shared facilities are priced on a usage-sensitive basis, and dedicated facilities are priced on a flat-rated basis. We believe that this usage-sensitive pricing mechanism provides a reasonable and fair allocation of cost between the users of shared transport facilities. For example, in the *Access Charge Reform Order*, specifically the sections dealing with rate structure issues for interstate access charges, we required that the cost of switching, a shared facility, be recovered on a per minute of use basis, while the cost of entrance facilities, which are dedicated to a single interexchange carrier, be recovered on a flat-rated basis.[83] We note that several state commissions, in proceedings conducted pursuant to section 252 of the Act, have required incumbent LECs to offer shared transport priced on a usage-sensitive basis.[84] We acknowledge that, under the Eighth Circuit's decision, we may not establish pricing rules for shared transport. However, in situations where the Commission is required to arbitrate interconnection agreements

[83] Access Charge Reform, First Report and Order, CC Docket 96-262, FCC 97-158 (rel. May, 16, 1997) (*Access Charge Reform Order*) at paras, 135, 153.

[84] *See, e.g.*, Michigan Public Service Commission, Case No. U-11280, July 14, 1997, Order at 26; Public Service Commission of Wisconsin, Case No. 6720-TI-120, Findings of Fact, Conclusions of Law, and Second Order, May 30, 1997.

pursuant to subsection 252(e)(5), we intend to establish usage-sensitive rates for recovery of shared transport costs unless parties demonstrate otherwise.[85]

## B. Application of the requirements of section 251(d)(2) to shared transport

31. Shared transport, as defined in this order, satisfies the two-prong test set forth in section 251(d)(2) of the Act. Section 251(d)(2) requires the Commission, in determining what network elements should be made available under section 251(c)(3), to consider "at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[86] In the *Local Competition Order*, we held that an incumbent could refuse to provide access to a network element pursuant to section 251(d)(2) only if the incumbent LEC demonstrated that "the element is proprietary and that gaining access to that element is not necessary because the competing provider can use other, nonproprietary elements in the incumbent LEC's network to provide service."[87] We further held that, under section 251(d)(2)(B), we must consider "whether the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network."[88] The Eighth Circuit affirmed the Commission's interpretation of section 251(d)(2).[89]

32. In the *Local Competition Order*, we concluded that, with respect to transport facilities, "the record provides no basis for withholding these facilities from competitors based on proprietary considerations."[90] We also concluded that section 251(d)(2)(B) requires incumbent LECs to provide access to shared interoffice facilities and dedicated interoffice facilities.[91] With respect to the unbundled local switch, we held that, even assuming that

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[85] *See* 47 U.S.C. § 252(e)(5). *See also Local Competition Order*, 11 FCC Rcd at 16127-32, paras. 1283-95 (giving notice of certain minimum procedural rules and substantive standards that the Commission will use if it assumes jurisdiction pursuant to section 252(e)(5)).

[86] 47 U.S.C. § 251(d)(2).

[87] *Local Competition Order*, 11 FCC Rcd at 15710, para. 419. *See also id.* at 15642, para. 283.

[88] *Local Competition Order*, 11 FCC Rcd at 15643, para. 285.

[89] *Iowa Utilities Bd. v. FCC*, at *22-24.

[90] *Local Competition Order*, 11 FCC Rcd at 15720, para. 446.

[91] *Local Competition Order*, 11 FCC Rcd at 15720-21, para. 447.

switching may be proprietary, at least in some respects, "access to unbundled local switching is clearly 'necessary' under our interpretation of section 251(d)(2)(A)."[92] We also concluded that a requesting carrier's ability to offer local exchange service would be "impaired, if not thwarted," without access to the unbundled local switch, and therefore, that section 251(d)(2)(B) requires incumbent LECs to provide access to the unbundled local switch.[93]

33. Upon reconsideration, we herein affirm that incumbent LECs are obligated under section 251(d)(2) to provide access to shared transport, as we here define it, as an unbundled network element. Parties in the record have not contended that interoffice transport facilities are proprietary, and we have no basis for modifying our prior conclusion that interoffice transport facilities are not proprietary. Thus, there is no basis under section 251(d)(2)(A) for incumbent LECs to refuse to provide interoffice transport facilities on a shared as well as a dedicated basis.

34. We also note that the failure of an incumbent LEC to provide access to all of its interoffice transport facilities on a shared basis would significantly increase the requesting carriers' costs of providing local exchange service and thus reduce competitive entry into the local exchange market. In the *Local Competition Order*, we observed that:

> By unbundling various dedicated and shared interoffice facilities, a new entrant can purchase *all* interoffice facilities on an unbundled basis as part of a competing local network, or it can combine its own interoffice facilities with those of the incumbent LEC. The opportunity to purchase unbundled interoffice facilities will decrease the cost of entry compared to the much higher cost that would be incurred by an entrant that had to construct all of its own facilities. An efficient new entrant might not be able to compete if it were required to build interoffice facilities where it would be more efficient to use the incumbent LEC's facilities.[94]

We continue to find the foregoing statements to be true with respect to shared as well as dedicated transport facilities. Requesting carriers should have the opportunity to use *all* of the incumbent LEC's interoffice transport facilities. Moreover, the opportunity to purchase transport facilities on a shared basis, rather than exclusively on a dedicated basis, will decrease the costs of entry.

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[92] *Local Competition Order*, 11 FCC Rcd at 15710, para. 419. In the *Local Competition Order*, we defined "necessary" in this specific context as meaning "that an element is a prerequisite for competition." *Id.* at para. 282. We also note that the Eighth Circuit affirmed this definition. *Iowa Utilities Bd.* at *22-23.

[93] *Local Competition Order*, 11 FCC Rcd at 15710-11, para. 420.

[94] *Local Competition Order*, 11 FCC Rcd at 15718-19, para. 441 (emphasis added).

35. We believe that access to transport facilities on a shared basis is particularly important for stimulating initial competitive entry into the local exchange market, because new entrants have not yet had an opportunity to determine traffic volumes and routing patterns. Moreover, requiring competitive carriers to use dedicated transport facilities during the initial stages of competition would create a significant barrier to entry because dedicated transport is not economically feasible at low penetration rates. In addition, new entrants would be hindered by significant transaction costs if they were required to continually reconfigure the unbundled transport elements as they acquired customers. We note that incumbent LECs have significant economies of scope, scale, and density in providing transport facilities. Requiring transport facilities to be made available on a shared basis will assure that such economies are passed on to competitive carriers. Further, if new entrants were forced to rely on dedicated transport facilities, even at the earliest stages of competitive entry, they would almost inevitably miscalculate the capacity or routing patterns. We recognize, however, that the need for access to all of the incumbent LEC's interoffice facilities on a shared basis may decrease as competitive carriers expand their customer base and have an opportunity to identify traffic volumes and call routing patterns. We therefore may revisit at a later date whether incumbent LECs continue to have an obligation, under section 251(d)(2), to provide access to all of their interoffice transmission facilities on a shared, usage sensitive basis.[95]

36. As noted above, although interoffice transport, as we define the element pursuant to section 251(c)(3), refers to the transport links in the incumbent LEC's network, access to those links on a shared basis effectively requires a requesting carrier to utilize the routing table contained in the incumbent LEC's switch. Ameritech contends that the routing table contained in the switch, which is used in conjunction with shared transport, is proprietary. Ameritech and other incumbent LECs further allege that requesting carriers may obtain the functional equivalent of shared transport either by purchasing transport as an access service, or by purchasing dedicated transport facilities. These parties thus contend that, under section 251(d)(2)(A), incumbent LECs are not required to provide shared transport (including use of the routing table contained in the switch) as a network element.

37. Issues regarding intellectual property rights associated with network elements are before us in a separate proceeding.[96] For purposes of this Order only, we therefore assume without deciding that the routing table is proprietary. We nevertheless conclude that section

[95] We note that, if, in the future, competitive carriers gain sufficient market penetration to justify obtaining dedicated transport facilities, either through the use of unbundled elements or through building their facilities, shared transport may no longer meet the section 251(d)(2) requirements. In that event, the Commission can evaluate at that time whether incumbent LECs must continue to provide access to shared transport as a network element.

[96] *See* MCI Petition for Declaratory Ruling, CC Docket No. 96-98, CCB Pol. 97-4 (Mar. 11, 1997).

251(d)(2) requires an incumbent LEC to provide access to both its interoffice transmission facilities and to the routing tables contained in the incumbent LEC's switches.[97] We affirm our finding in the *Local Competition Order* that transport provided as part of access service, or as a wholesale usage service, is not a viable substitute for shared transport as a network element.[98] All incumbent LECs are not required to offer transport as an access service on a stand alone basis. Only Class A carriers are required, under our *Expanded Interconnection* rules, to unbundle interstate transport service.[99] Moreover, transport service that incumbents offer under the *Expanded Interconnection* tariffs may include only interstate transport facilities (transport provided either via a tandem switch or direct trunked between a local switch and the serving wire center), not interoffice transport facilities directly connecting two local switches. In the *Local Competition Order*, moreover, we expressly rejected the suggestion that requesting carriers "are not impaired in their ability to provide a service . . . if they can provide the proposed service by purchasing the service at wholesale rates from a LEC."[100]

### C. Use of shared transport facilities to provide exchange access service

38. In this order on reconsideration, we clarify that requesting carriers that take shared or dedicated transport as an unbundled network element may use such transport to provide interstate exchange access services to customers to whom it provides local exchange service. We further clarify that, where a requesting carrier provides interstate exchange access services to customers, to whom it also provides local exchange service, the requesting carrier is entitled to assess originating and terminating access charges to interexchange carriers, and it is not obligated to pay access charges to the incumbent LEC.

39. In the *Local Competition Order*, we held that, if a requesting carrier purchases access to a network element in order to provide local exchange service, the carrier may also use that element to provide exchange access and interexchange services.[101] We did not impose any restrictions on the types of telecommunications services that could be provided over network elements. We did not specifically consider in the *Local Competition Order*,

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[97] The Eighth Circuit recognized that "the Act itself expressly contemplates that requesting carriers will have access to network elements that are proprietary in nature." *Iowa Utilities Bd.* at *32, n.37.

[98] *See Local Competition Order*, 11 FCC Rcd at 15721, para. 448.

[99] Class A carriers are those exchange carriers that have more than $100 million in total company regulated revenues. 47 C.F.R. §§ 32.11(a)(1), 32.9000.

[100] *Local Competition Order*, 11 FCC Rcd at 15643-44, para. 286. *See also id.* at 15644, para. 287. *See also Iowa Utilities Bd.* at *21 (stating that the fact that a capability may be available as a service does not necessarily preclude that capability from being available as a network element).

[101] *Local Competition Order*, 11 FCC Rcd at 15679, para. 356.

however, whether a requesting carrier may use interoffice transport to provide exchange access service. We conclude here that a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service.[102] We find that this is consistent with our initial decision.[103]

### D. Response to Specific Arguments Raised by Parties

40. As discussed above, we define the unbundled network element of shared transport under section 251(c)(3) as interoffice transmission facilities, shared between the incumbent LEC and one or more requesting carriers or customers, that connect end office switches, end office switches and tandem switches, or tandem switches, in the incumbent LEC's network. We exclude from this definition interoffice transmission facilities that connect an incumbent LEC's switch and a requesting carrier's switch, and those connecting an incumbent LEC's end office switch, or tandem switch, and a serving wire center. This definition of shared transport assumes the interconnection point between the two carriers' networks, pursuant to section 251(c)(2), is at the incumbent LEC's switch. This definition is consistent with the statutory definition of network elements, which defines a network element as a facility or equipment used in the provision of a telecommunications service, including the features, functions, and capabilities provided by means of such facility or equipment.[104]

41. As an initial matter, we reject Ameritech's contention that, by definition, network elements must be partly or wholly dedicated to a customer.[105] To the contrary, we held in the *Local Competition Order* that some network elements, such as loops, are provided exclusively to one requesting carrier, and some network elements, such as interoffice transport provided on a shared basis, are provided on a minute-of-use basis and are shared with other carriers.[106] In the *Local Competition Order*, we also identified signalling, call-related databases, and the

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[102] We issue a further notice of proposed rulemaking below seeking comment on whether carriers may use dedicated and shared unbundled transport facilities to carry originating to, and terminating access traffic from, customer to whom the requesting carrier does not also provide local exchange service. *See infra* paras. 51-52.

[103] *See, e.g., Local Competition Order*, 11 FCC Rcd at 15679, para. 356 (section 251(c)(3) permints interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services). *See also* NYNEX July 18 *Ex Parte* (recognizing that, when a requesting carrier "wins a local service customer," and uses an unbundled network element such as shared transport to serve that customer, that the carrier "is entitled to use that same element to provide other telecommunications services, such as exchange access, to IXCs.")

[104] 47 U.S.C. § 153(29).

[105] *See* Ameritech Reply at 19.

[106] *Local Competition Order*, 11 FCC Rcd at 15631, para. 258.