ORIGINAL

EX PARTE OR LATE FILED

LAW OFFICES OF

PAUL, HASTINGS, JANOFSKY & WALKER LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

600 PEACHTREE ST., N.E., STE. 2400
ATLANTA, GEORGIA 30308-2222
TELEPHONE (404) 815-2400

695 TOWN CENTER DRIVE
COSTA MESA, CALIFORNIA 92626-1924
TELEPHONE (714) 668-6200

TOWER 42
25 OLD BROAD STREET
LONDON EC2N 1HQ
TELEPHONE 44 (171) 562-4000

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2371
TELEPHONE (213) 683-6000

1299 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2400
TELEPHONE (202) 508-9500
FACSIMILE (202) 508-9700
INTERNET www.phjw.com

ROBERT P. HASTINGS (1910-1996)
COUNSEL
LEE G. PAUL
LEONARD S. JANOFSKY
CHARLES M. WALKER

399 PARK AVENUE
NEW YORK, NEW YORK 10022-4697
TELEPHONE (212) 318-6000

345 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94104-2635
TELEPHONE (415) 835-1600

1055 WASHINGTON BOULEVARD
STAMFORD, CONNECTICUT 06901-2217
TELEPHONE (203) 961-7400

ARK MORI BUILDING
12-32, AKASAKA 1-CHOME
MINATO-KU, TOKYO 107, JAPAN
TELEPHONE (03) 3586-4711

May 16, 2000

WRITER'S DIRECT ACCESS
(202)508-9570
cwnorthrop@phjw.com

OUR FILE NO.
25101.74560

VIA MESSENGER

Magalie Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.; Counter TW-A325
Washington, D.C. 20554

RECEIVED
MAY 16 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Presentation

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & Order, CC Docket Nos. 96-98, 95-185

Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers, CCB/CPD No. 97-24

Formal Complaint of TSR Paging Inc. against US West Communications Inc., File No. E-98-10 (filed December 24, 1997)

Formal Complaint of Metrocall against Various LECs, File Nos. E-98-14-18 (filed January 20, 1998)

Formal Complaint of Arch Communications Group, Inc. against U S WEST Communications, Inc., File No. E-99-05 (filed December 3, 1998)

Formal Complaint of MAP Mobile Communications, Inc. against US West Communications, Inc. File No. E-99-11 (filed March 4, 1999)

No. of Copies rec'd 0+6
List ABCDE

Dear Ms. Salas:

The Commission presently is considering the interconnection rights and obligations of paging carriers and local exchange carriers ("LECs") in the above captioned proceedings. In several of those proceedings, the issue of the use of foreign exchange ("FX") facilities by carriers

has arisen. In the context of that debate, LECs have asserted that carriers should not be permitted to use FX facilities because it results in LECs providing a "free ride" to those carriers. Over the course of this debate, the paging industry, through its industry organizations and individual carriers, and other telecommunications carriers have refuted these LEC arguments.

On May 8, 2000, the Illinois Commerce Commission ("ICC") addressed, *inter alia*, telecommunications carriers' use of FX facilities in the context of its arbitration of an interconnection agreement between Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") and Focal Communications Corporation of Illinois ("Focal").[1/] A copy of the ICC's Arbitration Decision is attached hereto. In its decision, the ICC rejected in full the arguments offered by Ameritech, and denied Ameritech's request to require carriers using FX facilities to establish points of interconnection ("POIs") within 15 miles of the rating point for the NXXs obtained through the FX facilities. The ICC's discussion is directly on point with respect to several of the arguments which have been raised before this Commission on the issue of FX facilities. In light of its direct relevance to the issue before the Commission, text from the decision is reproduced below.[2/]

The ICC provided the following summary of Ameritech's arguments regarding the use of FX facilities:

> Ameritech indicates that when the call is originated by an Ameritech local customer and delivered to a Focal FX customer, the originating customer still pays Ameritech for a local call. Ameritech emphasizes, however, that unless Focal has a point of interconnection ("POI") with Ameritech somewhere within the originating caller's local calling area, Ameritech must bear the cost of transport (and, in some cases, switching) to carry the call from the calling party's local calling area to Focal's nearest POI outside that local calling area. Ameritech states that this situation forces Ameritech to subsidize Focal's competing FX service with free interexchange transport. Ameritech asserts that the free interexchange transport is plainly uneconomic and anticompetitive. Ameritech concludes that Focal should bear the costs of interexchange transport for Focal's FX service.

1/ *Focal Communications Corporation of Illinois Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois,* Docket No. 00-0027, *Arbitration Decision* (Ill. Comm. Coms'n. 2000) (the "*Arbitration Decision*").

2/ The text reproduced here appears at pages 16-18 of the *Arbitration Decision.*

> To remedy this problem, Ameritech proposes that Focal be required to maintain a POI within 15 miles of the rating point of any NXX code that Focal uses to provide FX service. Ameritech states that a POI needs to be within 15 miles of the rating point for an NXX because calls between central offices that are less than 15 miles apart are considered local, whereas calls transported over a longer distance are Band C toll calls. Ameritech indicates that if Focal maintains a POI within the 15 miles, Ameritech will not have to transport an FX call more than 15 miles, and thus will no longer have to provide Focal with what amounts to free interexchange transport and switching. Ameritech states that it would also no longer be forced to collect only Band A local exchange charges from its own customers for calls that are actually toll calls.

The ICC summarized Focal's responsive arguments as follows:

> Focal contends that Ameritech's proposed requirement would impose unlawful and unreasonable interconnection obligations on Focal and would impair Focal's ability to offer FX service. Focal states that Ameritech's proposal would require Focal to construct or lease interconnection facilities solely for the purpose of transporting FX traffic, regardless of whether such interconnections are warranted by overall traffic volumes or any other network reasons.
>
> Focal disputes Ameritech's claim that Focal receives a free ride on Ameritech's network for FX service. Focal states that when the customer of one carrier originates a call, that carrier is obligated to bring that traffic to the POI associated with the terminating number. Focal indicates that once the call is handed off, the other carrier is responsible to deliver the call to the called party.
>
> Focal concludes that there is no justification to impose different interconnection obligations on FX service than on all other local service. Focal states that the establishment of POIs should continue to be based on traffic patterns and reasonable engineering practices.

After considering the arguments of each party, the ICC concluded that Ameritech's

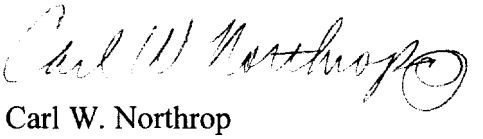
arguments were without merit, holding as follows:

> The Commission concludes that Focal should not be required to establish a POI within 15 miles of the rate center for any NXX code that Focal uses to provide FX service. If such a requirement were adopted, Focal could be required to construct or lease interconnection facilities, regardless of whether the interconnection was warranted by overall traffic volumes. **Ameritech's proposal is not required by federal or state law. The Commission does not accept the "free ride" argument or Ameritech for the reasons provided by Focal.** (emphasis supplied)

The ICC decision is instructive on the proper treatment of FX facilities in interconnection arrangements. Based on the ICC decision, this Commission also should find that FX facilities are interconnection facilities no different from other interconnection facilities, should reject efforts by LECs to require the establishment of additional POIs within the local calling areas where such POIs are not economically or technically justified, and should not entitle LECs to assess facilities charges against the telecommunications carriers utilizing FX facilities in an efficient network configuration.

Should you have any questions in this regard, please do not hesitate to contact the undersigned.

Very truly yours,



Carl W. Northrop
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Rebecca Beynon
Ari Fitzgerald
David Furth
Jordan Goldstein
Adam Krinsky
Frank Lamancusa
Mark Schneider
Peter Tenhula
Bryan Tramont
Helgi Walker
Sarah Whitesell

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Focal Communications Corporation of Illinois	:	
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company, d/b/a Ameritech Illinois.	:	00-0027

ARBITRATION DECISION

Jurisdiction

Section 252(b) of the Telecommunications Act of 1996 ("1996 Act") addresses the procedures for arbitration between incumbent local exchange carriers and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides an opportunity to respond to the non-petitioning party, and sets out time limits. Section 252(b)(4) provides that the State Commission shall limit its consideration to the issues set forth in the petition and in the response; and shall resolve each such issues by imposing appropriate conditions on the parties as required to implement Subsection (c) (Standards for Arbitration). Subsection (d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic, and wholesale prices.

Under §252(c), a State Commission shall apply the following standards for arbitration:

> (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Background and Procedural History

Focal Communications Corporation of Illinois ("Focal") and Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") entered into an interconnection agreement that expired on October 28, 1999. On August 6, 1999, Focal sent a letter to Ameritech requesting negotiations for a new interconnection agreement pursuant to Section 252 of the 1996 Act. During the pendency of negotiations for a new interconnection agreement, Focal and Ameritech have continued to operate, and are currently operating, pursuant to the expired interconnection agreement.

During their negotiations for a new interconnection agreement, Focal and Ameritech reached agreement on many of the issues raised. On January 13, 2000, Focal filed a petition to arbitrate 14 open issues with Ameritech. On February 8, 2000, Ameritech filed a response to the petition for arbitration.

On February 14, 2000, Ameritech filed a motion to strike Issue 8 raised in the petition for arbitration. Responses thereto were filed by Focal and Commission Staff ("Staff") and a reply to those responses was filed by Ameritech. On February 24, 2000, the Hearing Examiners granted the motion to strike Issue 8.

Pursuant to proper notice, a pre-hearing conference was held on January 18, 2000, before duly authorized Hearing Examiners of the Commission at its offices in Springfield, Illinois. Thereafter, procedural matters were discussed at hearings on January 25 and 28, 2000, and evidentiary hearings were held on March 15 and 16, 2000. Appearances were entered by counsel on behalf of Focal, Ameritech and Staff. Verified statements of John Barnicle, Michael Starkey and David Tatak on behalf of Focal; Debra J. Aron, Kent A. Currie, Michael C. Auinbauh, Robert G. Harris, Eric L. Panfil, and Fred A. Miri on behalf of Ameritech; and John M. Garvey, Christopher L. Graves, Patrick L. Phipps and Julie M. VanderLaan on behalf of Staff were admitted into evidence. On March 31, 2000, a hearing was held for the purpose of clarifying the positions of Focal and Ameritech regarding Issue 3.

Post-hearing briefs were filed by Focal, Ameritech and Staff.

On April 3, 2000, the Hearing Examiners' Proposed Arbitration Decision was served on the parties. Focal, Ameritech and Staff filed briefs on exceptions and replies. These briefs on exceptions and replies have been considered by the Commission in reaching the arbitration award granted herein.

Issues Subject to Arbitration

As previously noted, Focal initially sought arbitration of 14 issues. The Hearing Examiners granted the motion to strike Issue 8. Focal and Ameritech settled Issues 5, 6, and 9 through 14. Thus, there are five remaining issues to be resolved through

arbitration. The remaining issues will be considered in order. At the conclusion of each issue statement is the contract section to which the resolution of the issue applies.

1. **Should Focal charge Ameritech the tandem rate for non-internet service provider ("ISP") local calls terminated on Focal's network? (Section 4.7)**

a. Positions of the Parties

Ameritech argues that Focal is entitled to receive the composite tandem rate for the termination of local traffic only if it meets a two prong test demonstrating that its switches cover the same geographic area as the area covered by Ameritech's switches and that Focal's switches provide the same functionalities as do the tandem switches of Ameritech. Ameritech included language to this effect in its proposed contract, as well as language requiring Focal to permit it to interconnect at a Focal end office at rates, terms and conditions that are non-discriminatory, which would include offering the termination of local traffic by other local exchange carriers ("LECs") and long distance traffic by interexchange carriers ("IXCs") at the same rate.

Ameritech's position is based upon Federal Communications Commission's ("FCC") language found in paragraph 1090 of FCC 96-325 ("First Report and Order"), wherein the FCC discussed the fact that additional costs may be incurred by a LEC in transporting and terminating calls depending upon whether tandem switching is involved. After previously directing state commissions to establish presumptive symmetrical rates upon the incumbent local exchange carriers' ("ILECs") costs for transport and termination (Par. 1089, First Report and Order), the FCC concluded that states could, in conducting arbitrations under the Act, establish disparate rates for transport and termination of traffic that vary depending upon whether the traffic is routed through a tandem or directly to an end-office switch. In that event, the state commission was to also consider whether new technologies perform functions similar to tandem switches and, if so, whether some or all calls terminating on the new entrant's network should be priced at the composite tandem rate. The Commission went on to note that, where the interconnecting carrier's switch serves a geographic area comparable to the area served by the incumbent's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate. The rule that was eventually codified in response to this discussion (47 U.S.C. §51.711(a)(3)) refers only to the geographic coverage of the companies' switches.

Ameritech argues that the FCC has established a two-prong test to determine the eligibility of an interconnecting carrier to be entitled to receive the tandem rate as reciprocal compensation and that Focal does not meet the functionality test in several respects. Ameritech first points to an NXX application filed by Focal seeking codes for its Chicago switch in which it did not indicate its switch would be performing tandem functions. In addition, Ameritech argues that because some of Focal's customers are collocated, Focal, in terminating such a call, uses what amounts to a local loop,

because the traffic is taken from a switch and routed to an end user in the same building through the use of an intra-building OC48 transport system. Finally, in addressing the fact that the system employed by Focal is primarily fiber optic utilizing SONET rings (referred to generally as a "non-hierarchical" system) as opposed to the system used by Ameritech, which is primarily copper (and referred to generally as "hub and spoke"), Ameritech concludes that the only difference is that Focal's switches serve larger geographic areas through longer loops. Ameritech argues that the fact that the systems look different does not change the fact that Focal's end offices are no less dependent on their connections to Ameritech's tandem switches than are Ameritech's end office switches, leading to the apparent (but unstated) conclusion that they function in many ways as an end office switch and are not functionally equivalent to a tandem.

Focal notes that the 1996 Act provides for recovery by each carrier of costs associated with the transport and termination on its network facilities that originate on the network of another carrier. Focal indicates that such costs are to be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. §252(d)(2)(A).

Focal contends that reciprocal compensation should be paid on the transport and termination of all local calls at a cost-based rate. Focal states that Ameritech should pay Focal a single rate any time Ameritech delivers traffic to Focal's point of interconnection, and that Focal should pay Ameritech that same rate when Focal delivers traffic to Ameritech's point of interconnection. Focal concludes that the reciprocal compensation rate should be Ameritech's "tandem rate", which consists of the following four rate elements: end office termination, tandem switching, tandem transport termination and tandem transport facility mileage. This tandem rate is presently $0.005175 per minutes of use.

Focal contends that the FCC has identified the geographic comparability test as the sole test for entitlement to the tandem rate for reciprocal compensation, citing para. 1090 of the FCC's Order in CC Docket No. 96-98 ("*Local Competition Order*"), and Rule 51.711(a)(3) promulgated by the FCC to implement para. 1090, which states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate.

Focal asserts that it meets the geographic comparability test. Focal states that each of its two switches serves an area that is larger than the area served by several Ameritech tandem switches combined.

Focal contends that Ameritech and Staff are wrong as a matter of law in contending that Focal must also meet a functionality test in order to be entitled to the

tandem rate for reciprocal compensation. Focal argues that a reasonable reading of the FCC's language leads to the conclusion that the functional equivalence test applies only where a state commission decides to impose two disparate reciprocal compensations depending on whether traffic is terminated at an end office or a tandem switch. The apparent (but unstated) conclusion is that because the issue of disparate reciprocal compensation rates is not before the Commission here, the functionality test is moot. Focal goes on to argue additionally that, where an interconnecting carrier can show geographic comparability, a state commission must establish reciprocal compensation rates based upon the LECs interconnection tandem rate. Focal notes that no state commission that has addressed this issue has concluded that the issue of functionality has anything to do with the opportunity of an interconnecting carrier to receive the LEC tandem rate as reciprocal compensation.

In terms of the geographic comparability test, Focal notes that the unequivocal evidence is that it has the ability to serve and is currently servicing customers through Ameritech's footprint.

In terms of the functionality test, Focal argues that, in the event the Commission concludes that it must meet this test, the evidence shows that it does. On the customer access side of Focal's network, i.e., on the customer side of Focal's switch, Focal typically acquires DS-3 fiber optic transport extending from the switch to multiplexing equipment at leased hubs located either at the facilities of third party transport providers such as MCI WorldCom, AT&T or Nextlink, or at Ameritech tandem or end offices. From the hubs, Focal leases T-1 lines to the customer premises. The T-1s are commonly configured as ISDN-PRI lines. The T-1s are often multiplexed onto DS-3 facilities. Multiplexing is the use of electronic equipment which allows two or more signals to pass over one communications circuit. Focal also places SONET nodes in buildings and then uses the buildings' cable and riser facilities to connect to the customer's premises. Ameritech switching is not involved.

In addition to this typical network configuration, Focal also serves some end users by placing SONET switching equipment in a building and then using the building's cable and riser facilities to connect to the customer's premises. Calls that terminate through this architecture are carried over Focal's interconnection facilities from the point of interconnection ("POI") with the originating carrier to Focal's DMS-500 switch. The traffic is then transported over Focal facilities to the SONET switching node generally located in the basement of the building. The SONET node then passes the traffic from the inter-office transport fiber to the appropriate building cable terminating at the customer's premises.

If a Focal customer collocates in Focal's facilities, which most Focal customers do not do, additional facilities are deployed to connect the customer's facilities to the Focal switch. When traffic is terminated to collocated customers, Focal transports calls from the point of interconnection with the originating carrier to the Focal switch. The traffic is then switched onto facilities connected to the end user's collocated equipment.

In some cases, the collocation space may be located near the switch room, and in others, it may be located on a different floor, a different building, or even in a different town. For example, Focal has customers in collocation space located in its Chicago office, but, in some instances, those customers may receive dial tone from Focal's Arlington Heights switch. Focal also utilizes SONET-based fiber optic transport systems to carry these calls, regardless of the distance of the transport.

On the network interconnection side, i.e., on the network side of Focal's switch, Focal typically obtains two-way trunk facilities not only between the Focal switch and the Ameritech tandems, but also between numerous Ameritech end offices and the Focal switch. These trunk facilities range from DS-1 connections to DS-3 and higher order optical facilities, depending upon the purpose and volume of traffic. The facilities, like the transport facilities to the customer premises, are obtained by third party transport providers such as MCI WorldCom, AT&T or Nextlink. Focal picks up the traffic at the POI between the two networks and carries it over Focal's transport network to separate trunk ports at the Focal switch. Focal's switch performs the aggregation function from the multiple end offices and other trunk groups onto facilities for the delivery of the traffic to the Focal customer. While the traffic may be handed over to Focal at an Ameritech tandem office because that is where the POI is located, it usually does not traverse an Ameritech tandem switch. In other words, according to Focal, for the vast majority of traffic, it is Focal's switch that performs the traffic aggregation for traffic originating from Ameritech's end offices, not the Ameritech tandem switch.

In terms of Ameritech's definition of tandem functionality, which according to Focal necessitates a showing of trunk-to-trunk switching or a switching operation that connects two network switches to each other, Focal argues that no competitive local exchange carrier ("CLEC") could ever meet the definition unless it deployed an identical hub and spoke architecture as used by ILECs. Because CLECs generally do not have separate end office and tandem switches, there is no way to perform trunk to trunk switching and the only way to satisfy the test would be for Focal to add a tandem switch to its network. Focal argues that such a result is directly contrary to numerous actions and pronouncements of the FCC and regulatory bodies generally and a step backward in terms of technological advancement of the system.

In terms of the actual contract language proposed by Ameritech, Focal first notes that the end office interconnection requirement is not imposed on CLECs by any statute, rule or regulation and is, in effect, a request to interconnect at a point other than the agreed upon point of interconnection, i.e., Focal's end office. In addition, the proposal is inconsistent with Focal's network architecture, most notably the fact that Focal does not have end offices at which Ameritech can interconnect. In terms of the second, non-discrimination requirement, Focal finds it unnecessary and asserts that it currently provides non-discriminatory access to its entire system to all comers and that if Ameritech believes this to be untrue in a given instance, it should avail itself of the Commission's complaint process.

Staff agrees with Ameritech that Focal must meet both a geographic and system functionality test before being granted the opportunity to receive reciprocal compensation at the tandem rate for the transport and termination of local traffic. Staff agrees with Focal that it meets both tests.

b. Commission's Conclusion

The Commission is of the opinion that, while a fair reading of the relevant portions of the First Report and Order may lead to the conclusion that the functionality test has application only where a state commission is desirous of setting disparate reciprocal compensation rates for the transport and termination of traffic depending upon whether the traffic is terminated to an end office switch or a tandem switch, the Commission need not reach that issue here, because Focal has satisfied both tests. In terms of satisfying the geographic test, the overwhelming evidence is that Focal is able to and is serving customers throughout the relevant geographic area. In terms of satisfying the functionality test, the Commission agrees with both Focal and Staff that the test has been met. The Commission rejects, out of hand, Ameritech's arguments based upon the NXX application filed by Focal. The NXX application is probative only of the fact that Focal made an application for NXX numbers and has nothing to do with the function of its switches. The Commission also rejects Ameritech's arguments that the Focal system operates as an "end office"/"local loop" system, dependent upon Ameritech's tandem switches to provide the switching function. The FCC, in utilizing a "functionality" test, was obviously addressing the disparity between the modern CLEC fibre option/SONET ring system and the hub and spoke architecture utilized by most ILECs. If it were not, it would have simply directed state commissions to set reciprocal compensation rates at the ILEC tandem switching rate if the CLEC utilized tandem switches. Here, the evidence is that Focal's network architechure performs in a functionally equivalent manner to Ameritech's. The conclusion that must be drawn is that Focal is entitled to be compensated for the additional costs of terminating local calls from Ameritech customers at Ameritech's tandem rate of $0.005175 per minute.

2. Should Ameritech pay reciprocal compensation to Focal when Focal terminates a call made by an Ameritech customer to an Internet Service Provider customer of Focal? (Section 4.7)

a. Positions of the Parties

Ameritech's primary position is that it should not be required to pay Focal reciprocal compensation when Focal terminates a call made by an Ameritech customer to an internet service provider ("ISP") customer of Focal. In support of this position, Ameritech makes several arguments. Ameritech first argues that the Commission is without jurisdiction to decide the issue, noting that the 1996 Act empowers state commissions to arbitrate issues relating to interconnection agreements, but nowhere addresses issues involving the delivery of traffic to the internet. Ameritech also argues that Internet traffic is interstate telecommunications and without the purview of the

Illinois Commerce Commission, which is limited to deciding issues of an intrastate nature.

In the event that the Commission finds it has jurisdiction to decide this issue, Ameritech urges the Commission to find no compensation is due Focal. Ameritech, noting that the FCC is currently considering this very issue, urges the Commission to find that the interconnection agreement should contain language deferring the issue of reciprocal compensation for internet traffic until the FCC finally speaks to the matter. Ameritech also urges the Commission to decide that Internet traffic is not local and, therefore, not subject to reciprocal compensation. Ameritech notes that the FCC, in numerous decisions, has held that internet traffic is not local and that, while ISPs should be paying access charges to the originating carrier, the FCC has, thus far, exempted them from the access charge regime. Ameritech also posits that Internet bound traffic displays many cost characteristics not found in local traffic. Ameritech notes, in particular, that, when an Ameritech local exchange customer makes a local call, the customer is availing itself of contract rights existing between the customer and Ameritech. In this situation, Ameritech admits that it should compensate carriers that complete the call. Ameritech argues that this is distinct from an Internet bound call, where the caller is exercising contract rights existing between the customer and the ISP. Under this scenario, Ameritech concludes that the ISP should compensate all carriers that aid it in completing the call.

Turning to another line of argument, Ameritech indicates that, even if the Commission were to conclude that Ameritech should compensate Focal for the costs of completing a call, Focal should receive nothing in this docket, because Focal failed to prove what the costs of completing such a call were. In support of this position, Ameritech points to FCC Docket 96-325 (the "First Report and Order") wherein the FCC decided that competing carriers could use proxies in setting reciprocal compensation rates only for local traffic and, as Ameritech argues repeatedly, internet bound traffic is not local. In the event that proxies are not allowed, the competing carrier must prove its costs, which Focal did not do in this docket.

Ameritech's final position is that, in the event the Commission determines that reciprocal compensation is appropriate, it cannot be at the same rate the parties pay each other for the transport and termination of local traffic, because the rates are based upon costs that do not reflect the true costs of transporting and terminating internet bound traffic, primarily because of the longer hold times associated with this type of traffic. In addition, Ameritech argues that allowing Focal to recover at the ordinary reciprocal compensation rate would have anti-competitive effects and would serve to discourage Focal from seeking to serve customers that originate traffic because it would put Ameritech at risk of paying similar reciprocal compensation to other terminators of internet bound traffic.

In terms of establishing an economically rational reciprocal compensation rate, Ameritech argues that Focal should look first to its ISP customers as the source for

recovery of the costs they cause. Ameritech also argues that, while its costs must serve as the starting point for any discussion of cost recovery (because they are the only costs of record in the docket), the costs must be adjusted to reflect the differences in the type of the traffic they reflect. The primary adjustment proposed by Ameritech involves re-allocating the fixed set-up costs over the entire 26 minute average hold time of an ISP call, which would reduce the compensation rate to reflect the fact that all calls cost the same to set up, but that termination rates are based upon minutes of use calculations. Ameritech initial proposal, in the event the Commission concludes that some form of reciprocal compensation is to be included in the contract, is as follows:

(1) As of the Effective Date of the parties' agreement, and for a period of three months thereafter, the parties would compensate each other at the rate of $0.001333 per minute for the delivery of Internet traffic to each other's ISP customers. That rate gave Focal the benefit of Ameritech's end office switching rate, with the set-up component of the rate correctly adjusted to account for the long hold times of ISP calls.

(2) That rate would be reduced to zero over a period of one year. After the initial three-month period at $0.001333 per minute, the rate would be reduced to 75% of that rate for months 4-6; to 50% for months 7-9; to 25% for months 10-12; and to zero thereafter.

(3) Because Ameritech should not be required to pay out all of the revenues it receives for originating Internet access calls while retaining nothing to cover the costs it incurs to deliver the traffic, each party's payment to the other for delivery of ISP traffic originated by a particular end user customer of the paying party would be capped at one-half of the local usage revenues that the paying party derives from that customer.

Staff took the position that Focal, in cooperation with Ameritech, should first undertake efforts to segregate and identify ISP bound traffic for rating. In addition, Staff recommended that Focal be compensated for ISP bound traffic at a composite rate to reflect the longer hold times of ISP bound traffic. Staff's position rests upon the following distinctions it found between ISP bound traffic and the remainder of all other local traffic: (1) longer hold times; (2) potentially lower costs incurred by Focal because some ISPs collocate at Focal central offices and; (3) Focal's switch does not serve as a tandem when terminating ISP bound traffic.

Focal's position on this issue is that it should be compensated for the costs it incurs for terminating local calls originated by Ameritech regardless of the entity to whom the calls are terminated. Focal argues that because the costs it incurs for terminating calls to ISPs are the same as those for any other call, the reciprocal compensation rate should be the same.

In response to Ameritech's arguments relating to the Commission's jurisdiction over ISP calls; Focal argues that the FCC has explicitly recognized and sanctioned state commission continuing jurisdiction over the issue of reciprocal compensation for termination of ISP bound traffic. Focal goes on to argue that ISP bound calls are subject to reciprocal compensation because they definitionally involve telephone exchange service, which is the use of the local network to allow an originating local subscriber (here, a local service customer of Ameritech) to reach a terminating local subscriber (here, an ISP local service customer of Focal). Based upon this premise, Focal concludes that ISP bound calls are technically no different than any local calls and must be treated the same from a regulatory perspective, and that the Commission has jurisdiction to consider the issue. Staff recommends that Focal receive a reciprocal compensation rate of $0.001333 per minute.

In response to Staff's proposal, Ameritech argues that $0.001333 per minute is inappropriate as a permanent rate for the duration of the interconnection agreement. Ameritech asserts that compensation paid at this rate would amount to a cost to Ameritech of almost 3.5 cents on a 26 minute ISP access call, which is more than 80% of the revenue that would be typically received for such calls. In addition, Ameritech emphasizes that it bears the cost of providing original switching for the call and transporting it to Focal's point of interconnection, as well as any associated billing and administrative costs. Ameritech concludes that payment to Focal at Staff's recommended rate would not come close to allowing it to recover its costs of ISP access calls under its current untimed local calling area rates. As an alternative to Staff's proposal, Ameritech proposed a compensation rate of $0.000946 per minute. Ameritech states that this rate equals the cost of the tandem switching element of reciprocal compensation, adjusted to reflect the impact of a 26-minute average hold time on the allocation of setup and duration costs to a melded per-minute rate. Ameritech states that the compensation received under its alternative rate for a 26 minute ISP call ($0.02496) would be approximately one-half of the basic tariff rate (5 cents) for an untimed call in the Chicago LATA, but would represent more than 50% of the average per call revenues received by it in light of volume and time-of-day discounts to the basic rate.

Ameritech indicates that if the Commission orders inter-carrier compensation for ISP traffic, the Commission should require that the parties' interconnection agreement allow for a prompt adjustment to meet changed circumstances. Ameritech proposes that any inter-carrier compensation provisions for ISP traffic be subject to renegotiation on 60 days notice by either party, with an effective date of any replacement provisions no earlier than one year after the initial effective date of the interconnection agreement. Ameritech states that the parties would then negotiate a replacement compensation arrangement, subject to the dispute resolution process in the agreement with the ultimate possibility of a resolution mediated or arbitrated by the Commission. Ameritech concludes that to remove any incentive to slow down the negotiation process, the agreement should specify that the replacement compensation

arrangement will be applied retroactively (if necessary) to the date of cancellation of the initial arrangement.

In terms of the level of compensation to be allowed, Focal notes that, because calls to ISPs are functionally indistinguishable from any other local call, the inference is that they impose the same cost on Focal's system and should result in the same compensation. Focal disputes Ameritech's contention that the cost causer in the equation is the ISP, noting that, if an Ameritech local customer did not pick up the phone to dial an ISP, there would be no issues about reciprocal compensation in the first place. Focal further notes that Ameritech's proposed cost recovery mechanism (whereby Focal should look to the ISP for cost recovery) is inconsistent with well established rate-making principles under which the costs of terminating local costs are embedded in the price of local usage rates. Focal also notes that there are currently a plethora of regulatory restraints which would serve to prevent it from recovering termination costs from its ISP customers, not the least of which is that the FCC, while exerting jurisdiction over ISP bound traffic, has specifically exempted this traffic from being assessed access charges.

In response to Ameritech's arguments relating to the anti-competitive effects of imposing reciprocal compensation requirements on ISP bound traffic, Focal argues that the ISP market is the most logical market for CLECs to enter because new entrants are usually most successful in attracting customers that: (1) are most disaffected by the services or quality offered by the incumbent; (2) have technological capabilities or other specific requirements that are not easily met by the incumbent's often overly-generic service offerings; and (3) do not have a long history of taking service from the incumbent, which, according to Focal, describes ISPs. Focal argues that its success in attracting these customers points to a void in the market that is not being filled by the ILEC and that Ameritech's proposal would inhibit or destroy the nascent market for ISP bound traffic. Focal also notes the Commission has previously determined that reciprocal compensation should be paid for internet-bound traffic in Docket Nos. 97-0404, 97-0519 and 97-0525 (cons.) and has been offered no reason to depart from that conclusion here.

In terms of the rate to be paid in the event reciprocal compensation is ordered, Focal argues that the appropriate rate is the Ameritech tandem rate of $0.005175 per minute of use. Focal notes that the FCC has specifically sanctioned the use of ILEC costs as reasonable proxies for requesting carriers' costs in setting reciprocal compensation rates for the transport and termination of traffic. Focal notes that using Ameritech's current rates would likely understate Focal's costs because the current rates were developed using TELRICs, which are forward looking costs and assume the most efficient network. Because Focal is a new entrant, it posits that it likely has a lower switch utilization rate than was assumed in Ameritech's TELRIC study, which would lead to a lower rate of recovery.

In response to the suggested modification of Ameritech's rates to attempt to reflect the different characteristics of ISP bound calls, Focal argues that such a modification would not take into account all of the different characteristics of the two company's systems and costs and would be contrary to law.

In response to Ameritech's suggestion that the Commission defer consideration of this issue until the FCC finally decides the manner in which reciprocal compensation is to be paid for ISP bound calls, Focal responds that such an outcome would likely deprive Focal of cost recovery to which it is entitled for an extended period of time, noting that it took the FCC almost two years to respond to the request for clarification that resulted in its last attempt at addressing the ISP issue. Focal further argues that the suggestion is unworkable because it would require Focal to track ISP bound traffic until such time as the FCC acts, while its Chief Operating Officer testified that such tracking is impossible.

b. <u>Commission's Conclusion</u>

Consistent with our earlier findings in Docket 97-0404/0519/0525, this Commission finds that ISP bound calls are local and should be due reciprocal compensation. However, the Commission also takes note of the evidence in the record which suggests dramatic shifts in the utilization of the local exchange network, associated with the explosion in Internet traffic, and the resultant effects these changes are having upon the issue of reciprocal compensation. Due to these changes, the issue of reciprocal compensation demands further scrutiny by this Commission in order to ensure that just and reasonable rates are in place in Illinois.

Furthermore, since the issues raised here related to reciprocal compensation are likely to be very similar to those raised in other arbitration proceedings and other market participants have not been party to this proceeding, we conclude that this arbitration decision is not the proper place for the Commission to adopt a position which will have far-reaching competitive and economic effects upon the telecommunications marketplace. Therefore, the Commission hereby directs Staff to initiate a proceeding in order to further address the issue of reciprocal compensation. At this time, we will adopt Focal's proposed reciprocal compensation rate of $0.005175 per minute. However, the companies should take note that the Commission may subject this reciprocal compensation rate to an adjustment, including a possible true up or retroactive payment, based on its ultimate conclusion reached in the reciprocal compensation proceeding. Should the Commission order an adjustment to this reciprocal compensation rate, including a possible true up or retroactive payment, it will not apply to any period of time prior to the approval of this interconnection agreement.

3. Should Focal be allowed to count ISP bound traffic as local exchange service for the purpose of self-certifying that it provides a significant amount of local exchange traffic? (Section 9.2)

a. Positions of the Parties

Focal has requested that Ameritech convert special access circuits to an unbundled network element loop/transport ("UNE") combination known as an enhanced extended link ("EEL"). The obligation to provision loop transport combinations was addressed by the FCC in a Supplemental Order to CC Docket 96-98. The FCC concluded that LECs would not be required to provision loop/transport UNEs unless the requesting carrier certified that it provided a particular customer with a "significant amount of local exchange service."

The parties originally disagreed over several issues involved with the provisioning of EELs. These included: whether Focal should be required to self certify that it was, in fact, providing a customer with a significant amount of local exchange service, the propriety of including particular parameters for defining "significant" in the contract, the compensation to be paid for termination and service ordering charges, the manner in which the EELs would be collocated and finally, whether Focal could count ISP bound traffic in making its certification. Because the initial briefs of Focal and Ameritech addressed some, but not all of these issues, a status hearing was held on March 31, 2000. Prior to the hearing, the parties, via e-mail, submitted their understanding of outstanding issues. At the hearing, representatives of Focal and Ameritech indicated that the only outstanding matter to be determined under issue three was the counting of ISP traffic toward the "significant" benchmark. The e-mail was marked as Hearing Examiners' Exhibit 1, and admitted into the record.

Focal argues that ISP bound traffic is local exchange service and should be counted as such in determining whether or not Focal provides such service to customers. Because the majority of Focal's traffic is ISP bound traffic, counting it would, in all likelihood satisfy the "significant" benchmark. Focal first notes that the 1996 Act defines only two types of telephone traffic (1) exchange access (long distance) and (2) telephone exchange service (local calls). According to Focal, telephone exchange service calls are defined primarily by virtue of the fact that they are made between endusers in the same calling area. Focal argues that the FCC, in the Universal Service Report (13 FCC Rcd 11501 et seq), recognized that an Internet bound call has two components. The first component is the enduser dial up call which, according to Focal, is functionally equivalent to a telephone exchange service call because it is made by an enduser to an ISP that is in the same calling area. The second component of an Internet bound call is the two way communications between the ISP and the many websites that make up the Internet. Focal argues that the FCC, in the Universal Service Report, determined that this component of an Internet call is the provision of information services and not telephony at all. Focal goes on to note that this approach is consistent with various other pronouncements of the FCC and conclusions of various Federal Courts, all of which have recognized that the Internet is based primarily upon the ability of endusers to access the Internet on a non-access exchange service basis.

Focal also argues that, in the event the Commission were to conclude that the FCC has spoken on the issue of ISP calls to Focal's detriment, the 1996 Act as well as section 13-505.6 of the Public Utilities Act (220 ILCS 5/13-505.6) allows the Commission to ignore the FCC's conclusions and reach its own independent determination on the ultimate nature of Internet calls. Focal also notes that a determination that it could not include ISP bound calls as telephone exchange service would result in an impossible burden because there is currently no technology available that would it allow it to segregate ISP bound traffic from any other traffic coursing across its network.

Staff agrees with Focal that it should not be required to self certify that it is not treating ISP calls as local for purposes of requesting EELs. Staff notes that the FCC did not include this requirement in the Supplemental Order. Staff goes on to note that such a certification may have unforeseen long range legal implications relating to proceedings involving inter-carrier compensation arrangements for ISP traffic. Staff suggests that Focal only be required to self certify that the tabulations relied upon are consistent with current state and federal statutes, rules and regulations.

Ameritech argues that that the FCC has, in a number of dockets, held that the service CLECs provide ISPs is exchange access service, not local exchange service. In addition, Ameritech notes that the FCC, in the Supplemental Order, specifically deferred the issue of whether CLECs could employ unbundled network elements solely to provide exchange access service. Ameritech concludes that allowing Focal to use an unbundled special access line to serve an ISP, would, by definition, be providing solely exchange access service.

Ameritech argues that both Focal and Staff have misconceived the distinction between treating IPS traffic as local exchange traffic for the purposes of reciprocal compensation and the treatment of service to an ISP as local exchange traffic for the purpose of unbundling special access circuits into EELs. Ameritech acknowledges that the FCC has indicated that ISP traffic might, in some circumstances, be treated as local; however, Ameritech asserts that this does not transform the underlying nature of the traffic which is, according to Ameritech, interstate access service from which ISPs have been excused from paying access charges.

In response to Focal's arguments urging the Commission to ignore a detrimental conclusion of the FCC, Ameritech argues that such a result would be contrary to the Supremacy Clause of the United States Constitution and that the argument is simply an improper collateral attack on various decisions of the FCC. In response to Focal's "technical infeasibility" argument, Ameritech first notes that other jurisdictions have ruled that requesting carriers need not receive compensation for terminating ISP calls which, of necessity, calls for segregating this traffic from all other traffic. From this, Ameritech concludes that there must be some way to accomplish this task. In addition, Ameritech notes that Focal agreed to percentage based measurement in its communication to the FCC detailing the parameters it endorsed as the basis for making

the determination that it was providing a significant amount of telephone exchange service to an enduser. The implication of this, according to Ameritech, is that measurement of ISP and non-ISP traffic is possible. Ameritech concludes by arguing that if, in fact, Focal cannot identify ISP bound traffic, this is enough reason to deny it the opportunity to obtain the unbundled loop/transport combination.

b. Commission's Conclusion

In this issue, the Commission must address the conundrum created by the FCC in its quest to maintain jurisdiction over matters relating to the Internet. Here, similarly to its position in issue two, Focal urges us to find that ISP calls are local in nature. Ameritech disagrees. In issue two, we were faced with deciding the manner in which Focal and Ameritech were to be compensated for terminating calls. The issue before us here is distinct because it does not deal with the functionality or costs of the calls but rather with the local or long distance nature of the calls, which has been muddied considerably by the FCC. Staff's view that we should not require Focal to self certify that it is not treating ISP call as local because the FCC has not imposed this requirement not only misses the issue, which is whether Focal should be allowed to count such calls as local exchange service, but seems to admit that Ameritech is correct in its position, since Staff indicates that it does not expect Focal to count ISP calls as local, which is exactly what Focal is asking to be allowed to do.

Based upon the record before us, we must agree with Focal that, for purposes of complying with the FCC's directive in the Supplemental Order, Focal should be allowed to count ISP bound traffic as local exchange service in self certifying that it will be providing a significant level of local exchange service through an EEL. While the issue is distinct from our consideration of reciprocal compensation, much of the same reasoning applies. Here, the FCC, for whatever reason, has tied the LEC's obligation to unbundle a special access circuit to the CLEC's obligation to provide significant amounts of local exchange service to a particular customer. The FCC, through a number of proceedings, has specifically held that it is vested with jurisdiction over ISP bound traffic because, when analyzed on and "end to end" basis, it is not local exchange traffic. Nonetheless, as noted previously in this order, the FCC has continued to allow the states to imposed reciprocal compensation requirements, as if it were local exchange traffic. Here, based upon the totality of the circumstances, we conclude that, for purposes of the self-certification requirement, Focal should be allowed to count ISP traffic as local exchange service. The parties are directed to amend the interconnection agreement to reflect this conclusion and, if necessary, to reflect the agreed upon resolution of the remaining issues relating to requests for EELs as represented at the status hearing held on March 31, 2000.

4. **Should Focal be required to establish a point of interconnection within 15 miles of the rate center for any NXX code that Focal uses to provide foreign exchange service? (Section 4.3.12)**

a. Positions of the Parties

Foreign exchange ("FX") service allows a customer to obtain an NXX code (the first three digits of a seven-digit telephone number) that is assigned to a different geographic area than where the customer is actually located. People in the geographic area assigned to the particular NXX code can reach the FX customer for the price of a local call, even though the call is actually transported much further than a local call. Ameritech indicates, for example, that a call from Aurora to downtown Chicago travels more than 15 miles and would thus normally be a Band C toll call. Ameritech states that if the recipient of the call in downtown Chicago is an FX customer assigned to the same NXX code as the originating caller in Aurora, the originating caller would only be billed for a local call since Ameritech's billing systems recognize an intra-NXX call as a local call.

Ameritech notes that both it and Focal provide FX services. Ameritech indicates that when a call is originated by an Ameritech customer and terminated to an Ameritech FX customer, Ameritech charges the originating caller for a local call, and charges the FX customer a rate for FX service that includes the transport costs that Ameritech incurs to carry the call from the originating NXX area to the FX customer's location.

Ameritech indicates that when the call is originated by an Ameritech local customer and delivered to a Focal FX customer, the originating customer still pays Ameritech for a local call. Ameritech emphasizes, however, that unless Focal has a point of interconnection ("POI") with Ameritech somewhere within the originating caller's local calling area, Ameritech must bear the cost of transport (and, in some cases, switching) to carry the call from the calling party's local calling area to Focal's nearest POI outside that local calling area. Ameritech states that this situation forces Ameritech to subsidize Focal's competing FX service with free interexchange transport. Ameritech asserts that the free interexchange transport is plainly uneconomic and anti-competitive. Ameritech concludes that Focal should bear the costs of interexchange transport for Focal's FX service.

To remedy this problem, Ameritech proposes that Focal be required to maintain a POI within 15 miles of the rating point of any NXX code that Focal uses to provide FX service. Ameritech states that a POI needs to be within 15 miles of the rating point for an NXX because calls between central offices that are less than 15 miles apart are considered local, whereas calls transported over a longer distance are Band C toll calls. Ameritech indicates that if Focal maintains a POI within the 15 miles, Ameritech will not have to transport an FX call more than 15 miles, and thus will no longer have to provide Focal with what amounts to free interexchange transport and switching. Ameritech states that it would also no longer be forced to collect only Band A local exchange charges from its own customers for calls that are actually toll calls.

Focal contends that Ameritech's proposed requirement would impose unlawful and unreasonable interconnection obligations on Focal and would impair Focal's ability

to offer FX service. Focal states that Ameritech's proposal would require Focal to construct or lease interconnection facilities solely for the purpose of transporting FX traffic, regardless of whether such interconnections are warranted by overall traffic volumes or any other network reasons.

Focal disputes Ameritech's claim that Focal receives a free ride on Ameritech's network for FX service. Focal indicates that Ameritech's argument is belied by the manner in which traffic is exchanged between Ameritech and Focal. Focal states that when the customer of one carrier originates a call, that carrier is obligated to bring that traffic to the POI associated with the terminating number. Focal indicates that once the call is handed off, the other carrier is responsible to deliver the call to the called party. For example, Focal states that if an Ameritech customer calls a Focal customer physically located in Kankakee, Ameritech is obligated to deliver the call to the POI associated with Kankakee. Focal indicates that if Ameritech's customer in Kankakee calls a Focal customer physically located in Chicago that has an FX derived phone number in Kankakee, Ameritech has the same obligation to deliver the call to the POI associated with Kankakee. Focal states that in both cases, Focal would transport the call from the POI to its switch. Focal emphasizes that in both cases, Ameritech carries the call the same distance and incurs the same transport costs.

Focal concludes that there is no justification to impose different interconnection obligations on FX service than on all other local service. Focal indicates that it generally establishes POIs in the areas that it serves, and that the POIs are usually within the 15 mile distance advocated by Ameritech. Focal notes that it and Ameritech established 19 POIs for the exchange of traffic under their first interconnection agreement and have agreed to establish more than 100 POIs under the implementation plan for the new interconnection agreement. Focal states that the establishment of POIs should continue to be based on traffic patterns and reasonable engineering practices.

In response, Ameritech indicates that any speculative inconvenience to Focal in adding POIs for FX service pales in comparison to the significant uncompensated transport costs that Focal is already shifting to Ameritech. Ameritech further asserts that the establishment of POIs is not onerous.

Ameritech indicates that Focal's argument that Ameritech is obligated to transport all calls to Focal's nearest POI is a red herring. Ameritech asserts that Focal in essence argues that because the free ride problem could exist for both FX and non-FX service, the Commission is precluded from accepting Ameritech's proposal because it is limited to FX service. Ameritech indicates that it focused on FX service because such service has resulted in the most significant free ride problem. Ameritech concludes that federal or state law does not require that it provide the free ride to Focal.

b. <u>Commission's Conclusion</u>

The Commission concludes that Focal should not be required to establish a POI within 15 miles of the rate center for any NXX code that Focal uses to provide FXX service. If such a requirement were adopted, Focal could be required to construct or lease interconnection facilities, regardless of whether the interconnection was warranted by overall traffic volumes. Ameritech's proposal is not required by federal or state law. The Commission does not accept the "free ride" argument of Ameritech for the reasons provided by Focal.

5. Resolved

6. Resolved

7. Should Ameritech notify Focal prior to making service-affecting changes to the components of an already provisioned xDSL loop? (Section 9.5.6)

a. <u>Positions of the Parties</u>

Ameritech argues that it must maintain the unfettered opportunity to service and repair xDSL ("digital subscriber line") loops that are leased by Focal. Ameritech notes that the loops are only leased to Focal and that Ameritech continues to own the loops and with continuing ownership, the maintenance responsibility. Ameritech argues that it would be unfair to saddle it with the maintenance responsibility, while limiting its ability to perform those duties by imposing a notice requirement. Ameritech also questions what effect a notice requirement would have because Focal can not preclude Ameritech from performing the required maintenance and repairs.

In addition, Ameritech argues that the proposed notice requirement would be inordinately costly because it would result in large-scale changes to Ameritech's current maintenance procedures. The most onerous burden, according to Ameritech, would be the necessity of establishing teams to determine whether a loop is being used by another carrier, which carrier is using the loop, and contacting the carrier's representative, during which time the Ameritech field technician would be forced to wait for confirmation that notice had been given. Finally, Ameritech notes that its interconnection agreements require the non-discriminatory treatment of all interconnecting carriers, which Ameritech accomplishes by assuring that its field technicians are blind to the carrier to whom a particular loop is leased. Ameritech argues that branding loops would give potential rise to claims of discrimination because technicians would know in advance the party that was using the loop.

Focal argues that, because many alterations to an xDSL loop (particularly the installation of load coils or bridge taps) may serve to degrade service, Focal should be notified in advance of what Ameritech is proposing to do. Focal points to 47 C.F.R. Sec. 51.325, which requires public notice of any network changes that would either

affect a competing service provider's performance or would affect the incumbent's interoperability with other service providers.

Staff takes the position that Ameritech could satisfy Focal's concerns if it flagged all conditioned loops that are being used for DSL service as an alert that the service interrupting equipment should not be reinstalled. Ameritech noted that the loops are already flagged.

b. **Commission's Conclusion**

The Commission finds that Ameritech's current flagging of conditioned loops and the public notice requirements of Rule 51.325 are sufficient to address Focal's concerns over the possibility of "de-conditioning" a previously conditioned loop. We therefor decline to adopt the notice requirement propounded by Focal.

8. Stricken

9-14. Resolved

Compliance with Arbitration Standards

As noted in the "Jurisdictional" section of this Arbitration Decision, state commissions must apply three standards in resolving open issues and imposing conditions upon parties to an agreement subject to arbitration. The first standard requires the state commission to assure compliance with Section 251 and any rules promulgated under Section 251. The Commission has reviewed each of the conclusions reached above and finds that they are in compliance with the relevant statutes and rules. The second standard requires the state commission to establish rates according to Section 252(d). The rates for transport and termination adopted with respect to Issues 1 and 2 comply with the criteria in Section 252(d)(2). The final standard requires the state commission to provide a schedule for implementation of the terms and conditions by the parties to the agreement. Adoption of Article XVIII, "Implementation Team and Implementation Plan," and Section 19.1, "Compliance with Implementation Schedule," of Article XIX, "General Responsibilities of the Parties," establishes a schedule for implementation as required by the Act.

As a final implementation matter, the parties shall file, no later than 15 calendar days from the date of service of this Arbitration Decision, the complete Interconnection Agreement for Commission approval pursuant to §252(e) of the Act.

By order of the Commission this 8th day of May, 2000.

Chairman