STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc.	:	
Petition for arbitration of interconnection Rates, Terms and Conditions and related arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois.	:	96 AB-003 (Consol.)
Ameritech Illinois	:	
Petition for arbitration of interconnection rates, terms and conditions and related arrangements with AT&T Communications of Illinois, Inc.	:	96 AB-004

HEARING EXAMINERS PROPOSED 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 issue 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.

Procedural History

On February 27, 1996, AT&T; Communications of Illinois, Inc. (_AT&T;_) sent a letter to Ameritech Illinois (_Ameritech_) requesting negotiations under Sections 251 and 252 of the 1996 Act to establish an agreement regarding the rates, terms, and conditions for interconnections and other arrangements leading to the provisioning of intraMSA service by AT&T;. On August 1, 1996, AT&T; filed a petition for arbitration with the Illinois Commerce Commission (_Commission_) seeking arbitration of an entire interconnection agreement with Ameritech under Section 252(b) of

the 1996 Act. On August 2, 1996, Ameritech filed a petition to arbitrate three additional open issues with AT&T; which Ameritech had raised in negotiations and which AT&T; had failed to present for arbitration in its petition. These two petitions were consolidated and are considered here under the guise of a single contract to which the parties have submitted proposed language for all unresolved provisions. The contract runs to over 600 pages in length.

Pursuant to proper notice, a pre-hearing conference was held on August 2, 1996, before duly authorized Hearing Examiners of the Commission at its offices in Springfield, Illinois. Ameritech and AT&T; filed responses to each other_s petitions and the verified statements of numerous witnesses (8 for Ameritech and 7 for AT&T;). Staff also filed the verified statements of 6 witnesses. The witnesses of Staff and the parties were cross-examined at evidentiary hearings on September 30 and October 1-4 and 6, 1996. Transcripts of the arbitration proceedings consist of approximately 1600 pages.

On October 16, Ameritech and AT&T; submitted a final Joint Statement of Issues (consisting of Items 1 through 31) and a final version of the Interconnection Agreement (the _October 16 Agreement_) submitted as Joint Exhibit 2. On October 21, the parties filed briefs limited to a succinct discussion of each issue, and on October 22 and 23, they filed matrices relating Issues 1-31 to specific provisions in the Agreement. The parties have also filed, on an ongoing basis, motions, clarification statements, exhibits, additional verified statements and other pleadings. Additional status hearings have been held as required.

This proceeding has been directly impacted by actions of the Federal Communications Commission (_FCC_) and the Eighth Circuit United States Court of Appeals ("Appellate Court"). The FCC adopted its First Report and Order in CC Docket 96-98 and 95-185 (_FCC Order_ or "First Report and Order") on August 1 and released it on August 8, 1996. The FCC Order implemented the local competition and interconnection provisions in the 1996 Act. Among many other pronouncements, the FCC Order mandated the pricing of unbundled elements based upon Total Element Long Run Incremental Costs ("TELRIC"). Ameritech submitted TELRIC studies in conjunction with its filing and this mandate. On August 26, 1996, AT&T; filed a Motion to Sever TELRIC Cost Studies for Consideration in a Separate Proceeding. This Motion was granted on September 25, 1996, and Ameritech_s TELRIC cost studies are being considered in Docket No. 96-0486, rather than in the instant proceeding. As a consequence, interim pricing will be established here and provision made for the substitution of permanent pricing at the conclusion of Docket No. 96-0486.

Numerous entities appealed the FCC Order and, on September 27, 1996, the Appellate Court issued a temporary stay of the FCC Order pending its ruling on a Motion requesting a Permanent Stay for the duration of judicial review of the FCC Order. On October 15, 1996, the Appellate Court issued an order dissolving the temporary stay but granting petitioners_ motion to stay the FCC_s pricing rules and the _pick and choose_ rule pending a final decision on the merits. In particular, the stay pertains to Sections 51.501-51.515 (inclusive), 51.601-51.611 (inclusive), 51.701-51.717 (inclusive), 51.809, and the proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC_s Order on Reconsideration, dated September 27, 1996.

On October 31, 1996, a Hearing Examiners_ Proposed Arbitration Decision was served on the parties. Exceptions and Replies as received have been duly considered in reaching the arbitration award granted herein. In addition, all pending motions, objections and other matters not otherwise specifically disposed of are deemed disposed of in a manner consistent with ultimate conclusions reached in the following sections.

Issues Subject to Arbitration

As previously noted, the parties originally agreed that 31 issues remained to be resolved through arbitration after the conclusion of cross-examination. Some of those have now been resolved. They will be considered in order. At the conclusion of each issue statement is a list of contract sections to which this resolution of the issue applies. There is also a list of annotation numbers taken from the matrices utilized by the parties in formulating the general issues.

1. Should the parties_ Agreement (_the Agreement_) interpose an Alternative Dispute Resolution procedure: if so, what form of alternative dispute resolution is appropriate for inclusion in the Interconnection Agreement between Ameritech Illinois and AT&T;? [1.5, 3.8.5, 9.10.5, 10.9.5, 12.18.5, 16.25.5, 18.5.2, 21.2, 24.2, 28.2.4, 28.3.1, 28.3.2, 29.1, 29.2, 29.3, 29.4; Sch. 28.3.2; Annot. Nos. 1, 4, 14, 17, 23, 46, 49, 54, 56, 62, 63, 64, 65, 67, 68, 95]

   a. Positions of the Parties

AT&T; seeks to include an alternative dispute resolution (_ADR_) procedure in 28.3.2 and on Schedule 28.3.2. AT&T;_s proposal calls for an outside arbitrator agreed to by both parties to resolve disputes in a way that is binding on both companies and can be immediately implemented if the companies are not able to resolve matters using the internal escalation procedure. A separate provision for a more expedited arbitration procedure is included for services and disputes that directly affect service to customers. Both companies are allowed to seek review of the arbitrator_s decision by going to any regulatory agency or court authorized to hear the matter, but the dispute would be considered resolved and the resolution implemented during the appeal. AT&T; maintains that it is necessary to have an ADR process of this type because of the lack of economic incentive for incumbent LECs to provide potential competitors with opportunities to use the incumbent LEC_s networks and services. AT&T; relies on general policy statements to this effect in the FCC Order at 10, 15, 134 and 141.

Ameritech notes that AT&T;_s proposed Schedule 28.3.2 (with Annex) is a complex, nine-page arrangement not even contemplated by the 1996 Act, the FCC Order, or the FCC rules. Ameritech maintains that there is no need for the proposed ADR process because there are ample remedies under existing laws and regulations for settling contract disputes. Ameritech contends that it would probably be unconstitutional for a state commission to impose AT&T;'s proposal on an incumbent local exchange carrier ("ILEC") because it generally bars the parties from bringing suit for breach of contract. Furthermore, Ameritech points out that AT&T;'s proposal includes many provisions that are properly a subject for voluntary agreement between parties who mutually desire an alternative dispute resolution procedure. These include: whether American Arbitration Association rules should apply, the

number of arbitrators, how arbitrators are to be selected and removed, whether the United States Arbitration Act should apply, and provisions for review of the arbitrator's decision. Ameritech points out that, contrary to AT&T;'s assertion that its dispute resolution procedure is more efficient than litigation and complaint proceedings, the evidence suggests that it would take longer than regulatory complaint proceedings (Tr. 445-56) and add an extra layer to the process (Staff Ex. 7.00, p.24; Tr. 362-63). Ameritech notes that the party losing the arbitration could suffer irreparable harm before having the arbitration award set aside on appeal inasmuch as AT&T;'s proposal provides that arbitration awards are to be implemented pending appeal (11).

Staff recommends that the Commission reject AT&T;'s alternate ADR proposal. Staff observes that this procedure could actually delay resolution of issues due to a lack of time limits in the basic arbitration process and the appeals process outlined in 11 of Schedule 28.3.2. Staff is also of the opinion that the expedited arbitration process (Annex 1 to Schedule 28.3.2) appears to allow too little time for well-reasoned resolution of issues. Staff is concerned that the public, the FCC, and the Commission have continuing interests and obligations which may not be met by utilizing a third-party arbitrator under the alternate ADR process. Staff is of the opinion that sufficient options for dispute resolution are available including filing complaints with this Commission, requests for new non-competitive services under 13-505.5 or for the unbundling of non-competitive services under 13-505.6 or the bona fide request process for loops, ports, and loop sub-elements under 83 Ill. Adm. Code 790. Furthermore, Staff encourages the parties to work out an agreement for arbitration or other alternative dispute resolution process at least with regard to some issues (Tr. 1522, 1552).

b. Conclusion

The Commission rejects AT&T;'s proposal relating to the insertion of an ADR requirement into the contract. AT&T; consistently contended that the use of ADR was necessary to expedite the resolution of disagreements between the parties. The unrebutted evidence was that the ADR process would, in all likelihood, be more cumbersome and time consuming than current dispute resolution avenues already available to the parties, whether through the ICC, the FCC or the courts, because it would simply add a layer of litigation-like proceedings, prior to a final conclusion. In addition, policy reasons argue against farming out disputes between AT&T; and Ameritech, at least at this juncture in the introduction of competition to the local exchange. As noted by Staff witness TerKeurst, the Commission has not been relieved of oversight responsibilities for the local telephone market and continues to bear the obligation of assuring that the relationships between telephone service providers serve the public interest. Adopting the ADR proposal could effectively take the Commission out of the loop, thus either hindering or precluding it from satisfying its statutory obligations, further supporting the conclusion that AT&T;'s proposal for a mandatory ADR procedure should not be adopted.

2. (a) Should the parties arbitrate the prices, terms and conditions upon which AT&T; will permit Ameritech Illinois to collocate in AT&T;'s local service offices if Ameritech Illinois chooses or is required to use collocation as its method of interconnection with AT&T;'s network? (b) If so, what will those prices, terms and conditions be? (3.2.3,

A3.3; Annot. Nos. 2,3)

a. Positions of the Parties

AT&T; contends that the prices, terms, and conditions under which it will provide interconnection to Ameritech are not arbitrable issues under the 1996 Act or the FCC Order, and therefore, are not properly considered in this proceeding. AT&T; maintains that collocation obligations under 251(c) are not reciprocal and cannot be imposed on new entrants (FCC Order, 37, 220, 997, 1247). It did not present any evidence concerning its cost of providing collocation or language to govern terms and conditions. AT&T; proposed language that would require separate negotiations for collocation.

In its proposed 3.2.3, Ameritech suggests that AT&T; should be required to provide collocation to Ameritech on rates, terms and conditions no less favorable than Ameritech provides to AT&T;. Ameritech notes that an uncontested provision of the contract provides that AT&T; may elect "a network architecture that requires Ameritech to Interconnect with AT&T;'s facilities via Collocation" and that AT&T; will "provide to Ameritech Collocation for purposes of that Interconnection." (Agreement, 3.2.3) Ameritech argues that it should not be required to enter into an agreement that may require it to purchase collocation from AT&T; with the rates, terms, and conditions to be decided later.

Staff points out that because the parties have agreed to use a mid-span meet-point arrangement for transport and terminating local traffic in the Chicago LATA, the only time Ameritech would need to collocate in AT&T;'s central office is when Ameritech wishes to purchase unbundled loops or in areas other than MSA 1. Staff notes that AT&T;'s proposal is unfair and provides no incentive to set efficient rates. Staff supports Ameritech's proposed language with the following addition: "In the event that AT&T;'s economic costs are greater than Ameritech's, or AT&T; requires special arrangements for collocation in its central office, then AT&T; should have the opportunity to request appropriate collocation requirements so that the Commission could make the final determination."

b. Conclusion

The Commission concludes that the positions espoused by Staff and Ameritech should be adopted. AT&T;'s arguments all debark from the FCC Order's finding that the 252(c) additional obligations should not generally be imposed on requesting carriers. From this, AT&T; concludes that the prices it is to charge Ameritech for collocation on AT&T; premises, in the event that AT&T; elects to adopt this network architecture, are not subject to arbitration. The operative term is "elects." AT&T; is not being required to provide collocation space, but has asked for and been granted this option. The Commission finds that AT&T; has the duty, under 252(c)(1) to negotiate the terms and conditions of this option because it was inserted for its benefit, not because of any statutory obligation.

Once the decision to arbitrate the terms and conditions of collocation has been made, the next question is the price to be charged. Due to the fact that AT&T; has no cost studies upon which the Commission can reasonably price collocation, the issue loses its economic basis and becomes one of fundamental fairness. The Commission finds that Staff's proposal is fair and concludes that

AT&T; should provide collocation to Ameritech on rates, terms and conditions no less favorable than Ameritech provides collocation to AT&T;, unless and until AT&T; can show that its cost of providing collocation is greater than Ameritech's, or under circumstances where AT&T; must make special arrangements for collocation in its central office. In either case, the pricing would be subject to a further agreement between the parties and Commission approval.

3. Regarding meet point billing arrangements: (a) Should late fees apply to untimely provision of billing data? (b) For what time period should billing information be retained? (c) What is the appropriate limitation of liability provision to include in the Agreement regarding meet point billing arrangements? [6.2.5, 6.2.6, 6.3.1, 6.5.2, 27.6; Annot. Nos. 7,8,9,61]

a. Positions of the Parties

Concerning sub-issue (a) which relates to 6.2.5 and 6.2.6, Ameritech calls for late payment charges on itself if it provides Access Detail Usage Data either in an untimely manner or in an improper format which causes delays in AT&T;'s billing of IXCs; and late payment charges on AT&T; if AT&T; provides Summary Access Usage Data to Ameritech either in an untimely manner or in improper format which causes delays in Ameritech's billing of IXCs. Ameritech states that these are consistent with standard Meet Point Billing arrangements.

AT&T; contends that Ameritech's proposal is inconsistent with Ameritech's refusal to provide certain credits for delay in providing other crucial services to AT&T; such as customer usage data for resale (10.9.6).

Staff supports Ameritech's proposals for late payment charges in 6.2.5 and 6.2.6 because they appear to treat the parties equally while AT&T; provided no real basis for its opposition to this language.

Sub-issue (b) concerns 6.3.1 and time limits for claims relating to errors or loss of access usage data. Ameritech's current billing retention practice for Meet Point Billing data is 30 days which is what it proposes for the Agreement. Ameritech states that it does not have the capability to retain Meet Point Billing data for the longer period sought by AT&T;. Ameritech claims that 30 days is reasonable and will ensure timely submission of claims.

AT&T; proposes to use a period equal to the limitations period applicable between Ameritech and other carriers, less 30 days, but in all events not less than 30 days. AT&T; disputes Ameritech's claim that it lacks the ability to retain the data for longer than 30 days. AT&T; again cites Ameritech's lack of incentives to open its network to new entrants as support for the longer period.

Sub-issue (c) concerning 6.5.2 limits each party's liability to the other to $10,000 per month for losses arising from its Meet Point Billing performance under Article VI. Ameritech emphasizes that because neither party receives compensation for its services under Article VI, it makes sense to limit potential liability under that provision. Ameritech cited its tariffs limiting liability for 9-1-1 calls as precedent. AT&T; argues that Ameritech's proposal does not create sufficient incentives to insure that it will provide accurate and timely meet point billing services; however,

AT&T; does not offer alternative language or a different limit on liability.

b. Conclusion

Regarding the imposition of late fees for the untimely provision of billing data, the Commission finds Ameritech's proposal commercially reasonable and not precluded by the Act or Order. To the extent that AT&T; argues that this proposal is inconsistent with Ameritech's later opposition to providing credits in other contexts (see generally Issue 6, supra), the Commission finds that issue distinguishable, since the issue there involves credits in addition to penalties currently found in tariffs. Here, the late fees flow both ways and the transgressor pays.

Regarding the retention period for billing data and time limitations on actions for billing errors, the Commission again finds Ameritech's proposal superior to AT&T;'s. The uncontroverted evidence is that Ameritech does not have the technical capability to maintain the billing data for as long as requested by AT&T;. Further, the Commission rejects AT&T;'s assertion that Ameritech is unfairly limiting its liability. Requiring the submission of billing complaints within thirty days of the receipt of the data assures that these problems will be reconciled promptly with ready access to all pertinent information.

The final issue is the $10,000/month liability limitation proposed by Ameritech in cases where one party suffers losses relating to or arising from its Meet Point Billing responsibilities. The Commission finds this sum to be reasonable, given the fact that these services are non-compensated under Article VI, making any balancing between profits and potential liability impossible.

4. Is Ameritech Illinois required by the Act to provide transiting? If not required by the Act, is transiting required under Illinois law? If transiting is required by federal or Illinois law, what should the prices for transiting be and for how long should Ameritech Illinois be required to provide transiting? If transiting is not required by federal or Illinois law, what should the prices for transiting be and for how long should Ameritech Illinois be required to provide transiting? [7.3,7.3.4; Annot. Nos. 10, 11]

a. Positions of the Parties

The transiting service at issue regards the delivery by Ameritech of traffic between AT&T; and third party local exchange carriers over local/intraLATA trunks. Ameritech's position is that nothing in the 1996 Act or in the FCC Order requires it to provide transiting. Ameritech cites 176 of the FCC Order which limits the term "interconnection" under 251(c)(2) "only to the physical linking of two networks for the mutual exchange of traffic." Ameritech notes that 251(a)(1) requires all telecommunications carriers to interconnect their facilities and equipment, but contains no mention of transiting as a statutory duty. Nonetheless, Ameritech is willing to negotiate with AT&T; for the provision of transit service at commercially reasonable rates, terms, and conditions. The unresolved issues between the parties are limited to whether Ameritech may cease providing transiting service to AT&T; after 180 days (7.3.4) and whether rates for transiting will be commercially negotiated rather than governed by the Act.

AT&T; contends that transiting is required by the Act and the FCC Order for the term of the contract or until such time as new entrants have directly interconnected their networks, whichever occurs first. In support of its position, AT&T; states that 251(c)(2) of the Act requires Ameritech to provide interconnection for the transmission and routing of exchange service at technically feasible points within a requesting carrier's network. AT&T; contends that the FCC clarified this obligation when it stated in 209 of the FCC Order:

> Section 251(c) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.

AT&T; witness Hensen testified that the charge for transiting should be $.0013/minute. AT&T; argues that even if transiting is not required by the 1996 Act, the Commission may still require Ameritech to perform this function because the states are free to impose additional pro-competitive requirements consistent with the Act and the FCC Order (FCC Order, 66).

Also relying on 209, Staff recommends that Ameritech be required to provide transiting in order to lower barriers to competitive entry. Emphasizing the policy perspective, Staff states that it is in the public interest for Ameritech to provide this service because it would be inefficient for AT&T; to have to build out its network to every other carrier when Ameritech has existing connections to such carriers. Staff points out that efficient utilization will occur if AT&T; pays Ameritech its economic costs associated with the service, including additional flow-through charges such as compensation (Tr. 1410-11). Staff recommends that Ameritech price transiting service equal to the tandem switching rate or end office switching rate, determined according to whichever element is used, plus the rate for any applicable transport, plus or minus any charges that Ameritech pays or receives from other LECs to be flowed through to AT&T; (Staff Ex. 1.00, pp. 15-5).

b. Conclusion

In resolving this issue, the Commission must essentially answer three questions. (1) Is transiting required by the Act, the Order or state law? It is not. (2) Given that Ameritech has agreed to provide transiting, what is the price to be charged for this service? The proper price is either the tandem switching rate or the end office switching rate, depending on the element actually used, plus the rate for any applicable transport functions. In addition to pricing on this basis, any charges or revenues paid or received by Ameritech in conjunction with providing this service shall be flowed through to AT&T;. (3) How long should Ameritech be required to provide this service? It should be provided through the term of the contract.

Because Ameritech has agreed to provide transiting to AT&T;, one issue raised by AT&T; is not specifically addressed. That issue is whether, in the absence of specific statutory directives, public policy concerns might cause the Commission to impose transiting as an obligation on an ILEC, where the parties present it as an unresolved issue in an arbitration. This matter is reserved and no opinion is expressed on it at this time.

5. What are the appropriate performance criteria by which to judge Ameritech Illinois' performance regarding: (a) network elements; (b) interconnection; (c) collocation; and (d) rights-of-way? What is the proper role of the Implementation Team in establishing these criteria? [9.10.2, 12.18, 16.6, 16.25; Sch. 9.5, 1.10, 2.2.1, 4.2.1; Sch. 9.10; Annot. Nos. 13, 23, 37, 46, 83, 85, 87,88].

a. Positions of the Parties

AT&T; proposes that Ameritech's performance for collocation and rights-of-way should be measured by the Implementation Team under the Implementation Plan proposed in the Agreement. For interconnection, AT&T; recommends that the agreed-upon criteria in Schedule 3.8 be approved. AT&T; wishes to defer the remainder of the performance criteria (actual measurements for network elements and performance criteria for collocation and rights-of-way) to the Implementation Team. In response to Staff witness TerKeurst's expressed preference for establishing performance benchmarks in the Agreement, AT&T; offered some performance criteria for Staff's consideration.

Ameritech proposed performance criteria in Schedule 9.10 which are based on its experience in providing unbundled loops and ports (Tr. 1267-69). This approach was supported by Staff witness TerKeurst. Ameritech maintains, however, that the custom nature of network element provisioning for other interval categories, such as installation and repair, will vary from order to order. Ameritech proposes that provisioning of collocation space, which is also custom work, should be provided to AT&T; at parity to other telecommunications carriers (Tr.1313-15); that provisioning access to poles, ducts, conduits and rights-of-way, which also varies, should be handled by an independent administrator on a first-come, first-served basis (Tr. 1315-16). Ameritech emphasizes that establishing standard intervals for this type of work is not possible. Ameritech agrees with Staff witness TerKeurst that the Implementation Team should be relegated to technical and operational coordination tasks rather than the central role envisioned by AT&T; (Tr. 1551-52).

Staff recommends that performance benchmarks be established in this arbitration rather than be referred to an outside arbitrator. Staff supports the performance benchmarks and intervals proposed by Ameritech in Schedule 9.10 of the Agreement, with certain modifications. Staff would omit benchmarks for which negotiated intervals are shown except that an extrapolated interval of one day per extra 48 loops would be adopted for 97+ non-DS1 loops (Staff Ex. 7, p. 12). Staff suggests that a "Specified Performance Breach" be determined pursuant to 9.10.3 of the Agreement whenever, for each of three consecutive months, Ameritech's performance for a network element benchmark for AT&T; either (1) does not occur within the interval shown at least 80% of the time (Staff Ex. 7, pp. 12-14) or (2) is worse than Ameritech's treatment of affiliates by a statistically significant amount (Tr. 1502). Staff accepts the agreed-upon benchmarks for interconnection (3.8 and Sch.3.8) with one exception. Staff suggests modifying Sch. 3.8 by omitting the benchmarks that rely on negotiated intervals, except that an extrapolated interval of one day per extra 48 trunks would be adopted for 97+ end office trunks. Staff suggests that performance breaches for interconnection would be determined in the same manner used for network elements. Staff further notes that it would not object to a specified performance breach for interconnection if parity is not achieved relative to Ameritech's

internal performance. Staff accepts Ameritech's performance benchmarks for resale (10.9 and Sch. 10.9.2) and states that a breach should be found whenever Ameritech violates parity for AT&T; relative to Ameritech's own customers or affiliates for three consecutive months (Staff. Ex. .04 and Tr. 1507-8).

b. Conclusion

The resolution of this issue requires two inquiries. First, whether performance criteria should be included in the agreement or left generally to the Implementation Team and second, the criteria themselves, in the event they are to be included in the agreement. The Commission agrees with Staff witness TerKeurst that it is generally preferable to include the criteria in the agreement and to limit, to the extent possible, the duties of the Implementation Team to providing technical and operational coordination between the parties.

In terms of performance criteria for interconnection and resale, AT&T; and Ameritech have apparently agreed on the standards to be applied. While Staff prefers modification of the agreed-upon interconnection language to omit benchmarking in reliance on negotiated intervals (with one exception), the Commission is of the opinion that the parties are in the best position to decide this issue for themselves and that the agreed-upon language should be adopted.

In terms of network elements, the Commission finds reasonable the performance benchmarks and intervals proposed by Ameritech and supported by Staff. These measurements were developed through Ameritech's experience in provisioning unbundled elements and represent the best record basis upon which to measure this activity. The Commission rejects Staff's proposed modification addressing orders of 97+ non-DS1 loops. Ameritech witness Mickens was clear in positing that orders of this size are, by their nature non-standard and generally not subject to objective quantification.

The final two benchmarking issues involve the criteria to be applied to requests for collocation and rights-of-way. Here again, Ameritech witness Mickens' testimony was compelling. Given the vagaries attached to provisioning both of these items, the Commission concludes that, at this time, there is simply no basis upon which to compute parameters upon which to base benchmarks. While the Commission has previously expressed its belief that benchmarks should generally be included in the contract, the Commission finds that the provisioning of collocation and rights-of-way should be left to the Implementation Team. The Commission finds no merit in AT&T;'s assertion that it is without remedy if Ameritech is not forthcoming in provisioning requests. As noted above in 1, Alternative Dispute Resolution, numerous avenues for redress are available to wronged parties.

6. What credit allowances should apply regarding delays in (a) providing interconnection, (b) providing Customer Usage Data, (c) provisioning network elements, (d) provisioning collocation space, and (e) provisioning resale services.? [3.8.6, 9.10.6, 10.9.6, 12.12.2(e), 16.25.6; Annot. Nos. 5, 15 18, and 22].

a. Positions of the Parties

The disagreement covering all five sub-parts concerns whether AT&T; is entitled to a separate set of credit allowances in addition

to those Ameritech provides its own customers pursuant to tariff. There is agreement that AT&T; may receive the same credit allowances as Ameritech's own customers for delays in provisioning, but AT&T; wants additional credits for provisioning delays from Ameritech to be determined by the Implementation Team. Ameritech argues that there is no legal or commercial basis for granting AT&T; greater credit allowances than any other Ameritech customer. Ameritech also opposes additional credits because they could be unfairly applied to Ameritech even though AT&T; causes the delay; the Implementation Team is not well suited to establishing credit allowances; and a substantive term such as this should be determined in the arbitration process.

AT&T; objects to the use of existing credits because they are limited only to complete service interruptions. AT&T; contends that it should be compensated for Ameritech delays in providing interconnection (3.8.6) and customer usage data (10.9.6). In addition, AT&T; wants the Implementation Team to establish credits for Ameritech delays in provisioning space for collocation instead of Ameritech's proposal that the credits be "1/120 of its COBO payment for each day after the applicable Delivery Date." (12.12.2 and 12.18)

Staff supports use of Ameritech's existing credit allowance procedures. Staff does not support use of the Implementation Team for policy-oriented issues, but only for technical matters.

b. Conclusion

The Commission rejects AT&T;'s proposal that credit allowances be left to the Implementation Team. As noted previously, the Commission is in accord with Staff witness TerKeurst's belief that the Implementation Team is best suited to providing technical and operational details. The Commission agrees with Staff that Ameritech's proposal to use existing credit allowance procedures for interconnection, Customer Usage Data, network elements, collocation space and resale services is reasonable. In addition to the reasonableness of this proposal, the Commission agrees with Ameritech that the successful satisfaction of many of the obligations subject to credit allowances require actions by both parties to the contract. The failure to provide accurate information in the first place will necessarily increase the time required to satisfy the request. Ameritech should be penalized only for its own transgressions, not those with shared responsibility. The current system of credit allowances helps assure this outcome.

While this disposes of the matters raised in the issue list, Staff's Initial Brief notes that Article XVI of the contract, relating to access to poles, ducts, conduits and rights-of-way, bears a credit allowance provision relating to structures to which Ameritech failed to provide any alternate language. If the portent of this is that there are no current procedures in place, this matter should be left to the Implementation Team.

7. What is the appropriate penalty provision concerning a failure by Ameritech Illinois to provide resale interfaces by January 1, 1997? What is the proper role of the Implementation Team with respect to resale interfaces? [18.5.3; Annot. No. 50]

a. Positions of the Parties

AT&T; emphasizes that the FCC has mandated that ILECs provide operational electronic interfaces no later than January 1, 1997 at

47 CFR 51.319(f)(2). AT&T; maintains that, given the lack of incentives for Ameritech to provide potential competitors with interconnection opportunities, a financial incentive is both necessary and appropriate. AT&T; proposes a penalty of up to $10,000 per day (with the actual amount to be determined by the Arbitrator or Commission) for each day of deficiency after January 1, 1997.

Ameritech objects to AT&T;'s proposed 18.5.3. Ameritech notes that in addition to damages of up to $10,000 per day, this section would permit AT&T; to seek additional damages through AT&T;'s proposed ADR process (Schedule 28.3) including damages for gross negligence (265.) Ameritech argues that because the $10,000 penalty would apply whether or not AT&T; suffers any actual damages from Ameritech delays, it would constitute an implicit punitive damage provision, contrary to Illinois law. Ameritech concludes that the penalty provision is invalid. It further objects to the imposition of any additional penalty through the ADR process for the reasons set forth in Issue 1. Ameritech also contends that AT&T;'s proposal would arrogate the FCC's ability to decide complaints under 208 concerning alleged violations of 251 or 252 of the 1996 Act.

Concerning the role of the Implementation Team, Ameritech objects to AT&T;'s proposed language in 18.2 (Annot. No. 48). Ameritech contends that this provision would allow AT&T; to send an unlimited volume of orders at once or to demand that Ameritech have an unlimited amount of network elements ready to order on a given day or week. Ameritech argues that this is commercially unreasonable and that the Implementation Team should only be able to obligate Ameritech to handle a commercially-reasonable number of orders and should not require order handling in excess of AT&T;'s forecasts. Finally, Ameritech maintains that the Implementation Team should not be involved in resale interfaces because teams of experts from both companies are currently testing the resale interfaces. Ameritech maintains that these teams will complete all necessary work to enable AT&T; to fully utilize the interfaces by January 1, 1997.

Staff takes the position that if Ameritech's unwillingness to engage in joint interface planning with AT&T; causes Ameritech to be unable to provide electronic interfaces necessary for AT&T; to operate by January 1, 1997, then Ameritech should pay AT&T; up to $10,000 per day. This is the amount proposed by AT&T;. Staff supports flexibility in the level of damages that can be awarded and proposes that the determination of the actual amount be left to the Commission.

b. Conclusion

The Commission concludes that the $10,000/day deficiency payment should be included in the contract. The Commission finds none of Ameritech's objections to this provision compelling. To the extent that Ameritech complains about the amounts being in addition to damages sought through the ADR process, ADR has been rejected. To the extent that Ameritech attempts to characterize the sum as an award of punitive damages, the Commission notes that characterization is a two-way street. To our way of thinking, the sum much more resembles a liquidated damages clause than a punitive award. Liquidated damages clauses are fixed sums and are appropriate where actual damages are hard to determine or subject to speculation. Punitive damages are without limitation in amount, subject only to the fact-finder's impression of the egregiousness

of the actor's conduct and the level of punishment necessary to deter similar conduct in the future. Finally, there is no arrogation of FCC authority since the FCC Order makes clear that parties who believe they are aggrieved by an arbitration award may appeal to the FCC or a Federal District Court if they so wish. (Order at 124)

While the Commission has concluded that the $10,000/day deficiency payment should remain in the contract, the Commission also concludes that the portion of this section allowing the recovery of additional damages should be stricken. As discussed above, the Commission has taken the view that this clause most nearly resembles a liquidated damages clause. Besides the factors cited above relating to such clauses, another factor is the fact that damages are generally limited to the liquidated amount. Without such a limitation, the contract is without consideration and voidable. This is not to say that Ameritech will be able to buy its way out of providing electronic interfaces for $10,000/day, because numerous avenues exist to pursue recourse against the company in the event this would come to pass.

8. Resolved

9. Resolved

10. Should AT&T; be permitted to place in collocation space on Ameritech Illinois' premises equipment used by AT&T; to perform hubbing or switching? [A3.3, 12.5; AT&T; Exhibit A; Annot. Nos. 3, 19, 96]

a. Positions of the Parties

Hubbing refers to a process of regenerating a fiber optic signal. AT&T; seeks to have hubbing equipment placed in its collocated spaces within Ameritech facilities. AT&T; plans to use SONET termination/transmission equipment in its collocated space to regenerate signals for transmission of traffic over its fiber optic SONET ring architecture. AT&T; argues that it should be allowed to place both hubbing and switching equipment in its collocated space based upon its reading of 581 and 579 of the FCC order. Section 581 provides that 251(c)(6) requires collocation of equipment "necessary" for interconnection of access to unbundled elements. Section 579 notes that "necessary" does not mean "indispensible" but rather used or useful. AT&T; argues that the collocation of hubbing and switching equipment would be "useful" to AT&T; and would promote competition.

Ameritech opposes AT&T;'s placement of hubbing and switching equipment in collocated spaces. Ameritech relies on 252(c)(6) which allows placement of equipment "necessary for interconnection or access to unbundled network elements" and 47 C.F.R. 51.323(b) which states that collocation is only for equipment "actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements." Ameritech notes that 581 of the FCC Order declined to adopt AT&T;'s proposal to require incumbent LECs to allow collocated equipment used for hubbing or switching and urges the Commission to do so as well. Ameritech also cites the testimony of AT&T; witnesses Manzi and Sherry that some of the fiber optic strands it seeks to collocate in Ameritech's space would be used to connect AT&T; to large business customers rather than for interconnection or access to network elements (Tr. 344, 572-73). Ameritech discounts the efficiency gains of collocating hubbing equipment in Ameritech

space and finds irrelevant the fact that the equipment will fit in such space. Ameritech also emphasizes that 581 of the FCC Order did not impose a general requirement for the collocation of switching equipment, but allowed a situation-specific exception which has not been met in this docket.

Staff supports AT&T;'s position because hubbing performs a basic function of regenerating signals on fiber optic cables and is necessary for transmission accuracy. Staff believes that it is within the intent of 251(c)(2) of the 1996 Act to allow the collocation of hubbing equipment in Ameritech's space, and it would further competition.

b. Conclusion

The Commission concludes that AT&T; should be permitted to install equipment used for signal regeneration within its collocated space. The Commission agrees with Staff witness Gasparin that hubbing is integral to transmission, necessary for transmission accuracy, and important to establishing competitive parity between AT&T; and Ameritech. The Commission finds no merit in Ameritech's contention that the FCC "rejected" the concept of including hubbing equipment in collocated space. The FCC simply refused to mandate the inclusion of hubbing equipment based upon the lack of a record before that body. Here, the record convinces the Commission that hubbing equipment should be included as a pro-competitive measure beyond the minimal requirements of the Act and in accordance with the powers granted state commissions by 66 of the FCC Order. The Commission also finds unconvincing Ameritech's argument that allowing AT&T;'s hubbing equipment at this time will eventually result in a future requesting carrier being denied the opportunity to install such equipment because of space exhaustion problems. The FCC has recognized that collocation space is finite and has excused ILECS from the obligation of providing physical collocation once this occurs.

In terms of the installation of AT&T; switching equipment in collocated space, the Commission notes that the final submission of AT&T; witness Sherry discusses only hubbing, not the installation of switching equipment, so the status of this issue is unclear. If the parties have agreed that switching equipment is to be installed, the Commission will not disturb the agreement. The Commission concludes that Ameritech should not be required to include switching equipment in collocated space, if this is still an issue between the parties. The Commission views the switching function as distinct from the signal regeneration function and finds that competition will be better served by AT&T; siting, installing and maintaining its own switching equipment on property it controls, not on property controlled by Ameritech. The Commission notes that AT&T;'s proposed contract language mentions only the installation of signal regeneration equipment, not switches or switching equipment and the list of actual devices that may be installed appears uncontested.

11. Should the parties' contract require Ameritech Illinois to provide customer credit and payment histories to AT&T;? [19.19, Annot. No. 51]

a. Positions of the Parties

AT&T; takes the position that it should be able to gain access to customer credit and payment histories. AT&T; contends that it should have the same opportunity as Ameritech to use this

information to set deposit levels, establish terms and conditions for services, and to screen out customers with poor payment records. AT&T; notes that its proposed contract language stating that the provision of this information is subject to all applicable laws adequately addresses Ameritech's assertion that this provision may conflict with federal or state fair credit reporting statutes.

Ameritech emphasizes that nowhere in the 1996 Act is it required to provide customer credit information to new entrants. Ameritech also notes that proposed 19.19 would subject Ameritech to possible lawsuits by customers whose credit histories had been shared with AT&T; and/or incorrectly used by AT&T;. Ameritech points out that AT&T; is not willing to indemnify Ameritech against such risks (Tr.395).

Staff takes a middle ground, recommending that AT&T; have equal access to customer specific information only after the customer has granted AT&T; permission to access the information. Staff suggests that customer permission could be granted either through written authorization, oral confirmation through the use of a three-way call among Ameritech, AT&T;, and the customer, or through the use of a password.

b. Conclusion

The Commission concludes that Ameritech should not be required to provide AT&T; with customer credit and payment histories. While the goal of the Act is to promote competition, the entities seeking to compete bear some responsibility for their entry into the market. The release of customer credit information is regulated in many ways and subjects the releasing party to liability. It should be AT&T;'s responsibility to develop credit profiles on customers as it solicits them and to maintain the profiles and information once it obtains them.

12. What is the appropriate initial term (duration) of the Agreement -- three years or five years? [21.1, Annot. No. 53]

a. Positions of the Parties

AT&T; seeks a term of five years for the Agreement while Ameritech proposes a term of three years. AT&T; notes that it has taken the two parties over a year to get to the present point and there are still quite a number of unresolved issues. AT&T; contends that if it is to have a reasonable chance to execute its business plans, it needs the stability and certainty that the longer term offers.

Ameritech prefers the shorter term primarily because it is concerned about potential inequities that may reside in the price structures either as a result of the initial Agreement or as a result of subsequent changes in Ameritech's costs. The Agreement does not provide for the ad hoc renegotiation of prices, and the parties have not been able to come to terms concerning a "price reopener" provision in the contract. As an alternative, Ameritech has proposed a five-year initial term with a price reopener after three years. AT&T; has rejected this alternative (Tr. 396).

Staff favors the three-year initial term given the volatility of the telecommunications market and the uncertainty caused by changing regulations. In support of its position, Staff cites various pending FCC and Commission proceedings and the fact that a portion of the FCC Rules on pricing are currently stayed and may be

overturned.

b. Conclusion

The Commission concludes that the initial term of the contract should be five years. Given the fact that many of the technical issues between the parties will not be resolved for at least a year and that such issues as number portability, access charge reform and universal service will not be addressed until at least the summer of 1997, the three-year term favored by AT&T; and Staff is really a proposal for an actual contract life of two years or less. The parties would be back to the bargaining table with little real life experience upon which to base bargaining positions or buttress their positions in the event that the agreement would again require arbitration. The five-year term provides for a significant period of cohabitation, hopefully under a consistent regulatory pattern, which should provide for much more fruitful preliminary negotiation than took place in these dockets before the issue came to the Commission.

The Commission does not share Staff's concerns over the impacts that changes in the regulatory terrain may have on the contract. Upon entry, the contract will ostensibly be governed by both general rules of contract law and by the continuing oversight of the FCC and the Commission. Either party is free to avail itself of any avenue of recourse in the event that it believes a change in the law places it at a competitive disadvantage or makes part of the contract void, voidable, or without legal effect. Further, given our later conclusion that the interim prices adopted in this order will be replaced upon the conclusion of the various regulatory proceedings dedicated to the resolution of pricing issues, the contract itself is self-correcting in many places.

13. What are the appropriate indemnifications for the parties to include in the Agreement? [12.7, 25.1; Annot. Nos. 20, 57]

a. Positions of the Parties

Ameritech suggests that there is no substantive issue between the parties on indemnification and that the issue is limited to which contract language better effects the agreed indemnification principle. Ameritech states that the parties agree that if a third party has a claim against Ameritech that arises from the fault of AT&T;, then AT&T; will indemnify Ameritech against any loss to that third party, and vice versa. The difference in the language offered by the parties seems to be that AT&T; wants to include a limit that indemnification is available with respect to employees or agents of the indemnifying party only based upon actions committed while performing within the scope of their employment (25.1). Ameritech contends that the problem with the language is that at best it is superfluous, and at worst, if it incorrectly reflects the law, it would lead to inequitable and unintended results.

AT&T; contends that Ameritech's language would make AT&T; responsible for losses caused by other carriers. In AT&T;'s view, Ameritech can protect itself from losses caused by another carrier in its collocation agreement with the other carrier. AT&T; contends that no carrier ought to bear unlimited liability for all acts of its employees and agents whether or not they are acting within the scope of their employment or duties. AT&T; maintains that its language is commercially reasonable and should be adopted.

Staff did not take a position on this issue.

b. Conclusion

The Commission concludes that AT&T;'s proposed language in 12.7 and 25.5 is reasonable and should be included in the contract. The Commission finds Ameritech's concerns over the effect of including principles of agency law in contract language are overstated and should be rejected.

14. What are the appropriate limitation of liability provisions for the parties to include in the Agreement? [3.9.4, 26.3, 26.3.1, 26.4, 26.5; Annot. Nos. 6, 58, 59, 60]

a. Positions of the Parties

Ameritech seeks to use limitations consistent with its existing tariff provisions which limit its liability to its customers to "an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission occurs." (IBT Tariff Ill.C.C. No. 20, Part 2, 3, 3.1). In 26.4, the parties have agreed to include in their tariffs and customer contracts provisions that bar the recovery of consequential damages. Ameritech takes the position that this language does not go far enough and seeks to include language to provide the same limitation as exists under its tariffs. Concerning 26.3, Ameritech contends that AT&T;'s proposed language would expand Ameritech's potential liability beyond its exposure in its tariffs. Ameritech also objects to AT&T;'s proposed 26.3 because it would expand Ameritech's potential liability for failure to meet "parity obligations" beyond what the parties have agreed upon.

AT&T; contends that Ameritech's proposed language should be rejected because it would effectively shield Ameritech from any monetary liability for failure to perform under the contract or from violations of the Act. AT&T; contends that its language in 26.3 addresses Ameritech's obligations under the Agreement for which AT&T; would have no adequate remedy if Ameritech's language is accepted. Concerning 26.4, AT&T; contends that Ameritech is attempting to impose requirements on AT&T; which it has not required of other carriers as evidenced by its resale tariffs or its Statement of General Terms filed with its 271 petition. Concerning 26.5, AT&T; objects to Ameritech's attempt to limit its liability for consequential damages if such damages result from the willful or intentional misconduct of Ameritech. Finally, regarding 3.9.4, AT&T; contends that Ameritech's attempt to limit its liability as a 9-1-1 provider is not consistent with Illinois law.

Staff contends that Ameritech's proposed language should be rejected for the same reasons that a similar provision was rejected in the Hearing Examiner's Proposed Arbitration Decision in 96 AB-001 (Teleport Communications Group Inc., October 15, 1996, pp. 15-19). Staff points out that the record does not contain information on which to base a finding that the proposed language is suggested by or necessary to meet the requirements of the 1996 Act or the FCC Order. Staff argues that the proposed language is outside the scope of this arbitration and the potential liability which these clauses address probably cannot be established. Staff finds AT&T;'s language more reasonable.

b. Conclusion

With regard to Ameritech's proposed language relating to limitations of liability to third parties in 3.9.4 and 26.4, the Commission adopts the reasoning and approach followed in Docket No. 96-AB-001 (Teleport Communications Group Inc.) and rejects this language.

With respect to 26.3, 26.3.1 and 26.5, the Commission finds AT&T;'s proposed language more reasonable than Ameritech's which would, in many cases, leave AT&T; without recourse for Ameritech's failure to perform under the contract.

15. Should the Agreement require Ameritech Illinois to provide route indexing-portability hub ("RI-PH") as an interim number portability solution? When AT&T; orders LERG reassignment, must Ameritech provide RI-PH until 45 days after the date on which LERG changes become effective? Is the geographic area for the porting of numbers limited by the Rate Center or the Wire Center? [13.2, 13.3, A13.4, 13.5; Annot. Nos. 24, 25, 26]

a. Positions of the Parties

AT&T; contends that route indexing is technically feasible and therefore, Ameritech must provide it to AT&T; as an interim number portability solution for AT&T;'s largest business customers. AT&T; argues that route indexing is critical for porting PBX customers who would not be large enough for LERG reassignment. AT&T; contends that RI-PH is the best option to use as an interim mechanism for the LERG transition period. AT&T; notes that when it orders LERG reassignment, it is not fully transitioned until 45 days after the date on which notification of LERG changes is issued, and this 45 days is necessary for carriers to adjust their systems or databases to accommodate the LERG reassignment. AT&T; contends that if AT&T; lacks the ability to port customers' numbers while the LERG reassignment is being transitioned, customers will be extremely unlikely to switch carriers. AT&T; also proposes that the geographic area for the porting of numbers would be limited by the Rate Center rather than Ameritech's Wire Center. AT&T; contends that it is technically feasible to do so and it is more consistent with LRN, the permanent number portability solution, which is being implemented by Rate Center.

Ameritech states that its interim number portability ("INP") proposal conforms to the Act, FCC Rules, and Illinois law while AT&T;'s does not. Ameritech proposes to provide three INP solutions: Remote Call Forwarding ("RCF"), Direct Inward Dialing ("DID"), and LERG reassignment ("NXX migration"). It contends that the Commission should not require implementation of the additional method requested by AT&T;. Ameritech notes that its proposal conforms to the Customers' First and Number Portability Orders, that implementing RI-PH would impose unnecessary costs on Ameritech detracting from its efforts to implement Location Routing Number ("LRN") as a long-term solution. Ameritech further argues that AT&T; has not demonstrated a need for the additional method of number portability. Concerning the use of rate centers versus wire centers, Ameritech states that this issue will be moot when LRN is implemented and the Commission should reject AT&T;'s proposal.

Staff notes that no evidence establishing the cost of implementing RI-PH was presented and that AT&T; admitted that it does not know how many call paths the Company will need to complete (Tr. 786), or the number of potential customers that will need

route indexing (Tr. 787). Staff states that this lack of information would make it difficult to measure the net benefit of requiring Ameritech to provide RI-PH. Staff notes that the Commission has approved LRN as the long-term number portability solution in the Chicago MSA and that LRN will be available in the Chicago MSA in the third quarter of 1997 with permanent number portability to be implemented in portions of the downstate area during 1998 and to be made available statewide in 1999. Staff further notes that AT&T; does not expect to be providing facilities-based competition using its own switch in MSA 1 until the third or fourth quarters of 1997 (Tr. 1489) and does not have a projection for such competition outside of that area. Staff concludes that AT&T; would have access to permanent number portability in MSA 1 before its anticipated entry on a facilities basis, and therefore, Ameritech should not be required to provide RI-PH under the Agreement.

b. Conclusion

The Commission declines to require Ameritech to provide RI-PH as a means of number portability at this time. In the Customers First Docket, we declined to order the tariffing of this service because of technical uncertainties. The only additional evidence presented here was AT&T;'s unsupported assertion that other LECs provide this service; that Bell South has agreed to RI-PH and Directory Number-Route Index as interim number portability solutions in another service area; and US West has tariffed Directory Number Route Index in the State of Oregon. While interesting anecdotally, none of these facts address the "technical uncertainties" identified in Customers First. Further, the uncontradicted evidence was that LRN will be in place in the only MSA in which AT&T; plans to provide facilities-based competition before any facilities are up and running. The likelihood is that RI-PH would be obsolete before it was ever needed. Because we decline to impose RI-PH generally, there is no need to discuss the necessity of porting numbers through RI-PH while LERG reassignment is being carried out. There is no requirement to provide RI-PH.

The final interim number portability issue involves the geographic area over which Ameritech must port numbers. While this issue is also tinged by the oncoming long-term solution, the Commission concludes that Ameritech's obligation should only extend to porting numbers within the boundaries of existing rate centers unless a rate center is divided into rate districts, in which case number porting should be limited to within rate district boundaries. This outcome most nearly comports with the current abilities of available technology and is the most reasonable until the establishment of long-term location portability.

16. Should the Agreement require Ameritech Illinois to (1) provide Yellow Page listings to AT&T;'s customers? (2) provide Information Page listings? (3) distribute White Pages directories to AT&T;'s facilities-based customers or Yellow Pages directories to all AT&T; customers? [15.1, 15.1.7, 15.2.5, Annot. Nos. 27-29]

AT&T; contends that customers have come to expect a free directory listing and a free directory as a part of receiving local phone service. AT&T; argues that if there is to be effective competition, this expectation must be satisfied. AT&T; maintains that in order for Ameritech to provide service parity, all AT&T; customers should receive the requisite White Pages directory listing free of charge to the customer and to AT&T; and all AT&T;

business customers should also receive a free yellow pages listing. AT&T; further contends that Ameritech should not charge AT&T; for its provision of directories to AT&T;'s customers because it does not charge its own customers for them. AT&T; also objects to Ameritech's proposal that AT&T; be required to communicate with DonTech in connection with the provisioning of directory listings and directories for AT&T; resale customers. Finally, AT&T; seeks the same opportunity as Ameritech to place product and service information in the front portion of the phone book referred to as the Information Pages.

Ameritech states that the 1996 Act makes only two references to phone directories. Section 271(c)(2)(B)(viii) requires incumbent LECs to provide White Pages listings for other carriers' local exchange customers. Section 251(b)(3) requires telecommunications carriers to provide dialing parity through nondiscriminatory access to directory listings. The first requirement is covered in 15.1 of the Agreement and Ameritech agrees to provide dialing parity. (Ameritech Brief, p. 30) Ameritech objects to providing the Yellow Pages listings, inclusion of AT&T; data in the Information Pages, and delivery of White Pages and Yellow Pages. Ameritech argues that these are not "telecommunications services," and therefore, not subject to arbitration under 251 and 252. Ameritech argues that the Act's reference to White Pages only indicates that Congress intended to draw the line before Yellow Pages. Ameritech further notes that 251(b)(3) requires Ameritech to provide nondiscriminatory access to listings, but does not require inclusion in the directories themselves (FCC Order, 135, 137). Similarly, Ameritech notes that 251(b)(3) does not require Ameritech to deliver directories to AT&T; customers although Ameritech will do so for AT&T;'s resale customers at no additional charge as part of the resale service offering (Agreement, 15.2.5). Finally, Ameritech points out that AT&T; is free to negotiate with White Pages and Yellow Pages publishers concerning listings and distribution of directories.

Staff takes the position that the Yellow Page directory is not a telecommunications service under the 1996 Act, and therefore, it is not subject to the arbitration provisions of the Act. Staff suggests that AT&T; is free to negotiate its own contract with DonTech, the owner and publisher of the Yellow Pages. Staff recommends that AT&T;'s Information Pages be included in the same fashion and at the same price as Ameritech's, and that Ameritech should be directed to work with DonTech to ensure AT&T;'s information pages are not inferior to Ameritech's. Finally, Staff states that Ameritech should not be required to distribute White Page directories to AT&T;'s facilities-based customers or Yellow Page directories to all AT&T; customers; however, Staff contends that Ameritech should be directed to work with DonTech so that AT&T;'s customers will not be disadvantaged.

b. Conclusion

In terms of Yellow Page issues, the Commission concludes that Yellow Pages are not telecommunications services and are without the purview of the Act, Order and Rules. Yellow Page listings result from negotiated commercial transactions between telephone service providers and are not part and parcel of opening up the local exchange to competition. AT&T; should pursue Yellow Page agreements with providers of those materials. While Ameritech must not impede AT&T; in this pursuit, the Commission can find no basis for requiring Ameritech to list AT&T; Yellow Page customers in directories Ameritech pays to have printed.

The Commission also concludes that Ameritech's proposals for White Page listings, Information Pages and delivery of listings are acceptable. While the parties have not cited it, the FCC spoke to the issue of access to directory listings in the Second Report and Order, (FCC 96-333, adopted August 8, 1996) 138-148. The FCC concluded that the only requirement to be placed on LECs was the necessity of providing directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. This conclusion was adopted in 51.217(ii) of the Rules and supported by the FCC's reasoning that it would stimulate competition in the directory services market, a result that would not be obtained if AT&T;'s proposals were accepted. Because Ameritech's proposal exceeds the minimum requirements of the Act and furthers its competitive goals, it should be incorporated into the contract.

17. Does Ameritech Illinois' obligation under the Act to provide access to rights-of-way extend to all property owned or controlled by Ameritech Illinois? Does that obligation also extend to Ameritech Illinois' easements or rights-of-way on publicly owned property? Is Ameritech Illinois obligated under the Act to provide access to "pathways" in addition to poles, ducts, conduits and rights-of-way? [16.1, 16.1.2, 16.3, 16.3.1, 16.4, 16.6, 16.7, 16.12, 16.13, 16.16, 16.20.1, 16.20.2, 16.24; Annot. Nos. 30-41, 43-45]

Section 224(f) of the 1996 Act provides that ILECs must grant new entrants non-discriminatory access to all poles, ducts, conduits, and rights-of-way owned or controlled by them. The FCC Order provides that the intent of Congress in 224(f) of the 1996 Act was to permit cable operators and telecommunications carriers to "piggyback" along distribution networks owned or controlled by utilities rather than granting access to all equipment or real property owned or controlled by the utility (FCC Order 1185).

AT&T; contends that Ameritech is obligated to grant AT&T; access to distribution network structures other than poles, ducts, conduits and rights-of-ways. AT&T; also maintains that Ameritech must provide access to those rights-of-way that are actually used by Ameritech for network distribution or suitable for use to expand or extend network distribution facilities. AT&T; particularly objects to Ameritech's contention that rights-of-way are limited to real estate owned by third parties. AT&T; contends that the requirement applies equally to property owned by Ameritech and to its easements and rights-of-way on publicly-owned property.

Ameritech emphasizes that the 1996 Act specifically provides for access only to poles, ducts, conduits and rights-of-way. Ameritech points out that the parties agree that the statutory term _right-of-way_ includes easements or licenses Ameritech owns across the property of others; however, they disagree over whether the statute also requires Ameritech to grant AT&T; new rights-of-way across property that Ameritech either owns in fee simple or leases. Ameritech insists that the term _right-of-way_ is limited to existing rights-of-way over the land of third parties. Ameritech emphasizes that it does not own rights-of-way across its own property and is, therefore, not obligated to create new rights-of-way for AT&T;. Concerning public rights-of-way, Ameritech contends that under the plain terms of the 1996 Act and Illinois law, it need not and cannot grant AT&T; access to rights-of-way owned by Ameritech across public property. Finally, Ameritech contends that AT&T;_s insistence on access to _pathways_ is contrary to the Act

and inconsistent with the FCC Order. Ameritech also points out that AT&T; has not shown that the other pathways to which it seeks access are capable of handling AT&T;_s distribution facilities.

Staff has taken the position that the term "pathways" should not be included in the Agreement because the Act specifically mentioned only "poles, ducts, conduits and rights-of-way." Staff maintains that AT&T;'s interpretation is overly broad because it seeks to include entrance facilities, vaults, manholes, telephone equipment closets, remote terminal equipment to buildings, huts or enclosures, cross connect cabinets, panels or boxes, equipment cabinets, pedestals or terminals, and any other infrastructure used by Ameritech to place distribution facilities. Staff points out that 1123 of the FCC Order directs that no party may use its control of poles, ducts, conduits and rights-of-way to impede competition. In Staff's view, if AT&T; believes that it is being so impeded, it should file a complaint with the Commission.

b. Conclusion

The resolution of this issue requires four basic inquiries. First, should AT&T; have non-discriminatory access to Ameritech rights-of-way? The answer is yes in all cases. Second, should AT&T; have non-discriminatory access to poles, ducts, and conduits located on real property possessed by Ameritech under a right-of-way, easement, or in fee simple? The answer is again yes in all cases. Third, should AT&T; have non-discriminatory access to property possessed by Ameritech under easement or in fee upon which there are no poles, ducts or conduits? The answer is no, unless agreed to by Ameritech. Fourth, should AT&T; have non-discriminatory access to pathways? The answer is no, not at this time. In reaching this conclusion, the Commission notes that the FCC took great pains to avoid reaching hard and fast rules applicable to non-discriminatory access to a LEC's network. The FCC noted the wide disparity between the systems currently in place and the impossibility of ever arriving at a single solution to the use of the incumbent's system by a new LEC. The Commission believes that adopting a middle position here will allow the parties to develop a more thorough working knowledge of each other's systems and requirements. We fully expect this issue will again be before us as this agreement expires and a new agreement is proposed. At that time all parties will have the benefit of having lived under this agreement for several years, after which they and we will be able to make a more informed and perhaps more permanent decision.

18. Should the Agreement incorporate AT&T;_s proposed Service Provider Quality Measurement System (SPQMS)? [18.2(13), 18.4;Sch. 18.2; Annot. Nos. 47, 94]

a. Positions of the Parties

Ameritech objects to AT&T;_s proposal to include SPQMS in the contract. First, Ameritech contends that implementing SPQMS would be exceedingly burdensome and would require Ameritech to devote 20 employees in addition to those required for the Implementation Team and the Operational Review. Second, Ameritech contends that SPQMS would give AT&T; the power and authority to review and approve Ameritech_s Quality Manual, and third, it is unnecessary because AT&T; has a number of remedies in the event of non-performance.

AT&T; contends that SPQMS is necessary because Ameritech has no market incentive to perform under the contract due to a lack of

alternative suppliers from which AT&T; can choose. According to AT&T;, performance benchmarks and complaint or breach of contract proceedings are not enough. AT&T; argues that SPQMS is often voluntarily agreed to in commercial arrangements such as Ameritech_s arrangement with Lucent Technologies in its capacity as a customer of Lucent_s switching business. AT&T; contends that a well-defined SPQMS can be expected to reduce the number of disputes and misunderstandings between the parties. In AT&T;_s view, SPQMS is not overly burdensome, even if it takes Ameritech 20 employees to implement it, because many of the processes implemented for AT&T;_s SPQMS can be used for other new entrants interconnecting with Ameritech.

Staff recommends that AT&T;_s SPQMS be rejected because it is overly burdensome and unreasonable. Staff is also of the opinion that SPQMS is unnecessary because in the event that Ameritech does not meet its contractual obligations to AT&T;, disputes can be resolved at the Commission or in the courts.

b. Conclusion

The Commission agrees with Staff witness McClerren that AT&T;'s SPQMS proposal is unduly burdensome, unworkable and ought to be rejected. An examination of the first element (the "Quality Manual") proves the point. The manual, which is to be prepared by Ameritech, apparently at its own expense and without compensation, is to set forth the assignment of management responsibilities in a number of areas, which are then to be approved by AT&T;. The Commission is reluctant to allow AT&T; to approve management decisions by Ameritech and, given the history of the parties in this proceeding, is somewhat skeptical that the aforementioned approval would ever be forthcoming. The Commission has previously concluded that there are currently sufficient processes in place to assure that Ameritech will perform its obligations under the Act and further finds that the burdens here would greatly outweigh the purported benefits.

19. Whether Ameritech Illinois_ or AT&T;_s proposed language in 30.13.1, 30.13.2 and 30.13.3 best reflects the requirement of 252(i) of the federal Telecommuni-cations Act to require Ameritech to make available any interconnection, service or network element provided under an agreement approved under 252 to which it is a party to AT&T; upon the same terms and conditions as those provided in the agreement. [30.13, A30.13.1-3, Annot. No. 73]

a. Positions of the Parties

Under either proposal, AT&T; could import provisions from interconnection agreements that Ameritech enters into with other carriers into its agreement with Ameritech. Ameritech_s language would limit AT&T; to adopting prices, terms and conditions of an entire interconnection, service or network element arrangement as a package. AT&T;_s language, on the other hand, would enable it to pick and choose individual pieces from other contracts. Ameritech relies on 1296-1323 of the FCC Order in support of its interpretation of 252(i). Ameritech contends that AT&T;_s position is absurd on its face and would take away any incentive for Ameritech to enter into negotiated agreements under the Act.

AT&T; argues that the pending stay of the _pick and choose_ portion of the FCC Order does not prohibit this Commission from deciding whether Ameritech_s or AT&T;_s language best reflects the

requirements of 252(i). AT&T; contends that Ameritech_s language is overly broad and would potentially deprive AT&T; of the processes, procedures and systems for services established in its Agreement with Ameritech.

Staff emphasizes that 51.809 of the FCC_s Rules regarding 251(i) of the 1996 Act is part of the FCC Rules which have been stayed by the Eighth Circuit Court of Appeals. Because 251(i) does not contain language limiting its applicability to ILECs, Staff takes the position that this requirement is applicable to all LECs. Staff recommends rejection of both AT&T;_s and Ameritech_s language in light of the uncertainty surrounding the FCC Rules.

b. Conclusion

The Commission agrees with Staff that with the issuance of a permanent stay of this portion of the First Order, there is little utility in including either the language proposed by Ameritech or AT&T; in the contract. No matter what the final outcome of the current appeal, the law will be the law and will govern the contract at the time of final judgment.

20. Should AT&T; be afforded unmediated access to Ameritech Illinois AIN triggers? [Sch. 9.2.5, 2.5.1; Annot. Nos. 80]

a. Positions of the Parties

AT&T; contends that its right to unbundled Advanced Intelligence Network ("AIN") triggers is consistent with the unbundling provision of the Federal Act and its definition of network elements (251(c)(3) and 153(a)(45). AT&T; argues that it requires unbundled AIN triggers in order to retrieve call processing instructions from its own AIN platform and to offer differentiated services that can be provided when a carrier is able to customize the behavior of call control. AT&T; also cites this Commission_s Order dated June 26, 1996, in Docket Nos. 95-0458 and 95-0531 (_Resale Order_)in which it granted AT&T;_s request for access to the AIN triggers of Ameritech and Centel subject to certain conditions. AT&T; suggests that a joint study team or task force be formed to address any technical questions surrounding the provision of unmediated access to Ameritech_s AIN triggers and report back to the Commission by April 1, 1997.

Ameritech cites its evidence demonstrating that it is not technically feasible to grant direct access to Ameritech_s AIN triggers at this time. Ameritech points out that AT&T; concedes that some technical problems exist that prevent unmediated access to AIN switch triggers at this time, which has led AT&T; to call for a joint study team on this issue. Ameritech contends that this proposal is entirely at odds with AT&T;_s contract proposal which would require access to AIN triggers. Ameritech argues that because AT&T;_s witnesses testified that AT&T; no longer seeks such access at this time, its proposed language should be rejected. In Ameritech_s view, there is no need to establish a study team on this issue because there are currently at least two industry groups at work on resolving the issue of access to AIN triggers on an industry-wide basis.

Staff supports AT&T;_s request for a joint study team. Staff suggests that this issue be examined in a separate docketed proceeding to follow up on the report Ameritech filed in the Resale Docket and that this docket be completed within one year.

b. Conclusion

The Commission concludes that there remain a number of network reliability issues to be resolved before Ameritech may be ordered to provide unmediated access to AIN Triggers. The question becomes the advisability of instituting a docket to examine these issues in light of the number of forums currently underway. The Commission concludes that there is no reason to open up a new docket at this time. The current forums are generally regional or national in scope and allow participation by most interested parties. The Commission believes that a wait and see approach is suggested for the near term at any rate. This does not, of course, prejudge the issue or preclude any interested participant in the arena from petitioning for such an inquiry if the need were to arise. In addition, the immediate issue before the Commission is the ordering of a contractual relationship between two parties. While the authority vested in the Commission by 252 includes resolving all remaining issues in an arbitrated agreement, the Commission has some concerns over whether Congress contemplated our taking actions beyond those which will impact the four corners of the contract.

21. Should Ameritech Illinois be required to provide, as a standard offering, Network Element Platform combinations without Operator Systems? [9.3.4.4;Sch. 9.3.4, 4, Attachments 1 & 2; Annot. Nos. 12, 81, 82]

a. Positions of the Parties

AT&T; has requested that Network Element Platform Combinations without Operator Services be provided as a standard offering. AT&T; contends that 251(c)(3) of the 1996 Act requires Ameritech to provide access to unbundled network elements at any technically feasible point and in a manner that allows the requesting carrier to combine elements to provide service. AT&T; cites Paragraphs 293-296 of the FCC Order which clarify the 251(c)(3) requirement. AT&T; also notes that the Commission has already rejected Ameritech_s assertions of technical infeasibility and ordered it to provide unbundled Operator Services (_OS_) and Directory Assistance (_DA_) services in the Resale Order. Moreover, Bell Atlantic has agreed to provide selective routing of OS/DA to AT&T; using AIN technology, and Nynex has agreed to provide it to AT&T; using line class codes.

Ameritech states that there are two reasons why it cannot make a standard offering of Network Element Platform combinations without Operator Systems. First, whether the selective routing required by this combination is technically feasible will vary on an individual switch basis. Under the FCC Rules, an ILEC is required to offer a combination only if it is technically feasible and would not impair the ability of other carriers to obtain access to unbundled elements or to interconnect with the ILEC_s network (47 C.F.R. 51.315(c)). According to Ameritech, neither condition can be uniformly satisfied at this time. The second reason why Ameritech cannot offer the combination as a standard offering is that it is not possible to set a pre-determined price for it. Particular routing solutions will vary on a switch-by-switch basis which will impose different costs on Ameritech, thereby necessitating different prices. Ameritech maintains that the network element combination can be offered only through the bona fide request (_BFR_) process that it has proposed.

Staff supports AT&T;_s request for Network Element Platform combinations without Operator Systems. Staff notes that, in the

Resale Docket, Ameritech was ordered to provide unbundling of operator services and directory assistance. Staff recommends that the Commission reaffirm its earlier requirement that Ameritech provide unbundled Operator Services.

b. Conclusion

The Commission concludes that Ameritech should be required to provide, as a standard offering, the Network Element Platform combination without Operator Systems. Ameritech was ordered to unbundle its Directory Assistance/Operator Systems from its wholesale offering in the Resale Docket, despite its claims concerning technical feasibility issues. Ameritech again claims technical feasibility problems here but has indicated only that work done so far indicates that various routing combinations result in different costs. If this is the case, it suggests the averaging of costs for pricing purposes, not that the service cannot be provided.

The second issue involves the unbranding of OS and DA. Ameritech has agreed to do so where possible. AT&T; argues that 971 of the FCC Order requires unbranding. It does not. Rather, 971 simply indicates that the refusal to provide unbranded elements is presumptively unreasonable. If and when Ameritech declines to provide unbranded OS or DA, it must prove that it is incapable of doing so. If it fails to do so, the elements must be provided or the consequences suffered. Because Ameritech's position is within the confines of the Act and Rules, it ought to be approved.

22. Resolved

23. Pursuant to 47 CFR 51.301(c)(3), should the Agreement include Ameritech Illinois_ proposed 29.3 or AT&T;_s proposed 29.3; Annot. Nos. 66]

a. Positions of the Parties

AT&T; suggests language which would permit renegotiation of any provision of the Agreement which is affected by amendments to the 1996 Act, the Rules, or the FCC Order. According to AT&T;, its proposal is consistent with the intent of the Act and fundamentally fair. AT&T; reserves the right to negotiate for the collection of rates or charges on a retroactive basis and to arbitrate if necessary.

Ameritech asserts that only one issue remains concerning 29.3. Ameritech proposes that it should provide that any rate-related amendment made to conform with a change in the Act, or the FCC Order _shall be retroactively effective_ to the effective date of the Agreement while AT&T; favors the provision that each party _reserves its rights and remedies with respect to the collection of such rates or charges on a retroactive basis._ Ameritech_s proposal will allow for a _true-up._ Ameritech notes that AT&T; argued against the stay of the pricing provisions of the FCC Order and Rules in the Eighth Circuit on the basis that ILECs would not suffer irreparable harm if the FCC_s pricing rules remained in effect and were later overturned due to the availability of true-ups. According to Ameritech, AT&T;_s proposal is inadequate because AT&T; has indicated that its version of 29.3 would allow a price amendment to be retroactive only if the rule requiring the amendment specifically said so.

Staff states only that it does not support Ameritech_s language.

b. Conclusion

The Commission concludes that AT&T;'s language should be included and Ameritech's rejected. In this instance, the Commission finds that AT&T;'s language is more utilitarian than Ameritech's. Ameritech's language seems to assume that a change in regulatory language would, in all cases, be devoid of instructions on the manner in which the change was to be implemented. Currently, for example, pricing provisions of the FCC Order and Rules are under judicial scrutiny. The Commission finds it as likely as not that any order emanating from this appeal will include directions concerning the retroactivity of the final decision. If the decision were to apply only prospectively, Ameritech's proposed language would be in conflict with that decision. AT&T;'s language, however, contemplates both directed and unguided court decisions, and provides the Commission and the parties with the appropriate level of flexibility to deal with any scenario. Accordingly, it should be adopted.

24. With respect to unbundled network elements, is Ameritech Illinois entitled to recover its costs for providing increased functionalities to AT&T;, that is, functionalities that exceed those that Ameritech Illinois provides to itself or to third parties? [Sch. 9.5, 2.2.5; Annot. No. 86]

a. Positions of the Parties

Ameritech takes the position that AT&T; has the right to request increased functionalities for unbundled network elements under Paragraph 314 of the FCC Order, but that Ameritech is entitled to recover its costs for providing the increased functionalities under that Paragraph. According to Ameritech, these two provisions defeat AT&T;_s contention that it is due increased functionalities at no charge.

AT&T; asserts that Ameritech_s costs for providing increased functionalities are already recovered by Ameritech in its charges to AT&T;. AT&T; states that the dispute in Schedule 9.5, 2.2.5 does not involve increased functionalities or costs. This provision involves Ameritech testing of AT&T; dial tone. AT&T; contends that since Ameritech will not give AT&T; access to Ameritech_s main distribution frame, AT&T; is unable to perform its own dial tone testing, and therefore, Ameritech should be required to perform the test for AT&T;_s collocated equipment. AT&T; asserts that it pays Ameritech a cross-connect charge for cross-connecting to Ameritech_s main distribution frame and that the dial-tone test should be considered covered by that charge.

Staff states that AT&T; should be required to compensate Ameritech for any additional costs incurred as a result of the provision of functionalities that exceed those that Ameritech provides itself.

b. Conclusion

This section of the contract raises two issues, one general, one specific. The basic issue involves Ameritech's ability to charge for functionalities that it does not provide to itself. The parties all pay lip service to the general proposition that, to the extent Ameritech must incur additional costs to provide increased

functionalities to requesting carriers, it should be compensated for incurring these costs, but disagree about how to define "increased functionalities." The more specific question, and the heart of this issue, is when is a request for an element a request for an increased functionality.

The lone example of the increased functionality given in AT&T;'s Initial Post Hearing Brief is dial-tone testing. Ameritech has agreed to provide free dial-tone testing for virtually-collocated equipment at Ameritech's main distribution frame ("MDF") for a period of one contract year, after which it will charge on a time-and-materials basis. AT&T; argues that since Ameritech refuses to allow AT&T; access to MDFs, AT&T; cannot test any of its collocated equipment, either physical or virtual. From this AT&T; concludes that Ameritech is obligated to provide free testing for both physical and virtual collocated equipment. The nexus of this argument to increased functionalities is unclear. The lack of clarity is made more unclear by the failure of either Ameritech or Staff to address this matter in their Briefs.

AT&T; also argues that the dial-tone test is actually recovered by Ameritech's cross-connect charge. This argument was not addressed by Ameritech or Staff.

The Commission concludes that where, as in the dial-tone testing example above, Ameritech provides a service, it should be compensated for it. To the extent that AT&T; has raised the possibility that costs are being recovered elsewhere, those arguments must be made on a case-by-case basis. The Commission has located no credible evidence to suggest double recovery of dial-tone testing in the cross-connect charge.

25. Should AT&T;_s proposed addition to Schedule 9.10, which reads _The measurement will be set at a level which is less than Ameritech_s retail intervals for ordering, processing, installation and repair in order to provide end-user parity by allowing time for additional work which is necessary to be performed by AT&T;,_ be included in the Agreement? [Annot. No. 88]

a. Positions of the Parties

Ameritech points out that AT&T;'s proposed language for Schedule 9.10 would require Ameritech to provision and repair unbundled elements in less time than Ameritech's retail intervals. Ameritech contends that it is improper to compare performance in providing access to unbundled network elements to performance in providing existing bundled retail services. Customer switchovers in the resale area are generally performed by an automated process while switchovers to a carrier using unbundled network elements involve the physical linking of network elements. Ameritech emphasizes that, as a general rule, it is not possible to perform the manual tasks at a faster rate than the automated processes used in resale. Ameritech takes the position that its willingness to perform like-for-like processes at parity with one another satisfies its obligations under 47 C.F.R. 51.313(b). Ameritech also cites Paragraph 421 of the FCC Order which distinguishes between manual and automated switchovers.

AT&T; argues that unless Ameritech provides service to its customers of at least the same quality as it provides to its end users, no one will choose AT&T;, the Act's mandate of service parity will not be achieved, and there will be no meaningful competition.

AT&T; points out that it must receive access to unbundled network elements in less than Ameritech's end-user provisioning retail interval because AT&T; must perform additional work to provide local service after it receives the elements from Ameritech. Therefore, AT&T; seeks inclusion of language which provides for performance benchmarks at a level which is less than Ameritech's retail intervals for ordering, processing, installation, and repair.

Staff opposes the inclusion of AT&T;'s language to Schedule 9.10. Section 251(c)(3) of the 1996 Act requires that incumbent LECs provide nondiscriminatory access to unbundled network elements. Section 51.311(c) of the FCC Rules provides that a carrier may request enhanced quality of service from the ILEC, but that any additional costs associated with the enhancement must be included in the cost of service. Because AT&T; is unwilling to pay a higher price for expedited service, Staff concludes that AT&T;'s proposed language should be rejected.

b. Conclusion

The Commission concludes that AT&T;'s proposed language should be rejected. The Commission accepts Staff witness TerKeurst's representation that comparing the provisioning of unbundled elements to retail services is inapt. The FCC recognized engineering distinctions in 421 of the First Report and Order, which directed LECs to switch over customers for local exchange service at the same rate that interexchange customers are switched over, but excepted switchovers requiring network modifications beyond software changes. The same comparison is present here. Ameritech witness Mickens testified that the unbundling of loops is a vastly different matter than resale switchovers and will, concomitantly, have its own customer specific time frame. Accordingly, AT&T;'s proposal to measure unbundled element parity by resale transaction time frames should be rejected.

26. Miscellaneous Issues

(a) Whether the Agreement should require a party receiving information from a third party to conduct an inquiry to determine whether the information is proprietary, or whether it is sufficient to make such inquiry only in those circumstances where the receiving party has a reasonable basis for conducting such an inquiry? [20.2.4; Annot. No. 52]

1. Positions of the Parties

Under 20.2 of the Agreement, parties may not disclose proprietary information obtained from the other party or use this information for unauthorized purposes. There is an exception to this prohibition in 20.2.4(iv) for proprietary information "rightfully obtained" from a third person if the receiving party is not aware of the third person's obligation to keep the information confidential. Ameritech points out that the parties disagree on when the exception should apply. AT&T; suggests that it apply only if the receiving party has "no reasonable basis on which to inquire as to whether or not such information was subject to a confidentiality agreement at the time such information was acquired." Ameritech contends that the exception should apply only if the receiving party has "exercised commercially reasonable efforts to determine whether such third person has" any obligation to keep the information confidential.

Ameritech argues that its language is more appropriate because it affords greater protection for the parties. Ameritech contends that this is appropriate given the increasing amount of commercial dealings which it has across the five state region with other carriers and regulatory bodies. Ameritech stresses that there is a substantial chance that proprietary information provided by Ameritech to a third party may be inadvertently passed on by the third party to AT&T;.

AT&T; contends that Ameritech's language would require the receiving party to conduct an inquiry into whether the third party has an obligation to protect information regardless of the nature of that information. In AT&T;'s view, Ameritech's language would place an unreasonable burden on the receiving party. AT&T; also argues that Ameritech has agreed to AT&T;'s proposed language in its tariff filing included with its Statement of Generally Available Terms (Ill. C.C. No. 20, Part 2, 6, 24(c)).

Staff did not address this issue.

2. Conclusion

The Commission concludes that Ameritech's proposed language should be included and AT&T;'s rejected. While very similar, the Commission agrees that Ameritech's language provides the greatest protection to the parties and that in the event disputes relating to this matter occur, the "commercially reasonable efforts" standard is subject to more certain proofs than the "no reasonable basis" standard preferred by AT&T;.

(b) Should the Agreement contain a non-severability clause? [24.1; Annot. No. 55]

1. Positions of the Parties

Ameritech seeks to include a non-severability clause in 24.1 of the Agreement. According to Ameritech, the main issue surrounding this provision is the right to renegotiate the Agreement under 21.2. Ameritech's language is intended to ensure that when renegotiation occurs, AT&T; does not attempt to limit the scope of negotiations so that it can retain all advantageous terms and conditions and modify others. Ameritech contends that the entire contract must be fair game if renegotiation occurs except as otherwise required by the Act. The exceptions include Article XXIX concerning appeals and mutually acceptable modifications and 31.13 allowing AT&T; to exercise "Most Favored Nation" rights.

AT&T; contends that Ameritech's language is inconsistent with 252(i) of the Act and should be rejected.

Staff did not take a position on this issue.

2. Conclusion

The Commission concludes that Ameritech's non-severability clause should not be included. Clauses of this nature generally appear in contracts where all terms are mutually agreeable and the parties wish to cement their business relationships. The clause, in fact, says so in the "mutually negotiated" language. To suggest that the contract here was mutually negotiated is hyperbole given the number of issues submitted to arbitration. While the Commission is convinced that the clause should not be included in the contract, further comment is warranted. To the extent that

AT&T; is of the opinion that the removal of the clause signals the Commission's view that the "pick and choose" provisions, which have been stayed, are now an option in Illinois, such is not the case. This matter is still under advisement in Federal Court. The Commission awaits the outcome. In the event that the provisions are reinstated and mandated on the states, Illinois will comply. To the extent that further review is warranted, that will be done. But here, the posture of the parties makes a non-severability clause inappropriate for this contract.

(c) Should affiliate(s) of AT&T; be permitted to purchase from Ameritech Illinois under the Agreement if AT&T; decides to conduct its business operations under the Agreement through such affiliate(s)? [30.2; Annot. No. 70]

1. Positions of the Parties

AT&T; proposes the addition of language in 30.2 which would allow all of the benefits of the Agreement to apply to affiliates of the parties to the extent that they desire to conduct their respective business operations through affiliates. AT&T; argues that the provision is necessary to give the parties needed flexibility and that it is commercially reasonable.

Ameritech points out that the parties agree that either party may designate an affiliate to fulfill that party's obligations under the Act. Ameritech objects to AT&T;'s further proposal that an affiliate may obtain all of the benefits of the agreement if AT&T; decides to conduct its operations through an affiliate. Ameritech contends that this proposed provision violates the Act by being inconsistent with the joint marketing restrictions of 271(e)(1) which prohibits a telecommunications carrier that serves greater than 5% of the Nation's presubscribed access lines from jointly marketing exchange services obtained from Ameritech with that carrier's interLATA services.

Staff did not take a position on this issue.

2. Conclusion

The Commission concludes that affiliates of AT&T; should be able to purchase from Ameritech under the contract if AT&T; decides to conduct its business operations through such affiliates. Conducting business through affiliates is the norm in telecommunications. The proposal is commercially reasonable. Ameritech's concerns over the possibility of joint marketing activities are overstated. If joint marketing occurs, Ameritech has numerous adventures available to it through which to deal with the problem.

(d) Should AT&T;'s proposed publicity clause be included in the Agreement? [30.11; Annot. No. 72]

1. Positions of the Parties

AT&T; argues that the Agreement should include its proposed additional language in 30.11 providing that Ameritech shall not state in any marketing or advertising that it is providing services to AT&T; or that AT&T; is reselling Ameritech services. AT&T; also argues that Ameritech should not be permitted to insert its brand name into the local service offerings that AT&T; provides to its customers. According to AT&T;, actions of this sort by Ameritech would give it an anti-competitive advantage.

Ameritech responds that AT&T;'s proposed language is inappropriate and one-sided, exceeding any reasonable restrictions on the use of trademarks and service marks. Ameritech argues that AT&T;'s proposal would violate Ameritech's First Amendment rights. Ameritech points out that under this proposed language, in the event of AT&T;'s charging Ameritech with non-performance under the contract, Ameritech would not be able to provide a truthful response because it would, of necessity, involve a representation that Ameritech is providing services to AT&T; or that AT&T; is reselling Ameritech services.

Staff did not address this issue.

2. Conclusion

The Commission concludes that AT&T;'s publicity clause would, in all likelihood violate the First Amendment and should be stricken. Preventing references in advertising is fundamentally different than requiring branding of services, which was the thrust of the FCC's concerns in the language cited by AT&T; in its initial post-hearing brief, which distinguishes the FCC Order from the facts herein.

(e) Once final prices are set by the Commission, is it appropriate to apply those prices retroactively, and to perform a "true-up" against the proxy rates set in this proceeding? [29.5, Annot. No. 69]

1. Positions of the Parties

Ameritech takes the position that the Eighth Circuit's ruling prevents interim adoption of the FCC's proxy rates. Ameritech recognizes that the Commission may set interim rates in this proceeding that will be reviewed in a separate proceeding. Ameritech contends that these interim rates must be based on costs consistent with 252(d) of the Act. Ameritech states that if the Commission does not use Ameritech's cost studies to set interim rates, it believes that Staff's suggestion to set interim cost-based rates at LRSIC plus the mark-up suggested by Staff is appropriate. Ameritech contends that when permanent prices are established, there should be a "true-up" to reconcile differences between the rates ordered herein and subsequently-adopted permanent rates.

AT&T; argues that neither the Act nor the FCC Order or Rules allow a "true-up" once final prices replace the proxy rates set in this proceeding. AT&T; recognizes, however, that a "true-up" may not be needed given the expected timing of AT&T;'s provision of facilities-based service.

Staff objects to Ameritech's proposal to "true-up" its rates and revenues to reflect the difference between rates ordered herein and those determined later in Docket No. 96-0486. Staff contends that Ameritech's proposal would be inefficient. In Staff's view, because the proposed rates for this arbitration are reasonable and meet the standards in 252(d), any modification to such prices in Docket No. 96-0486 should not be significant (Tr. 1417). Staff also recognizes that the evidence indicates that AT&T; may not be able to actually purchase network elements and interconnection until late next year after the expected conclusion of Docket No. 96-0486. In addition to the timing considerations, Staff notes that requiring a retroactive charge by either party would be

inefficient since AT&T; will be making business decisions based on the actual rates, not on some expected rates in the future. Staff recommends that the Commission adopt AT&T;'s proposed language with one exception -- that is, the language should be revised to reflect the current stay of the FCC's pricing provisions by the Eighth Circuit. Staff recommends the addition of the following language:

> 29.5 In the event that Ameritech's rates established herein are subsequently changed due to Docket 96-0486, the parties are to simply substitute the new rates for the existing rates.

2. Conclusion

In concert with our discussion of Issue 23 supra, the Commission can find no legislative or administrative prerogative necessitating the insertion of a "true up" clause in this contract. In the event the Eighth Circuit orders refunds or surcharges, Illinois will comply. In the event refunds or surcharges are forfended, the issue is resolved. If the issue is left open, there are numerous avenues available to a party or parties entitled to recourse. The Commission finds that AT&T;'s proposed 29.5 should be included in the agreement to give more certainty to the contract.

27. What are the appropriate proxy, or interim, rates for unbundled network elements, facilities interconnection, reciprocal compensation and collocation? [16.18; Pricing Schedules; Annot. No. 42]

a. Positions of the Parties

Many of AT&T;'s proposed rates for unbundled network elements, facilities interconnection, reciprocal compensation and collocation were included in exhibits sponsored by Mr. Henson. AT&T;'s pricing schedules were incomplete since many indicated that prices were to be included after reviewing more data from Ameritech. AT&T; recognizes that the Eighth Circuit's stay of the pricing provisions of the FCC Order precludes imposition of those provisions on state commissions. AT&T; maintains, however, that the stay does not prevent a state commission from finding that rates which would be consistent with the FCC proxies are reasonable and consistent with the 1996 Act. AT&T; notes that the stay of the pricing provisions of the FCC Order allows this Commission to adopt final rates which it deems consistent with the Act or to pursue permanent pricing proposals in Docket No. 96-0486 and adopt interim rates herein.

AT&T;'s prices for unbundled network elements are based on Ameritech's LRSIC/TSLRIC costs plus a reasonable allocation of joint and common costs. The AT&T; prices disregard Ameritech's modifications of its LRSIC studies after the FCC Order. AT&T;'s proposed prices pass the "sum of the parts" test adopted by the Commission in the Customers First proceeding to ensure that prices for network elements used to provide local exchange service do not exceed the corresponding prices for Ameritech's retail exchange service. For mutual compensation, AT&T; developed separate end office-routed, tandem-routed, and transit-switched calls using a similar approach. AT&T;'s resulting prices were below the FCC proxy level of $.002, but AT&T; accepts $.002 for end office and $.0027 for end office and tandem terminated traffic, respectively. For collocation, AT&T;'s proposal is based on cost support filed by Ameritech with the FCC and includes direct costs plus a markup.

Ameritech emphasizes that since the issuance of the stay of the FCC Order by the Eighth Circuit, the FCC's pricing rules no longer govern this arbitration. Instead, this arbitration should result in rates based on the cost incurred in providing the elements and services pursuant to 252(c)(2) and 252(d)(2) of the 1996 Act. Ameritech contends that rates should be set based on its cost studies, which represent the minimum prices authorized by the Act. Ameritech argues that prices based on these cost studies may actually be too low because they would not recover the full costs that Ameritech incurs in providing the elements and services nor would they permit Ameritech the reasonable economic profit authorized by the Act. Ameritech contends, however, that its cost studies are the only credible evidence of the costs of providing the elements and services which must be priced in this proceeding.

Staff recommends that the rates for network elements, interconnection, and reciprocal compensation be determined by adding a factor representing the allocation of Shared Costs and Common Overhead to the LRSIC of each element and subtracting costs attributable to retailing functions. Costs relating to retailing functions would be removed because those functions are not incurred in the provisioning of unbundled network elements, interconnection, or transport and termination of local telecommunications traffic. In other words, Staff suggests setting prices consistent with 252(d) by using Ameritech's existing LRSIC studies and adding a reasonable amount of shared and common costs excluding retailing. Staff notes that Ameritech's LRSIC studies are forward-looking economic costs and the Staff mark-up covers the Company's historical common and shared costs excluding residuals consistent with 252(d)(1)(A) of the 1996 Act. Staff further notes that the LRSIC and shared and common costs include a return on capital component that allows investors to receive compensation for the use of their capital or investment which can be equated as "reasonable profit" consistent with 252(d)(1)(B) of the 1996 Act. Staff's latest pricing proposal was identified as Staff Ex. 1.02 at the hearing on October 30, 1996. Staff expects to provide a complete pricing proposal as Staff Ex. 1.03 after it has received all necessary LRSIC studies from Ameritech. Staff also suggests that, because the wholesale/resale issues have been removed from this arbitration, the arbitrated agreement would not include specific prices for wholesale services, but merely reference Ameritech's tariffed wholesale prices.

AT&T; comments that if the Commission accepts Staff's pricing approach, it should use LRSIC plus a 10% allocation of joint and common costs. In response to Staff's pricing proposal, AT&T; indicated that the mark-up used to recognize the allocation of shared and common costs less retailing should be lower than the mark-up recommended by Staff.

b. Conclusion

Upon a complete review of the pricing methodologies proposed by the parties, the Commission adopts Staff's method as appropriate for setting interim prices, pending the outcome of the current docket investigating that issue. Staff's proposal is consistent with the Commission's past practice in the wholesale/resale arena and is based, in large measure, on forward looking costs that have been independently scrutinized.

28. Has AT&T; violated its duty to negotiate in good faith?

a. Positions of the Parties

AT&T; states that it has negotiated in good faith with Ameritech, has adopted Ameritech's format for the proposed contract, and has, in fact, reached agreement with Ameritech on the vast majority of issues. AT&T; assumed that Ameritech's bad faith allegation related to a representation made to the Hearing Examiner in Indiana (in Indiana Utility Regulatory Commission Cause No. 40571-INT-01) that the proposed Agreement between AT&T; and Ameritech which deferred DMOQs and performance benchmarks to the Implementation Team was applicable to all states in the Ameritech region. AT&T; states that Ameritech apparently maintains that AT&T; knew at the time this representation was made that it intended to suggest proposed performance benchmarks/criteria for interconnection, collocation and rights-of-way in Illinois. AT&T; emphasizes that no such representation was made to the Indiana Hearing Examiner and that even had it been made, it would not rise to the level of "bad faith." AT&T; states that the reappearance of the performance benchmarks in Illinois was due to the prefiled testimony of Staff witness TerKeurst who recommended that performance measures not be deferred to the Implementation Team.

Ameritech contends that AT&T; has persistently violated its 251(c)(1) duty to negotiate in good faith with Ameritech. In its brief, Ameritech limits its discussion to one alleged violation, AT&T;'s unwillingness to include in the Agreement a provision (namely, Ameritech's proposed 29.3) which would permit the Agreement to be amended to reflect changes in the Act or the FCC Rules. Ameritech cites 47 C.F.R. 51.301(c)(3) which provides:

> If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:
>
> (3) refusing to include in an arbitrated or negotiated agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules;

Ameritech further emphasizes that the FCC has stated that a violation of 51.301(c)(3) is a per se violation of the duty to negotiate in good faith (152). Ameritech notes that AT&T; has rejected proposed 29.3 on numerous occasions even after Ameritech specifically drew the attention of AT&T;'s chief negotiator to the above-quoted language.

Staff believes that Ameritech's assertion that AT&T; failed to negotiate in good faith is based on AT&T;'s failure to timely disclose AT&T; witness Sherry's workpapers related to DMOQs or to Ameritech's contention that DMOQs were improperly put back on the table. Staff takes the position that any possible shortcomings in AT&T;'s provision of data to Ameritech during this arbitration do not rise to the level of failure to negotiate in good faith. To the extent that Ameritech may be relying on AT&T;'s unwillingness to negotiate with respect to AT&T;'s obligations under 251(b) of the 1996 Act, Staff notes that 153 of the FCC Order establishes that AT&T;'s obligations under 251 may not properly be linked to Ameritech's duty to interconnect under 252.

b. Conclusion

The Commission concludes that the issue of a party's alleged bad faith is not an appropriate topic for an arbitration award

under the Act and Rules. In issue 20 (AIN Triggers) we declined to order the initiation of a new docket due, in part, to the fact that this agreement simply orders one aspect of the business relationship between the two parties to it. The Commission concluded that the arbitration award should not go beyond accomplishing that goal by establishing an industry forum to examine technical issues surrounding AIN technology. Similarly, the issue of AT&T;'s alleged bad faith goes to Ameritech's satisfaction of its 271 Checklist Obligations, not the business relationship memorialized in the contract between it and AT&T;. This docket was conducted through open hearings with testimony and exhibits being marked for future reference. If Ameritech believes that AT&T; has attempted to thwart the pursuit of its 271 obligation, Ameritech should raise the issue in the docket examining the issue. There is simply no statutory basis upon which AT&T;'s good faith, or lack thereof, can be relied upon in arriving at the final arbitration award under consideration here.

29. Can AT&T; use a mid-span meet arrangement for terminating network elements in AT&T;'s Wire Center in a "condo" building? [12.8.5; Annot. No. 21]

a. Positions of the Parties

Ameritech explains that condo buildings are buildings in which both AT&T; and Ameritech house separate facilities usually on separate floors, and are also referred to as Shared Network Facilities Arrangements ("SNFA"). Ameritech indicates that AT&T; wants to connect to Ameritech in these buildings by drilling a hole through the floor to obtain access to Ameritech's equipment through a mid-span meet. Ameritech contends that this proposal is discriminatory to other requesting carriers, and that this type of interconnection is not included in the FCC's list of required interconnection points (FCC Order, 210). Ameritech also asserts that AT&T;'s proposal conflicts with the FCC Order's determination that AT&T; should not receive an advantage in collocating with Ameritech simply because AT&T; already had facilities located in a condo building with Ameritech (66).

AT&T; recommends that language be added to 12.8.5 to allow for a mid-span meet arrangement where Ameritech and AT&T; are located in a "condo" building or whenever otherwise deemed appropriate by AT&T;. AT&T; contends that allowing it to place its equipment in its own space is technically feasible, is not discriminatory, and would reduce its need for collocated space in condo buildings. AT&T; argues that it is entitled to mid-span meet arrangements under 549 and 553 of the FCC Order. AT&T; maintains that if it is willing to pay the economic costs of meet point arrangements, then Ameritech has the obligation to provide this form of interconnection.

Staff supports a mid-span meet arrangement at a condo building under the same rules, conditions, and rates found elsewhere relating to collocation/mid-span meet arrangements.

b. Conclusion

The Commission concludes that AT&T; must be allowed to opt for mid-span meet arrangements but must pay all economic costs in the event this option is chosen. To the extent that Ameritech argues that language in the FCC's 1992 Expanded Interconnection Order conflicts with AT&T;'s request, the Commission finds that the FCC's discussion in 549-554 of the First Report and Order, has, in all

likelihood, overruled the prior pronouncement sub silentio. The First Report and Order specifically approved mid-span meets as a method of collocation where technically feasible. The only qualifying language is that where a mid-span meet arrangement is requested for the purposes of allowing access to unbundled elements, as here, the requesting carrier must pay all of the economic costs of the arrangement(First Report and Order 553). AT&T;'s proposed language is that "AT&T; will be responsible for the connection . . . . " The Commission finds that this language is somewhat ambiguous and should be modified to refer specifically to the payment of economic costs and should read "AT&T; will pay all economic costs relating to any mid-span meet arrangement and will also be responsible for the connection . . . . "

30. Should Ameritech be required to furnish dedicated transport to AT&T; as a system? [Sch. 9.2.4., 1.2, 1.4, 2.3, A4.10; Annot. Nos. 76-79]

a. Positions of the Parties

AT&T; requests the ability to order equipment and facilities used to provide Dedicated Transport as a system (a SONET ring) through a Bona Fide Request ("BFR") process. AT&T; wants the ability to control such facilities. AT&T; contends that this is a request for unbundled network elements which must be made available if it is technically feasible to do so.

Ameritech responds that under Sch. 9.2.4 of the Agreement it will provide AT&T; with unbundled interoffice transmission facilities, including both shared and dedicated transport. Ameritech contends that AT&T; wants it to provide not only the unbundled interoffice transport facilities required by the Act, but also to combine these facilities with other elements and to do the network engineering and design for AT&T;. Ameritech argues that AT&T;'s language must be rejected as it attempts to include a combination of unbundled network elements outside of Schedule 9.3.5 (the list of combinations AT&T; intends to seek through the BFR process) and because it improperly attempts to require Ameritech to provide network design and engineering for AT&T;.

Staff did not take a position on this issue.

b. Conclusion

The Commission concludes that Ameritech should not be required to provide dedicated transport as a service to AT&T;. This request came from AT&T; at the eleventh hour. Until directed by the Hearing Examiners on October 24, 1996, it was not the subject of testimony or cross examination. The Commission agrees with Ameritech's assertion that AT&T;'s request is unacceptably vague, could cause technical complications and is untimely. If this service, element, or combination is important to AT&T; as it enters the local market, the BFR venue remains open.

31. What is the appropriate time period for Ameritech Illinois to respond to Bona Fide Requests? Should an exception be made for extraordinary circumstances? [Sch. 2.2, 5; Annot. Nos. 74, 75]

a. Positions of the Parties

AT&T; has proposed in Schedule 2.2(a) that Ameritech must respond (a) within 30 days for combinations of standard offerings

or individual customer arrangements that do not require special alterations and (b) within 60 days for all other BFRs. AT&T; objects to any longer period contending that it is unnecessary and would hamper AT&T; and delay actual local service competition.

Ameritech requests a maximum of 120 days to respond to BFRs, with a longer period for extraordinary circumstances. Ameritech explains that its response to a BFR requires the completion of a preliminary analysis of the request to determine whether the request complies with the Act and is technically feasible. Ameritech must then assign a product manager and product team to complete a price and cost analysis and provide AT&T; with a written report and statement of development costs. Ameritech points out that it is expecting to receive BFR requests of varying complexity from many carriers in addition to AT&T; and that it cannot control the timing of these requests. Ameritech contends that a 120-day period is necessary to ensure that it is able to respond adequately to the requests and to treat all carriers equally. Ameritech points out that it has agreed to a 60-day time period for less-complicated BFRs (5 of Schedule 2.2). Ameritech notes that the FCC has ordered the use of a 120-day period to process requests for new basic service arrangements, basic service elements, and complementary network services in its Open Network Architecture orders. Finally, Ameritech notes that the reasonableness of its proposal is supported by the fact that AT&T; had originally proposed a 120-day timeframe for processing requests for new services although it abandoned a request for this process in later versions of the Agreement.

Staff did not address this issue.

b. Conclusion

The Commission concludes that Ameritech's 120-day BFR request response time is commercially reasonable and should be included in the contract. AT&T; has raised no compelling arguments to the contrary. In fact, as AT&T; points out, the requests that Ameritech can expect to receive will be for "elements or arrangements that are somehow unique, novel or customized." (AT&T; Initial Post Hearing Brief at 49) Given this fact, the Commission finds that the 60-day period proposed by AT&T; is unreasonable and should be rejected.

Compliance with Arbitration Standards

As noted in the "Jurisdiction" 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 Subsection (d). The adoption of interim prices for interconnection based upon staff's methodology complies with Subsection (d) because the prices are based on cost, are nondiscriminatory and include a reasonable profit. The interim prices for transport and termination similarly comply with the relevant Subsection (d) criteria because the prices recover costs mutually and reciprocally and recognize the additional costs of terminating calls on the network facilities of the terminating carrier. The contract term providing for the replacement of the interim prices with prices to be determined in

Docket No. 96-0486 further assures compliance with this provision. 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 Article XXIX "Regulatory Approval" establishes a schedule for implementation as required by the Act.

DATED: October 31, 1996

Hearing Examiners