

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 96-33

CASE 96-C-0787 - Petition of MCI Telecommunications Corporation, Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement between MCI and New York Telephone Company.

OPINION AND ORDER RESOLVING
ARBITRATION ISSUES

Issued and Effective: December 23, 1996

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COMMISSIONERS:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Thomas J. Dunleavy

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OPINION AND ORDER
CONCERNING ARBITRATION

(Issued and Effective December 23, 1996)

BY THE COMMISSION:

INTRODUCTION

This is an arbitration award pursuant to 252 of the
Telecommunications Act of 1996 (the Act).¹ At issue are numerous disputed
terms and conditions concerning an interconnection agreement proposed by MCI
Telecommunications Corporation (MCI) to New York Telephone Company (New York
Telephone). This is a three-year agreement, which would automatically be
renewed absent notice by either party. The disputed terms and conditions
concern prices, network interface, service quality, and dispute resolution,
among other issues. Some of these issues have broad legal and policy
implications, while others are more purely technical arrangements upon which
the parties were unable to agree. We are charged with resolving each open
issue set forth in the arbitration petition and response consistent with our
own precedent and policy, the Act, and the applicable FCC regulations

currently in effect pursuant to the Act;¹ establishing rates for interconnection, services, or network elements as prescribed in the Act; and providing a schedule for implementation of the terms and conditions by the parties to the agreement.² Pursuant to 252(b)(4)(C), this determination must be rendered no later than December 25, 1996.³

PROCEDURAL BACKGROUND

On August 29, 1996, MCI filed a Petition for Arbitration (Petition), in order to resolve open issues for the purpose of concluding an interconnection agreement with New York Telephone. On September 23, 1996, New York Telephone filed its Response to MCI's Petition (Response), and on September 30, 1996, MCI filed a supplement to its Petition (Supplement). The arbitration proceeding was conducted by Administrative Law Judge Eleanor Stein. In addition, on August 29, 1996, MCI filed a Request for Mediation under the Act,⁴ and this proceeding was mediated by Administrative Law Judge Judith A. Lee.

On October 2, 1996, a procedural conference was held to delineate the scope and schedule of this proceeding, and on October 17, 1996, Judge Stein ruled that all issues necessary for the completion of the interconnection agreement between New York Telephone and MCI would be arbitrated unless successfully resolved in mediation or negotiation between the parties. Parties were encouraged to remove from arbitration issues currently the subject of mediation or negotiation, and issues as to which the filings indicated substantial agreement. Judge Stein also ruled that certain issues proposed for arbitration implicated policies contemporaneously being litigated or negotiated on an industry-wide basis, in which a Commission

FCC First Report and Order, CC Docket 96-98, FCC 95-185, Implementation of Local Telecommunications Competition (issued August 8, 1996) (Local Competition Order).

47 U.S.C. 252(c). The implementation schedule is Appendix B.

47 U.S.C. 252(b)(4)(C).

Case 96-C-0785, Joint Petition of MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Mediation Pursuant to Section 252(a)(2) of the Telecommunication Act of 1996.

determination was expected prior to the close of the arbitration period, December 25, 1996. For administrative convenience, our intervening determinations will be incorporated into the arbitration award where appropriate.¹

The Arbitration Procedure

On June 14, 1996, and again on October 21, 1996, we issued a notice of procedures adopted pursuant to the Act, in order to notify the industry and other interested parties of the procedures we intended to follow.² In particular, the notices informed those not party to the arbitrations of their opportunities to be informed of the filings before the Commission and to comment upon the filings and, upon filing of a completed agreement for approval, the terms of the interconnection agreement. In the October 21, 1996 notice we emphasized that the arbitration award of the Commission directly binds only the parties to the arbitration and that the outcome of an arbitration may be subject to superseding generic Commission determinations.³

The Judge's rulings and the parties' stipulations left three categories of issues for arbitration: issues of law and policy, briefed by the parties with appropriate supporting affidavits; issues of fact concerning the costs and pricing of network elements, decided based upon incorporating

MCI moves for interlocutory review of that portion of the Judge's ruling, reaffirmed by her rehearing requested by MCI, which denied its request to file an avoided cost study it had unsuccessfully attempted to file in Cases 95-C-0657 et al. (the Resale Case); New York Telephone opposes the motion. MCI argues it lacked a full and fair opportunity to be heard on the related issues in the Resale Case and that, therefore, the Commission is obliged to allow it a full hear in this arbitration. MCI's request to file the study in the Resale Case was denied as untimely; the sole issue to which the study is pertinent--wholesale rates--has been decided in that case. There is therefore no reason to overturn Judge Stein's ruling.

Cases 94-C-0095 et al., Transition to Competition in the Local Exchange Market, Notice of Procedures for Implementing Sections 251 and 252 of the Telecommunications Act of 1996 (issued J 14, 1996) and Notice of Additional Procedures (issued October 21, 1996).

In designing the arbitration procedure, we rely upon New York State common law, inasmuch as N York has not adopted the federal arbitration statute, the provisions of Article 75 of the New Yo Civil Practice Law and Rules, and our Rules of Procedure. Where instructive, we have consulted Federal Communications Commission (FCC) regulations governing its own arbitration procedures in event it assumes jurisdiction over an Act arbitration.

pertinent portions of the evidentiary record developed in the network element pricing phase of the Resale Case before Administrative Judge Joel A. Linsider; and the operational issues, decided on a final offer basis.¹ The final offer portions of the arbitration award are found in Appendix A.

The Arbitration Record

On September 23, 1996, MCI submitted documentation in support of its Petition for Arbitration, consisting of six white papers setting forth its positions on categories of issues upon which the company seeks arbitration.² With regard to the issues concerning pricing of resale and unbundled network elements, MCI submitted testimony of Dr. Robert A. Mercer and Dr. August H. Ankum. New York Telephone submitted testimony of C.R. Curbelo, T. Gansert, James J. Vander Weide, and Dr. Lawrence K. Vanston, with accompanying exhibits. As stipulated by the parties, portions of the Resale Case record consisting of the prefiled direct testimony of the witnesses proffered by New York Telephone and MCI, and the stenographic transcripts of the cross examination of those witnesses by all parties in the Resale Case, were also considered.

The Mediation Process

The parties identified seven issues as the subject of mediation.³

The Local Competition Order, while prescribing no procedures or standards for state commission arbitrations, adopts a procedure for FCC arbitration in the event the FCC preempts state jurisdiction over an interconnection dispute pursuant to the provided procedures (1291-1295). The FCC procedure includes the option of adopting final offer arbitration, allowing the arbitrator to choose the final offer of one party, in whole or in part, in determining the outcome of a disputed term. Administrative Law Judge Stein requested the parties to submit the bulk of the operational issue disputes on a final offer basis; no party objected. Making it clear that final offer arbitration did not preclude continuing negotiation, the Judge encouraged the parties to continue settlement discussions and they did so, presided over by Judge Lee as mediator.

The papers are: 1) *An Economic Analysis of Issues to be Arbitrated under Section 252 of the Telecommunications Act of 1996*; 2) *Wholesale Services: Pricing and Provisioning*; 3) *The Hatfield Model for the Determination of Total Element Long Run Incremental Cost*; 4) *Network Implementation Requirements for Interconnection, Access to Unbundled Elements, and Collocation*; 5) *Operations Support Systems Implementation Requirements*; and 6) *Ancillary Arrangements and Services Requirements*.

Case 96-C-0785, Joint Petition of MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Mediation Pursuant to Section 252(a)(2) of the Telecommunication

Following a series of mediation sessions during which the parties clarified issues and removed some from arbitration, parties and the Administrative Law Judge considered that the mediation process on those issues was complete. Some issues were placed back into arbitration; the rest appeared susceptible to a negotiated resolution. Accordingly, Administrative Law Judge Lee closed the mediation proceeding.

However, following the filing of parties' final offers, the parties requested the assistance of Judge Lee at a second series of mediated negotiations, which were both intensive and productive, resulting in considerable agreement in principle on contract language related to some issues that had been presented for final offer arbitration. As stipulated by the parties, after these discussions of enumerated sections of MCI's Attachment II (Local Resale), Attachment VII (Number Portability), Attachment IV (Interconnection), Attachment V (Collocation), and Attachment VIII (Maintenance), there was agreement except for the sections listed and decided in the final offer portion of this arbitration award.

ISSUES OF LAW AND POLICY

Certain disputes concerning the interpretation of the Act, the FCC Local Competition Order, or Commission precedent, weave through the specific issues presented by the parties and will be discussed generally as well as applied to the specific controversies at issue. In general, MCI's position is that New York Telephone failed to offer it the operational platform, on a non-discriminatory basis, to which it is entitled under the Act, FCC regulations, and Public Service Commission determinations. New York Telephone's position is that MCI failed to present sufficiently New York-specific information to allow New York Telephone to identify exactly what MCI's interconnection needs are; that New York Telephone has offered all it is required to by law; and that its current tariffs should govern all terms and prices relevant to the interconnection agreement.

Generally, neither party provided us all the information necessary

Act of 1996. 47 U.S.C. 252(a)(2) provides that "[a]ny party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation."

conclusively to identify the unresolved issues, or to indicate all issues discussed and resolved by the parties.¹ Taking into account the full record, however, we conclude that New York Telephone is correct that its tariff terms, in particular its 914 and 915 tariffs, can and should be considered. MCI is also correct, however, that the non-discrimination requirements of the Act do not compel the conclusion that those terms must be used. At issue are the conditions and rates for wholesale purchase of services and cost-based purchase of network elements. Absent agreement by the parties on rates or other terms, we will apply existing tariff rates where available rates were calculated on a forward-looking incremental cost basis, consistent with the Act. For elements that lack such tariff rates, we have set temporary rates subject to refund and reparation in those instances in which pending proceedings will soon result in permanent rates. For remaining elements, we have set permanent just and reasonable rates based upon the arbitration record and consistent with the standards contained in 252(d)(1).²

Provision of Transit Traffic Service--
Pricing of Dedicated Connections

MCI requests the establishment of transit services, which it defines as the carriage of traffic between interconnected carriers. Dedicated transit service occurs when both competitive local exchange carriers have collocated nodes in the same central office and wish to interconnect into each other's collocated nodes; under other circumstances the service is a switched transit service.³ New York Telephone has proposed the rate for dedicated transit connections be set at twice the applicable Service Access Charge, or \$3.80 per month for a voice-grade circuit, while MCI requests a rate no

47 U.S.C. 252(b)(2),(4).

Such rates must be based on the cost (determined without reference to a rate of return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and nondiscriminatory, and may include a reasonable profit. 47 U.S.C. 252(d)(1).

The parties apparently have agreed that the record in the Resale Case concerning tandem switching costs will be adopted in this proceeding for the purpose of setting the appropriate rate for switched, as opposed to dedicated, transit connections. Rate issues will be addressed, therefore, in the Network Element Pricing section.

greater than \$.25 per month, pending completion of a total element long-run incremental cost (TELRIC) study for the Service Access Charge.¹

MCI asserts that it is entitled to dedicated transit service pricing based upon TELRIC in general, and the Hatfield method in particular. As MCI points out, New York Telephone concedes that it has not performed a TELRIC study for the Service Access Charge.² MCI styles New York Telephone's proposals "outrageous."

In contrast, generally New York Telephone's position has been that when a tariff is now in place, the presumption of legal regularity of a filed rate compels us to apply that rate in this arbitration. New York Telephone proposes a rate of twice the Service Access Charge, on the ground that charge is itself cost-based, and that it must use two dedicated connections to link both of the competitive local exchange carriers. New York Telephone asserts a cost-based study justifies the Service Access Charge, referring to the 1991 approval of these rates for New York Telephone and Optical Transport Interconnection Service, including language to the effect that the Service Access Charges embodied New York Telephone's incremental costs.

New York Telephone proposes the application of two service access charges for dedicated transit.³ It points out this charge reflects the cost of cabling and terminations to bring a facility to the intraoffice point of termination of any single collocated node in the first instance, and that application of the charge twice in this instance is reasonable. New York Telephone points out that MCI's proposed rate for dedicated transit is, in its view, inappropriate as it is based on rates for non-comparable facilities employed by another regional Bell Operating Company (Ameritech).

MCI reiterates its view that switched transit rates should be based on the rates for tandem switched services

MCI offers a rate of \$.0017 per minute for switched transit, identical to the rate it propose for tandem switching, plus transport. MCI's Initial Brief, p. 2.

MCI's Initial Brief, p. 2, citing New York Telephone's Response, p. 7.

Under this proposal, the charges would be \$3.80 for voice grade and \$7.02 for DS1 circuits.

apply as developed here. New York Telephone believes the rate for switched transit should include tandem switching, terminating carrier access charges, and associated billing and administrative costs.

The definitions, rates, and rate structure proposed by New York Telephone will be used both for switched and dedicated transit service. The rates for switched transit will be temporary, subject to refund and reparations, pending the determination of permanent rates in the next phase of the Resale Case. The rates for dedicated transit will not be temporary, as they are now priced consistent with the costing provisions of the Act and are not currently under examination in another proceeding.

Unbundling of Network Elements

The Act provides the competitive local exchange carriers the opportunity to request the provision of unbundled network elements, requiring the incumbent to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point."¹ One group of issues here concerns those elements the FCC has required incumbent carriers to unbundle immediately. In the Local Competition Order, the FCC specified elements that the incumbent local exchange carriers must immediately unbundle and offer to any requesting telecommunications carrier.² MCI requested that New York Telephone provide it these and numerous other elements, detailed and assertedly justified in the white papers filed with its Supplement.³ MCI asserts that

47 U.S.C. 251(c)(3).

47 CFR 51.319.

MCI's request includes Local Loops (including POTS, DS-1, ISDN); Network Interface Device; Local Switching Capability; Tandem Switching Capability; Dedicated Interoffice Transmission; Shared Interoffice Transmission; Multiplexing/Digital Cross Connects; Signaling Networks (including signaling links and signaling transfer point); Call-related Databases (including LID

New York Telephone is not in compliance with 251(c)(3) of the Act or the FCC rules. In particular, MCI specifies that New York Telephone is not proposing immediately to provide unbundled local switching and access to its directory assistance databases, and that it has not demonstrated that it is capable of providing non-discriminatory access to operations support systems for pre-ordering, ordering, provisioning, maintenance and repair, or billing for interconnection, resale and purchase of unbundled network elements.

New York Telephone asserts that there is no dispute between the parties as to the necessity for it to provide the listed network elements; the issue is the timetable.¹ New York Telephone notes it provides local loop, signaling networks and call-related database and interoffice transmission facilities (dedicated) today, has made progress since the FCC Local Competition Order toward provisioning the others, and expects to provide all on this list by the time we act on a submitted MCI/New York Telephone interconnection agreement, or shortly thereafter.² New York Telephone also represents that combinations of network elements, as requested by MCI, should be available in early 1997, but refused to commit to that date.³

We agree with MCI that the dates for element availability should be specific. We further accept New York Telephone's proposed dates and clarify that New York

Toll-free Calling database, number portability databases, and AIN); Service Management Systems; Operations Support Systems Functions (pre-ordering, ordering, provisioning, maintenance and repair billing); and Operator Services and Directory Assistance, including the New York Telephone directory assistance database.

New York Telephone's Initial Brief, p. 45.

Ibid., p.5; Weiland Aff.

Id.

Telephone's reference to early 1997 will be read as March 1, 1997.

MCI also requested the immediate availability of multiplexing/digital cross connects and service management systems, items for which New York Telephone has not specified service availability dates. New York Telephone has not opposed MCI's request for unbundled multiplexing, and we agree with MCI that this additional element should be provided by March 1, 1997. New York Telephone opposes MCI's additional requests, however, and while MCI removed AIN (advanced intelligent network) issues from this arbitration, New York Telephone points out it nevertheless included requests for related access to the service creation environment and service management system in attachments to its pleadings. New York Telephone focuses almost entirely on security and reliability concerns that would attend unrestricted access to these systems.

Though opposing MCI's full request in this area, New York Telephone has agreed to provide MCI access on a nondiscriminatory basis as long as New York Telephone, as the network operator, continues to direct and administer the new capabilities resident there. This is reasonable and we agree with New York Telephone's proposed resolution. New York Telephone should provide this access by no later than March 1, 1997.

Immediate Unbundling Beyond the FCC's Minimum List

A second set of issues under this heading concerns immediate unbundling beyond the FCC's minimum list. With respect to these, MCI contends that loop distribution--that is, the portion of the loop from and including the network interface device at the customer's premise to the feeder distribution interfaces outside the central office--should be

unbundled. New York Telephone asserts the FCC rejected this requirement,¹ and requests that we do the same, citing to 376 and 391. New York Telephone asserts that, to its knowledge, no local exchange carrier has developed, tested or implemented sub-loop unbundling because of the technical difficulties involved. New York Telephone also advised MCI, however, that it would consider individual case requests for sub-loop unbundling, conceding this requirement of the FCC Local Competition Order.²

Based on the best information available, we conclude access to loop distribution is technically feasible and it will be required. However, practices related to unbundled access to loop distribution in the state's urban, suburban, and rural neighborhoods will likely vary so widely initially that the only prudent approach, as New York Telephone suggests, is to look at each request on an individual case basis. This does not mean that once we have sufficient experience we would not consider generic pricing, or that we will tolerate unreasonable variations in the incumbent's provisioning and practices. We would, however, expect that the industry would take the initiative to resolve these matters without regulatory action.

The final issue concerns an expedited process for treating requests for further unbundling of network elements as the need arises. MCI requests the establishment of a formal expedited process, initiated by a bona fide request for further unbundling of network elements. New York Telephone proposes a process consisting of a 30-day review period within which New York Telephone will analyze a request and provide a written response to the requesting carrier, either confirming the availability of the element or detailing the reasons if a

Local Competition Order, 374-376.

New York Telephone's Initial Brief, p. 7.

particular request is not technically feasible. Based on the best information available, we adopt the bona fide request process detailed in Opinion No. 96-31.¹ The process would include five steps: request initiation, preliminary analysis, detailed quote, confirmation of order, and cancellation.²

Cases 96-C-0723, et al., Petition of AT&T, Opinion No. 96-31, p. 46.

In the course of analysis of the contract provisions presented as final offers, it appeared that many of the sections were requests for the provision of new unbundled elements or points of interconnection. In these instances, rather than finding for either party, we determine that a bona fide request process is the proper manner to resolve these requests and we adopt such a process. We have identified those contract sections where such a process is appropriate.

Access to Databases and Information

In order effectively to use New York Telephone's unbundled elements and services for resale, MCI says, it requires access to numerous operations support systems. According to MCI, New York Telephone is required to unbundle its operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing; MCI notes the FCC recognizes that such action may require modifications to existing local exchange company systems. Nonetheless, MCI claims that nondiscriminatory access to operations support systems is required by January 1, 1997.¹ In addition, MCI requests immediate access to directory assistance databases. New York Telephone argues that since it has agreed to provide MCI access to the directory assistance platform and read-only access to the information resident there, MCI does not need additional access to the data, nor does New York Telephone acknowledge any obligation to provide such access. We agree with New York Telephone that MCI has not demonstrated that these particular limitations on its access are a barrier to entry. We will, however, require New York Telephone to provide MCI the access to which it has agreed no later than March 1, 1997.

New York Telephone responds that it will provide MCI access to those requested databases and information sources necessary for pre-ordering, ordering, provisioning, maintenance, repair and billing, consistent with its obligations under the Act. New York Telephone will also provide access to customer record information, emergency services information, repair dispatch and service order information, switch network ID data and number assignment data through its Direct Customer Access System.²

MCI's Initial Brief, p. 7.

New York Telephone's Reply Brief, p. 12.

MCI recognizes that New York Telephone will provide access to most of the requested databases and information sources.¹ However, for certain databases (e.g., repair dispatch) MCI wants New York Telephone to use applicable industry standards once available. Certainly, New York Telephone should adhere to all applicable industry standards.

The only remaining area of contention appears to be the provision of Plant Inventory Data, which New York Telephone argues it should not be required to provide because it goes beyond the requirements of the Local Competition Order. According to New York Telephone, this information has no relation to pre-ordering, ordering, provisioning, maintenance and repair, or billing of network elements or services for resale, and the information is not required to access and use its unbundled elements and resale services. In addition, much of the information is not resident in New York Telephone's operations or support systems and some of the information is only available on handwritten maps.²

MCI says that access to plant inventory data--for example conduit, fiber, switch port, loop feeder, and distribution--is necessary for it to request feasible points of interconnection and to ensure that New York Telephone's facilities are being made available on a non-discriminatory basis. Without this information it cannot determine whether a particular point of interconnection is feasible.³

New York Telephone has acknowledged its requirement to make its facilities available on a non-discriminatory basis and to allow access at technically feasible points of interconnection. It asserts, however, that it is not required

MCI's Reply Brief, p. 7.

New York Telephone's Initial Brief, p. 28.

MCI's Reply Brief, pp. 7-8.

to share its plant records with MCI.

MCI appears to be entitled to view this data. New York Telephone makes no claim of any policy magnitude to defeat MCI's right to have access to the information. However, New York Telephone has no obligation to generate new data of this kind or to reformat its own records. MCI can view it on the same basis that New York Telephone does now.

Collocation

At issue is whether there should be any restriction on the type or nature of equipment placed in any collocated space if it does not damage or hinder the operation of New York Telephone's network. MCI alleges that the prevailing terms and conditions for collocation are a barrier to competitive entry, which it believes the FCC has recognized in not restricting the type of equipment placed in any collocated space, interpreting the Act's requirement that carriers provide for physical collocation of equipment where "necessary for interconnection or access to unbundled network elements."¹

As its offer, MCI proposes this contract language on the placement of collocated equipment:

MCI may collocate the amount and type of equipment it deems necessary in its collocated space in accordance with FCC Rules and Regulations. NYNEX shall not restrict the types of equipment or vendors of equipment to be installed.²

MCI's stated intention is to install equipment, which may have switching capability, within its collocation cages. MCI claims the installation of such equipment is necessary in order to deploy its network efficiently. MCI submits that

47 U.S.C. 251(c)(6).

MCI Attachment V, 2.4.

remote switching equipment allows purchasers of unbundled links efficiently to access that element by performing a concentration function, as well as a switching function.¹ Further, placing remote switching equipment in collocated space enables it to handle intra-switch local calls in an efficient and less costly manner. MCI argues that without the collocation of its own switching equipment, a call that would have never left New York Telephone's switch if New York Telephone had been the carrier would have to be transported from the MCI collocation space back to MCI's host local switch and then transported back to the MCI collocation for termination. Further, MCI contends that allowing it to avoid this inefficient use of its network imposes no costs on New York Telephone and allows for a more reliable network. As an example, MCI argues, if switching equipment could be collocated, MCI customers would be able to place calls to customers located within the same central office and to emergency services such as 911 in the event its transport facility were disabled.

New York Telephone replies that the FCC does not require it to allow placement of switching equipment in collocated space. It also opposes MCI's rejection of Commission-approved 900 Tariff language, which permits the placement of concentration and transmission equipment, but not switching equipment.

The Act requires collocation of equipment "necessary for interconnection or access to unbundled elements,"² and the FCC has concluded that the term "necessary" is synonymous with "used" or "useful"³ for the purposes of interconnection or

MCI's Supplemental Brief on Policy and Operational Issues, p. 5.

47 U.S.C. 251(c)(6).

Local Competition Order, 579, 581.

access to unbundled elements. The FCC remanded to the states determinations as to whether the equipment at issue "is actually used for interconnection or access to unbundled elements."¹

Based on MCI's submissions, and the fact that New York Telephone does not contest that this equipment is used for interconnection and access to unbundled elements, we will require New York Telephone to allow collocation consistent with MCI's proposal.

With regard to rates for collocation, MCI argues that rates for collocation must be established using the TELRIC method and that, until such time as TELRIC can be determined and rates set accordingly, the Commission should establish interim rates, which should not automatically be set at New York Telephone's existing tariffed rates.

New York Telephone asserts that its existing, tariffed rates are consistent with the TELRIC method, which mandates that rates be based on forward-looking incremental costs plus a portion of forward-looking joint and common costs.² In fact, New York Telephone speculates that its current rates for collocation are probably lower than those a new cost study would produce because it had not calculated any forward-looking costs, such as labor costs, as permitted by the Local Competition Order. In addition, New York Telephone believes it is unnecessary to address collocation in this arbitration, as the FCC has committed to consider collocation pricing.³

MCI replies that it cannot be sure that New York Telephone's collocation charges are based on forward-looking

Id.

New York Telephone's Initial Brief, p. 30.

New York Telephone's Reply Brief, p. 8.

costs since New York Telephone has not performed the proper TELRIC study. MCI also charges that New York Telephone's current tariffed rates are not properly used as interim rates as they are not based on incremental costs. Further, MCI requests that we require New York Telephone to produce incremental costs studies that could be used to set interim rates.¹

New York Telephone filed tariff revisions to establish standard collocation provisions and to revise its collocation rates, charges, and fees² on November 14, 1996; the revisions are in effect on a temporary basis, subject to refund. New York Telephone has also indicated it will file a TELRIC-based collocation cost study by December 31, 1996. The existing tariffed rates will be used in the interim, on a temporary basis, subject to refunds and reparations following our determination on the November 14, 1996 filing.

Interim Number Portability

The Act requires that local exchange carriers provide number portability to the extent technically feasible in accordance with rules established by the FCC. In its First Report and Order on Telephone Number Portability the FCC propounded guidelines for the states to use in developing rates for interim number portability, as well as a policy for the sharing of interstate terminating access charge revenues.³

MCI contends that the Act and the FCC's order require that costs of interim number portability be borne on a competitively neutral basis⁴ but left it to the states to

MCI's Reply Brief, p. 8.

Case 96-C-0036, Complaint of AT&T Communications of New York, Inc., Order to Resolve Complaint and Clarify ONA Order (issued September 30, 1996).

Local Number Portability Order, p. 126.

The FCC defined "competitively neutral" to mean that the cost of number portability borne by

determine the form of cost recovery.

New York Telephone states that the Act requires that the costs of establishing number portability be borne by all telecommunications carriers, and it proposes two methods of interim number portability.¹ The first method is a tariff offering, based on the Rochester Plan, that allows New York Telephone to charge each carrier for a percentage of New York Telephone's costs based on the carrier's percentage of working telephone numbers. Under this arrangement, New York Telephone retains the access charges associated with calls to ported numbers as part of its compensation. The second method consists of a \$2.00/month charge for porting a business telephone number and \$1.00/month charge for porting a residential number. Under this approach, New York Telephone proposes to share access charges collected from interexchange carriers for calls to the ported number, and notes that this structure has been agreed to in other interconnection agreements. MCI proposes that each carrier absorb its own costs of providing interim number portability and, thus, that there be no explicit charge for interim number portability by any carrier. MCI explains that under this method there is no need to determine the incremental costs of providing interim number portability.

MCI has not demonstrated that its approach meets the competitive neutrality standards established by the FCC at this stage of the transition to a fully competitive marketplace. Specifically, since the vast majority of potentially ported numbers belong to New York Telephone, it would bear an unfair share of the costs of interim number portability. Accordingly, we find for New York Telephone.

each carrier does not affect significantly any carrier's ability to compete with other carriers customers in the marketplace. (Number Portability Order, paragraph 131.)

New York Telephone's Initial Brief, p. 34.

Meet Point Billing under Interim Number Portability

This issue concerns the treatment of access charges. The FCC has established a policy under which interstate access charges are shared; however, we recently approved the retention of intrastate access charges by New York Telephone.¹

MCI argues that these policies should be consistent and that the FCC's order on sharing of interstate access charges should apply to intrastate charges as well.²

MCI proposes that for meet point billing, the forwarding local exchange company be allowed to charge the interexchange carrier for transport from the point of presence to the end office where the call terminates.³ The terminating local exchange carrier would then be allowed to charge the interexchange carrier its switched access rates, minus any charge the forwarding local exchange carrier has already charged. MCI points out that in this case the interexchange carrier would not pay more than the terminating carrier's switched access rate and each local exchange carrier would be able to bill for its share of service provided to the interexchange carrier. MCI would need certain billing information from the forwarding company in order to properly bill the interexchange carrier; it believes the FCC has ordered forwarding carriers to provide that information.⁴

New York Telephone urges us to reject MCI's proposals regarding the issue of meet point billing (i.e., how local carriers share interexchange carrier terminating access

Cases 94-C-0095 et al., Transition to Competition in The Local Exchange Market, Tariff Filing (issued October 23, 1996).

MCI's Initial Brief, p. 10.

Ibid., p. 11.

First Report and Order on Telephone Number Portability. CC Docket 95-116 (issued July 2, 1996)(LNP Order), 140.

charges) for ported calls which utilize both carriers' networks.¹ Rather, New York Telephone believes, we should reaffirm the Rochester Open Market Plan approach which it asserts compensates both carriers fairly. New York Telephone explains that the Rochester Open Market Plan enables New York Telephone to recover the use of its access tandem, transport facilities, and local switching which are paid for by the interexchange carrier in the form of terminating access charges, and allows MCI to recover its costs for completing the ported call to its subscriber via payments by New York Telephone when New York Telephone remits to MCI the reciprocal compensation charge for call termination.

New York Telephone's position that it keep intrastate access charges for ported calls is inconsistent with the FCC's Interim Number Portability Order that recommends a sharing of access charges. We agree with MCI that it should share access charges. New York Telephone should charge the interexchange carrier for transport from the point of presence to the end office where the call terminates or to a designated meet point, where it hands the call off to MCI. MCI should then be allowed to charge the interexchange carrier its switched access rates to terminate the call. However, MCI and New York Telephone should render separate bills to interexchange carriers to recover the switched access charges associated with their respective rates. New York Telephone should not be required to adjust its rates for MCI charges.

Branding

New York Telephone describes MCI's requirements, asserting MCI wants New York Telephone to route operator and directory assistance calls on all MCI resold lines to its own

New York Telephone's Reply Brief.

operator services platform; MCI wants New York Telephone to rebrand calls on MCI resold lines that go to the New York Telephone operator platform; until New York Telephone is capable of the customized routing and rebranding of calls mentioned above, MCI wants New York Telephone to unbrand all operator and directory assistance calls, including those from New York Telephone's own subscribers; and MCI wants to have its name or logo printed on the cover of telephone directories.

New York Telephone asserts that today its network cannot segregate calls from its own end users from those placed by MCI's or other resellers' callers. In order to route calls to an alternative operator platform or to rebrand calls from resellers' customers, New York Telephone's network has to be redesigned to identify operator traffic by local service provider. Once identified, operator traffic could be directed either to its operator services platform for rebranding, or to reviewed various technical solutions to provide such customized routing and rebranding. One solution is Advanced Intelligent Network (AIN), and the other is Class of Service (COS). New York Telephone prefers the AIN solution for customized routing and rebranding of operator and directory assistance calls as it appears to be the most technically and administratively efficient solution. As New York Telephone explains, AIN technology allows changes and additions to be made in a database rather than in every end office switch where memory and capacity is not limitless and is needed for other services. However, New York Telephone asserts, it cannot begin to offer AIN until January 1, 1998, while COS could be available by mid-1997.

MCI responds that it must have the ability to route calls to operator services and directory assistance to the MCI operator platform on a schedule that allows it to provide at a minimum the same level of service as is currently provided by

New York Telephone to its customers. Routing of these calls should be handled by sending the MCI traffic over separate trunk groups to MCI's operator services center. MCI thinks that New York Telephone's 12 to 18-month estimate for customized routing of AIN is too long, especially since New York Telephone acknowledges that 84% of its access lines will be converted to AIN by January 1, 1997, and is silent as to how many lines are converted today. MCI urges us to order New York Telephone immediately to provide customized routing from all end offices that have AIN capability.

New York Telephone maintains that neither the Act nor the Local Competition Order require it to unbrand its own operator services.¹ It believes such action would be competitively unfair as MCI could continue to brand its own long distance operator services while New York Telephone would have no brand recognition. Moreover, New York Telephone argues that requiring it to unbrand would not serve the public interest because consumers who do not hear its brand when dialing an operator service will not know if their calls are being handled by New York Telephone or an alternative operator services provider, many of which have been known to charge higher rates. In addition, such action could conflict with the Telephone Operator Consumer Services Improvement Act, which requires that the operator service provider for each publicly accessible phone be identified through specific written and audio notice requirements.

Brand recognition is a critical element for competitive entry, and competitive local exchange carriers should suffer the minimum delay in having access to this valuable commodity. The COS approach to unbranding of network elements should be implemented by March 1, 1997, and the AIN approach for rebranding and customized routing should be

New York Telephone's Initial Brief, p. 16.

available no later than September 1, 1997.

New York Telephone believes that directory branding is not arbitrable under the Act and, therefore, outside this arbitration's scope. Further, it states that the directory and its brand are property of a NYNEX subsidiary, NYNEX Information Resources, which is neither a telecommunications carrier nor a local exchange carrier. But while New York Telephone does not plan to place reseller logos on the front covers of NIRC directories, it will create an "Information Page" section of the directory to include reseller customer contact numbers. This is an adequate solution.

Access to Poles, Conduits, Ducts,
Rights of Way, and Dark Fiber

MCI states that compensation for shared use of New York Telephone-owned or controlled poles, ducts, or conduits should be based on the pro-rata portion of the forward looking costs of the facility. MCI bases its position on 251(b)(4) of the Act, which requires that the incumbent local exchange carrier provide access to its poles, ducts, conduits, and rights of way to competing providers of telecommunications services on rates, terms and conditions consistent with 224.¹

New York Telephone says it understands its obligation to provide non-discriminatory access to rights-of-way, poles ducts, and conduits pursuant to the Act but contends Case 95-C-0341, a pending proceeding established to consider these issues, is the forum in which the issues framed by MCI are to be addressed. New York Telephone deleted several provisions from its proposed contract on the ground that these issues should be decided in Case 95-C-0341 for all carriers. In the meantime, New York Telephone believes

MCI's Statement in Support, pp. 7-8.

current access policies and practices should prevail.

MCI wants certain requirements placed on New York Telephone regarding the provisioning of access to its facilities: that New York Telephone provide information on the location and availability of access to poles, ducts, conduits, and rights of way within 20 business days of MCI's request; that New York Telephone not be allowed to provide such information to itself or its affiliates sooner than it provides such information to other carriers; that New York Telephone should reserve poles, ducts, conduits, and rights of way for 90 days after MCI makes a request for access; and that MCI be allowed six months to begin attachment or installation work. In addition, MCI requests that compensation for shared use of poles, ducts, and conduits owned or controlled by New York Telephone be based on the pro-rata portion of the forward-looking costs of the facility.¹ It appears that MCI does not agree that access to facilities should be reciprocal.

We have exercised our authority over use of facilities, as provided in the Local Competition Order, and have instituted a proceeding to address these matters (Case 95-C-0341). We agree with New York Telephone that these issues should be decided there; MCI has adduced no persuasive reason why another procedure is preferable. In the interim, existing access policies and practices remain in place.

New York Telephone also states that it is not required to provide access to dark fiber to MCI. According to New York Telephone, MCI is incorrectly attempting to compare unused conduit space with unused or spare optic facilities. Since New York Telephone has no obligation under the Act to provide dark fiber, it argues, we should reject MCI's claims. We agree.

Ibid., p. 7.

Compensation for Alternate-Billed to Third Party Calls

MCI adopts AT&T's arbitration arguments regarding this issue, the crux of which is proper revenue allocation between New York Telephone and the reseller when calls (such as collect calls) are billed to and paid for by someone other than the calling party (*i.e.*, a "third party"). Two basic scenarios were presented in the AT&T case. The first involves someone placing a call over a line resold by AT&T, but charging the call (perhaps on a collect basis) to a New York Telephone customer. In this circumstance, New York Telephone argued that it should bill its customer at its rates and, further, that it should keep the revenue because it incurred all of the costs (including operator assistance and billing and collection) associated with the call. AT&T argued that it should receive the revenue, inasmuch as the call originated on one of its customers' lines.

In the second scenario, a call is placed on a New York Telephone Company line, but billed to a third party that is an AT&T resale customer. In this instance, it was proposed by the parties that AT&T would bill its customer, and according to New York Telephone, that New York Telephone would bill the call to AT&T for its compensation, at the wholesale rate. In other words, this call would be treated as a resold service provided to the AT&T customer that accepted the charges. AT&T apparently had no objection to this arrangement, except to point out the lack of symmetry between the two situations.

We determined that New York Telephone's approach to the first situation was illogical, for AT&T, which is purchasing New York Telephone's service for resale and therefore paying New York Telephone for the call and associated operator services, is entitled to have New York Telephone recover for the call at AT&T's rates, and to have the revenue returned to it by New York Telephone, less an

appropriate credit for New York Telephone's billing and collection. That the call is a New York Telephone customer's call which should be billed, by AT&T, at New York Telephone's rates. AT&T would then turn the revenue over to New York Telephone, keeping an appropriate credit for billing and collection. Those conclusions will be applied here as well.

NETWORK ELEMENT PRICING

New York Telephone asks us to establish interim rates for network elements based on Total Element Long Run Incremental Cost studies it filed in Cases 95-C-0657 et al., for the following elements: local switching, tandem switching, links, dedicated transport, common transport, and signaling networks and call-related databases. New York Telephone claims to have prepared those studies in accordance with the pricing method prescribed in the FCC's Order.

New York Telephone has committed to providing by the end of this year or early next year TELRIC studies for the remaining unbundled elements. For these elements, New York Telephone proposed that for interim rates we use proxy rates established by tariff.

For its part, MCI recommends that we adopt rates for unbundled elements based on the Hatfield model's results. MCI offers no alternative to its approach, but it does state a preference for interim rates based on the FCC's proxies if interim rates are to be made subject to true-up.¹

Each party is extremely critical of the other's cost studies and method. MCI asserts that New York Telephone's proposed rates are not actually based on appropriate TELRIC methods, and cannot properly form the basis for either interim or permanent rates. Likewise, New York Telephone describes major flaws in the Hatfield studies, and asserts that rates

MCI's Reply Brief on Law and Policy Issues, p. 5.

based upon its results would cause substantial under-recovery of its costs.

We are not prepared to adopt either party's cost study for interim rates. Although each party argues that its own studies are proper, and though both purportedly use the same costing methods, the studies produce widely disparate results and the differences have not been explained. Moreover, the accuracy and public interest implications of conflicting geographical deaveraging, developed in response to the now-stayed FCC pricing rules, needs to be examined.

Our previous determinations providing for competitive access have resulted in tariffed rates for many elements that already reflect our long-standing preference for cost-efficient prices that reflect forward-looking costs. Accordingly, we set interim rates here pursuant to New York Telephone's existing tariff rates where we are satisfied they are appropriately cost-based.¹ Where such rates are not in existence, we set rates on the best information available to us.² Specific rates are shown in Appendix C; several of these are discussed below.

Network Elements

1. Unbundled Loops

Rates for unbundled loops (links) are currently the subject of Cases 95-C-0657, et al. The parties proposed geographically deaveraged loop rates³ but, as discussed above, we are not introducing geographically deaveraged rates as

Where existing tariff rates have been adopted, we have in each instance determined that they are in compliance with the pricing standards of the Act (47 U.S.C. 252(d)).

47 U.S.C. 252(b)(4)(B).

Under New York Telephone's proposal, a two-wire, non-conditioned link rate would increase 58% in rural areas, and fall dramatically in urban areas.

interim rates in this arbitration. The current tariff rate, now effective on a temporary basis, was based on an incremental cost study and it will be used for all link types (two-wire and four-wire, analog and conditioned). The current rate of \$19.32 includes the network interface device (NID).

2. Network Interface Device

New York Telephone currently has a NID rate on file in its general tariffs; these rates were last established in the context of a revenue requirement proceeding and may not comport with the pricing standards of the Act. We will use the NID price of \$.58/month proposed by MCI in this proceeding as the interim rate.¹ Subtracting that from the current loop/NID rate of \$19.32 yields an interim link rate of \$18.74.

New York Telephone proposes to apply a time and materials charge for NID-network element charges; MCI had opposed such charges for the NID itself. New York Telephone may, however, apply such charges.

3. Local Switching

Local switching may be used in two contexts. First, there is a rate for local switching when it is used to terminate traffic. Local service switching rates used in this context were derived from a New York Telephone total service long run incremental cost (TSLRIC) study filed in an earlier proceeding.² Pending our determination of permanent local switching rates, we will use the existing tariff rates on an interim basis, as shown in New York Telephone's 914 tariff.

Second, local service switching may be used as an

New York Telephone has not separately identified a charge for the NID.

Case 28425, Impact of the Modified Final Judgment, Opinion No. 92-13, (issued May 29, 1992).

element for providing switching service to retail customers. In that instance, the existing tariff rates consist of charges for ports, plus the applicable tariff rates for usage and features in New York Telephone's general tariff (the 900 tariff). As retail rates for usage and features were set in a general rate proceeding, they are not necessarily cost based.

Accordingly, for interim local switching rates associated with the local switching element, we adopt rates for all port types (analog, digital, and ISDN) at the cost of a business port (\$4.96/month)¹ plus usage and features rates set equivalent to the local switching termination charges in New York Telephone's interconnection tariff (the 914 tariff).

While New York Telephone has further proposed rates for port "additives" based upon its cost estimates, we have found its cost study an inadequate basis for setting rates here. The existing termination charges will be considered to include the feature functions envisioned as resident in the local switching element as defined by the FCC, and New York Telephone will be prohibited from applying any additives above the port charge of \$4.96/month.

4. Tandem Switching

For the reasons discussed above in connection with local switching, we are adopting interim rates for tandem switching at their currently effective tariff rate levels, as specified in New York Telephone's interconnection tariff (the 914 Tariff).

5. Interoffice Transmission

There are no tariff equivalents at present for interoffice transmission (comprising common and dedicated transport); however, the rates for common transport may be

Case 91-C-1174, Comparably Efficient Interconnection, Order Directing the Filing of Tariffs and Requesting Additional Comments (issued May 25, 1994), Attachment, p. 14.

derived from the existing tariff rates for tandem and local switched interconnections, and the dedicated transport rates filed by New York Telephone in its carrier access tariff only apply in competitive circumstances when an interconnector is present in the local or tandem switch. These rates are based on cost studies that, as discussed above, are suitable for setting rates in this arbitration; they are also consistent with the rates we are adopting here for other switching elements. These rates constitute the best available basis for interim interoffice transmission rates.

6. Signaling Networks and
Call-Related Databases

New York Telephone and MCI propose rates for signaling elements set at the outputs of their respective TELRIC studies. As discussed, we will not adopt either cost study filed here for setting rates. However, in this instance, the existing tariff rates (PSC No. 914) have not been determined to be appropriately cost based. Accordingly, based upon the best information available, rates for signaling will be set at the levels we established in the New York Telephone/AT&T Arbitration, as set forth in Appendix C. Where rates have not been specified in Appendix C, they will be established at the average represented by the outputs of the cost studies filed in this arbitration.

7. Other Elements

As discussed, New York Telephone's cost studies for other "elements" (operator services and directory assistance, 911/E911, busy line verify and interrupt, port additives, collocation, and operations support systems) are not expected to be filed until December 31, 1996 or January 31, 1997. For these elements, New York Telephone has proposed various

interim rates.¹ MCI is silent. However, there are some overlaps between the rates (i.e., operations support) at issue here and those we recently considered and ruled upon in the arbitration between New York Telephone and AT&T, and those rates will be adopted here. Remaining rates (e.g., operator and directory assistance, busy line verify and interrupt, and 911/E911 trunks) will be established by adopting New York Telephone's unopposed proposals.

Non-Recurring Charges

New York Telephone has proposed a variety of miscellaneous, non-recurring charges to "recover costs of services and work activities, not identified by the FCC, related to the provision of unbundled elements and other services."² MCI argues that, without properly developed forward-looking cost studies carefully constructed to avoid double counting costs, these charges could have negative impacts on competition and discourage entry.

In our view, New York Telephone has inadequately defined and explained the need for each of the dozens of charges it proposes, and has not justified the proposed rate levels for them. We cannot be certain in some instances what the charges are for. In these circumstances, we are establishing interim rates for non-recurring costs,³ limited to existing service connection and non-recurring charges already present in New York Telephone's intrastate tariffs. Where the tariff would clearly apply a charge to a similarly

Essentially, New York Telephone argues that while the FCC established proxy rates for some elements, some elements may be established at federal tariff rates (47 CFR 51.513 (c)(7)).

New York Telephone's Initial Presentation of Issues for Arbitration, p. 35.

In other sections, interim rates for certain miscellaneous activities (911/E911, Collocation, OSS, etc.) are separately addressed.

situated retail customer (900 tariff), reseller (915 tariff), facilities-based local carrier (914 tariff), or interexchange carrier (913 tariff), New York Telephone may apply that charge as the interim rate under this agreement, subject to the limitations stated above. Where the tariff does not provide for a charge, New York Telephone may either not charge for the activity, or charge a zero rate if it believes it will ultimately be able to support a discrete charge as a permanent rate. In setting interim rates in this fashion, we are acting on the basis of the best information available to us at this time. These rates will be subject to refund or reparation upon our determination of permanent rates in Cases 95-C-0657, et al.

Reciprocal Compensation

Reciprocal compensation refers to the rates MCI and New York Telephone pay each other for completing each other's calls. Rates for reciprocal compensation are equivalent to the sum of the rates for the network elements involved in the transportation and termination of traffic--switching (local and tandem) and interoffice transmission.

As discussed above, neither company's cost studies provide an appropriate basis for setting interim rates for network elements; therefore, they are rejected for reciprocal compensation. The interim rates we have adopted for the appropriate elements will be used instead.

New York Telephone points out that interim rates set here may vary from those applied to other carriers under the tariff and therefore might be viewed by the Commission as discriminatory.¹ But as the rates established here are consistent with prior agreements, this is not a concern.

New York Telephone's Supplemental Presentation of Issues for Arbitration, p. 18.

OPERATIONAL ISSUES (FINAL OFFER)

Parties

were informed by the Administrative Law Judge that specific operational issues would be decided on a final offer basis; neither party objected. The arbitrator therefore has the option of choosing either of two proposals in its entirety or in part. The final offers must meet the standards set forth in 252(c) of the Act, that is, comply with the substantive provisions of 251 and applicable FCC regulations adopted pursuant to 251. If the final offers fail to satisfy these terms, then the arbitrator can request that the parties submit new offers.

Thirteen general issues were reserved for decision by the final offer process. The parties filed their final offers in the form of annotations to portions of New York Telephone's proposed interconnection agreement and portions of MCI's proposed attachments to its interconnection agreement, with accompanying text as to policy issues where appropriate.

In addition, MCI filed an annotated version of New York Telephone's proposed interconnection agreement. To simplify the decisional process, this award tracks the MCI proposed interconnection agreement, as this was the basis for the ongoing mediation process. It is understood that the two proposed agreements, although organized differently, refer to identical subject matter. The organization of this award should imply no conclusion as to what form or which party's template should be followed in crafting the final interconnection agreement for filing pursuant to 252(e)(1) of the Act.

A procedural conference was held before Judge Stein on November 7, 1996, at which time the final offer process was discussed. The parties were encouraged to continue negotiating to resolve as many of the issues as possible. To

that end, additional mediation sessions were requested by the parties and were conducted by Judge Lee on November 13, 19, and 20, 1996. The parties were able to come to agreement on many of the provisions contained in the fscusses generally the final offer issues remaining; the award with respect to each of the contract provisions is set forth in Appendix A. Unfortunately, at no time in this process did the parties stipulate effectively to a limited set of issues or even a numbering system in this arbitration. Issues as to which we conclude the parties reached agreement in principle or do not disagree are not considered in this award. If issues were excluded that either party considers to have been subject to arbitration, this can only be attributed to the parties' failure, in the final analysis, clearly to define the arbitrable issues.

Connection of Elements in General

MCI is contesting the level of the service access charges applicable under New York Telephone's Optical Transport Interconnection Service II for connections of network elements to the interconnector node. MCI's position is that the charges for jumper wire and cable used to make these connections should be based on forward-looking costs and should be nominal.

New York Telephone responds that the service access charges were set to recover the costs that it incurs in providing a collocated party with access to unbundled elements. Unique charges apply, based on the capacity of the connection (voice, 64 kbps, 1.544 Mbps, or 45 Mbps). We set these charges in 1992, equal to cost at that time.¹ The

These charges were filed by New York Telephone in Case 28425, *Impact c the Modification of Final Judgement and the Federal Communications Commission Docket 78-72 on the Provision of Toll Service In New York State*, Opinion No. 92-13 (issued May 29, 1992).

current charges, which have remained unchanged since 1992, are \$1.90 per month for a voice grade or 64 kbps connection, \$3.51 per month for a 1.544 Mbps connection, and \$35.87 per month for a 45 Mbps connection. These charges are reasonable, particularly when compared to rates for residence and business wiring. Accordingly, this issue is found for New York Telephone.

Efficient Connection of Unbundled Loops

MCI asserts that purchasers of unbundled loops must be able to connect them efficiently to their networks or to other unbundled network elements purchased from New York Telephone. To do this, the purchaser should be permitted to place concentration (digital loop carrier) equipment in the New York Telephone end office where the loops terminate. The purchaser then should be permitted to lease transport from New York Telephone or from an alternative transport provider that connects the concentration equipment to MCI's network.

In its November 18, 1996 filing, New York Telephone offered the affidavit of Francis C. Safara on this issue. Mr. Safara identified the several extended link services presently offered by New York Telephone, as well as proposed services that will be offered:

Presently available - collocation required Capacity

DS1 Channelized Extended Link Service	24 links
DS3 Extended Link Service	72 links

Planned, available 1st quarter 1997 - collocation not required

Analog link transport service	1 link
DS1 Link Transport service	24 links
DS3 Link Transport service	72 links

These extended link services provide the technical, cost, and rate efficiencies requested by MCI. In addition, the proposed

link transport services will eliminate the requirement for collocation, as requested by MCI. Accordingly, this and related issues are found for New York Telephone, with the proviso that the proposed services be offered no later than March 31, 1997.

The concentration function between the New York Telephone office and the MCI location is suitably served by the multiplexing element offered by New York Telephone. Consequently, New York Telephone is not obligated to provide central office-based digital loop carrier remote equipment, as it is not necessary and New York Telephone does not use such equipment in this setting. As for the use of digital loop carrier, MCI is entitled to use this equipment in its collocation nodes, if desired.

Coordinated Cut-Overs of Unbundled Loops

MCI specified procedures to coordinate cut-overs of unbundled loops, including agreed-upon conversion periods, New York Telephone coordination, and minimizing end user service interruptions to no longer than five minutes. Coordinated cut-overs are the means by which a New York Telephone customer is cut over to MCI local service when MCI uses unbundled local loops. MCI notes that this process is critical to ensure commercial use of unbundled loops without significant customer disruption. New York Telephone's proposed service disruption times were too long, in MCI's view, and would impede MCI's ability to offer service via unbundled loops. New York Telephone responded that its proposal presented to MCI on July 15, 1996 established a conversion window that begins with a two-hour commitment and is reduced over time to one hour. New York Telephone believes that this interval adequately addresses MCI's request for a coordinated cut-over of unbundled loops, although there is no agreed upon specific procedures.

MCI's requests that are in dispute--that New York Telephone notify MCI when the conversion is complete and that end user interruptions be minimized and not exceed five minutes--have not been shown by New York Telephone to be unreasonable, nor has New York Telephone proposed an alternative standard. Accordingly, this issue is found for MCI.

Pre-Ordering and Order Processing

MCI has requested that New York Telephone make available to MCI industry standard electronic interface systems sufficient to order interconnection trunks, unbundled network elements, resale, and other New York Telephone services on a basis as efficient as the best used by New York Telephone to provide these services to itself. In support of this request, MCI notes that these interfaces are key determinants of its ability to provide potential customers with the same level of service as New York Telephone.

New York Telephone responds that it will provide order processing interfaces, using industry standard electronic data interchange standards. However, similar standards have not been established by the industry for pre-ordering interfaces. (Pre-ordering activities include looking up available services and finding available telephone numbers). New York Telephone is working with MCI and other companies in establishing these standards, scheduled to be available in the first quarter of 1997. It has committed itself to provide an electronic interface through a single system ("DCAS") that would enable MCI to access all of the many NYNEX systems utilized by New York Telephone in its pre-ordering and ordering processes.

In the interim, New York Telephone is offering the interfaces it uses (identified as EIF), and has developed a pre-ordering system that may be used with a personal computer

and a World Wide Web browser program.

MCI's need for standard interfaces has been justified, and they should be provided by New York Telephone as soon as technically feasible. New York Telephone's other offers (EIF and a graphical user interface or Web browser) are reasonable interim efforts to accommodate MCI's needs, but do not substitute for a more useful and permanent interface. We find for New York Telephone on this issue.

Provisioning and Installation

MCI has requested that New York Telephone install ordered items in no more time than it takes for New York Telephone to install such items for itself or its affiliates.

MCI also requested real-time access to the New York Telephone's provisioning system in order to allow it track order status and to be able to report such information to customers. Finally, to ensure parity, MCI requests that New York Telephone report quarterly on the installation intervals for new entrants and for itself on each type of installation order.

New York Telephone responds that it proposed use of standard intervals defined in its 914 Tariff for the provision of interconnection trunks. For connection of links, New York Telephone proposed two alternatives for MCI's consideration: fixed intervals under contract or the same interval utilized by New York Telephone in its retail operations, which varies based on the actual work load at hand. Real-time access to information contained in the company's many provisioning and installation-related systems would be provided using DCAS.

The fixed intervals proposed by New York Telephone were unacceptable to MCI as being too lengthy, and the offer to process orders in the same intervals as for New York Telephone customers as too flexible, for while parity concerns might be satisfied, New York Telephone could not assure

adequate performance. In the alternative, MCI proposed to include specific standards for order processing in attachments to the proposed interconnection agreement with New York Telephone. The general reaction by New York Telephone was to reject these specific measurements as unnecessary, without proposing alternative intervals.

In contracting to purchase services from New York Telephone, MCI is entitled to receive measurable and enforceable performance criteria. Our findings on the proposed final offer standards are shown in the review of all contract provisions in Appendix A.

For provisioning and installation, New York Telephone should provide available EIF and graphical user or web browser interfaces as interim measures, and a DCAS interface conforming to industry standards (electronic data interchange) as soon as technically feasible.

Maintenance and Trouble Resolution

MCI has requested that New York Telephone put in place procedures and mechanisms to resolve troubles and disputes in a timely and efficient manner including single points of contact available seven days per week, 24 hours per day ("7 by 24"), trouble management and escalation processes, and repair intervals equivalent to those provided to New York Telephone customers. It also requested that New York Telephone provide real-time access to repair tracking and trouble reporting systems in order to allow it to inform its customers as to the status of repairs. Finally, in order to determine whether MCI was receiving parity, MCI requested quarterly reports on the repair and maintenance intervals for other new entrants and for itself. Accordingly, in its final offer contract language MCI proposed to hold New York Telephone to numerous service standards.

New York Telephone initially argued that there was

no substantial difference between the parties; subsequently, it asserted that MCI was entitled to parity, that is, to a level of quality no lower than what New York Telephone provides itself. MCI, however, identified each of its requests with a proposed provision in the contract attachments.

MCI contends that general assurances of parity treatment, absent specific commitments to explicit standards, may put it at a competitive disadvantage. Where MCI's expectations are reasonable, we agree. Accordingly, we find that New York Telephone must provide "7 by 24" access to its operating support systems, and access to New York Telephone personnel as available. Trouble management methods, repair intervals, and reporting requirements proposed by MCI in the contract appear to be reasonable and are adopted. Finally, the requested access to reporting systems should be made available by New York Telephone, using industry standard interfaces, as soon as practicable.

Quality of Service, Liquidated Damages, and Credits

MCI requests that the quality (including but not limited to average length of outages and percent of call blockage or failure) of items purchased from New York Telephone, including interconnection, unbundled elements, resale, and other services, equal the best New York Telephone provides itself. MCI urges that this is a basic tenet of nondiscrimination: that the quality of the services and functions that New York Telephone provides new entrants must at least equal the quality of what it provides to itself.

It requests New York Telephone to report quarterly on the average outage length and percent call blockage for new entrants and for itself. The requested reporting requirements on quality of service indicators would help MCI measure how the service provided new entrants compares to that New York

Telephone provides itself. New York Telephone agrees that service quality reporting is appropriate but asserts that MCI's Petition lacked sufficient specificity to assess the nature and extent of MCI's request. This specificity was subsequently provided by MCI in the contract attachments. New York Telephone found most of the proposed standards to be unacceptable, but did not propose alternative standards, instead relying on general assurances of parity. In our view, many of the proposed MCI standards are reasonable and achievable, and those therefore are adopted, as detailed in Appendix A. The balance are rejected and, as to those issues, we adopt New York Telephone's final offer.

In Attachment X to its contract, MCI has proposed a set of credits for specified New York Telephone failures to meet performance standards. New York Telephone, in its commentary, disputes MCI's establishment of these credits, asserting that MCI has rewritten legal precedent regarding the legal rights of allegedly injured parties to seek relief from regulated entities.¹ It argues that Attachment X should be rejected for MCI's failure to tie its proposed penalties into New York Telephone's tariff, or to the cost-based compensation received by New York Telephone for the provision of such service to MCI. New York Telephone adds that MCI would not be without remedies if there were "actual deficiencies" (emphasis in the original) in New York Telephone's service performance:

MCI would receive the service penalties due the end user under New York Telephone's resale tariff. In addition, New York Telephone offers the same liquidated damages for the provision of unbundled links as it made available to MFS pursuant to its interconnection agreement. New York Telephone also asserts MCI could urge the establishment of penalties in

New York Telephone's Commentary to Attachment X, n. 1.

the projected generic carrier-to-carrier service case.¹

MCI rejects all of New York Telephone's proposed language and deletions. It disagrees that liquidated damages are its sole remedy in the event that New York Telephone fails to meet the agreed-upon service standards that MCI is relying upon to provide service to its customers. In MCI's view, liquidated damages are "simply the cost of doing business." New York Telephone could breach the agreement for a fixed cost, MCI claims, while benefitting from the harm caused to MCI. In contrast, MCI believes, its proposed system of credits, with its proposed limitation of liability provision, makes compliance with the parity standards a rational economic choice. In addition, MCI would not be foreclosed from seeking consequential damages if New York Telephone repeatedly breached the agreement.

Specifically, MCI proposes that New York Telephone will credit MCI against charges due to New York Telephone's failure to meet performance expectations measured on a monthly basis. Delay credits would be available to MCI when New York Telephone does not install a service at the specified time. These credits are for subscriber specific and non-subscriber specific services and include the waiver of the associated provisioning and installation charge for the delayed service.

In addition, for subscriber specific services, there would be an additional delay credit equal to the monthly charge for the service for each month. For non-subscriber services, there would be an additional credit of \$25,000 per day for each day of delay.

In MCI's proposed contract, New York Telephone would be liable for performance standard credits for each and every outage/trouble call that is not restored/resolved in the

Cases 95-C-0657 et al., Resale Competition, Order Declaring Void Prohibitions on Resale (issued June 25, 1996).

specified interval. This section is divided into outages either requiring or not requiring premises visits, and the percentage of responses that New York Telephone is to achieve.

Credits are also proposed for delayed or improperly provided subscriber usage data. New York Telephone would be liable for a subscriber usage credit for each day such data is delayed.

New York Telephone, in contrast, posits a set of liquidated damages as the sole remedy in the event it fails to meet certain performance standards. Specifically, it agrees to pay liquidated damages to MCI when there is a "specified performance breach," which is defined as the failure by New York Telephone to meet the performance criteria for any of three defined activities for three consecutive calendar months. These activities are: the installation of unbundled links, the provision of interim telecommunications number portability, or the repair of out of service problems.¹

The schedule for liquidated damages is a sliding scale, based on the number of links installed in New York and the monthly specified activity threshold. The range of damages per performance breach ranges from \$2,500 to \$75,000.

We find that New York Telephone's proposal to use liquidated damages as a remedy is a reasonable approach. However, liquidated damages should not be the only recourse available to MCI in the event of a breach and we adopt MCI's subscriber-specific credits. Appendix A contains our

Performance criteria are defined by New York Telephone as its performance of each of the specified activities within the designated time interval in at least 80% of the instances. Performance interval dates are delineated for each specified activity, including new link installation, "hot cutover" installation, orders for interim number portability installation, an out of service repairs. The out of service repairs generally have a time interval of less than 24 hours from New York Telephone's receipt of notification of the out of service condition. New York Telephone notes that this excludes residence customers in single and two-family homes and that such damages will not commence until MCI has 250 links in service in Connecticut a LATA 132.

determination of the contract provisions that effectuate these conclusions. MCI is correct that its proposal will allow effective enforcement of this agreement. The majority of its proposed contract language is adopted, as detailed in Appendix A.¹

Dispute Resolution Process

MCI believes that a contract-specific dispute resolution process is necessary and proposes a procedure involving expeditious submission of disputes to the Commission, envisioning a 60-day decision-making process in which we may appoint a facilitator, with expenses borne equally by the parties. This provision would not preclude the parties from seeking relief available in any other forum.² New York Telephone, however, considers existing Commission procedures to be adequate. In its view, current procedures provide the flexibility needed for the Commission to arbitrate disputes.³ New York Telephone asserts that MCI's proposal will lead to frivolous complaints, especially if there is fee sharing, and that any change in our procedures needs notice and comment under the State Administrative Procedure Act.

We find for MCI on this issue, although we do not interpret MCI's proposal as imposing a mandatory deadline for our decision, nor do we cede authority over what method to employ to resolve disputes, including use of mediation. However, we recognize the importance of expeditious dispute resolution for new market entrants. Finally, we reject New York Telephone's argument that the adoption of MCI's final offer constitutes a change in our procedure necessitating

This determination may be subject to the outcome of a superseding generic proceeding concerning carrier-to-carrier service standards.

MCI's Supplemental Brief, p. 2.

New York Telephone's Supplemental Presentation, p. 26.

notice and comment pursuant to the State Administrative Procedure Act. This is neither a promulgation of regulations nor a generic policy determination, but an adjudicatory ruling interpreting a contract which binds two parties pursuant to procedures mandated by federal law.

Network Information

MCI requested certain network information, subject to privacy or proprietary safeguards. These requested data will be used to access unbundled elements, implement dialing parity, efficiently program MCI switches ensure proper routing of calls, and properly bill for calls. New York Telephone responded that it will provide the following information:

- a) Customer lists - New York Telephone will provide MCI with publicly available customer data. However, customer data that is not publicly available is Customer Proprietary Network Information subject to 222 of the Act.
- b) Points of interconnection available on the New York Telephone network - New York Telephone will try to provide all the requested information MCI considers as falling within this category.
- c) List of all local exchanges, and for each local exchange, the NXXs that are defined as within the New York Telephone's "local calling areas" will be provided.
- d) Switch locations (including tandems and end offices) will be provided.
- e) For resale products, customer usage data sufficient to render itemized bills--New York Telephone will provide information to the extent available for resale products necessary for MCI to render bills to its resale customers.
- f) Provision of billing information for casual usage--New York Telephone will provide information to the extent available necessary for MCI to render bills for casual users of MCI services.
- g) Location of network interface devices and types thereof - New York Telephone is unsure of the types of

information MCI considers as falling within this category. New York Telephone is prepared to meet its obligation to provide MCI with information necessary for it to interconnect and use unbundled network elements to the extent that the Company has such information. New York Telephone is willing to work with MCI to address their specific needs for this type of data.

h) Location and type of feeder distribution interfaces. New York Telephone is prepared to meet its obligation to provide MCI with information necessary for it to interconnect and use unbundled network elements to the extent that it has such information. It is willing to work with MCI to address specific needs for this type of data.

Each of the MCI requests for information was subsequently added to the contract attachments. To the extent that New York Telephone has already compiled the requested information, either in existing documents, or in its computer systems, it should be provided. Information that may exist in New York Telephone computer systems, but is not available to New York Telephone as an entire dataset need not be provided to MCI.

CONCLUSION

We have herein decided the issues presented to us for arbitration as required by the Act. Attached as Appendix C is the implementation schedule for the actions we have required in this arbitration award.

The Commission orders:

1. The issues presented for arbitration by MCI Telecommunications Corporation and New York Telephone Company are resolved as decided herein.

2. The findings concerning the parties' final offers, contained in Appendix A, are adopted consistent with this Opinion and Order.

3. The interlocutory appeal of MCI

Telecommunications Corporation is denied.

4. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY

Secretary