

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of AT&T Communications of)
Ohio, Inc.'s Petition for Arbitration of Inter-)
Connection Rates, Terms, and Conditions) Case No. 96-752-TP-ARB
and Related Arrangements with The Ohio)
Bell Telephone Company dba Ameritech)
Ohio.)

ARBITRATION AWARD

The Commission, considering the application, the evidence of record, and the arbitration panel report, and being otherwise fully advised, hereby issues its Arbitration Award.

APPEARANCES:

Vorys, Sater, Seymour and Pease, by William S. Newcomb, Jr. and Benita A. Kahn, 52 E. Gay Street, P.O. Box 1008, Columbus, Ohio 43215-1008, Robert W. Quinn, Jr., AT&T Communications of Ohio, Inc., 227 West Monroe Street, Chicago, Illinois 60606, on behalf of AT&T Communications of Ohio, Inc.

Porter, Wright, Morris & Arthur, by Daniel R. Conway, Mark S. Stemmm, Stephanie L. Mott, and Samuel H. Porter, 41 South High Street, Columbus, Ohio 43215, Michael T. Mulcahy, Ameritech Ohio, 41 Erieview Plaza, Room 1400, Cleveland, Ohio 44114, and Jon F. Kelly, Ameritech Ohio, 130 East Gay Street, Room 4C, Columbus, Ohio 43215, on behalf of Ameritech Ohio.

ARBITRATION AWARD:

On February 27, 1996, AT&T Communications of Ohio, Inc. (AT&T) served upon Ameritech Ohio (Ameritech) a written request for and began negotiations of the rates, terms, and conditions for interconnection, resale services, network elements, and related services and arrangements pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the Act). Pursuant to Section 252(b)(1) of the Act, if the parties are unable to reach agreement on the terms and conditions for interconnection, a requesting carrier may petition a state commission to arbitrate any issues unresolved by voluntary negotiation under Section 252(a) of the Act. On July 18, 1996, this Commission established guidelines in order to carry out its duties under Section 252 of the Act. See, In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996, Case No. 96-463-TP-UNC (July 18, 1996). Under those guidelines, an internal arbitration panel, composed of members of the Commission staff, is assigned to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement. On August 1, 1996, AT&T filed a petition for arbitration of numerous issues to establish an interconnection agreement between it and Ameritech, pursuant to Section 252(b) of the Act.

In its petition, AT&T initially identified 42 issues for which it sought arbitration, including: resale, access to unbundled network elements (UNEs), transport and termination of traffic, collocation, access to right-of-way (ROW), interim number portability (INP), quality assurance, operational interfaces and support systems, and alternative dispute resolution (ADR) for resolving disputes. Along with the petition, AT&T filed a proposed interconnection agreement and a motion for a protective order of many of the exhibits attached to its petition. On August 2, 1996, Ameritech filed a memorandum in support of AT&T's motion for a protective order and, through that pleading, raised its own independent request for a protective order of the same exhibits. The attorney examiner granted the motions for protective order.

Also on August 2, 1996, Ameritech filed a petition for arbitration with AT&T to arbitrate three issues that Ameritech claimed it has raised in the negotiations between Ameritech and AT&T, under Sections 251 and 252 of the Act, and which Ameritech claimed AT&T had failed to raise in its petition for arbitration. These issues involve: (1) the prices, terms, and conditions which would apply to the collocation of Ameritech's transmission equipment in AT&T's offices, (2) AT&T's obligation to

provide information regarding the local transport and termination costs, and (3) whether AT&T, as a local exchange carrier (LEC), is exempt from the requirement of Section 251(c)(1) of the Act requiring carriers to negotiate in good faith over the terms and conditions of agreements to fulfill the obligations set forth in Section 251(b) of the Act. At the commencement of the hearing, Ameritech indicated that it would not pursue the first or second issues in its arbitration petition. With respect to the third issue, the panel found that the obligations of Section 251(b) of the Act are duties which cannot be imposed upon AT&T at the present time. However, the panel determined that AT&T will be required to comply with the Commission's guidelines relative to these obligations at the time it has a local exchange network, facilities, or services available for use to end users. No exceptions were taken to the panel's recommendation on this issue.

On August 12, 1996, MCI Telecommunications Corporation (MCI) filed a motion to consolidate its arbitration petition with all other Ameritech arbitration proceedings, along with a request for an expedited ruling. MCI filed the motion prior to filing its arbitration petition. AT&T filed a response to MCI's motion, stating that it was not opposed conceptually to consolidation of issues, but, with the timing of MCI's arbitration petition, it was unsure whether there would be sufficient time before the scheduled arbitration hearing in TCG Cleveland's (TCG) proceeding to adequately review, evaluate, and comment on specific similar issues. On August 30, 1996, Ameritech filed a memorandum in response to MCI's motion, deferring to the Commission's discretion in determining how best to apply its resources in conducting an arbitration.

On August 19, 1996, TCG and AT&T filed a joint motion to sever cost issues in their arbitration proceedings, including the costs associated with the transport and termination of local calls and UNEs and a request for an expedited ruling. The joint movants questioned whether Ameritech's August 12, 1996 cost study complied with the Federal Communication Commission's (FCC's) new total element long run incremental cost (TELRIC) methodology. Moreover, the joint movants contended that there was insufficient time to comprehensively review and evaluate the cost studies developed by Ameritech. The joint movants requested the Commission establish initial rates with the FCC established proxies or impose a bill and keep arrangement. On August 26, 1996, Ameritech filed a memorandum contra the motion to sever the cost issues.

By entry dated August 22, 1996, Ameritech's petition for arbitration was docketed as Case No. 96-824-TP-ARB and was consolidated with AT&T's petition for arbitration in this case, 96-752. On August 26, 1996, Ameritech filed its response to AT&T's petition for arbitration and AT&T filed its response to Ameritech's petition for arbitration. On August 28, 1996, AT&T filed a memorandum contra Ameritech's petition for arbitration and requested that Ameritech's petition be dismissed. Also, on August 28, 1996, TCG filed a letter in which it noted that it received a revised cost study from Ameritech, but argued that there was insufficient time to assess the validity of the cost study. By entry dated August 30, 1996, the attorney examiner granted the motion to sever all unresolved cost issues associated with Ameritech's TELRIC costs studies in the TCG and AT&T arbitration proceedings and denied MCI's motion to consolidate the arbitration proceedings.

Timely requests for interlocutory appeals were filed by MCI and Ameritech. Ameritech filed an application for interlocutory appeal of the severance ruling and MCI filed an application for interlocutory appeal of the consolidation ruling contained in the attorney examiner's August 30, 1996 entry. By entry issued September 3, 1996, the attorney examiner concluded that each of the appeals represented a new question of policy and that an immediate determination by the Commission was needed to prevent the likelihood of undue prejudice or expense to one or more of the parties. On September 4, 1996, the following parties filed the following pleadings: TCG filed a memorandum contra Ameritech's and MCI's interlocutory appeals; Time Warner Communications of Ohio, L.P., filed a motion to intervene and a response to the interlocutory appeals supporting the severance of the TELRIC issues; Ameritech filed a response to MCI's interlocutory appeal, AT&T filed a memorandum contra Ameritech's interlocutory appeal; and The Office of the Ohio Consumers' Counsel (OCC) filed a letter supporting the severance of the TELRIC issues.

On September 5, 1996, we determined that the attorney examiner's rulings on the severance and consolidation issues should be affirmed. Additionally, we opened a

new docket, Case No. 96-922-TP-UNC (hereinafter referred to as 96-922) for conducting the TELRIC studies review and noted that it will be helpful for others to participate and provide information to the Commission on Ameritech's TELRIC studies. We clarified that we would use the proxy rates/ranges that have been provided by the FCC, pending the completion of the TELRIC review, to establish interim rates in this arbitration proceeding, as well as in MCI's and AT&T's arbitration proceedings. We also noted that we would establish interim rates, as best as can be determined, for the cost elements in which the FCC did not provide a proxy, pending the completion of the TELRIC review in 96-922, after which the determinations in 96-922 would supplant the interim determinations made in the various arbitration proceedings. Moreover, we did not accept MCI's suggestions for reorganizing the arbitration of the issues in the three proceedings involved.

By entry dated September 11, 1996, the attorney examiner scheduled the arbitration hearing in this case to begin on September 24, 1996, and scheduled the oral arguments. AT&T and Ameritech timely filed their arbitration packages on September 17, 1996. AT&T and Ameritech both filed motions for protective orders regarding various portions of the information contained in their arbitration packages. The attorney examiner granted the protective orders. The arbitration hearing was held on September 24, 25, 26, and 30, and October 1, and 2, 1996. AT&T presented the testimony of eight witnesses (Thomas Crisham, James Henson, William Lester, Bridgit Manzi, Lila McClelland, Robert Sherry, Michael Starkey, and Matthew Taylor) and Ameritech presented the testimony of eight witnesses (Neil Cox, Gregory Dunny, John Mayer, Wayne Heinmiller, Warren Mickens, Kent Currie, Debra Aron, and James Farmer). Oral arguments were presented to the panel on October 3, 1996. The parties indicated to the panel that they had resolved issues 5, 9, 15, 16, 21, and 42.

On November 5, 1996, the panel issued its report on the remaining 36 issues identified by AT&T for arbitration. In its report, the panel noted that several appeals and requests for stay of the FCC's rules regarding Sections 251 and 252 of the 1996 Act had been consolidated at the Eighth Circuit Court of Appeals (Eighth Circuit). Utilities Commission of the State of California, et al., v. Federal Communications Commission, etc., Case No. 96-3520. The Eighth Circuit granted a temporary stay of the FCC's pricing rules and the "pick and choose" rule, while it considered the requests for and held oral arguments on those stay requests. As a result of the stay, its temporary nature, and the arbitration statutory time frames of the Act, the panel presented recommendations based upon the FCC's rules and this Commission's guidelines. See, In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (released August 8, 1996 and hereinafter referred to as the FCC order or 96-98), and In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues, Case No. 95-845-TP-COI (June 12, 1996 Finding and Order and November 7, 1996 Entry on Rehearing). On November 12, 1996, the United States Supreme Court (Supreme Court) declined to lift the Eighth Circuit's stay.

We would note that, as a result of the decisions from the Eighth Circuit and the Supreme Court, our award in this proceeding with respect to the pricing issues cannot rely on those FCC's rules. Given the Eighth Circuit's decision to stay those rules, we note that our rules are the only ones in effect in these areas.

On November 12, 1996, AT&T and Ameritech filed exceptions to the panel report and on November 15, 1996, both parties filed replies to the exceptions to the panel report. AT&T took exception to the panel's recommendations regarding issues 2, 4, 8, 12, 17, 19, 20, 24, 25, 31, 34, 35, 37, and 38, and requested clarification on issues 6, 7, 10, 14, 18, 23, 26, and 32. Ameritech took exception to the panel's recommendations regarding issues 1, 2, 3, 6, 7, 10, 12, 14, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, and 32. Neither party took exception to the panel's recommendations related to issues 11, 13, 26, 28, 29, 33, 36, 39, 40, and 41. AT&T filed a portion of page nine of its exceptions under seal. We find that the information relates specifically to data that had previously been given confidential treatment and should remain confidential. However, in accordance with Rule 4901-1-24(F), Ohio Administrative Code (O.A.C.), this decision to prohibit disclosure shall automatically expire 18 months after the date of this award. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date. Previously, other material filed in this docket was ruled to be confidential. Any prohibition against disclosure of that material shall also expire 18 months after the date of this award. On November 25, 1996, both parties made oral presentations before the

Commission which were transcribed, regarding their exceptions and replies. On November 26, 1996, Ameritech and AT&T filed letters with the Commission which indicated that they did not object to the Commission issuing its order on December 5, 1996, which would be beyond the nine-month deadline by which this Commission is to issue its order under the Act. In addition, Ameritech filed a letter on December 3, 1996 responding to several questions raised by the Commission during the oral presentation on November 25, 1996.

Issues 1, 2, and 3

What services should be included in Ameritech's resale offering? (Issue 1)

Whether the Commission should use AT&T's avoided retail cost model to determine the appropriate discount rate to apply to Ameritech's retail product offerings to derive wholesale rates? (Issue 2)

Whether each and every retail rate should have a corresponding wholesale rate? (Issue 3)

The panel made the determination that Ameritech's cost study, rather than AT&T's cost model, provided the most reasonable basis for establishing an appropriate resale discount. However, the panel believed that certain assumptions that Ameritech made in determining the proper avoided cost levels used in certain shared accounts were not reasonable and the panel recommended revisions to Ameritech's model. The panel believed that the aggregate discount for all services would be at least 19 percent after the revisions are made and recommended that an interim discount of 19 percent be used until Ameritech makes the required revisions to its model and re-runs the model to demonstrate the real and actual discount. The panel also recommended that, when Ameritech provides any retail tariffed service at a volume discount, it must also provide that volume discount less the retail avoided cost associated with the service(s) to AT&T or any other reseller, and that end-user contracts must be offered for resale, but only to the extent that the reseller is only providing the services within the contract to a customer that is similarly situated.

Ameritech takes exception to the panel's conclusion that call completion/operator services (OS) (Account 6621) and number services/ directory assistance (DA) (Account 6622) expenses will be avoided in a wholesale market, and that the uncollectible expense booked to Account 5301 should be considered as 100 percent avoided. Ameritech contends that there was no need for it to provide evidence on the portions of Accounts 6533 and 6534 that will be avoided because Commission Guideline V.A.4.3 correctly presume that the costs in those plant accounts will not be avoided. Ameritech believes that, at a minimum, the panel's recommendation for promotions must be modified to the extent necessary to be consistent with the Commission's November 7, 1996 Entry on Rehearing in 95-845. Ameritech urges the Commission to make clear that the requirement to offer end-user contracts at wholesale rates only applies to contract services that are "telecommunications services", as defined by 47 U.S.C. §153(46), provided "at retail to subscribers who are not telecommunications carriers." 47 U.S.C. §251(c)(4)(A).

AT&T objects to the panel's decision to reject the AT&T model and to adopt the Ameritech model to determine the discount and the panel's conclusion that the interim rate in this proceeding should be 19 percent. AT&T asserts that the Commission should adopt an interim rate based on AT&T's avoided cost model of either 25 percent or 27.5 percent. AT&T contends that there was no evidence in the record which demonstrates the amount that Ameritech currently spends on "trade shows" or "trade publications" or what services it advertises through those forums, how those amounts were calculated, or upon what assumptions those expenditures were based. AT&T also argues that the panel also erred in concluding that only 63.46 percent of the costs captured in Account 6623 (customer services) would be avoided in a wholesale environment, and should have adopted AT&T's proposal which would

have avoided 100 percent of those costs. Finally, AT&T requests that, in the event the Commission approves the panel report as the arbitration award in this proceeding, the Commission should clarify the procedure to be used for Ameritech to make the recommended changes to its avoided cost study to ensure that AT&T has proper notice and an opportunity to be heard on those adjustments.

Arbitration Award for Issues 1, 2, and 3:

We have reviewed the panel's determination to use Ameritech's cost model, rather than the AT&T's avoided cost model, to calculate the appropriate discount for resale rates. However, we disagree with the panel's determination and believe that AT&T's avoided cost model should be used to calculate the discount. First, we disagree with the panel's reasoning that Ameritech's cost model provides a more appropriate basis for determining an actual discount and that AT&T's avoided cost model is more appropriate for the development of a proxy rate. While we acknowledge that there were questions raised about AT&T's model, there were also questions raised about Ameritech's model. Further, we believe that AT&T's model's reliance on cost information derived from Ameritech's Uniform System of Accounts (USOA) provides a more accurate and more easily verifiable methodology than does the Ameritech model.

We also believe that AT&T's model, which arrives at a single discount to be applied to all services, provides a more simplified approach than does Ameritech's model, which attempts to develop a service specific discount. The use of a service specific discount will also create additional problems in the future. Whenever a new service will be offered by Ameritech, an associated avoided cost study along with the studies already required by our guidelines and Ameritech's alternative regulation case (Case No. 94-487-TP-ALT, November 23, 1994) will necessarily have to be done for that service. In its presentation before the Commission, Ameritech's counsel correctly acknowledged that some additional due process would need to be provided to AT&T to review and challenge such studies since its resale price will be directly affected (Oral Presentation, November 25, 1996, Tr. 1 at 28-30). We are concerned that, with the time frames established under our guidelines for competitive telephone services and Ameritech's alternative regulation plan, it will prove administratively difficult for the Commission to fully analyze both cost studies for any new services plus provide a forum for AT&T to contest such studies in the time frames set forth in Ameritech's alternative regulation plan. This potential delay will place all telephone companies in a competitive disadvantage.

We believe that the methodology behind AT&T's avoided cost study conforms with the FCC order and our guidelines. The FCC order provides that a state should use a methodology for calculating discount rates that is consistent with the manner in which that state establishes that LEC's retail rates. Ameritech's residential (R1) and business (B1) rates which represent the vast amount of services to be resold were not established on the basis of long run service incremental cost (LRSIC), rather we set Ameritech's retail rates based on embedded costs as determined in Case No. 84-1435-TP-AIR. Those rates were then reduced and frozen pursuant to a stipulation reached between the Commission staff, the Ohio Consumers' Counsel and the company, among others, in Ameritech's alternative regulation case, and the Office of Consumers' Counsel v. Ohio Bell, Case No. 93-576-TP-CSS, November 23, 1994. Thus, we believe that it would be inconsistent to set resale rates for those services at this time based on LRSICs. We are also concerned with the fact that the panel relied on direct avoided costs which are based on LRSIC studies, many of which were not supported by work papers while there was general testimony presented by Ameritech's witnesses on the methodology for these studies, the work papers on which those studies were based, would have provided the complete basis for the LRSICs. Finally, although our guidelines clearly call for interconnection rates to be set on a forward looking basis, the guidelines also make clear that resale rates are to be set on a "top down" basis. We specified the USOA accounts not to identify mere activities which were avoided as Ameritech claims, but rather to provide an easily verifiable method to identify specific costs incurred but avoided through the provision of resale.

We are also concerned with the panel's recommendation that the indirect expense for uncollectibles, Account 5301, should be considered as 100 percent avoided by Ameritech. While we agree with the panel's conclusion that it is unlikely that Ameritech will experience any uncollectibles when providing services to AT&T, we do not believe that this will necessarily be true with every carrier which Ameritech

will do business. We note that Ameritech determined its indirect expense for uncollectibles based on its business with not only interexchange carriers (IXCs), but also with Centrex resellers, information providers, independent telephone companies, and independent payphone providers. We do not believe that Ameritech's experience with all of these entities are necessarily representative of what will happen with respect to its uncollectibles account in a future resale environment, as many of these entities have different measures of credit worthiness. We believe that a more realistic expectation is that the avoided costs in this account will resemble Ameritech's experience with certified IXCs rather than all of these entities as a group. While Ameritech believes at a minimum that certified independent telephone companies should likewise be included, it has not demonstrated to our satisfaction in this case that it would be appropriate to do so. This results in a 95.83 percent avoided calculation. Accordingly, the percentage of avoided uncollectibles should be calculated at 95.83 percent, rather than 100 percent.

Also significant to our determination of the resale discount is the provision of OS and DA. OS involves helping customers place and complete calls. DA involves providing customers numbers and classified listings. The panel determined that it was appropriate to consider this account as 100 percent avoided, rather than the zero percentage recommended by Ameritech. AT&T testified that it intends to provide its own OS and DA services wherever possible. We believe that other resellers will purchase these services from Ameritech and, thus, it would be improper to always treat these accounts as 100 percent avoided. We also believe that, if these services are purchased, they will ultimately be purchased together. Thus, we find that a more appropriate approach for the development of the resale discount would allow for both possibilities. Accordingly, there should be a two-pronged resale discount, one discount which applies when the reseller purchases OS and DA, and a second discount when these services are not purchased in their entirety. We would also note that, if AT&T purchases all or part of OS and DA from Ameritech to serve all or part of its customer base, the former discount will be applicable to all services purchased by AT&T from Ameritech.

Based on our modification to Account 5301 for uncollectibles, and using our recommended two pronged resale discount approach, the discount to be applied when Ameritech provides OS and DA should be 20.29 percent. With respect to the discount to be applied when Ameritech does not provide OS and DA, this discount was calculated to be 27.46 percent. However, we note that AT&T stressed throughout this arbitration that it was willing to accept a discount of 25 percent. Accordingly, we believe that it is reasonable to accept AT&T's position, as it was based on many studies provided by AT&T in support of its recommended discount, and given the inherent uncertainties associated with any cost study, a 25 percent discount should be applicable when AT&T provides its own OS and DA. We note that the parties took other exceptions to the panel's determinations with respect to the resale discount; however, we support the rationale and the determinations of the panel with respect to these other exceptions. Finally, with respect to promotions that Ameritech offers in the retail market, the panel recommended that wholesale prices be set at either the promotional rate minus 10 percent or the wholesale rate, based on Guideline V.E.4. We have since revised that guideline to provide the same price structure without the 10 percent reduction. Accordingly, we modify the panel report on that rate to eliminate the 10 percent reduction. Similarly, the panel report should also be modified with respect to making contracts available for resale.

Issues 12, 19, and 25

At what rate should unbundled network elements and network element combinations be priced in the interconnection agreement?
(Issue 12)

What is the appropriate rate for traffic exchange arrangements?
(Issue 19)

What are the proper rates for collocation? (Issue 25)

In determining interim rates for UNEs, interconnection, and transport and termination, the panel determined that prices should be set at forward-looking long-run economic costs, namely LRSIC, and a reasonable allocation of forward-looking joint and common costs. The panel evaluated both parties' cost

information under the Commission's guidelines and the FCC order. The panel looked at Ameritech's TELRIC, plus joint and common costs, and then calculated a percentage adjustment, based on the areas in which there were concerns. The panel then adjusted Ameritech's interim rate proposal by that percentage. In rationalizing its decision for calculating the percentage discount, the panel first looked at prior LRSIC studies which included joint cost that Ameritech provided in support of its prices for end-user services. A 10 percent factor was added to the LRSIC for the recovery of common costs. Next, a calculation was performed to compare the overall weighted average of these LRSIC priced services with the overall weighted average of these TELRIC priced services. A difference between the LRSIC "plus" and TELRIC "plus" was derived and provided for a 21 percent downward adjustment to the TELRIC. Based on these determinations, the panel recommended interim rates for unbundled loops, network interface devices, unbundled ports, unbundled local switching, dedicated transmission links, shared transmission facilities, tandem switching, signaling and call-related database services, nonrecurring charges for the provisioning of UNEs, transport and termination, virtual and physical collocation, and a mechanism for "true up" if the rates differ from the rates established by the Commission upon examination in 96-922.

Ameritech argues that the panel's concerns with the modified assumptions utilized by Ameritech in its TELRIC studies are misplaced. Ameritech also contends that interim rates should be set without reference to proxy rate ceilings or floors set by the FCC in its order. Ameritech maintains that the Commission should rely upon Ameritech's local switching cost study to set interim prices for unbundled ports, because its TELRIC study shows that the local switching element does not recover the cost of the features and functionalities. Ameritech also takes exception to the panel's recommendation that the Commission utilize the FCC's proxy rate-setting approach which converts dedicated transport costs into per minute of use rates. Ameritech contends that the Commission should utilize Ameritech's TELRIC cost studies as the basis for setting nonrecurring rates for provisioning UNEs. Ameritech also argues that it would be unreasonable for Ameritech to expend resources developing pricing for combinations that are not yet specified or requested, or for network element combinations utilizing interim rates not designed for the elements used in the combination. Finally, with regard to interim rates for collocation, Ameritech recommends basing interim rates on Ameritech's TELRIC costs studies alone.

AT&T maintains that the concerns which the panel expressed regarding the assumption changes made by Ameritech in performing its TELRIC studies were valid concerns and the panel was justified in rejecting Ameritech's proposed rates on that basis. AT&T believes that the panel's use of the FCC order was entirely proper as an additional data point to utilize in setting interim rates until permanent rates can be set in a separate proceeding. AT&T also contends that each of the assumption changes for cost of capital, fill factors, and depreciation lives made by Ameritech had the effect of increasing the price of the unbundled network elements compared to that which would have been achieved using the assumptions Ameritech uses to price its own competitive service offerings. AT&T further asserts that, instead of adopting AT&T's or Ameritech's proposed prices, the panel created its own pricing proposal by analyzing "prior LRSIC studies which included joint costs that Ameritech has provided in support of its prices for end user service." AT&T contends that the panel should have relied on Ameritech specific cost information that was used to construct AT&T's proposed rates at the time of filing its arbitration petition and, thus, the Commission should rely on that information in setting interim prices in this proceeding and adopt, on an interim basis, AT&T's proposed prices for interconnection, UNEs, and for traffic exchange.

Arbitration Award for Issues 12, 19, and 25:

We adopt the panel's recommendations on issues 12, 19, and 25, and note that our findings are solely for the purpose of setting interim rates and that these issues will be fully explored in the 96-922 cost proceeding. In that proceeding, Ameritech will be expected to address AT&T's issues and make clear how Ameritech will apply these prices and methodology to its certified affiliates. We also believe that, with the expedited nature of the cost proceeding, and our mechanism for a true-up, as earlier discussed, neither party will be significantly disadvantaged by these interim rates during this period. We believe that, despite AT&T's and Ameritech's exceptions, the panel's basis for setting these interim rates was appropriately determined and neither AT&T's nor Ameritech's interim rates or the objections raised by those parties

provides a sufficient basis to reject the panel's recommended rates. We also believe that the panel's recommendation on combinations is reasonable and that, to the extent that Ameritech can price combinations, it should do so. Finally, with regard to requiring Ameritech to sell loops at weighted average cost rates, the Commission believes that the panel's recommendation is appropriate. As far as setting interim rates for access areas B, C, and D, this is consistent with Ameritech's alternative regulation plan. We believe that applying a weighted average to all eight different types of loops, rather than developing eight separate rates for each access area, is a more appropriate method for interim rates.

Issue 4

Whether Ameritech must provide electronic operational interfaces for the ordering, provisioning, maintenance, and billing of resold local exchange service which are at parity with those offered by Ameritech's own retail operation?

Section 10.8 of the contract provides for the nondiscriminatory provision of resale services by Ameritech. It appears, from a reading of this language, that the parties are in agreement as to the manner in which such provision will be made. Further, Commission Guideline IX.B.6. provides that each LEC which maintains a carrier-to-carrier tariff shall be required to provide nondiscriminatory, automated operational support systems which would enable other LECs reselling its retail telecommunications services to order service, installation, repair, and number assignment; monitor network status; and bill for local service. The panel believed that this issue was closed. The Commission has established guidelines for such offerings and, therefore, the panel recommended that the parties adhere to such guidelines and the contract language, as provided, to accomplish what is required from both in order to guarantee such performance.

AT&T does not believe that the panel's reliance on Commission Guideline IX.B.6. resolves the issue of whether Ameritech is required to provide AT&T with access to customer credit and payment histories. Specifically, AT&T seeks information on an identified customer's address, previous phone number, amount of any unpaid balance, whether the customer is delinquent on payments, and the length of service. AT&T argues that the Commission's rules for the establishment of credit for residential utility services, Rules 4901:1-17-03 and 4901:1-17-04 O.A.C., provide that a customer's payment history is an important factor in determining whether a deposit or advance payment may be required in the establishment of service. AT&T also cites to Rule 4901:1-17-03, O.A.C., which provides that all utility companies must promptly provide upon request, written information reflecting the requesting customer's service record relating to credit requirements. AT&T argues that Ameritech's concerns regarding the fair, credit reporting laws are expressly protected in Section 19.19 of the parties contract.

Ameritech contends that the question whether Ameritech is required to provide AT&T with access to customer credit and payment histories does not fit within Issue 4 and does not fit under any issue raised by AT&T in this arbitration. Ameritech contends that the Commission should decline to adopt AT&T's proposed Section 19.19 of the contract as AT&T failed to identify this as an issue for arbitration. Ameritech argues that there is nothing in the Act or the FCC order which requires or authorizes the Commission to require Ameritech to provide customer credit or payment histories, and AT&T is unable to point to any section of the Act requiring Ameritech to do so. Ameritech also rejects AT&T's claim that AT&T needs this information in order to access information on financial responsibility and to compete effectively in the local market. Ameritech argues that Rule 4901:1-17-03, O.A.C., applies to new customers and is inapplicable here, and that AT&T has advanced no reason why it cannot obtain customer credit and payment information in the same manner that Ameritech obtains such information for new customers, through a credit bureau.

Arbitration Award for Issue 4:

The Commission supports the panel's recommendation on Issue 4. With respect to AT&T's request for customer credit information, the Commission believes this request should be denied. The Commission understands AT&T's concern that credit information is an important factor in determining whether a deposit or advance

payment may be required in the establishment of service. However, the Commission points AT&T toward its October 16, 1996 Entry on Rehearing in In the Matter of the Commission Investigation into the Disconnection of Local Telephone Service for the Nonpayment of Charges Associated with Telephone Services Other Than Local Telephone Service Case No. 96-790-TP-COI. In that docket, we adopted guidelines for the establishment of deposit policies related to the disconnection of local telephone service. We believe that the normal business practice should be for each company to develop policies related to billing, credit, and deposits, consistent with our guidelines, which it believes will protect it against bad debt. Accordingly, we believe that, in order for AT&T to accomplish what it seeks in this area, AT&T, and every other prospective LEC, should follow normal business practice and utilize credit bureaus for any information they seek related to whether they will require a deposit for a prospective customer. We believe that is the more appropriate basis for furthering competition in the market place on this issue. We would also note that this recommendation does not alter Ameritech's obligation to provide customer proprietary network information to AT&T on nondiscriminatory terms and conditions.

Issue 8

Whether Ameritech will provide AT&T both a selective routing and branding option for operator assistance, directory assistance, and 611 maintenance/trouble assistance calls?

The panel determined that the solution to the selective routing dilemma is one which the parties needed to jointly work through and resolve. It was evident that Ameritech and AT&T have not gotten together to review Ameritech's proposed solution as it relates to the specific switches and their capabilities. The panel also did not believe that there was sufficient evidence on the record to make a determination as to whether and in what instances the line class code (LCC) solution would be technically feasible. However, the panel noted that Ameritech provides routing of calls to alternate OS providers and cellular providers and, thus, it appeared to the panel that there were workable solutions to this issue.

AT&T argues that the panel failed to resolve the issue of whether selective routing of OS and DA is technically feasible. AT&T contends that the evidence at hearing demonstrated that selective routing of OS and DA is technically feasible using LCC and is being utilized by other LECs and that at least one LEC has agreed to provide this capability through the use of an advanced intelligent network (AIN). AT&T argues that Ameritech presented no evidence that a single switch in Ohio would be affected by capacity issues, and that the capacity of a switch is a financial concern irrelevant to the issue of whether it is technically feasible to provide selective routing. AT&T also contends that there was no testimony presented by Ameritech that Ameritech had even commenced review of its Ohio switches to determine the possibility of capacity constraints.

Ameritech claims that the parties at Section 10.10 of the contract already agreed that Ameritech, upon AT&T's request, shall make available the ability to route local OS and DA calls directly to AT&T's platforms, to the extent such routing is technically feasible. Ameritech argues that AT&T cannot now argue that its agreed to language is inadequate. Ameritech contends that AT&T conceded that several open questions remain concerning the technical feasibility of selective routing and that AT&T admitted that it has no actual knowledge of whether Ameritech's switches are capable of accommodating AT&T's requests for selective routing using LCCs. Further, Ameritech contends that, until AT&T submits a specific request for custom routing at a particular location, Ameritech cannot evaluate and determine technical feasibility.

Arbitration Award for Issue 8:

We believe it is clear in the contract, as agreed to by the parties, that Ameritech will route local OS and DA calls directly to AT&T's platforms, if it is technically feasible. The issue of whether or not it is technically feasible to provide such routing was determined, by the panel, to be insufficiently documented by evidence in the record. We agree with the panel that the evidence on this issue is insufficient to make the determination of technical feasibility that AT&T seeks. We note, that as

acknowledged by the panel, Ameritech does provide routing of calls to alternate OS providers and cellular providers. Thus, we believe that there is a presumption that it is technically feasible. If the issues arises in the future, Ameritech will have the burden of demonstrating that it is not feasible. Ameritech must make available OS and DA through not only separate trunk groups, but also through LCCs where technically feasible. We understand that AT&T is concerned with the possibility that Ameritech may take an unusually long time in making the determination whether or not this routing is technically feasible. However, we agree with Ameritech that AT&T should make use of the (bona fide request) BFR process which will insure that Ameritech will make a timely determination of technical feasibility.

Issue 10

Whether Ameritech should be required to provide other operational processes and functionalities required to support resale of local service, such as directory listing requirements, yellow page advertisements, primary local exchange and interexchange carrier selections, 911 updates, and administrative requirements for telephone assistance programs and telephone relay service? (Issue 10)

The panel concluded that Ameritech should not be required to insert any provisions relating to yellow pages into this contract. However, the panel encouraged the parties to resolve that issue as well as the issue concerning the delivery of directories within the context of the contract in this arbitration. The panel also recommended that AT&T's language regarding the publisher's obligation to include, in the customer information section of each white pages and yellow pages directory, information about AT&T services, including addresses and telephone numbers for AT&T customer service, be included in the contract. The charge for the listing of such information would be calculated on the same basis as the charges, if any, paid by Ameritech for similar listings.

AT&T contends that Section 2151(b)(3) of the Act establishes a duty for Ameritech to provide nondiscriminatory access to directory listings, and that the FCC interprets nondiscriminatory access as the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC. AT&T also contends that Ameritech's claims regarding American Advertising Services (AAS) and its control of the directories were not established in the record. AT&T argues that the evidence at hearing demonstrates that Ameritech provides its business customers with a free yellow pages listing, included in its retail local service rates, and that the Act requires Ameritech to provide that same service on a nondiscriminatory basis to AT&T. AT&T also contends that the publisher shall include in the customer information section of each white pages and yellow pages directory information about AT&T services. AT&T contends that Ameritech should not be permitted to charge AT&T either directly or indirectly for its provision of directories to AT&T's customers, just as Ameritech does not separately charge its retail customers for the distribution. Finally, AT&T contends that Ameritech, not its publisher, should directly communicate with AT&T in connection with the provisioning of directory listings and directories for AT&T retail customers since the publisher is an affiliate of Ameritech.

Ameritech argues that the panel accepted its position that the Act does not require Ameritech to: provide free yellow pages listings to AT&T, include information describing AT&T's customer service in Ameritech's directories, or provide copies of the Ameritech/AT&T directory to all of AT&T's customers. Ameritech claims that it does not publish a yellow pages directory and that American Advertising Services (AAS) publishes the Ameritech yellow pages directories in Ohio, under the terms of a contract between Ameritech and AAS. Ameritech contends that AT&T's demands are not supported in the Act, or under the FCC's orders, because these are not telecommunications services, as defined in 47 USC Section 153(43) and (46), and are not subject to arbitration. Ameritech also contends that the panel erred by recommending inclusion of AT&T's proposed Section 15.1.7 in the contract. Ameritech claims that the Act requires nondiscriminatory access to listings so that a provider can provision directory assistance; it does not require that an ILEC publish listings of another provider in either a white pages or yellow pages directory. Ameritech also contends that Section 251(b)(3) does not require Ameritech to deliver yellow pages directories to AT&T's facilities-based customers.

Arbitration Award for Issue 10:

First, we agree with the panel's recommendation to use AT&T's language regarding the publisher's obligation to include, in the customer information section of each white pages and yellow pages directory, information about AT&T services, including addresses and telephone numbers for AT&T customer service. We believe that the inclusion of this information in the white and yellow pages directories will insure that AT&T's customers, as well as all customers of all LECs operating in Ameritech's service areas, will be able to access information about their local service provider on service related concerns. The Commission believes that AT&T should be at liberty to choose what information shall be included on this page of the directories. We also agree that the charge for the listing of such information should be calculated on the same basis as the charges, if any, paid by Ameritech for similar listings.

With respect to whether AT&T's business subscribers should receive a free listing in the white and yellow pages directories, we believe that, to the extent that Ameritech pays for or receives at no charge such listings for its customers, AT&T should receive the same treatment. Thus, if an Ameritech business customer receives a free business listing in the white and yellow pages directories as part of its retail local service, then AT&T's resale business customers should necessarily receive the same treatment as part of its resale service. We also believe that the delivery of white and yellow pages directories should also be based on whether Ameritech charges its customers for the delivery of the yellow and white pages directories. We believe that the price for the provision of directories is already accounted for in the resale price that Ameritech charges its customers and, therefore, there should be no extra charge for such distribution to AT&T's resale business customers. However, if there is a charge associated with resale customers, AT&T's customers would be obligated to pay such charges. If Ameritech does charge its facilities-based customers for delivery, we believe that Ameritech may assess a separate unbundled charge to AT&T's business customers for delivery of white and yellow pages directories, as set forth in Commission Guideline XV.C.3., which provides that prices for such provision of directories shall be set at a level that allows the requested LEC to recover the TELRIC of providing such services and a reasonable contribution to the joint and common costs incurred.

Finally, as provided in Guideline XV.A.1, the LEC has the obligation to provide directories to its customers. However, once a residential or business customer transfers its local service provider from Ameritech to AT&T, the obligation to provide directories also passes from Ameritech to AT&T. We also believe that the costs associated with white and yellow pages directory listings for residential and business subscribers and the costs associated with delivery of directories transfer from Ameritech to AT&T. Finally, we believe that AT&T must also share with Ameritech its proportionate costs associated with its residential and business customers' directory listings and delivery of directories to its customers. This will insure that Ameritech does not unfairly retain the financial obligation for the provisioning of directories to customers who are no longer receiving service from Ameritech.

Issue 17

Whether Ameritech should be required to permit AT&T to design its network interconnection requirements in the manner which will permit AT&T to utilize its facilities most efficiently?

The panel believed that the Act speaks for itself and that there was no need to insert Ameritech's language into the contract which states that Ameritech was not required under the Act to provide transiting. The panel also recommended adoption of AT&T's proposed language which provided that an interim arrangement for transit traffic would continue until the earlier of the date on which either party has entered into an arrangement with such third party LEC or Commercial Mobile Radio Service (CMRS) provider, or upon the termination of this contract. The panel rejected Ameritech's proposal that the interim arrangement would continue until the earlier of the date on which either party had entered into an arrangement with such third party LEC or CMRS provider, or 180 days after the earliest interconnection date, but which also provided that, if arrangements were not entered into within 180 days, either party may block such traffic from the originating third party LEC or CMRS provider. The panel cited to the Commission's August 29, 1996 Finding and Order rejecting a

similar provision in Ameritech's interconnection agreement with MFS Intelenet of Ohio, Inc. (See In the Matter of the Application of Ameritech Ohio for Approval of an Agreement between Ameritech Ohio and MFS Intelenet of Ohio Pursuant to Section 252 of the Telecommunications Act of 1996, Case No. 96-565-TP-UNC, (August 29, 1996).

AT&T takes exception to the panel report on this issue only to the extent it fails to specifically find that transit service is required by the Act and the FCC order and should be provided and priced accordingly. AT&T argues that the FCC order is clear that the new entrant's decision of how to fulfill its interconnection obligation under 251(a) of the Act lies with the new entrant. The new entrant, if it chooses, and based upon the most efficient technical and economic choices, may connect with other new entrants directly or indirectly by interconnecting with an incumbent local exchange carrier's (ILEC) network and passing that traffic to the other new entrant through the ILEC's facilities. Further, AT&T contends that the price of transiting should not be Ameritech's recommended rate of .2 cents per minute, rather the rate charges should be the price of the UNE actually used to provide the transiting service.

Ameritech contends that it demonstrated on the record that neither the Act nor the FCC order require an ILEC to provide transiting service. Ameritech argues that ILECs may facilitate indirect interconnection, but that they are not required, by law, to provide transiting. Further, Ameritech claims that it has offered to provide transiting to AT&T on commercially reasonable terms. Ameritech contends that, to the extent that Ameritech provides transit service, Commission Guideline IV.E.2.a. establishes the compensation to which Ameritech is entitled and AT&T advances no argument against the application of this guideline. Ameritech contends that the Commission's guidelines provide Ameritech with a choice between the two options for offering transit traffic functionality, the latter being direct connection between collocated carriers. Further, Ameritech argues that the Act does not contemplate the use of ILECs' networks as bridges between other local networks and that, if AT&T wishes to hand off traffic to another carrier, the statute imposes a duty to interconnect on AT&T and the third carriers, not on Ameritech. Finally, Ameritech argues that the Commission's MFS Finding and Order supports the reasonableness of Ameritech's proposed 180-day time limit because Ameritech believes that Commission transferred from Ameritech to MFS the burden to negotiate transit traffic agreements with third party LECs.

Arbitration Award for Issue 17:

First, we agree with the panel that there is no need to insert parenthetical statements into this contract which rationalize why a certain provision of the Act is or is not included in the contract or does or does not require certain actions by either party. Such language as Ameritech seeks us to add to this contract would add nothing to the underlying obligations of either party under the contract. With respect to Ameritech's obligation to provide transiting, we also concur with the panel's recommendation that Ameritech must provide transiting during the term of the contract. As discussed previously, in the MFS Finding and Order in we rejected, as problematic and untenable, the parties' proposed language which inferred that the parties would have the discretion to deny service to customers of third party LECs after 180 days, through no fault of the end-user customer. We do so here again. We do not believe that Ameritech presented any new arguments in this arbitration why its 180-day time frame would be appropriate or why such a provision, if permitted to exist, would be in the interest of local telephone competition or in the interest of consumers. Accordingly, we adopt the panel's recommendation on this issue. Finally, with respect to compensation under Commission Guidelines IV.E.2.a. or IV.E.2.b., Ameritech, as the intermediate carrier, may provide transit traffic functionality either of two ways, each of which carries with it different compensation methodologies. The parties can also negotiate other transit traffic interconnection and compensation arrangements. We believe that our guidelines provide a rational basis for insuring that Ameritech will be appropriately compensated for this service provided during the term of the contract.

Issues 20 and 22

Whether the proposed interconnection agreement should include a process for the ordering and provisioning of carrier collocation requests? (Issue 20)

What technical requirements should apply to collocation?
(Issue 22)

The panel recommended that AT&T's proposal on mid-span meets was not unreasonable and believed it should be permitted where technically feasible. AT&T's proposal provides that when AT&T and Ameritech are located in a "condo" building AT&T should be allowed to locate in AT&T's wire center equipment that normally would have been collocated in Ameritech's wire center to enable AT&T to access network elements. The panel also determined that AT&T should be permitted to perform its own maintenance activities, in the company of an Ameritech escort. The panel recommended that the parties draft language which gives AT&T at least some assurance of the time frame in which it will be notified of an emergency-related activity. Finally, the panel recommended that, when Ameritech is asked by AT&T to provide information above and beyond that which is already being prepared and provided for regulatory agency purposes, Ameritech should be reimbursed for the costs incurred by Ameritech in providing such information.

AT&T seeks clarification on Issue 20 that initial engineering plans be made available to AT&T, at the time of the initial walk through, to assist AT&T in verifying during a walk through whether Ameritech's plans are consistent with the physical space to be used for collocation. AT&T argues that the FCC order concludes that mid-span meets are technically feasible and are required under the Act to enable new entrants to obtain access to UNEs, and that Ameritech failed to show that mid-span meets are not technically feasible and, thus, the Commission must order that form of interconnection. AT&T also contends that Ameritech did not address this issue in arbitration and that it failed to provide any evidence regarding its position that interconnection in the same building will provide AT&T with higher quality than other carriers without condo arrangements. AT&T also contends that Ameritech presented no evidence why an AT&T technician, accompanied by Ameritech personnel, should not be permitted to maintain AT&T's equipment.

Ameritech argues that the issue of the type of documentation related to walk throughs was not identified by AT&T as one requiring resolution by the Commission and its request for clarification does not qualify as an exception. Ameritech also objects to the panel's recommendation that would allow AT&T to interconnect with Ameritech's network via a mid-span meet arrangement within a condo building instead of using other methods, such as collocation that it normally would have to use for such interconnection. Ameritech contends that this will provide AT&T with an unfair advantage over other new entrants. Ameritech also argues that, once AT&T elects virtual collocation for interconnection or access to UNEs, the equipment provided by AT&T comes under the exclusive control of Ameritech via a lease agreement, that AT&T's equipment is intermingled with all of Ameritech's equipment in the Ameritech relay rack bays, and it is Ameritech's responsibility to maintain these bays. AT&T's offer to permit an escort during its proposed maintenance activities does not alter Ameritech's responsibility.

Arbitration Award for Issues 20 and 22:

The Commission supports the panel's recommendations on this issue. The panel recommended that AT&T's proposal on mid-span meets was not unreasonable and believed it should be permitted where technically feasible. AT&T's proposal provides that when AT&T and Ameritech are located in a "condo" building AT&T should be allowed to locate in AT&T's wire center equipment that normally would have been collocated in Ameritech's wire center to enable AT&T to access network elements. This determination is consistent with the FCC order which concludes that other arrangements such as meet point arrangements in addition to virtual and physical collocation, must be available to new entrants upon request. With respect to Ameritech's exceptions on mid-span meets and condo relationships, we find that the record in this proceeding does not include any of the arguments raised by Ameritech in its exceptions. The Commission believes that, had Ameritech believed that AT&T would have received economically advantageous treatment over other carriers, it should have provided evidence to that effect at hearing. While we accept AT&T's position that mid-span meets are required under the Act to enable new entrants to obtain access for interconnection, the FCC order at paragraph 553 provides that mid-span meets may not be used for unbundled access. Further, in accordance with FCC Order paragraph 559, under virtual collocation, AT&T should be allowed to designate central officetransmission equipment dedicated to its use, as well as to monitor and

control their circuits terminating in Ameritech's central office. AT&T however, does not pay for Ameritech's floor space under virtual collocation arrangements and has no right to enter Ameritech's central office. Ameritech must install, maintain and repair interconnector designed equipment under the same intervals and with the same or better failure rates for the performance of similar functions for comparable Ameritech equipment. For physical collocation, AT&T should be permitted access to its own equipment in its collocated space.

With respect to AT&T's request for clarification on exactly what engineering plans need to be provided to AT&T subsequent to a site visit, both parties failed to articulate exactly what type of documentation Ameritech may deliver to AT&T subsequent to the initial walk through. The Commission believes that the parties should provide whatever information is available at the time of the initial walk through and that the cost to provide such information should be borne by AT&T.

Issue 24

Whether Ameritech may impose limits on the type and/or use of equipment that is collocated on Ameritech's premises?

In Section 12.5 of the contract, the parties differed on the issue of hubbing. Hubbing would allow AT&T to carry traffic over fiber which would traverse the Ameritech network, but would not be terminated by Ameritech in any manner. Ameritech proposed that AT&T should not be permitted to collocate switching equipment used to provide enhanced service or equipment used to facilitate hubbing architectures. Conversely, AT&T proposed that nothing should prohibit AT&T from collocating equipment necessary for interconnection or access to unbundled network elements, which shall include equipment used for signal regeneration (or "hubbing"), and for any purpose, or in any manner or method authorized by the Act, the Commission, or the FCC. The panel determined that there was insufficient evidence in the record to permit it to make a recommendation in favor of adopting AT&T's hubbing proposal. The panel believed that the problems associated with hubbing from Ameritech's perspective appear to be what the hubbing would be used for, how Ameritech would monitor what the hubbing would be used for, and the charges, if any, associated with permitting hubbing. Thus, the panel determined that, unless and until there is sufficient support as to the manner in which hubbing would be utilized and tracked, the panel would recommend against the inclusion of AT&T's hubbing request in the contract.

AT&T contends that hubbing, or signal regeneration, is necessary for AT&T to provide service to its end-user customer because, for its end-user customers on a fiber optic facility, the signal must be regenerated at regular intervals on the fiber ring in order to maintain the quality and speed of transmission. AT&T contends that failure to perform signal regeneration would seriously degrade the transmission. AT&T also contends that, in most cases, AT&T would not need additional space, beyond the requested collocated space, to perform this hubbing function; but that, if Ameritech does not permit AT&T to perform hubbing in its collocated space, AT&T will be required to lease space and install the equipment necessary to perform that function. AT&T argues that its equipment used for hubbing is necessary to obtain access to unbundled loops. Therefore, most of that interconnection would be to connect with Ameritech back to AT&T's service resulting in a situation where fiber carrying AT&T business premises traffic could also be carrying Ameritech LSO traffic. AT&T contends that Ameritech did not have any problem with the transmission equipment or the regeneration in terms of the signal for the purpose of interconnecting into Ameritech's network or getting access to UNEs.

Ameritech contends that the Commission can presume that AT&T provided the FCC all pertinent information with respect to its hubbing proposal, but that the FCC, at paragraph 581, determined there was inadequate record support to adopt AT&T's proposal. Ameritech argues that the issue is whether the equipment is necessary for interconnection or access to UNEs and not for transmission. Ameritech also argues that AT&T indicated at hearing that hubbing will be used for other than interconnection or access to UNEs, and that AT&T's proposal entails bringing fiber optic strands into Ameritech's space that would be used to connect AT&T to large business customers. Ameritech argues that the record is far from clear about the actual extent to which hubbing will be used, or how AT&T would permit Ameritech to monitor the use of its collocated space to assure that it is not being improperly

used.

Arbitration Award for Issue 24:

While 47 C.F.R. Section 51.323 requires collocation of equipment used for interconnection or access to UNEs, it also provides that "[n]othing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services." In addition, our guidelines state that collocation should be provisioned in accordance with 47 C.F.R. Accordingly, we find that the more appropriate resolution of this issue would be to permit AT&T to collocate its equipment in Ameritech's premises under certain conditions. First, the digital loop carriers or other concentration or regeneration equipment should be allowed in the collocated space, but any switching functionality inherent in these pieces of equipment should be disabled so that the equipment does not perform the switching function. Second, AT&T should only be permitted to collocate its proposed equipment in order to interconnect with the UNEs and to regenerate AT&T's signal, but AT&T cannot use such equipment for switching purposes. Finally, the Commission believes that, if AT&T or Ameritech has a question on the appropriateness of any particular piece of equipment, it may seek a determination from this Commission.

Issue 31

Whether Ameritech shall offer Remote Call Forwarding (RCF), Route Index-Portability Hub (RI-PH), and LERG Reassignment as INP options and the appropriate operational interfaces necessary for their provisioning on a customer specific basis?

The panel noted the parties' agreement that, to the extent technically feasible, INP will be provided by Ameritech to AT&T, in accordance with the Act, and that INP will be provided on a reciprocal basis between their networks via RCF. While the panel noted its understanding of AT&T's proposal regarding RI-PH and its concerns relative to the efficient number usage in order to promote local competition, the panel recommended that RCF and direct inward dialing (DID) (including Flex-DID) should be implemented as the INP solution. The panel also recommended that pricing for these solutions shall be in accordance with Commission Guideline V. The panel recommended that Ameritech not be permitted to charge for the shadow numbers for either RCF or DID. Finally, the panel recommended that the same rate center be adopted, which was consistent with the Commission's guidelines in place at the time the report was issued.

AT&T contends that it is technically feasible for Ameritech to provide number portability to areas beyond its wire centers, including the customer's rate center and that it should be able to utilize the INP options to which it is entitled to the maximum extent possible. AT&T also contends that limiting number portability to wire centers would eliminate AT&T's ability to use INP solutions if its plans should include use of facilities installed by other carriers. With respect to RI-PH and LERG Reassignment as interim number portability measures, AT&T argues that the only single number tandem SS7 solution is RI-PH and SS7 is critical so that AT&T's large ported customers do not lose functionality such as caller ID. AT&T further indicates that, while its business plans for deployment of its own switch are irrelevant to the requirement for Ameritech to provide for RI-PH, the evidence also shows that other carriers' plans included installation of facilities in Ohio prior to AT&T's plans and these facilities could become part of AT&T's plans thus creating an earlier need for INP solutions for all segments of customers.

Ameritech contends that it is unreasonable for AT&T to suggest that Ameritech be required to develop and deploy an INP method that AT&T will never use. Ameritech also contends that the FCC declined to order implementation of currently unavailable short-term and medium-term INP solutions because devoting resources to implement such a solution may delay implementation of a long-term database solution. Ameritech contends that the panel's recommendation that RCF should remain within the same rate center, rather than the same serving wire center, should be rejected. Ameritech argues that this issue would appear to be moot as LRN will be

implemented and INP will be obsolete by the time AT&T interconnects and deploys its switches. Ameritech also argues that a rate center can cover a much larger area than a wire center and, because INP is switch specific, it must be limited to an individual wire center. Ameritech also contends that the Commission's guidelines, issued by the Entry on Rehearing dated November 7, 1996, confirm that number portability is keyed to the wire center not the rate center.

Arbitration Award for Issue 31:

We are not convinced from a review of the evidence that AT&T's route indexing method is either technically or economically feasible. Further, we note that RCF and DID are services that are already available and will require very little technical adjustment to offer them on a carrier-to-carrier basis. We also believe that it would be inefficient to devote substantial resources or time to implementing other interim number portability methods given that permanent number portability is on the near horizon. The FCC order, as well as our guidelines, order specifically provide only for RCF and DID. Therefore, we believe that Ameritech should not have to offer every carrier its own desired type of INP. Furthermore, since Ohio will be converting to LRN number portability, beginning first quarter 1998, we do not believe that AT&T will be overburdened unnecessarily by using RCF and DID until that time.

With respect to the issue of wire center versus rate center, we note that, at the time the panel made its recommendation, keying number portability to the rate center, rather than the wire center was based on the interim guideline in place. However, the Commission's final guidelines indicate that number portability is keyed to the wire center not the rate center. Consequently, the Commission concurs with Ameritech that the Commission should reject AT&T's demand that INP, for a given customer, be provided within a rate center and adopt Ameritech's position that the wire center is the appropriate geographic area.

Issues 6, 7, 14, 18, 23, and 32

Whether Ameritech will provide service for resale in accordance with demonstrable measures of performance and service quality with accompanying remedial procedures in place to remedy and penalize failures? (Issue 6)

Whether Ameritech will provide local service in accordance with a predetermined deployment plan which documents specific time frames and processes for implementing the provisions of Ameritech's total services resale offering and provides for remedial measures for substandard performance? (Issue 7)

What service standards and performance requirements should be used to evaluate the performance of the unbundled network elements and network element combinations provided by Ameritech and what, if any, remedial measures should be made available if Ameritech does not meet the established performance standards? (Issue 14)

What service standards and performance requirements should be used to evaluate the performance of traffic exchange arrangements provided by Ameritech and what, if any, remedial measures or penalties should be available to compensate for any substandard performance? (Issue 18)

What service standards and performance requirements should be used to evaluate Ameritech's performance under the collocation arrangements contained in the interconnection agreement and what, if any, remedial measures or penalties should be available to compensate for any substandard performance? (Issue 23)

Whether Ameritech must adhere to specific service standards and performance requirements for the provision of pathway facilities and what, if any, remedial measures should be made available if Ameritech does not meet the established service and performance standards? (Issue 32)

The panel recommended that performance standards for UNEs, collocation, and ROW are best left to the proposed inter-company (IT) as proposed by AT&T. The panel also recommended that remedies and/or penalties for performance failure should be agreed upon by the IT as proposed by AT&T. The panel believed that, as the companies continue to work with one another in the new competitive market, additional remedies not proposed in this proceeding may be more appropriate. On AT&T's proposal for ADR for an arbitrator to order Ameritech to take specific actions and award damages, the panel recommended that the Commission should act as the final arbitrator. The panel also recognized the value of a long-term performance measurement system as suggested by AT&T with its Service Performance Quality Measurement (SPQM) system, finding that utilization of a long-term performance measurement system will ensure that those standards are met for the duration of the contract. The panel also stated that development of such a system would help lessen any future misunderstanding between the parties as to the terms and conditions of the contract. However, the panel believed that such a system should be determined by input from both parties. Therefore, the panel encouraged the parties to jointly develop such a long-term, performance measurement system.

Ameritech objects to the panel's recommendation that the IT should at least have the opportunity to resolve the open issues regarding service quality and performance standards, as proposed by AT&T. Ameritech argues that this recommendation runs the risk that AT&T will defer final resolution of these issues for many months and permit the IT to develop and apply performance and benchmark quality standards which is a role not originally envisioned for this team. Ameritech requests that the Commission establish reasonable ground rules to guide the IT. First, the Commission should find that AT&T is not entitled to modify Ameritech's existing performance levels by dictating its own customer set of benchmarks unless it can demonstrate that Ameritech's standards do not provide parity. Second, Ameritech asserts that the Commission should establish a reasonable time frame in which the IT must complete its consideration of these issues, and that, if the IT has not resolved these issues, Ameritech's proposed standards will be adopted.

AT&T rejects Ameritech's proposal that the Commission adopt Ameritech's guidelines if the IT is unable to resolve these issues. AT&T disputes Ameritech's argument that AT&T will delay final resolution of issues for many months. AT&T asserts that, when it enters the local market, it will be important to provide high quality services in a timely manner and, unless AT&T can provide service on a par with Ameritech, AT&T will suffer a competitive disadvantage. AT&T contends that it accepted Ameritech's proposed performance measurements for resale, and that for UNE, collocation, and ROW performance standards, remedies and penalties for performance failures, AT&T indicated a willingness to have those standards reviewed by the IT. AT&T urges the Commission to adopt the recommendation of the panel for implementation by the IT of performance standards for UNEs, collocation, and ROW; remedies and penalties for performance failures; and a long-term performance measurement system with the provision that, if the IT has not resolved these issues by June 30, 1997, either party may file a complaint with the Commission pursuant to the expedited complaint provision specified in Commission Guideline XVIII.C.2. Ameritech agrees with AT&T that the Commission should include in its arbitration award some reasonable time frame for the IT to complete its work, although Ameritech seeks a 30-day time frame.

Arbitration Award for Issues 7, 14, 18, 23, and 30:

The Commission adopts the panel's recommendations on these issues. We agree with both companies that a resolution date for the establishment of performance benchmarks should be set. Therefore, the Commission finds that both companies should develop a working timeline with individual goals for the inter-company IT to meet, with a completion date of June 30, 1997, as suggested by AT&T. The Commission also supports AT&T's clarification that if, at any time during this timeline, the IT is unable to meet an individual goal and to agree on benchmarks, either company has the right to come to the Commission and request intervention

through the expedited complaint procedures specified in the Commission Guideline XVIII.C.2. Finally, we believe that all decisions that the IT reaches should be made public by filing with the Commission for approval in this docket. This will assist other carriers in the resolution of related issues.

Issue 27

What pathway facilities must Ameritech make available to AT&T?

The panel recommended that the parties review Ameritech's procedures which govern access to poles, ducts, conduit, and ROW which are used by Ameritech in Illinois, and that this issue be ultimately referred to the IT, which both parties agree will develop cooperative procedures for implementing the terms of the contract. With respect to the issue of specifically what facilities should or should not be included within the definition of poles, ducts, conduit, and ROW and AT&T's proposed pathways, the panel determined that Ameritech should be required to provide to AT&T nondiscriminatory access to those facilities AT&T will be required to access in order to interconnect its facilities with those of Ameritech for the purpose of local service competition. To the extent that these facilities include Ameritech's owned or leased space, public ROW, Ameritech controlled environment vaults, remote terminals, equipment closets and cabinets, pedestals, and wiring and electrical supplies within buildings, the panel believes that Ameritech is under an obligation to provide access to AT&T to such facilities. Finally, the panel believed that the rates for access to poles, ducts, conduit, and ROW should be offered to AT&T at current rates established in Ameritech's tariff, as these rates were established by Ameritech to mirror FCC rates.

Ameritech argues that the panel's finding with respect to this issue is in error, and that it does not have to grant AT&T new ROW across property that Ameritech owns in fee simple or leases. Ameritech contends that it can only provide access to the ROW over public property to the extent to which Ameritech is able, and that it does not always own or control public ROW in a manner that permits it to give access to AT&T in every instance without the consent of the applicable municipality. Ameritech also contends that AT&T's pathways position is contrary to the Act. The intent of the Act is to facilitate piggybacking without mandating the use of an ILEC's land and other facilities by a third party upon request to establish its own network for its benefit, according to Ameritech. Ameritech recommends that the Commission, consistent with the panel report, direct the parties to implement the procedures currently employed by Ameritech in Illinois on a trial basis for at least a long enough period to permit an evaluation of their soundness before AT&T considers any complaint to the Commission.

AT&T claims that ROW refers to fee ownership of the land and not merely an easement across it, and that the broader meaning of ROW advances the intended purpose of the Act of allowing consumers the benefits of competition. AT&T claims that, once it is established that Ameritech owns or controls the ROW, the only question is whether the land is used for distribution facilities or is suitable to be used to extend distribution facilities where none currently exist. AT&T contends that it would be inappropriate to include a blanket exclusion for all public ROW which Ameritech may own or control. Finally, AT&T claims that piggybacking is necessary to efficiently deploy networks, and that, while the FCC did not define the term "pathways", the FCC infers pathways are expected and anticipated when the FCC provided for "piggybacking" onto the facilities of the ILEC. Finally, AT&T requests clarification from the Commission on Issue 26. AT&T requests that the Commission include in its award that, should the IT be unable to resolve those points by June 30, 1997, either party may file a complaint with the Commission, pursuant to the expedited complaint provisions specified in Guideline XVIII.C.2.

Arbitration Award for Issue 27:

Section 251(b)(4) of the Act provides that the LEC has the duty to afford access to the poles, ducts, conduits, and ROW of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224. Paragraph 1185 of the FCC order provides that the intent of Congress was to permit cable operators and telecommunications carriers to piggyback along distribution networks owned or controlled by utilities as opposed to granting access

to every piece of equipment or real property owned or controlled by the utility. Commission Guideline XII.B.1. provides that access to poles, ducts, conduits, and ROW shall be on a first-come, first-serve basis subject to space limitation and taking into consideration a demonstration of the LEC's own future needs.

Accordingly, the Commission believes that AT&T should be permitted to have nondiscriminatory access to those distribution networks owned or controlled by Ameritech in accordance with the Commission guidelines. Further, and more specifically, we believe that the panel's recommendation should be clarified such that AT&T should be able to piggyback along Ameritech's distribution network, any necessary, ancillary facilities in order to support its conductor activity. On a prospective basis, however, the Commission directs that Ameritech not enter into contracts with private property owners which would prohibit new entrant carriers (NECs) from piggybacking along its distribution networks.

Finally, the Commission finds no problem with AT&T's request for clarification. Accordingly, the parties should incorporate language in their contract that, if the IT is unable to resolve those points by June 30, 1997, either party may file a complaint with the Commission, pursuant to the expedited complaint provisions specified in Commission Guideline XVIII.C.2. We also believe that this process will insure that the issues are ultimately resolved. While we note that the panel encouraged the parties to review Ameritech's procedures used in Illinois, we ultimately agree with the panel that this issue should be referred to the IT and that it be resolved by June 30, 1997, or either party may file a complaint pursuant to Guideline XVIII.C.2.

Issues 32 and 34

Should AT&T be required to limit its liability and its customers' remedies for resold local service or service using elements purchased under the interconnection agreement so as to minimize Ameritech's exposure to claims based on faulty provision of service by Ameritech? (Issue 32)

Will damages be limited to the amounts payable for nonconforming or defective service? (Issue 34)

The panel determined that AT&T's proposed liability provisions related to Ameritech's failure to meet its parity obligations were unnecessary and that AT&T's proposal should not be included in the contract. The panel reasoned that, pursuant to the Act, and throughout the contract, Ameritech has specific obligations to provide interconnection to AT&T, at parity, that is at least equal in quality to that provided by Ameritech to itself or to any subsidiary, affiliate, or any other party to which Ameritech provides interconnection. The panel believed that AT&T's proposed provision related to a generic term called parity, without qualifying exactly which terms and conditions of this contract would fall within this provision, would inevitably lead to unnecessary conflict between the parties as to whether or not some action or inaction involves a parity obligation.

AT&T argues that the panel failed to recognize that Ameritech has obligations under this agreement for which AT&T would have no adequate remedy for Ameritech's failure to perform if limited in this manner. AT&T contends that its liability is limited to the amount that would have been charged to AT&T for the service or functions not performed in many circumstances, and that AT&T will be unable to recover any monetary damages from Ameritech. AT&T argues that, if Ameritech fails to provide parity as required by the Act, AT&T would be unable to recover any compensation for the harm caused to AT&T since there are no charges directly associated with Ameritech's parity obligations. AT&T contends that Ameritech's proposed language would unreasonably limit Ameritech's liability in the event it violates the Act.

Ameritech argues that AT&T has advanced no new arguments in support of its position and simply reiterates its previously made position that, if Ameritech fails to provide parity as required by the Act, AT&T would be unable to recover any compensation for the harm caused to AT&T since there are no charges directly associated with Ameritech's parity obligations. Ameritech further contends that the parity obligations to which AT&T's proposal refers are embodied in contractual

performance benchmarks, which carry with them their own system of consequences and remedies. Further, Ameritech argues that there is nothing in Ameritech's proposed language that limits either AT&T's remedies or Ameritech's liability under the Act.

Arbitration Award for Issues 32 and 34:

The Commission concurs with the panel's position on this issue. We agree that the parity obligations to which AT&T's proposal refers are embodied in contractual performance benchmarks, which carry with them their own system of consequences and remedies. Further, we agree that there is nothing in the contract language that limits either AT&T's remedies or Ameritech's liability under the Act. Accordingly, we recommend that the panel's recommendation on this issue should be adopted. Of course nothing would prevent AT&T from raising to this Commission parity issues or prevent the Commission from adding conditions to the prices, terms, and conditions set forth in this contract, which we believe should, in the future, be considered parity obligations under this agreement, and which would subject Ameritech to liability. We also believe that AT&T should be free to seek treble damages in the event of discriminatory treatment.

Issue 35

Should the interconnection agreement have a base term of 10 years or the shorter three-year term proposed by Ameritech?

The panel recommended that the length of term for this contract should be three years. The panel made its determination based on the belief that the length of the contract must provide the parties with sufficient long-term stability in a quickly changing telecommunications environment, and in which the regulatory climate for telecommunications policy at the federal and state government levels is subject to change. The panel also concluded that a three-year time period corresponds with the length of time after which both parties sought to reopen prices. The panel also recommended that, during the term of the contract, the parties should be permitted to modify any price, term, or condition, provided that both parties can agree on such modifications, subject to approval of this Commission. However, if both parties were unable to agree to modify any term, price, or condition set forth in this contract, then the panel recommended that no changes to the terms of this contract would be permitted until the expiration of the contract.

AT&T contends that the scale and scope of the contract make it essential that the contract provide stability and predictability in operational support issues, and that its request for a five-year term is more reasonable than the panel's recommended three-year term. AT&T also argues that the concerns of the panel can be addressed with an earlier reopener for price issues and that Ameritech is not opposed to a longer term provided that there is a price reopener after three years. Finally, AT&T argues that, considering the length of time negotiating and arbitrating this agreement, it is possible that the parties could be back at the bargaining table reopening not only process, but also operational and performance issues, less than 24 months after commencement of this agreement.

Ameritech submits that the Commission should adopt the panel's conclusion that three years is the appropriate length of the contract. Ameritech argues that the initial term is significant because it will determine how long the initial rates established in the agreement could be in effect, and the longer the initial term, the longer any inequities that may reside in the price structure will be in place. Ameritech proposes that the Commission should adopt an initial term of three years or at a minimum require a price reopener after three years. Ameritech also states that AT&T's perceived need for stability is not shared by other new entrants such as MCI, which sought only a one-year term.

Arbitration Award for Issue 35:

The Commission is convinced that the panel correctly decided this issue, and that the panel's basis for this decision was reasonable. As the panel concluded, the length of the contract must provide the parties with sufficient long-term stability but also enough flexibility to adjust to a quickly changing telecommunications

environment at the federal and state government levels. We believe that a three-year term provides such stability and flexibility. The Commission also notes that a three-year time period corresponds with the length of time after which both parties sought to reopen prices. Accordingly, the Commission adopts the panel's recommendation that the term of the contract should be three years.

Issue 37

Will the interconnection agreement provide for the commercially customary dispute resolution procedures proposed by AT&T?

The panel recommended that AT&T's concept of an inter-company review board (ICRB) be adopted. The panel also encouraged the parties to resolve disputes in this manner and indicated that it would, in fact, look favorably upon the parties imposing specific time frames on the ICRB process, especially when it is a service-affecting dispute, in order to ensure that the process moves swiftly and efficiently to resolution. If a party was found to have delayed the resolution of a dispute and acted in bad faith, the panel recommended that the Commission levy the appropriate sanctions on the offending party. The panel recommended against AT&T's proposal that, subsequent to a failed ICRB process, the dispute be taken directly to binding arbitration and from there to an appropriate regulatory or judicial body. The panel recognized the necessity for the timely and expeditious resolution of all carrier-to-carrier complaints and cited to the Commission's commitment that it would endeavor to resolve any such dispute within 180 days of the filing of the complaint. With respect to AT&T's concern that service-affecting disputes be dealt with even more expeditiously than other disputes, the panel recommended that the Commission adopt an even more defined streamlined complaint procedure for carrier-to-carrier disputes. The panel left to the parties the decision as to whether common issues should be consolidated on a regional basis.

AT&T argues that the panel erroneously rejected AT&T's proposal to take service affecting disputes unresolved by the ICRB directly to binding arbitration and from there to an appropriate regulatory body. AT&T argues that, if Ameritech seeks to delay the process, it can ensure that the process takes the entire 90 days, and that this would effect AT&T's ability to effectively compete as a local service provider, the quality of its local service offerings, and an end user's assessment of AT&T's service. AT&T contends that its proposed ADR process will result in resolution of service affecting disputes in a more expeditious manner than the guidelines because it provides a binding resolution of operations and technical service affecting disputes which are implemented immediately. AT&T also contends that it agreed to accept that the Commission would have original jurisdiction for minimum telephone service standards (MTSS) complaints which would permit the Commission to retain its oversight responsibilities for the local telephone market and fulfill its obligation of assuring that the relationship between telephone service providers serves the public interest.

Ameritech contends that, under AT&T's proposal, a party that loses an arbitration may suffer irreparable harm before having the arbitration award set aside on appeal, and AT&T's proposed process does not include a process or provide a mechanism to make Ameritech whole if, after the fact, the arbitration award turns out to be incorrect. Ameritech also contends that the Commission and the FCC have the expertise and responsibility to address and decide these issues, many of which will involve the Act, FCC regulations, state and federal telecommunications policies or discrimination between the parties and, therefore, farming them out to an outside party is unwise. Finally, Ameritech argues that arbitration usually is provided in contracts voluntarily by parties. Because one of the parties objects to provision regarding a third-party arbitrator, such a process should not be forced upon it.

Arbitration Award for Issues 37 and 38:

We support the panel's recommendations on these issues. We believe that AT&T's recommended concept of an ICRB provides the more reasonable process to address disputes. However, we agree with the panel's decision to not accept AT&T's proposal that, subsequent to a failed ICRB process, the disputes be taken to binding arbitration. We believe Commission Guideline XVIII.C., which establishes an expedited process for resolving carrier-to-carrier complaints, provides a more

reasonable approach than referring these complaints to outside arbitrators. Further, we believe that the possible imposition of sanctions will guard against either party attempting to unnecessarily delay the process. We also agree with the panel that a regional approach to issue resolution is best left to the parties rather than mandated as part of the contract, so that the parties can decide when and how the issued should be resolved.

SUPPLEMENTAL ISSUES:

The following issues were identified by the parties as differences in contract language proposal. In an effort to fully resolve all outstanding issues for the contract between AT&T and Ameritech, we resolve these issues accordingly.

Publicity

Ameritech argues that AT&T proposes that language be added to the contract which provides that, in no event shall Ameritech represent in marketing, advertising, or other publicity or promotional materials, that it is providing services to AT&T and/or that AT&T is reselling Ameritech services. Ameritech argues that such language is unreasonable, violates Ameritech's First Amendment rights, and would prohibit Ameritech from making statements rebutting claims made by AT&T.

AT&T contends that, if Ameritech is allowed to claim in its advertising, marketing, and promotional materials that, when parties receive service from AT&T, they are really receiving it from Ameritech, this will undermine efforts to develop competition. Further, AT&T argues that its proposed language only prevents Ameritech from making statements which are likely to deceive or confuse consumers.

Arbitration Award:

We find that the language suggested by AT&T is inappropriate and should not be included in this contract. We believe that it would be unreasonable to prohibit Ameritech from making statements about the provision of its service to any reseller. We also believe that Ameritech well understands its obligations to make truthful and factual statements about its services, and thus, AT&T's concerns are unwarranted. However, the Commission would note that, in the event it is shown that Ameritech's advertising is in fact undetermining the efforts to develop competition, the Commission will take corrective action on a case-by-case basis to ensure that the development of competition is not thwarted.

Protection of Proprietary Information

The contract includes a prohibition on both parties against disclosing to unauthorized persons proprietary information obtained from the other party or from using such information for unauthorized purposes. The contract also includes an exception to this prohibition for proprietary information rightfully obtained from a third person, if the receiving party is unaware of the third person's obligation to protect the information's confidentiality. AT&T proposes that the exception apply 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 proposes that the exception apply only if the receiving party has exercised commercially reasonable efforts to determine whether such a third person has any obligation to keep the information confidential.

Arbitration Award:

The Commission believes that Ameritech's language provides greater protection to the parties involving unauthorized dissemination of proprietary information. We believe that, in the event disputes relating to this matter occur, Ameritech's proposed "commercially reasonable efforts" standard is more certain than the "no reasonable basis" standard preferred by AT&T.

Disaster Recovery

AT&T proposes to include in the contract a provision which states that the IT

shall establish a process for disaster recovery that addresses events which would affect the system, establish a single point of contact, establish procedures for notifying AT&T of the event and resolution, define a disaster, and provide for equal priority for restoration efforts between Ameritech and AT&T customers. Ameritech believes that its disaster recovery plans are proprietary and should not be shared with any customer. Ameritech argues that it will provide AT&T with all necessary and appropriate information it needs for interfacing with Ameritech during a disaster. AT&T contends that its disaster recovery provisions do not require disclosure of Ameritech's disaster recovery plans.

Arbitration Award:

We believe that this contract should provide procedures to be utilized by both companies in the event of disaster. However, we believe that AT&T's proposal for the IT to resolve this issue is reasonable.

Taxes

Both parties proposed language regarding gross receipts taxes. Ameritech proposed that, to the extent a party includes gross receipts taxes in any of the charges or rates for services provided hereunder, no additional gross receipts taxes shall be levied against or upon the purchasing party. AT&T proposes that each party shall be responsible for any tax imposed on its gross receipts and no amount due to a party under this agreement shall be affected by the fact that its receipt by the other party subjects the other party to tax on the receipt thereof.

Ameritech contends that, under its proposal, if it incorporates gross receipts taxes into the base rate charged to AT&T for a given service, Ameritech will not then levy upon AT&T an additional charge for those same gross receipts taxes. Ameritech argues that AT&T's proposal would prohibit Ameritech from billing AT&T for such taxes and from recovering all of the costs it incurs in providing service to AT&T. AT&T did not file any reply to Ameritech's position on this issue.

Arbitration Award:

We find that Ameritech's proposal on gross receipt taxes is reasonable and believe that it should be included in the contract. However, we are not granting the parties any discretion on the application of gross receipts taxes to particular sales. Ohio law must be followed and both parties are subject to enforcement of all applicable laws, rules, and regulations promulgated by the State of Ohio Department of Taxation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AT&T's arbitration petition was filed on August 1, 1996, pursuant to Section 252(b) of the 1996 Act.
- (2) On August 30, 1996, the attorney examiner granted a motion to sever the unresolved issues associated with Ameritech's TELRIC cost studies from this proceeding and denied a motion to consolidate similar issues within several arbitration proceedings, including this proceeding. Interlocutory appeals were timely filed. This Commission confirmed those rulings on September 5, 1996.
- (3) On September 17, 1996, AT&T and Ameritech timely filed their arbitration packages.
- (4) The arbitration hearing was held on September 24, 25, 26, and 30, and October 1, and 2, 1996. Oral arguments were conducted on October 3, 1996.
- (5) On November 5, 1996, the arbitration panel filed its recommendations on the issues requiring arbitration.
- (6) On November 12 and 15, 1996, AT&T and Ameritech timely filed exceptions and replies to the panel's

recommendations. Ameritech also filed a motion for protective order, which is reasonable and should be granted. The attorney examiner also granted the parties' motions for protective order of the information filed within each party's arbitration packages. In accordance with Rule 4901-1-24(F), O.A.C., the protective order prohibiting disclosure shall automatically expire 18 months after the date of this award. Any party wishing to extend this protective order should file an appropriate motion at least 45 days in advance of the expiration date of this protective order. The Docketing Division of the Commission should maintain, under seal, the unredacted copy of AT&T's exceptions to the arbitration panel report filed on October 15, 1996, for 18 months from the date of this award.

(7) On November 25, 1996, both parties presented oral presentation to the Commission which were transcribed.

It is, therefore,

ORDERED, That the Docketing Division maintain, under seal, the unredacted copy of AT&T's exceptions to the arbitration panel report filed on November 12, 1996, as well as all other material previously ruled to be confidential, for 18 months from the date of this award. It is, further,

ORDERED, That AT&T and Ameritech incorporate the directives as set forth in this arbitration award within their interconnection agreement. It is, further,

ORDERED, That, within 14 days of this arbitration award, AT&T and Ameritech file in this docket their entire interconnection agreement for our review, in accordance with Mediation/Arbitration Guideline X.J. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall file for Commission review its version of the language that should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That any motions not expressly ruled upon in this award are denied. It is, further,

ORDERED, That nothing in this Arbitration Award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That this Arbitration Award does not constitute state action for the purpose of the antitrust laws. It is not our intent to insulate the applicant or any party to a contract approved by this Finding and Order from the provisions of any state or federal law which prohibit the restraint of trade. It is, further,

ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

ORDERED, That a copy of this Arbitration Award be served upon AT&T, Ameritech, all certified new entrant carriers and those with pending certification applications, all LECs who have received requests for interconnection, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Richard M. Fanelly

SEF/pdc

Codified at 47 U.S.C. 151 et seq.

At the time of MCI's motion for consolidation, the Commission had received only one other arbitration petition involving Ameritech. See, In the Matter of the Petition of TCG Cle Arbitration of Open Issues Pursuant to Section 252(b) of the Telecommunications Act of 1996-694-TP-ARB. MCI filed its arbitration petition (Case No. 96-888-TP-ARB) with the Commission on August 27, 1996.

At the time the panel issued its recommendations, the Commission had not yet issued its rehearing for the final local competition guidelines.

