

**STATE OF INDIANA**

**UTILITY REGULATORY COMMISSION**

IN THE MATTER OF THE PETITION OF  
INDIANA BELL TELEPHONE COMPANY,  
INCORPORATED D/B/A AMERITECH  
INDIANA FOR THE COMMISSION TO  
DECLINE TO EXERCISE IN WHOLE OR  
IN PART ITS JURISDICTION OVER, AND  
TO UTILIZE ALTERNATIVE  
REGULATORY PROCEDURES FOR,  
AMERITECH INDIANA'S PROVISION)  
OF RETAIL AND CARRIER ACCESS  
SERVICES PURSUANT TO I.C. 8-1-2.6 ET  
SEQ.

BY THE COMMISSION:

G. Richard Klein, Commissioner  
Clayton C. Miller, Chief Administrative Law Judge  
CAUSE NO. 40849

**FINAL ORDER ON  
INTERIM RELIEF**

With the passage of P.L. 92-1985, the Indiana General Assembly ushered in a new era of telephone regulation in Indiana. That Act, as amended by P.L. 23-1988 and codified at chapter 81-2.6 of the Indiana Code, acknowledged that "[t]raditional commission regulatory policies and practices and existing statutes are not designed to deal with" the competitive environment for telephone services the legislature hoped to foster. I.C. 8-1-2.6-1(3).

On May 4, 1993, Indiana Bell Telephone Company, Inc. initiated Cause No. 39705 seeking alternative regulation pursuant to I.C. 8-1-2.6. On June 30, 1994, this Commission issued an order in that Cause in which we declined to exercise much of our jurisdiction over the state's largest provider of local telephone service. Specifically, our order approved an alternative to the traditional "rate of return" regulatory framework, which alternative had been proposed by Indiana Bell, the Office of the Utility Consumer Counselor ("OUCC"), and numerous other parties to that cause with which Indiana Bell had entered into settlement agreements. This alternative regulatory framework, dubbed "Opportunity Indiana," expires on December 31, 1997.

In anticipation of the expiration of Opportunity Indiana, Petitioner Indiana Bell Telephone Company, Inc. (now doing business as "Ameritech Indiana") initiated the instant cause on May 1, 1997. Again citing I.C. 8-1-2.6, Ameritech Indiana again requested that we decline to exercise, in whole or in part, our jurisdiction over its provision of retail and carrier access services, and that we adopt alternative regulatory procedures. Recognizing the possibility that this Commission might not be able to issue a final order establishing a comprehensive replacement regulatory structure by December 31st., Ameritech Indiana also included in its petition a request that we extend the terms of Opportunity Indiana on an interim basis beginning January 1, 1998 until a longer-term replacement regulatory structure is finalized.

### Proceedings on Interim Relief

At the prehearing conference held on June 18, 1997 the OUCC and intervening parties, most, if not all, of whom were parties to the Opportunity Indiana Settlement Agreements, objected to any extension of Opportunity Indiana beyond its expiration on December 31, 1997. Because all the parties did agree, however, that there was not enough time before the end of the year for them to prepare their evidence on the question of how best to replace Opportunity Indiana and for the Commission to consider same, they proposed and we adopted a separate schedule for our consideration of "the specific question of what interim relief, if any, might be appropriate." July 16, 1997 Prehearing Conference Order.

The history of the interim relief proceedings conducted in this Cause, which we summarize below, was recounted in greater detail in our Preliminary Order on Interim Relief issued on October 15, 1997. At the July 21, 1997 hearing on interim relief, the presiding officers granted the a Trial Rule 41(B) challenge to the sufficiency of Ameritech Indiana's evidence. Ameritech Indiana appealed to the full Commission, and, in our Order on Appeal, we upheld the presiding officers' determination of the Trial Rule 41(B) motion. No other parties had proposed any interim regulatory alternatives at that time but, rather than put the question of interim relief to rest, in that same Order on Appeal we gave Ameritech Indiana and any other party the option of coming back with evidence in support on an alternative regulatory plan. A second hearing on the question of interim relief was conducted over three days beginning on September 30, 1997 at which hearing testimony was offered by witnesses for Ameritech Indiana, the OUCC, and intervenors Citizens Action Coalition of Indiana, the American Association of Retired Persons, Inc. and United Senior Action of Indiana, (collectively known as the "Residential Customers"), AT&T Communications of Indiana, Inc. (AT&T"), and the Indiana Cable Telecommunications Association ("ICTA").

Having considered the parties' testimony from the hearings conducted in this Cause, as well as the parties' legal arguments presented on the record and otherwise contained in their briefs, we now make the following findings relating to our relaxation on an interim basis of our jurisdiction over Ameritech Indiana's provision of retail and carrier access services pursuant to I.C. 8-1-2.6:

## Preliminary Order on Interim Relief

Two weeks after the second interim relief hearing, we issued a Preliminary Order on Interim Relief. Although several parties had advocated that Ameritech Indiana be returned to traditional rate of return regulation, in that order we found that on an interim basis Ameritech Indiana should continue to be regulated pursuant to some alternative to traditional rate of return regulation. We did not, however, agree to implement an alternative regulatory plan which mirrored Opportunity Indiana in all respects or to keep prices capped at their current levels.

In the years since our approval of Opportunity Indiana, the regulatory landscape has continued to change. Chief among these changes was the February, 1996 passage of the federal Telecommunications Act ("TA'96"), the responsibility for the implementation of many aspects of which was assigned to state regulatory commissions such as ours. While TA'96 is intended to hasten the transition to local telephone competition, we noted in our Preliminary Order that under Opportunity Indiana we have greater regulatory oversight of Ameritech Indiana's competitors than we do of the incumbent provider. In addition, we found that our compliance with the mandates of TA'96 was hampered by the limitations Opportunity Indiana placed on our ability to collect and monitor operational data. Finally, we were persuaded that to decline to exercise our oversight over Ameritech Indiana's earnings while keeping basic local service ("BLS") rates capped at their present level was not in the public interest. Thus, we concluded that we could not continue Opportunity Indiana, especially not over the other parties' objections, even on an interim basis.

While we found that the record was sufficient at that time for us to structure interim alternative regulatory relief, we also acknowledged that giving the parties yet another opportunity to be heard could enhance our ability to fine tune an interim alternative regulatory plan, at least if such a hearing could be conducted in time for us to issue an order before the end of the year. That hearing was set for November 17, 1997. Regrettably, however, it was not to be.

### Additional Findings

The procedural odyssey of this Cause since we issued our Preliminary Order on October 15, 1997 was recounted in our November 19, 1997 Order on Second Appeal as well as in the presiding officers' November 25, 1997 docket entry. In brief summary, rather than file testimony as directed in our Preliminary Order, Ameritech Indiana instead filed an Omnibus Motion, Notice and Request for Administrative Notice on October 29, 1997. The other parties went ahead and filed their testimony and exhibits by November 7<sup>th</sup>, and numerous filings ensued. Since the November 25<sup>th</sup> docket entry, several of the parties have filed either briefs or proposed orders based on the record as it stood at the time of our Preliminary Order. The OUCC filed a Motion for Reconsideration of, and, Appeal to the Full Commission and Motion for Reestablishment of Procedural Schedules on December 5<sup>th</sup> seeking to reinstate the interim relief hearing called for in our Preliminary Order, which hearing had been vacated by the presiding officers in their November 25<sup>th</sup> docket entry. The OUCC also filed a Motion to Make Ameritech Indiana's Rates Interim and Subject to Refund. Our resolution of the OUCC's Appeal to the Full Commission is contained in our Order on Third Appeal to the Full Commission issued contemporaneously. That Order contains a more detailed description of why the hearing which had been set for November 17<sup>th</sup> did not occur.

#### A. Ameritech Indiana's competitive posture.

Ameritech Indiana is in the midst of a transition away from being a fully regulated monopoly provider of local exchange service. While it currently faces few if any competitors in the market for some services, such as Basic Local Telephone Service ("BLS") for residential

customers, see Record at E-70, in other areas of its operations it faces some level of competition. See, e.g., I.U.R.C. Cause Nos. 38561, and 40178. Although applicable to all incumbent local exchange carriers, this transition has progressed further at Ameritech Indiana than at any of the state's other such providers. First mandated some ten years ago by our General Assembly, which declared that "[a]n environment in which Indiana consumers will have available the widest array of state-of-the-art telephone services at the most economic and reasonable cost possible will necessitate fall and fair competition in the delivery of certain telephone services throughout the state," I.C. 8-1-2.6-1(4), as noted above the transition to competition in the local telephone exchange market was also endorsed last year by the federal government with the passage of TA'96. 47 U. S.C. 151 et seq.

Under traditional regulation, local exchange carriers were regulated as natural monopolies. There was no distinction between competitive and non-competitive local services, only whether the service was jurisdictional. Today, local exchange carriers are not necessarily viewed as natural monopolies. In recent years, this Commission has certified nearly fifty competing local exchange carriers to begin offering a particular type of service in former monopoly markets across the state. Such certification of competing carriers, however, does not mean this Commission's job is done, particularly when most of these certificated competitors have yet to offer service. While it is our goal to supplant much of our regulatory oversight with the regulation of a competitive marketplace consistent with our state and federal mandates, that day has not fully dawned. Yes, some consumers today have some choice among providers of some local telephone services. Such choices, however, are for the most part confined to large business customers.

B. Two approaches to alternative regulation no jurisdiction except as specified v. relaxed jurisdiction only as specified.

In Opportunity Indiana, we agreed to accept the parties' proposal that we generally relax our jurisdiction except in specific areas designated by the parties. This Commission also "modified" the parties' Settlement Agreement so as to include both our partial retention of jurisdiction pursuant to I.C. 9-1-2-58 as well as our requirement that Ameritech Indiana continue to provide the Part 36 Allocation Report. Order in I.U.R.C. Cause No. 39705 at 12. In the instant cause, however, the OUCC and most of the intervening parties advocate returning Ameritech Indiana to the full measure of our traditional statutory jurisdiction on an interim basis upon the expiration of the Opportunity Indiana alternative regulatory plan.

As noted above, in our Preliminary Order we rejected the possibility of returning Ameritech Indiana to traditional regulation. We find, however, that, absent consensus by the parties, the scope of relaxed regulation we approve in the instant Final Order on Interim Relief is best expressed in specific terms. Thus, upon the expiration of Opportunity Indiana Ameritech Indiana will be subject to all sections of I. C. chapter 8-1-2 relating to telephone companies, except as specified herein.

C. Differentiation of local exchange services.

When considering Ameritech Indiana's request for us to relax our regulatory oversight three and a half years ago in Opportunity Indiana, the need to differentiate between different categories of local telephone service led to our adoption of three categories of local telephone service as proposed by the parties in that cause: BLS, BLS-related, and "other" services. Opportunity Indiana gave Ameritech Indiana flexibility to price and structure its "other" service offerings, while imposing a price cap for BLS and BLS-related services.

Among the preliminary findings in our Preliminary Order on Interim Relief is that this tripartite classification of Ameritech Indiana's local exchange services into "BLS," "BLS

-related," and "Other" should continue, at least in the interim. Preliminary Order at 10. As noted above, competition does not and will not occur in all segments of the local exchange business all at once, and we find that by allowing for targeted deregulation such differentiation is useful in protecting the public interest during that transition. We now also find that, at least in the interim, it is in the public interest for this Commission to continue its relaxed jurisdiction over the processing of tariffs for Ameritech Indiana's "other" local exchange services, which services should continue to be changed through one day tariff filings or as otherwise provided pursuant to Opportunity Indiana. Neither has Ameritech Indiana sought the same degree of interim rate and service flexibility for BLS and BLS-related services as for "Other" services, however, Record at E-125 and E- 126 (cross-examination of Ameritech Indiana witness Cubellis: "Basic local service would still be capped, customers would be protected in that manner, [Ameritech Indiana] couldn't reconfigure those services, flexibility would exist for the other services, et cetera.") and at E-192 (Ameritech Indiana's "request for an Opportunity Indiana-like plan would mean that there still was no flexibility for basic local service") nor is a relaxation of our jurisdiction to such an extent warranted.

D. Price caps.

Opportunity Indiana is a form of price cap alternative regulatory plan. See, e.g., Petitioner's Exhibit NLC-R at 26 (Q 17). Unlike under traditional rate making, in which the Commission may examine a utility's earnings to determine whether its rates are too high or too low, the earnings of a company operating under a price cap are generally subject to much less Commission scrutiny during the term of that price cap. Such alternative regulation can provide a utility a more tangible incentive to reduce its costs because it keeps some or all of the profit which might otherwise be deemed excessive during the term of the price cap. Theoretically, the utility also assumes the risk that if its costs increase over the course of the price cap its shareholders will lose money. See generally Intervenor Residential Customer's Exhibit I (written testimony of Dr. Trevor Roycroft) at pp. 5-9.

When Opportunity Indiana expires on December 31, 1997, unless we approve some form of alternative regulation Ameritech Indiana would revert to rate of return regulation. As an initial matter, we agree with Ameritech Indiana that, absent a Commission finding otherwise, its lawful rates under Opportunity Indiana on December 31, 1997 would continue to be its lawful rates after that date Record at E-32; Reply of Ameritech Indiana to Responses of Other Parties to Omnibus Motion at 12, 24-25. We correspondingly deny the OUCC's Motion to Make Ameritech Indiana's Rates Interim and Subject to Refund The expiration of our relaxed jurisdiction would not immediately effect the rates Ameritech Indiana may charge. Again assuming we took no action, however, as of January 1, 1998 we would have the ability to review whether these rates resulted in unreasonable returns under traditional standards for over and under-earning. We note that certain intervening parties in the instant cause have initiated another cause, No. 41058, seeking just such a rate review.

In its instant request for interim relief, Ameritech Indiana is seeking our continued declination of our traditional authority to review the reasonableness of its rates for BLS and BLS-related services in exchange for a cap on the prices it may charge for such services. As noted above, we have already found that it would not be in the public interest to return Ameritech Indiana to traditional regulation on an interim basis, Preliminary Order at 8. We now find that continuing to cap the prices Ameritech Indiana may charge for BLS and BLS-related services represents a potentially preferable alternative to rate of return regulation, in keeping with our charge to be open to alternatives which promote "[a] more accurate evaluation by the commission of a telephone company's physical or financial conditions or needs, as well as a less costly regulatory procedure for either the telephone company, its consumers, or the commission," and "[r]egulation consistent with a competitive environment." I.C. 8-1-2.6-3; cf. Ameritech Indiana's Appeal to the Full Commission of the Docket Entry Entered in this Cause on November

4, 1997 and Motion to Strike Prefiled Testimony at 35 ("no continuing reason to cling to the outdated concept of rate of return regulation").

Our agreement to relax our jurisdiction for the interim over Ameritech Indiana's earnings after December 31, 1997 in favor of a cap on Ameritech Indiana's rates necessarily depends on our determination of the appropriate level of the cap. Ameritech Indiana has proposed the cap stay at the same level as it was for the final year and a half of Opportunity Indiana. We find, however, that the fact that these rates were settled upon three and a half years ago by the parties to Opportunity Indiana tells us little about their appropriateness today. Are they too high, too low, or just right? That Ameritech Indiana is satisfied with the amount of revenue it receives from selling these services surely is evidence that the cap is not too low, but hardly satisfies the countervailing concern that it could be too high as the OUCC and all intervening parties have alleged.

Ameritech Indiana has repeatedly asserted that we do not have the authority to change the level at which its prices are capped in this interim relief proceeding since its petition "did not request any relief with regard to prices." Exceptions and Reply of Ameritech Indiana to Proposed Order and Brief of Residential Customers and AT&T at 11. We disagree, and reiterate our position that when a company asks for a price cap, the level at which prices are to be capped is in issue. See Order on Second Appeal at 3; November 25, 1997 Docket Entry at 5. Indeed, the justification for capping the rate at a particular level is essential to our consideration of Ameritech Indiana's instant request pursuant to I.C. 8-1-2.6 that we relinquish our statutory authority to review rate levels in favor of a price cap for its provision of BLS and BLS-related services. And while any action we take with regard to Ameritech Indiana's rates must be taken giving full regard to its state and federal constitutional due process rights and be based on substantial evidence of record, its emphasis in its Exceptions on our failure to invoke our traditional ratemaking authority in I.C. 8-1-2 is misplaced.

Having the authority to set a rate cap is one thing, and exercising that authority in this particular cause another. How do we fairly determine the correct level of a price cap? As this Commission considers Ameritech Indiana's request for a rate cap, any party may be entitled to a presumption that the existing rate is correct. That presumption, however, may be rebutted, and in our Preliminary Order, we found that the Residential Customers' witness Dr. Trevor Roycroft had effectively rebutted any presumption that Ameritech Indiana's BLS and BLS-related rates should be capped at their present levels after December 31<sup>st</sup>. Because the mere passage of time can and should alter those cost factors contributing to a utility's bottom line, price caps are not intended to be static. A utility experiencing net productivity gains after inflation can expect its costs to decrease. Consequently, when setting a price cap on a forward-looking basis, rates should be adjusted accordingly.

We are satisfied that Ameritech Indiana has experienced and will continue to experience net productivity gains in the future. While it has attributed its impressive prosperity under Opportunity Indiana to the "recent economic boom and Internet explosion," Ameritech Indiana Proposed Order at 18, greater usage of its installed plant should also lower its cost per use. As the Residential Customers noted in their Exceptions to Ameritech Indiana's Proposed Order at 6, "[e]conomies of utilization plus further allocation of costs among an expanding group of services increases system efficiency even without innovation in local loop technology." We are also skeptical of Ameritech Indiana's attribution of one-hundred percent of the cost of the local loop to BLS customers and its corresponding assertion that BLS rates are already below cost. While the specific allocation of costs among the various services sharing the local loop is currently pending in another cause, for purposes of the instant cause we find further support for our rejection of Ameritech Indiana's costing theories in the recent conclusions from the FCC: "The costs of local loops ... are common with respect to interstate access service and local exchange service, because once these facilities are installed to provide one service they are able to provide

the other at no additional cost." FCC First Report and Order in Common Carrier Docket Nos. 96-98 and 95-185 (FCC 96-325, issued August 1, 1996) at 678.

We now find that the OUCC's and other parties' objections to any interim alternative regulatory relief also cast sufficient doubt as to the reasonableness of relaxing our jurisdiction over Ameritech Indiana's earnings while maintaining its current BLS and BLS-related rate levels. For example, we cannot find that the public interest would be served by keeping rates at the same level when Ameritech Indiana's filings with the federal Securities and Exchange Commission indicate that in 1996 it earned a 38.8 percent return on average equity. Intervenor Residential Customers' Cross-Examination Exhibit 2 at 8. Ameritech Indiana has countered that such figures are irrelevant because they include results from some operations outside the Indiana jurisdiction and are not specific to its jurisdictional BLS and BLS-related services. Of course, it also maintains that such jurisdiction specific data does not exist. See, e.g., Record at H-8. The OUCC has suggested that Ameritech Indiana's provision of company-wide data in response to the OUCC's data request relating to the company's jurisdictional financial performance provides a sufficient basis for us to conclude that such company-wide data are representative of Ameritech Indiana's intrastate operations. OUCC's December 19, 1997 Reply to Ameritech Indiana's Verified Response in Opposition to the OUCC's Motion to Make Ameritech Indiana's Rates Interim and Subject to Refund at 5. Whether or not we agree with the OUCC, for purposes of assessing whether the public interest will be served by relinquishing pursuant to I.C. 8-1-2.6 our ability to review Ameritech Indiana's earnings, we find that its total return on average equity is not only relevant, but is highly probative.

Having ruled out continuing the price cap at present levels, we turn to perhaps the most difficult issue: setting some other rate. Although in our Preliminary Order we neither adopted nor rejected Dr. Roycroft's proposal for a \$0.67 rate reduction based on his application of a 7.66 percent productivity offset, we implicitly accepted and now explicitly adopt the concept of using a productivity offset to determine the appropriate level of price cap to accompany an interim alternative regulatory plan.

As the parties' evidence suggests, productivity factors and their built-in assumptions about cost and efficiency trends are not new to the telecommunications industry. Ameritech Indiana's corporate parent has set a goal of achieving annual productivity gains of 7%. Residential Customers' Cross-Examination Exhibit 1. Also, before the parties settled Opportunity Indiana, Ameritech Indiana had proposed a productivity factor of 2.8% to be applied to its proposed price cap. Petitioner's Exhibit NLC-R at 37. Not unlike certain aspects of traditional rate-of-return ratemaking, such as pinning down the risk factor of a given utility, getting the productivity factor right is not an exact science. Ameritech Indiana's witnesses certainly disputed Dr. Roycroft's testimony, giving their reasons on rebuttal why his factor was too high.

Having reviewed the parties' positions and the various alternatives presented, we find that the price cap we establish on an interim basis should take into account the productivity factor assigned to Ameritech Indiana by the FCC: 6.5%. Intervenor Residential Customers' Exhibit I at 24. Applying that productivity factor, after subtracting 1.9% for inflation, (according the December 23, 1997 U.S. Department of Commerce Bureau of Economic Analysis National Accounts Data) results in a reduction of 4.6% for Ameritech Indiana's residential and business rate classes as they can be found at I.U.R.C. Tariff 20, part 4, §2 Original Sheet No. 3 and 1<sup>st</sup> Revised Sheet No. 4. Because of other regulatory developments, however, we make the following two exceptions: the productivity-based rate reduction should not apply to Ameritech Indiana's coin and Centrex services. Coin services have been largely deregulated by federal order, and are the subject of our proceedings in Cause No. 40830. Centrex services have also been largely deregulated, generally falling within Ameritech Indiana's "other" service category.

Finally, because it not our intent to relax our jurisdiction over Ameritech Indiana's

earnings indefinitely, we find that if no Order has been approved in the "permanent" (as opposed to "interim") phase of this Cause by October 1, 1998, we reserve the right to implement further changes in the price cap after that date.

### Interim Alternative Regulatory Provisions

The Settlement Agreements approved to create Opportunity Indiana contained a relatively comprehensive declination of Commission jurisdiction over Ameritech Indiana. Today, with much less time to resolve Ameritech Indiana's petition for interim relief, and with considerable dissension between the parties, our interim alternative regulatory plan is less sweeping. When Opportunity Indiana expires after December 31, 1997, all of our statutory jurisdiction returns, except as specified in this order.

Our Preliminary Order already addressed some of the features an interim alternative regulatory structure should include. We found that Ameritech Indiana's tariff structures and formats and filing requirements for BLS, BLS-related, and "other" services should continue as under Opportunity Indiana. Also, I.U.R.C. Tariff No. T-7 should remain in effect in its present form, and Ameritech Indiana should be subject to the applicable provisions of our Third Order in I.U.R.C. Cause No. 39369 concerning the filing and processing of intrastate access tariffs, exceptions and concurrences. Finally, Ameritech Indiana should submit changes in intrastate end user charges to the Commission for approval pursuant to I.U.R.C. Cause Nos. 37905 and 38269, and should be subject to this Commission's rules for standards of telephone service (170 IAC 71.1, et seq.) and for extended area service (170 IAC 7-4, et seq.).

We now make the following additional findings with regard to an interim alternative regulatory structure. One of the Settlement Agreements which was part of Opportunity Indiana concerned filings related to toll services. Because we are continuing the tariff filing procedures for Ameritech Indiana, we also now continue the corresponding tariff filing procedures for interexchange carriers as agreed to in Opportunity Indiana.

Among the areas over which we specifically reassert our jurisdiction are the following:

#### CSOs

In order to be consistent in our regulation of Ameritech Indiana relative to our regulation of other incumbent local exchange carriers' customer specific offerings (CSOs), we now find that our CSO filing requirements established in I.U.R.C. Cause No. 38561 should also apply to Ameritech Indiana's customer specific contracts. Individual customer agreements (ICAs) consummated prior to the expiration of Opportunity Indiana, should be filed with the Commission no later than January 9, 1998, and the corresponding tariff sheets for these ICAs should be processed pursuant to the instant Order.

#### Market Performance Reports

Consistent with our findings with respect to market performance reports for facilities based Alternative Local Exchange Companies (ALECs), the Commission finds that Ameritech Indiana should submit market performance reports to the Commission's staff on an annual basis. Specifically, Ameritech Indiana should include such basic market performance data as the number of customers and the number of customer lines for each category of basic service and the sales revenues and the sales volume for service categories for basic local service and basic toll service. We also note that it is our intent to develop with the industry and the OUCC standardized reporting guidelines so that the market performance filings of Ameritech Indiana and ALECs are consistent in the type of data they include, and we further find that Ameritech Indiana's filings should comply with these standardized reporting guidelines once they are

developed.

### Other Reports

On and after January 1, 1998, Ameritech Indiana should be subject to the same reporting requirements as other incumbent local exchange carriers. These include reports on Ameritech Indiana's jurisdictional financial matters referenced on page twelve of its December 12, 1997 Verified Response in Opposition to the OUCC's Motion. In addition, beginning with the 1997 federal filings, Ameritech Indiana should file with the Commission all ARMIS reports that it files with the FCC within ten days of the federal filing.

### Depreciation

In the Opportunity Indiana order, while we relinquished our regulatory oversight of Ameritech Indiana depreciation, Opportunity Indiana at 13, we also directed the company to "resume the maintenance of actuarial data in accordance with the applicable accounting rules of the Federal Communications Commission in the event we reassert our jurisdiction over depreciation upon the termination of the Settlement agreement." We now find that Ameritech Indiana should maintain its depreciation records in accordance with the requirements of the FCC Uniform System of Accounts and should furnish such information to the Commission upon request.

### Quality of Service

When considering the relaxation of our regulation over a telephone company pursuant to I.C. 8-1-2.6, one of our challenges is to promote the minimization of a telephone company's costs without a corresponding diminution in the quality of its services. I.C. 8-1-2.6-3. In Opportunity Indiana, we retained our jurisdiction over customer complaints regarding Ameritech Indiana's service quality, but we reduced the amount and type of information it was required to file. CITE.

At the hearing in the instant Cause, the OUCC cross-examined Ameritech Indiana's witness Mr. Cubellis about the ARMIS reports Ameritech Indiana files with the Federal Communications Commission. Record at E-44 - E-45. Responding to suggestions that ARMIS Report 43-05 indicates a decline in service quality under Opportunity Indiana Mr. Cubellis indicated that, at least with regard to increased delays in installation for inter-exchange carriers Ameritech Indiana had already "addressed the shortcoming in that area," Record at E-44, but he generally accepted subject to check that the ARMIS reports evince an increase in the number of service-related complaints since the adoption of Opportunity Indiana. He explained in his direct testimony, however, that complaints had actually decreased since 1993 when measured as a percentage of lines. Petitioner's Exhibit NLC- I at 4 1.

This Commission has adopted quality of telephone service standards applicable to all telephone companies in Indiana. 170 IAC 7-1.1 et seq. We now find that Ameritech Indiana should begin reporting on a quarterly basis its quality of service data. Specifically, this should include data on installation intervals, reports per 100 access lines, out of service carried over, out of service over 24 hours, and repair, business office and operator answer times.

### Infrastructure Investments

Finally, in addition to the terms of our interim alternative regulation described above another matter raised during the course of the hearing in this Cause merits our attention.

One of the terms included in Opportunity Indiana involved Ameritech Indiana's obligation to make a particular type of infrastructure investment "for each year 1994 through

1999." Paragraph 10(a) requires Ameritech Indiana to contribute \$5 million worth of "information processing and telecommunications equipment in each of those six years, while paragraph 10(b) of the Settlement Agreement contained Ameritech Indiana's commitment to spend \$20 million in each of those six years to provide "digital switching and transport facilities ... to every interested school, hospital and major government center" in its service territory.

In the three and a half years since our approval of the Opportunity Indiana Settlement Agreement, Ameritech Indiana has failed to live up to its infrastructure investment obligation. While it should have spent \$60 million pursuant to paragraph 10(b) by the end of 1996, Mr. Cubellis testified that as of June 1997 the actual total attributable to paragraph 10(b) was less than \$15.6 million. Record at E-170. His explanation that, try as it might, Ameritech Indiana had been unable to generate sufficient interest among the schools, hospitals and government centers it serves is troubling. In any case, if Ameritech Indiana is encountering obstacles to spending the money it promised to spend, the solution is not for it to pocket the approximately \$44 million difference. We find it should spend the full amount specified in paragraph 10(b). If its has trouble generating sufficient interest it should try harder, perhaps with the advice and assistance of other parties to the Settlement Agreement or of Indiana's Intelenet Commission, to generate interest in its provision of digital switching and transport facilities, or to otherwise propose some other means for its shareholders to provide infrastructure improvements consistent with paragraph 10(b). Ameritech Indiana should also file with the Commission by April 3, 1998 a report on its compliance with this finding, including its plans for making future infrastructure investments pursuant to paragraph 10(b).

More troubling still is Mr. Cubellis' suggestion that Ameritech Indiana might not honor the final two years' worth of its infrastructure commitments. Notwithstanding the express requirement that Ameritech Indiana continue the paragraph 10 infrastructure investments through 1999, he opined that, if the rest of Opportunity Indiana ends as scheduled on December 31, 1997, then "so does the infrastructure commitment." Record at E-39. His position thus calls into question not only the final \$40 million it committed pursuant to paragraph 10(b) (\$20 million in 1998 and again in 1999), but also the \$10 million it owes for the final two years of its commitment under paragraph 10(a) (\$5 million for the Corporation for Educational Technology in 1998 and again in 1999).

Although Mr. Cubellis noted that the validity of the doubts Ameritech Indiana is now casting as to the enforceability of its commitment to continue the paragraph 10 investments through 1999 "will have to be left to the attorneys to decide," and he and his counsel emphasized more than once that he is not an attorney and was not testifying as a legal expert, see, e.g. Record at E-121, in various post-hearing briefs Ameritech Indiana has asserted that it is under no legal obligation after December 31, 1997 to fulfill the balance of its \$150 million total commitment as set forth in paragraph 10 of the Opportunity Indiana Settlement Agreement. See, e.g., Omnibus Motion at 10 (Ameritech Indiana "is not required as a matter of law or agreement" to comply with paragraph 10.) The legal justification for this disturbing position, however, has yet to be provided. We are at a loss to explain how Ameritech Indiana could promise to invest \$150 million above and beyond its other planned infrastructure investments (see reference to Mr. Cubellis' testimony on this issue on page 10 of our Order in Cause No. 39705) through 1999 as a condition of the other parties' as well as our own approval of Opportunity Indiana, including our adoption of a price cap, and then unilaterally reduce that obligation by \$50 million. While we are pleased that Ameritech Indiana has thus far signaled its willingness to continue its infrastructure investments, we find that such investments are not optional, and should continue beyond December 31, 1997 unless we order otherwise.

### Conclusion

Most assuredly, the price cap interim alternative regulatory plan we adopt today is not

intended to constitute a comprehensive, long-term solution. The abbreviated review necessitated by the impending expiration of Opportunity Indiana effectively prohibited as full an airing of the parties' views as we would need to structure a longer term solution. Particularly given Ameritech Indiana's recent request that permanent relief in this Cause take into account the broad rate rebalancing currently set to take place in our Cause No. 40785, not to mention the potential impact of our establishment of the prices for Ameritech Indiana's unbundled network elements in Cause No. 40611, the ultimate conclusion will likely look quite different. Still, given the constraints of time and the parties' rights to due process, we believe today's order will serve as a bridge to take Ameritech Indiana and its customers beyond Opportunity Indiana and on to the next step in the transition to competition in the market for local telephone exchange service.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1.) Ameritech Indiana's Petition for interim alternative regulatory relief pursuant to 1.8-1-2.6 et seq. is granted to the extent described above.

2.) Subject to other ongoing rate investigations, until such time as this Commission issues an Order addressing the remainder of Ameritech Indiana's Petition other than for interim alternative regulatory relief, and subject to our further review if no such Order has been issued by October 1, 1998, this Commission shall relax its jurisdiction to review Ameritech Indiana's earnings. Ameritech Indiana shall accordingly reduce by 4.6 percent the cap currently in place on its residential and business rates for basic local service.

3.) Ameritech Indiana shall make infrastructure investments of no less than \$150 million through 1999 in compliance with the Settlements Agreement we approved in Cause No. 39705.

4.) This Order shall be effective on and after the date of its approval.

MCCARTY, KLEIN, SWANSON-HULL AND ZIEGNER CONCUR; HUFFMAN DISSENTS.

DATE: December 30, 1997

I hereby certify that the above is a true and correct copy of the Order as approved:

Brian J. Cohee, Executive Director  
and Secretary to the Commission