

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 97-3

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

OPINION AND ORDER GRANTING IN PART,
DENYING IN PART, AND DISMISSING
PETITIONS FOR REHEARING AND CLARIFICATION

Issued and Effective: April 11, 1997

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COMMISSIONERS:

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

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BY THE COMMISSION:

MCI Telecommunications Corporation (MCI), New York Telephone Company (New York Telephone), and MFS Intelenet of New York, Inc. (MFS) each filed petitions seeking rehearing or clarification of various aspects of our award in the arbitration between MCI and New York Telephone¹ pursuant to 251 and 252 of the Telecommunications Act of 1996² (the Act). Responses to the petitions were filed by New York Telephone and MCI.

THE NEW YORK TELEPHONE PETITION

Overview

New York Telephone distinguishes between the issues of law, policy, and rates presented for arbitration through an evidentiary and briefing process, and those arbitrated through final offer. Generally, it asserts that the former were decided consistent with the record and form a basis for an interconnection agreement.³ Of greater concern to New York

Case 96-C-0787, Petition of MCI Telecommunications Corporation for Arbitration, Opinion No. 933 (issued December 23, 1996)(the Opinion).

47 U.S.C. 251, 252.

New York Telephone's Petition, p. 2.

Telephone are those issues resolved through the final offer method. These determinations, it argues, revise Commission service standards and other prior determinations without any record evidence of technical feasibility, cost impact, or rate recovery mechanisms. Certain of these determinations, New York Telephone argues, cannot be implemented or are ambiguous.

Requests for Rehearing

1. General Legal and Policy Issues

New York Telephone seeks modification of the Opinion concerning what it terms "extraordinary service requirements" that assertedly violate 251(c)(4) of the Act, conflict with existing service standards and the service requirements of its Performance Regulatory Plan¹ (the PRP or the Plan), and are tantamount to new generic service standards improperly adopted. New York Telephone submits that the Opinion inappropriately sets carrier-to-carrier performance standards that should instead be established in a generic service standards proceeding. It says that the standards adopted by the Opinion are not based in fact, do not balance service quality, price, and returns and eviscerate the rules established by the Commission in the Plan. Further, according to New York Telephone, there has also been no notice of proposed rulemaking concerning these extraordinary service requirements in the State Register, and therefore the Opinion violates the State Administrative Procedure Act.

a. Issues Concerning Compliance with the Act

On rehearing, New York Telephone contends that service quality standards adopted in the arbitration through the final offer process violate the Act's prohibition against discrimination, requiring New York Telephone to provide services to MCI at intervals or on schedules different from those provided to its own customers.

With respect to resale, New York Telephone argues that the standards adopted are inconsistent with 251(c)(4), asserting that "MCI is only entitled to the performance level New York Telephone provides to its end

Case 92-C-0665, Performance-Based Incentive Regulatory Plans, Opinion No. 95-13 (August 16, 1995).

users."¹ In support of its position, New York Telephone relies on the Federal Communications Commission (FCC) statement that "incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to that incumbent LEC's subsidiaries, affiliates or other parties to whom the carrier directly provides service, such as end users."²

The Act requires the incumbent local exchange carrier to offer for resale "any telecommunications services that the carrier provides at retail."³

New York Telephone argues that a new class of services is established by the adoption of MCI's final offers with respect to timing and repair. In reply, MCI contends that New York Telephone will not be creating new retail services; rather, it will be selling the same features that New York Telephone sells to its own customers. MCI frames the issue as the "timing of delivery and repair; not the features and functions of the service itself."⁴

New York Telephone also asserts that the timetables or intervals established in the Opinion are inconsistent with the Act. New York Telephone notes that the intervals adopted for the provision of resale services are "considerably shorter than the intervals New York Telephone provides to its own subscribers"⁵; MCI replies that the requirement of an "absolute level of service quality"⁶ is consistent with the Act and interprets New York Telephone's argument as permitting it to provide poor service to everyone.

The Opinion does not require New York Telephone to offer MCI unique services; its requirements only address the quality of service offered. The Local Competition Order states that the incumbent must provide services with the same timeliness it provides services, not only to its end use customers, but to its own subsidiaries and affiliates as well. To the extent that New York Telephone has identified such intervals, we will modify the

New York Telephone's Petition, p. 28.

FCC First Report and Order, CC Docket 96-98, FCC 95-185, Implementation of Local Telecommunications Competition (issued August 8, 1996) (Local Competition Order), 970.

47 U.S.C. 251(c)(4).

MCI's Reply, p. 7.

New York Telephone's Petition, p. 30.

MCI's Reply, p. 9.

Opinion and adopt those intervals accordingly. However, we see no reason to modify our conclusion that "general assurances of parity treatment, absent specific commitments to explicit standards, may put [MCI] at a competitive disadvantage."¹ Where New York Telephone has failed to indicate such intervals, we will deny reconsideration of our standard set forth in the Opinion.

b. Procedural Issues

New York Telephone argues that the performance standards should be set aside, because these standards are "new rules with which New York Telephone must comply for all carriers without any evidentiary record whatsoever."² New York Telephone sets forth several independent grounds for rejecting the standards.

First, New York Telephone argues that because the standards were adopted as part of the final offer process, there was no factual record. Each party "did nothing more than present contract language it urged and, in some instances, a brief justification for the language."³ MCI responds that New York Telephone has waived any objection to the final offer process since it raised no objection during the arbitration.

Rehearing is denied. New York Telephone was fully informed of the issues that were to be decided and the method for the final offer awards. There was no objection by New York Telephone to Administrative Law Judge Stein's adoption of this process in response to the time constraints dictated by the Act. New York Telephone neither made any oral or written motion, nor requested the judge's reconsideration, nor took an interlocutory appeal. If New York Telephone had concerns about the development of the factual record with respect to service standards, those concerns should have been made known during the arbitration process. Moreover, the final offer method is appropriate for Act arbitration.⁴

Opinion, p. 39.

New York Telephone's Petition, pp. 34-5.

Ibid., p. 35.

See Local Competition Order, 1292.

Second, New York Telephone argues that these standards are impermissible as a matter of law because they amount to the promulgation of a new rule. New York Telephone interprets our adoption of the service standards "as a general policy determination with application beyond parties to the arbitration."¹ MCI responds, asserting the need for objective standards, relying on a similar conclusion reached by the Massachusetts Department of Public Utilities.

Inasmuch as we previously stated that, with respect to all arbitrations under the Act, our decision directly binds only the parties to the arbitration,² there is no reasonable basis for inferring the service standards adopted herein apply to all customers. Rehearing is denied on this point as well.

We also reject New York Telephone's suggestion that the service standards be considered solely in a generic proceeding. MCI is entitled, pursuant to the Act, to a comprehensive agreement embodying all the rates, terms, and conditions pertaining to its purchase from New York Telephone of interconnection, network elements, and services for resale. As the Opinion noted, if relevant service standards are established in a generic Commission proceeding, those standards may supersede these.

Finally, New York Telephone suggests that the standards be set aside because they differ from those in the PRP and an explanation for such departure was not provided. MCI replies that the PRP service standards do not apply to MCI, due to New York Telephone's efforts, and, moreover, if New York Telephone wanted these or similar standards to apply, it ought to have made such a proposal during the arbitration, rather than in a request for rehearing. New York Telephone's petition for rehearing on this issue is denied for the reasons offered by MCI.

c. Policy Issues

New York Telephone claims that only under 251(c)(3) of the Act, can MCI obtain enhanced service quality which is specific to unbundled

New York Telephone's Petition, p. 38.

Cases 94-C-0095 et al., Notice of Additional Procedures for Implementing the Telecommunications Act of 1996, (issued October 21, 1996).

elements, and then only if it is willing to pay for that higher level of service quality. Under the Act, New York Telephone continues, service is and should be exactly the same as the service it offers to its end users. Concerning unbundled elements, New York Telephone notes that under the Act it is required to provide equal quality of service among competing carriers, and where technically feasible, the quality of service on unbundled elements must at a minimum be equal to that which New York Telephone provides itself. It claims that its offer of parity to MCI satisfies the requirements of the Act, and that the Opinion creates standards well above the parity sought by MCI without evidentiary basis. New York Telephone indicates that where MCI seeks a higher quality of service than parity, New York Telephone will consider the feasibility and costs. MCI replies that removing service standards from this arbitration to a generic proceeding, as advocated by New York Telephone, would impermissibly delay the conclusion of a comprehensive interconnection agreement.

New York Telephone has adduced no additional information, argument, or reason to warrant reconsideration of the determination in the arbitration award that general assertions of parity, absent specific guarantees, are insubstantial. We reiterate, however, that the outcome of this proceeding may be affected by the determination in the industry-wide service quality standards proceeding, Case 97-C-0139.

2. Specific Rehearing Issues - Service Quality Standards

In addressing the specific service standard objections raised by New York Telephone, we have sought to recognize the needs of both carriers. Where a standard is unattainable due to technological limitations, we modify it.

a. Obligations for Service Outages on Hot-cuts

New York Telephone requests modification of the decision requiring no more than five minutes service disruption to end users during a hot-cut conversion of unbundled loops.¹ It asserts that MCI never provided specific procedures to accomplish cut-overs this quickly; a five minute outage standard

A hot-cut conversion is a conversion from one carrier's service to another's.

is patently unreasonable; and only the physical work and not the translation work can be done within five minutes. New York Telephone has offered to complete translation work (required for Interim Number Portability) out-of-hours and within a predetermined 60-minute window in order to minimize service disruption.

In reply, MCI states that New York Telephone was ordered to develop the capability to minimize service disruption to no more than five minutes, and claims the incumbent has not attempted to develop such operational procedures because they would only benefit potential competitors.

New York Telephone responds that MCI never requested that all work activity be completed in five minutes; MCI's request was that translation work be done within five minutes of completion of the physical work. Further, New York Telephone claims that the Opinion addresses only physical work since not all cut-overs require translation work.

The Opinion addressed service disruption to end users generally, holding such disruption to no more than five minutes regardless of whether translation work is required. Upon reconsideration, we find this may be too restrictive under New York Telephone's current procedures. Rehearing is granted to the extent we will require that New York Telephone complete all physical work within five minutes. Until Local Number Portability is widely available, we will hold New York Telephone to its offer of a 60-minute out-of-hours window on translation work.

b. Provisioning and Installation

For resale, New York Telephone claims that the Opinion requires much shorter intervals for provisioning than its current standard. It also notes that its internal provisioning process does not differentiate between services for resale and its own end user services. It asks that its current standards be used for resale services in order to be consistent with the requirements of the Act and to conform to the capabilities of its internal provisioning process.

For unbundled elements, with the exception of trunks and links, the Opinion requires provisioning within two days; New York Telephone asserts it is not technically possible to meet this requirement because of the additional coordination needed between carriers in processing an unbundled

element service order, and the potential that facilities, special engineering, and switch software provisioning may be required. Finally, New York Telephone says that its system of provisioning and balancing work force to load is incompatible with a two-day interval, and such intervals would have to be established manually outside of this system specifically for the advantage of MCI, but to the disadvantage of New York Telephone's end users. New York Telephone offers the same intervals for unbundled elements as for resale services, that is, the existing generic end user customer service standards.

MCI replies that New York Telephone concedes that residential resale installations can be completed within 24 hours when no premise visit is required. MCI argues that the two day interval on unbundled network elements, as required by the Opinion, cannot be unreasonable given New York Telephone's ability to provide resale residential service within 24 hours when no premise visit is necessary. MCI opines that most of New York Telephone's residential orders likely do not require a premise visit, stating that there will be no parity if unbundled elements are provisioned within five days when New York Telephone can provision its residential end users within 24 hours.

Based on New York Telephone's admission, we deny rehearing concerning non-dispatchable resold service installation provisioning. New York Telephone should develop adequate capability within its provisioning systems to distinguish between dispatchable and non-dispatchable orders. New York Telephone cannot expect the potential advantage of an across-the-board five day residential installation interval on resale services when it can complete many of these orders within 24 hours for its end users. For residential resale orders requiring a premise visit, we grant rehearing and adopt the current standard of five days. This should allow New York Telephone to use its system for balancing force and load for resale and end user service orders without disadvantaging either resale customers or its end users.

New York Telephone also asserts that the Opinion is more stringent than current New York Telephone practices for business orders involving 10 to 20 lines per order. The Opinion allows five days, the current standard is 10 days. New York Telephone asserts it would have to significantly modify its provisioning to provide 10 to 20 line orders within five days, and that such modification would give MCI a discriminatory preference over other customers.

Rehearing is granted as to this size order. For larger orders, MCI generally sought defined intervals whereas New York Telephone offered a negotiated interval. New York Telephone again offers no explanation as to why it cannot meet defined intervals, and we deny rehearing as to these types of installation orders.

For unbundled elements, New York Telephone claims that the complexity of unbundled elements makes it impossible to make a commitment to respond to all requests within two days. This statement suggests that some orders can be completed within two days, but New York Telephone only provides detailed reasons why it cannot uniformly make the two day commitment. It appears that, despite the additional complexity of provisioning unbundled elements, non-dispatchable basic link orders can be completed within two days as this is the interval New York Telephone uses for its non-dispatchable residential end user orders. New York Telephone has provided no evidence that a similar interval is impossible for orders of less than 10 business links. Therefore, we will order non-dispatchable basic link orders be completed within two days for all links--residential and business.

c. Provisioning and Installation - Performance Measurement

New York Telephone offers to use the current standard or its actual performance instead of the Opinion's measurements for provisioning and installation of resale services and unbundled elements. The Opinion mandated 99% percent of all residence orders and 99.5% of all business orders be completed within four days, versus the general standard of 85% of all orders completed within five days. The Opinion required a standard of 1% of installation appointments missed versus the current standard that missed appointments be held to 3% or less; and a standard of 1% for installation troubles within 30 days versus New York Telephone's actual performance (the company claims no standard exists for this measure) of 7.7% during the fourth quarter of 1996.

We will require the use of current standards for both resale services and unbundled elements. Concerning installation troubles, we note that our Special Service Guidelines include a quality of installation work standard. It is 0 to 3.5% trouble reports during the first 30 days following the installation of a service. We will require New York Telephone to use this measure for resale services and unbundled elements instead of the 7.7% or the 1%.

d. Maintenance Standards

New York Telephone objects to the requirements of the Opinion and offers to use the current standard instead for resale services and unbundled elements. The Opinion requires that (1) all out-of-service trouble reports be repaired within 24 hours; (2) all non-out-of-service trouble reports be repaired within 72 hours, and (3) that total outages requiring a premise visit received between 8 a.m. and 6 p.m. be restored within 4 hours 90% of the time, within 8 hours 95% of the time, and within 16 hours 99% of the time.

New York Telephone asserts the Plan objectives for out-of-service troubles should be the applicable standard. These standards vary by geographic region from 70% to 77% repaired within 24 hours. In reply, MCI argues only the general issues on service quality and standards.

The standard in our rules is that no more than 20% of out-of-service troubles last beyond 24 hours. We have adopted less stringent goals in New York Telephone's Plan; these gradually improve to the level of our rules over the life of the Plan. We will apply the standards of the Plan for resale services and the standard of our rules for unbundled elements. Concerning the second and third items listed above, we deny rehearing inasmuch as New York Telephone offers no proof that it could not meet these goals.

e. Repeat Troubles

The Opinion requires that repeat trouble reports for the same subscriber on the same service in a two-month period be less than 1%. New York Telephone claims that a repeat trouble report standard is subsumed in its Plan and that the Plan requires the overall trouble report rate for a switching entity be 4% or less in a given month. Further, New York Telephone asserts it uses a 30-day period to measure repeat trouble reports, not a 60-day period.

We agree that a 30-day period is more appropriate for repeat trouble reports. However, we do not agree with New York Telephone's reading of the Plan, which addresses the overall level of trouble reports. We take notice of the fact that New York Telephone's average performance for 1996 on repeat trouble reports is 0.56%. Thus, we grant rehearing to the extent of adopting a 1% level over a 30-day period for repeat trouble reports.

f. Billing Services

The Opinion requires accurate, complete, and timely billing records be provided to MCI. In particular, 99.4% of records were to be provided within one day, and 100% within five days; with no more than 60 errors and 20 omissions per one million records. New York Telephone claims it currently does not provide itself these records and is currently incapable of providing them. Not all billing records from central offices are accumulated electronically; a significant number of offices still involve transporting tapes via truck, a three day process at a minimum. While New York Telephone asserts there is no way to verify the accuracy and completeness of its billing records, it does offer to review instances of error.

New York Telephone raises concerns about its ability to meet the timeliness standard of the Opinion. Three days is the earliest New York Telephone processes usage records for itself. We will modify this standard on billing services from 99.4% provided within one day to within three days, and maintain 100% provided within five days. We decline to modify the standards on accuracy and completeness at this time.

g. The Reporting Process

New York Telephone objects to the level of detail required concerning the measurements to gauge parity in service quality. The Opinion requires monthly reports by state, area code, NXX,¹ and product feature, showing daily detail. New York Telephone offers monthly detail at the state level, but is willing to provide these reports at its central office level. It claims that daily information at the NXX level is neither practical nor

NXX indicates the first three digits of a telephone number, the central office code, formerly termed an exchange.

feasible and that it believes MCI's intent was the central office level. Further, New York Telephone reports it needs three months of intensive programming effort to provide NXX or product level detail. New York Telephone asserts it needs clarification from MCI on the definition of product level detail. MCI appears willing to further clarify its requirements in the continuing contract negotiations. Concerning product level detail, New York Telephone should provide service data reasonably specific to the product.

It does not appear necessary to require reporting of daily NXX information on a monthly basis for measuring parity. This level of detail apparently requires additional programming effort, and service data at the central office level may be more meaningful than at the NXX level. Therefore, we will not require NXX detail in the reports. New York Telephone's petition is unclear as to its ability to provide central office level detail in a timely manner, but this appears readily available. Thus, the reports should at least have state, area code, and central office level detail.

h. Surveillance and Performance
Monitoring Requirements

The Opinion requires New York Telephone to provide real-time monitoring and alarm data on elements, digital cross-connect systems, and events affecting MCI's traffic. New York Telephone claims that this has never been attempted in the industry and is likely to require hardware and software which can only be defined after the competitive local exchange companies' needs are fully understood. It says that, if and when it is technically feasible to offer this monitoring and alarm capability on a partitioned basis, New York Telephone would be willing to do so at the appropriate price. In the alternative, New York Telephone offers to tailor its own internal abnormal events reporting procedure to MCI's needs, and to communicate significant outages to the FCC and to us.

In reply, MCI rejects New York Telephone technical limitations arguments as unsupported. Further, MCI argues, New York Telephone had ample opportunity to raise such claims, and did not.

We will adopt New York Telephone's position on this issue; however, we direct New York Telephone to work with MCI to better define the applicable requirements. Until these requirements can be met, we direct New

York Telephone to make its abnormal event reports available to MCI with modifications to improve upon the form, content, and timeliness of event reporting.

i. Operation Support System Availability

New York Telephone claims that its operation support systems are not all available on a 7 by 24 (7 days a week, 24 hours a day) basis, and that it would have to create duplicate systems to meet this requirement of the Opinion. New York Telephone offers the same hours of access to MCI that it currently provides to its own employees.

MCI claims that New York Telephone has not provided any technical or operational evidence that would prevent 7 by 24 access. MCI asserts that New York Telephone fails to demonstrate that during maintenance to some systems all of the off-hours are truly required for maintenance. It says that availability of any system, not the hours of operation, should be controlling.

Adequate allowance should be given for system downtime for maintenance. We are unwilling to quibble over the difference of hours of operation versus actual downtime for maintenance as suggested by MCI. It is adequate at this time for New York Telephone to provide access to its systems on the same basis its employees can access these systems. To the extent systems are available 7 by 24, New York Telephone should provide that access to MCI.

j. Control of Digital Cross-Connect System Equipment

New York Telephone raises a number of detailed technical issues associated with the Opinion's requirement that it permit MCI direct, unrestricted control of configurations and reconfigurations of channels between physical interfaces. It offers such capability only where it is technically feasible to partition Digital Cross-Connect System (DCS) equipment to meet both its and MCI's requirements.

New York Telephone also states that unrestricted direct access would severely jeopardize security and may violate nationally accepted network security standards. In reply, MCI asserts that the Opinion does not require New York Telephone to provide unrestricted direct access. The parties appear to be in agreement on this issue and the Opinion will be read to imply the

parties' understanding that MCI is entitled to DCS access where feasible and in accord with industry reliability and security standards.

3. Other Specific Rehearing Issues

a. Interim Number Portability Compensation

The arbitration award determined that access charges would be shared: New York Telephone would be allowed to charge the interexchange carrier for transport of a call from the interconnector's point of presence to the end office where the call terminates or to a designated meet point, where it hands the call off to MCI. MCI would be allowed to charge the interexchange carrier its switched access rates to terminate the call. However, we determined that MCI and New York Telephone would render separate bills to interexchange carriers to recover the charges associated with their respective rates, rather than require New York Telephone to adjust its rates for MCI's charges.

New York Telephone argues that the Opinion differs from the Rochester Open Market Plan and previous determinations concerning interim number portability. New York Telephone states that the Opinion appears to order it to share terminating access charges with MCI under a meet point billing plan, asserting that to permit otherwise would be inconsistent with FCC policy. New York Telephone requests that we clarify that we did not intend to reverse prior determinations that New York Telephone is entitled to retain intrastate access revenues. It also challenges the determination on the independent ground that we assertedly failed to provide a considered rationale for a change in policy as required under New York law.

New York Telephone also asserts that if we intended to apply different rules solely to the parties to this proceeding, the Opinion conflicts with the principles of non-discrimination in the Act and Local Competition Order.

We concluded in this arbitration that New York Telephone's proposal that it retain access charges was inconsistent with the FCC's approach. However, this was only part of the basis for our determination. We agreed with MCI that the terminating carrier, during this interim period, should receive appropriate compensation for its provision of terminating access. We have recognized that, for the interim period, less than full

recovery of the incumbent's interim number portability costs is acceptable. Moreover, as this is an arbitration under 252 of the Act, the outcome is only directly binding upon the parties and may differ from outcomes in other arbitrations. Accordingly, rehearing is denied on this point.

b. Method for Rebranding and Customized Routing

New York Telephone believes that the Opinion deviates from prior arbitrations, as it requires New York Telephone to deploy the Advanced Intelligent Network (AIN) method and not the Class of Service (COS) or some alternative method as the means to provide routing/rebranding of operator and directory assistance calls on resold lines. New York Telephone points out that prior decisions have given it the flexibility to determine the appropriate methodology. In addition, New York Telephone believes we erred by establishing a fixed date by which it must provide a complete solution to re-route/re-brand MCI's operator and directory assistance resold calls. New York Telephone opines that deployment of any approach is dependent upon the specific requirements of the requesting carrier and a firm date cannot be determined for providing re-routing or re-branding until a specific request is made.

MCI maintains that using the AIN solution for rebranding and customized routing of operator and director assistance service on resold lines was New York Telephone's preferred approach during this arbitration. In addition, MCI states that the September 1, 1997 deadline was based on New York Telephone's evidence.

The record supports the deadline that we imposed for the AIN solution for rebranding and customized routing. Further, it was New York Telephone that offered AIN as the best solution for rebranding and customized routing, and it cannot fairly complain about being ordered to provision its preferred solution by a certain date. New York Telephone has offered no new facts or circumstances for consideration here. Therefore, New York Telephone's request for rehearing on this matter is denied.

c. Availability of Unbundled Multiplexing

The Opinion required New York Telephone to offer multiplexing/digital cross connects by March 1, 1997. New York Telephone now

petitions for reconsideration of the timing related to this network element, on the ground that its provision will require an overhaul of methods and procedures that it does not expect to complete until June 1, 1997. MCI responds that it does not oppose a 30-day extension in this instance.

The Opinion will be modified and New York Telephone is required to offer multiplexing/digital cross connects within 15 days of the issuance of this opinion and order.

d. Access to Plant Inventory Data

In the Opinion, we acknowledged that New York Telephone had agreed to provide MCI with access to most requested data bases and information sources. However, an area of contention was the provision of plant inventory data, which New York Telephone had argued it was not required to provide as it was beyond the requirements of the Local Competition Order. MCI had responded that access to plant inventory data--for example conduit, fiber, switch port, loop feeder, and distribution--was necessary for it to request feasible points of interconnection and to ensure that New York Telephone's facilities are available on a non-discriminatory basis. We determined that MCI appeared to be entitled to view this data, since New York Telephone made no countervailing policy claim.

New York Telephone now asserts that allowing MCI access to such data would enable it to gain a competitive advantage vis-a-vis other competitive local exchange carriers. In addition, allowing MCI to view a system called Trunk Integrated Record Keeping System (TIRKS) would give it access to information pertaining to all New York Telephone customers, including other competitive local exchange carriers, unless extensive work was done to partition the data. New York Telephone asserts that its concerns for protecting the confidentiality of network data from a competitor and our concern that New York Telephone not discriminatorily deny requests for interconnection can both be accommodated. New York Telephone requests that we clarify the Opinion by indicating that it shall provide access to such data to the extent necessary to enable MCI to verify or contest New York Telephone's denial of a specific MCI interconnection request brought before us.

MCI responds that we should not alter our decision for three reasons. First, New York Telephone did not raise any policy arguments during

the arbitration, so it cannot do so now. Second, MCI requires access to plant inventory data so that it can request feasible points of interconnection and to ensure that New York Telephone's facilities are being made available on a non-discriminatory basis. Third, New York Telephone's proposal to limit MCI's access to situations where MCI is contesting New York Telephone's denial would lead to significant delays in establishing points of interconnection.

On balance, the likelihood of delay outweighs the conjectural discrimination problem, and rehearing is denied. As for New York Telephone's argument that some systems contain confidential data that should not be shared, MCI should demonstrate it has received appropriate authorization from the customer as a precondition to system access. However, New York Telephone's assertion that it will need to do extensive work to separate confidential data from plant records does not correspond to its initial assertion that plant information is not resident in operations or support systems and that some of the information is only available on handwritten maps. Upon a request from MCI, New York Telephone should be able to provide enough information to allow MCI to determine feasible points of interconnection without exposing information sensitive to other New York Telephone customers.

e. Collocation of Remote Switching Equipment

The Opinion grants MCI the right to collocate switching equipment in New York Telephone's central office buildings. New York Telephone reraises its legal arguments, and claims, in addition, that digital switching equipment requires special grounding arrangements. New York Telephone identifies this component as an Isolated Ground Plane and gives examples of its complexity and cost. Further, New York Telephone indicates that costs can vary greatly depending upon which competitive local exchange carrier is first to collocate a remote switch and the subsequent competitive local exchange carriers whose switching equipment is likely to be further removed from the initial isolated ground plane within a New York Telephone central office building.

In reply, MCI disputes New York Telephone's interpretation of the Act; on the technical issue of the isolated ground plane, MCI claims that a remote switch does not require the same protections as other switching equipment.

As MCI also notes, New York Telephone raises the issue of an "isolated ground plane" for the first time on rehearing. Setting this aside, however, and addressing the technical aspects, we do not believe that New York Telephone has identified a roadblock that would prevent collocation of switching equipment. The need to add special grounding for any central office-based switching equipment is a common industry practice.

We do not here reach the issue of additional costs. Because there are no errors of fact or law, rehearing is denied. New York Telephone is free to seek to recover such costs.

f. Alternatively Billed Calls

In the Opinion, we determined the revenue allocation between New York Telephone and MCI when calls are billed to and paid for by a third party.

New York Telephone believes that our determination is based on a misunderstanding of the relationship of the resale carrier and the underlying carrier that results in an unfair recovery of its costs. New York Telephone asserts that in a resale environment, MCI purchases billable usage from New York Telephone at a discount and resells this usage to MCI's customers, and that when there is no usage billable to an MCI customer, there is nothing to resell. Unless modified, New York Telephone believes that the Opinion puts New York Telephone in the position of paying MCI for a call that MCI never purchased and resold in the first instance. In addition, New York Telephone objects to requiring it to apply MCI's rates for these calls. MCI points out that New York Telephone's position on alternatively billed calls in a resale environment has been rejected in the AT&T arbitration.

New York Telephone's position has already been considered and rejected in this arbitration. Currently, the carrier serving the calling party applies the charges for the call regardless of whether those charges are to be billed to a party other than the calling party. The fact that the serving carrier is providing resold services provides no basis for altering this approach, and doing so would result in unnecessary customer confusion and disparate treatment of customers. Rehearing is denied on this point.

g. Long-Term Number Portability

Issues related to long-term number portability were presented as part of the final offer portion of this arbitration. New York Telephone argues the Commission erred, as a matter of law, in ruling on such matters because MCI excluded this issue from arbitration in its white paper. MCI, while not squarely addressing the legal issue, states that the Commission's findings here are consistent with long-term number portability methods the Commission previously approved.

Long-term number portability was properly presented for the Commission's consideration. It was incumbent upon MCI or New York Telephone to seek to exclude this issue from the final offer process, if that was either party's intent. Neither did so.

Concerning the requirements for portability of codes New York Telephone notes that the declaration of end office (NXX) codes, rather than entire central offices, as portable, is the accepted industry definition. New York Telephone also identifies operational difficulties and additional costs in providing number portability for entire central offices, when no ported numbers exist for a given end office.

New York Telephone further argues that the Opinion requires provision of number portability first in tandem offices, and that this requirement impedes the company's flexibility to deploy number portability efficiently. It refers to affidavits identifying operational, technical, and cost reasons why tandems should not be converted first, and that the provision of number portability in its end offices is consistent with the plans of other competitors. Finally, New York Telephone states that conversion of tandem switches would delay its ability to provide number portability by the current October 1, 1997 deadline for the New York Metropolitan LATA. In response, MCI renews its request for tandem conversions to be done first, arguing they are the facilities through which every carrier can reach every other carrier.

New York Telephone has demonstrated in its petition that the prior determination conflicts with industry plans. New York Telephone's request for reconsideration is granted. The determination concerning these service requirements should be read to include the requirement that any requested arrangement also be consistent with industry standards.

New York Telephone also seeks clarification, requesting the

deletion of the phrase "Interim" from "Interim Number Portability" is not object, and it is so clarified. In addition, New York Telephone believes that the requirement of this paragraph that there be no degradation of service is restrictive and impossible to meet. MCI responds that this requirement was established by the FCC.¹ MCI's argument is persuasive. Accordingly, New York Telephone's request for rehearing is denied. Finally, New York Telephone requests reconsideration of the provision of 10 digit unconditional AIN triggers "where technically feasible." MCI does not oppose the request; reconsideration is granted.

Requests for Clarification

1. Unbranding of Operator and Directory

Assistance Services

New York Telephone seeks clarification of our decision that it unbrand network elements by March 1, 1997, asserting that we used the word "unbranding" instead of "unbundling," and that we must correct this error to be consistent with the decisions in the AT&T and Sprint arbitrations that network elements be unbundled by that date. MCI believes we meant to require "unbranding" of operator services and directory assistance on resold lines by March 1, 1997.

MCI is correct that in this instance we intended that New York Telephone should "unbrand" operator and directory assistance services on resold lines by March 1, 1997, a date which New York Telephone admitted was possible.

With regard to unbundling of network elements, we also determined that March 1, 1997 should be the date for element availability.

2. Directory Information Access

New York Telephone believes that the Opinion properly determined that its provision of information access on a read-only basis was reasonable and met the requirements of the Act. However, New York Telephone believes that we decided final offer issues in an inconsistent manner insofar as MCI might surmise that it is entitled to data base "dumps."

CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability (July 2, 1996), 48.

MCI argues that it should not be forced to pay for access to New York Telephone's directory assistance platform when it is providing its own directory assistance platform. It argues that the information needed to build its directory assistance system can be unbundled from the New York Telephone directory assistance platform and should be unbundled, if its system is to be fully functional. A failure to provide basic directory assistance data forces MCI to query New York Telephone's database on every directory assistance call, resulting in a directory assistance charge, which unnecessarily increases MCI's costs.

The Opinion found that MCI had not demonstrated that read-only access to New York Telephone's directory assistance records was a barrier to entry. MCI's argument removes this defect. The requested information should be provided to MCI.

3. Advanced Intelligent Network Triggers

New York Telephone requests clarification concerning the list of Advanced Intelligent Network (AIN) triggers¹ it is ordered to provide MCI, asserting that it is committed to providing MCI nondiscriminatory access but that certain of the triggers listed in the final offer Appendix do not exist; others have not been purchased by New York Telephone; and still others may affect customers of carriers other than MCI. MCI does not disagree, although it disputes whether clarification is necessary. Since the parties appear in agreement, the Opinion should be read to subsume New York Telephone's clarifications.

4. Common Transport at the Prevailing
Transmission Speed

New York Telephone seeks clarification concerning the transmission rates available on common transport. It has been ordered to offer multiple transmission rates, but wants to make it clear that MCI would be required to use the common transport at the transmission rates designed to address the combined busy hour demand of all carriers that access that trunk group,

An AIN trigger is a computerized process by which MCI and other carriers use New York Telephone's AIN capabilities automatically to query MCI, New York Telephone, or third party databases.

asserting that to do otherwise, would result in less efficient, lower speed systems.

MCI asserts that New York Telephone seeks to eliminate higher transmission rates, forcing MCI to use lower transmission speeds and forcing higher costs upon MCI. It responds that the contract language allows New York Telephone to engineer, provision, and maintain the underlying equipment and facilities and that clarification is unnecessary.

The Opinion neither requires New York Telephone to use inefficient trunking, nor restricts MCI to inefficient transmission rates. Rather, it requires New York Telephone to provide tariff rates that reflect the transmission rates provided on common transport. No further clarification is necessary.

5. Responsibility for Fraud

New York Telephone seeks clarification or reconsideration of the determination that it is responsible for uncollectible revenues resulting from unauthorized use of service due to physical security breach, on the ground that this is inconsistent with the outcome in a prior arbitration, and that losses from fraud are costs of doing business resellers should bear in a competitive market. New York Telephone asserts the resale discount should be recalculated if this outcome is not reconsidered, and that MCI needs the incentive to prevent fraud by its customers. MCI responds that as a reseller it has no control over New York Telephone's network and is in no position to prevent fraud resulting from breaches of physical security. Because MCI assumes responsibility for fraud costs resulting from the subscription process, there is no persuasive reason to grant rehearing.¹

6. Use of the New York Telephone Calling Card

New York Telephone seeks clarification or reconsideration of its obligation to allow customers to continue to use New York Telephone calling

As we have frequently noted, arbitrations directly bind only those parties to the arbitration proceeding. Moreover, this is not inconsistent with the outcome in Case 96-C-0864, Petition of Sprint Communications Company L.P. for Arbitration, Order Resolving Arbitration Issues (issued January 14, 1997) p. 19. The issues were presented differently in this arbitration, requiring a more specific determination of the resellers' share of uncollectible revenues.

cards for certain periods after changing local service providers. Agreeing to the expressed goal of maintaining continuity of service, New York Telephone asserts that MCI's proposed solution is infeasible, because its system automatically terminates calling cards when customers change carriers. Further, New York Telephone argues, it should immediately shed billing and collection responsibility for customers once they choose other carriers. MCI responds that its proposed contract term, as adopted, simply continues New York Telephone as the calling card provider for up to 30 days, in transition, and that New York Telephone must, in any event, render a final bill. Reconsideration is granted to the extent that New York Telephone will not be required to maintain calling card accounts into additional billing cycles beyond the one in which it renders a customer its final bill.

THE MCI PETITION

Requests for Rehearing

1. Legal and Policy Issues
 - a. MCI Issues Concerning Interim Rates'
Compliance with the Act

MCI asserts that temporary rates are insufficient as a matter of law to establish pricing standards consistent with the Act.¹ New York Telephone responds that temporary rates are consistent with the Act and the Local Competition Order; and that MCI failed to raise this argument during the course of the arbitration.

To a certain extent, MCI's argument is academic, inasmuch as permanent rates for numerous elements, including links, will take effect shortly. To the extent any rates remain temporary, however, New York Telephone is correct that this is a necessity envisioned by the Local Competition Order and consistent with the Act. Moreover, because the temporary rates are subject to refund or reparation upon the establishment of permanent rates, MCI can assert no harm.

- b. Challenges to Specific Rates
 - i. Link Rates

47 U.S.C. 252(d)(1).

The Opinion established as an interim link rate, an estimate of the statewide average incremental cost for loops provided by New York Telephone in Cases 95-C-0657 et al. This rate was in effect on a temporary basis, subject to refund.

MCI asks that the rate for links be reconsidered, arguing that 252(d) of the Act requires link rates be set based on costs and, given the cost evidence it provided showing that costs vary among six "density zones", the Opinion fails to set rates consistent with the Act in establishing only a single statewide rate.

New York Telephone responds that 252 (d) requires rates that are "just and reasonable", MCI has not argued that the interim rate is itself not "cost based", and permanent rates will be established shortly.

MCI's request for reconsideration is denied. The interim rate established in Case 95-C-0657 was found to be based on forward-looking costs and adequate, subject to refund and reparations while we complete our ongoing review of the costs of, and appropriate rates for, elements in Cases 95-C-0657 et al.

ii. Local and Tandem Switching Rates

The Opinion set interim rates for switching elements based upon a total service long run incremental cost study. MCI argues that the cost study used by the Commission was filed in 1990 and should not be relied on, and that the tariff (PSC No. 914) in which those rates reside has not yet been approved on a permanent basis.

New York Telephone responds that the Commission properly relied upon the best evidence of costs available to it, and that these rates are also subject to reexamination shortly in the current cost proceeding. MCI has adduced no new arguments and its request for reconsideration is denied on this point.

iii. Interoffice Transport

The Opinion set forth rates for transport that were based on cost studies previously examined by the Commission, and derived from rates currently in effect in New York Telephone's carrier access tariff. MCI argues that the 1990 cost studies supporting these rates were outdated and that they

include tandem switching costs which would result in an overcharge if MCI were to buy both common transport and tandem switching. New York Telephone responds that the rates relied upon in the Opinion removed the tandem switching costs.

The rate we established in this arbitration for transport is properly cost-based and, thus, MCI's petition for reconsideration is denied. We further note that the rate for common transport established in the Opinion is below that which MCI requested.

iv. Reciprocal Compensation

Rates for reciprocal compensation were based upon the sum of the following elements: local switching, tandem switching, and interoffice transport. MCI asks that we reconsider these rates, as it believes the individual element rates upon which it was based are themselves inappropriate.

New York Telephone asserts that if MCI's challenge to the individual element rates fails, so must this request for reconsideration. New York Telephone is correct. As the element rates themselves are just, so must be the reciprocal compensation rate which they compose. MCI's request for reconsideration is denied on this point.

v. Collocation Rates

The Opinion set interim collocation rates at New York Telephone's existing tariff rates, noting that New York Telephone would be filing a collocation cost study in Case 95-C-0657 and that it had filed revisions to its collocation tariff on November 14, 1996. MCI expresses concern that New York Telephone has since asked Judge Linsider to rule that collocation rates are not at issue in Cases 95-C-0657 et al., and has not filed applicable rates in that proceeding.

New York Telephone replies that it is proposing to offer carriers collocation rates based on the forward-looking cost studies presented with its Petition for Approval of its Statement of Generally Available Terms and Conditions, filed February 13, 1997. New York Telephone states that it will also file these rates shortly in the collocation tariff proceeding.

We have established that Case 96-C-0036¹ is the proceeding in Case 96-C-0036, Complaint of AT&T Concerning Request for Four Collocated Cages.

which we will review New York Telephone's collocation rates and in which New York Telephone may be required to file the appropriate forward-looking cost studies.

vi. Non-recurring Charges

The Opinion faults New York Telephone for inadequately defining the various non-recurring charges it proposes, and establishes that only such charges as currently apply to a similarly-situated customer will apply until we complete our ongoing investigation of these charges in Cases 95-C-0657 et al. MCI argues that such charges are not properly cost-based; New York Telephone responds that the rates are based upon incremental labor costs and lawful.

The costs associated with one time, non-recurring activities are actually incurred by New York Telephone, and are not otherwise reflected in the rates for network elements. In short, they are real costs and it is proper to recover them through one-time charges. The interim rates adopted are reasonable and subject to refund and reparations. The rates were established under existing tariffs and apply to similar activities when requesting similar work; these rates were established in proceedings and tariff processes in which MCI had an opportunity to participate; a proceeding is currently underway to review these rates; if different rates are established MCI will pay those rates here. Thus, this aspect of MCI's request for reconsideration is denied.

vii. Dedicated Transit

MCI, joined by MFS, asserts the rates established for dedicated transit connections are not in compliance with the Act. We adopted New York Telephone's proposal that the rates for dedicated transit connections be set at twice the New York Telephone Service Access Charge (SAC) of \$1.90 per month consistent with the Act because they are based on a New York Telephone incremental cost study filed in connection with the Optical Transport Interconnection Service II (OTIS II) tariff. We did not make the rate temporary, as it is now priced consistent with the costing provisions of the Act and not currently under examination in another proceeding.

MCI claims that our decision was contrary to law and arbitrary and

capricious. First, MCI believes that the decision to adopt the charge as a permanent rate simply because the rates were not under consideration in another proceeding was illogical. Second, MCI believes that the SAC rate was not the product of an incremental cost study but was based on New York Telephone's embedded costs, and thus violates the Act.

New York Telephone responds that the Opinion made clear the Commission was establishing permanent rates for dedicated transit service on two grounds: the rates are priced consistent with the costing provisions of the Act and that are not currently under examination in another proceeding. In addition, New York Telephone responds that Mstudy, and that we previously determined that the SAC rate represents incremental costs. However, since the incremental costs have not been reviewed since 1991, New York Telephone may be required to file a new cost study in the above mentioned collocation proceeding.

c. Issues Concerning Resolution of General Contract Terms and Conditions

Conceding that the Opinion addressed almost all unresolved issues in Attachments II through X of its proposed contract, MCI nonetheless seeks rehearing of the absence of a determination on its Attachment I, containing proposed general contract terms and conditions.¹ MCI points out that it filed an annotated version of New York Telephone's proposed contract, red-lining the comparable general terms and conditions language. It asserts these terms and conditions are critical to a workable interconnection agreement. In response, New York Telephone notes that in the course of the arbitration both parties agreed to submit proposed contract terms, MCI submitting only its Attachments II through X.² New York Telephone refers to correspondence and a procedural conference, at which parties submitted lists of issues for arbitrations.

In its final offer on operational issues, MCI stated that "Attachments II through X of MCI's proposed Interconnection Agreement contain all of MCI's terms and conditions for interconnection and resale and include all of the operational issues which MCI has proposed for arbitration as

MCI's Petition, pp. 17-18.

New York Telephone's Response, pp. 27-28.

'Mediation Plus' issues." Indeed, in the course of numerous procedural and mediation conferences, and in frequent correspondence between the parties and the Administrative Law Judge, no mention appears indicating that the issues in Attachment I were the subject of arbitration. As we noted in the Opinion, MCI was deficient in specifying with any clarity what issues it intended to arbitrate. If it indeed intended to present the Attachment I issues for arbitration, it apparently failed to notify either New York Telephone or the Administrative Law Judge. MCI will not be given another opportunity to arbitrate these issues in rehearing form.

2. Other Specific Rehearing Issues

a. Interim Number Portability Arrangements

MCI maintains that several of the findings unreasonably restrict its ability to obtain interim number portability arrangements from New York Telephone. Specifically, MCI complains that while technically it can purchase trunks for porting numbers, the Opinion requires it to pay tariffed rates for trunks. MCI opines that such a result is contrary to the FCC's number portability order, which requires that such trunks be offered as an interim number portability option, and also differs from that order in regard to cost recovery. In addition, MCI contends we have precluded use of a form of Route Indexing known as Route Indexing-Portability Hub.

We required New York Telephone to port calls using the best available technology. Specifically we determined that the underlying carrier should reserve the right to determine the type of service arrangement used to redirect ported calls to the competitive local exchange carrier. The arrangement must be, at a minimum, an appropriate level of service, based on what is available, and considering the preference of the competitive local exchange carrier. This policy does not preclude MCI from obtaining a preferred arrangement. In addition, MCI offers no support for its contention that currently tariffed rates for New York Telephone's trunks are inconsistent with the FCC's cost recovery rules. Accordingly, rehearing is denied on this point.

b. Customized Routing Timetable for
AIN-Capable Central Offices

MCI claims that New York Telephone should be required to provide

customized routing today for the portion of its access lines that are served by AIN-capable switches. According to MCI, the failure to do so forces it to pay a higher wholesale rate for resold services on all access lines until September 1, 1997, the date on which we ordered New York Telephone to provide MCI with customized routing to its own operator and directory assistance platform. Since New York Telephone has not unbundled operator services and directory assistance from its wholesale service, MCI asserts resellers cannot take advantage of the maximum wholesale discount.

New York Telephone replies that its ability to offer an AIN solution to rerouting/rebranding for resold calls is dependent on two separate but related conditions. First, an office must have general AIN capability, and second, New York Telephone must develop and deploy specific AIN abilities supporting rerouting/rebranding at an AIN ready switch. New York Telephone believes the thrust of MCI's claim is a request for clarification that New York Telephone will provide, where possible, rerouting/rebranding on a per-office basis. New York Telephone agrees with the clarification sought by MCI, but adds that such functionality cannot be made available immediately in those offices with general AIN capability since the necessary logic, testing, and implementation has not yet been developed for the AIN platform. New York Telephone offers that to the extent the capability exists at a particular location, either using a COS or AIN approach, or a combination thereof, New York Telephone will offer rerouting/rebranding to MCI.

It appears that New York Telephone is willing to provide rerouting/rebranding on a per-office basis as soon as possible, as MCI requested. MCI should provide the necessary information that York Telephone requires, such as identifying particular offices where it seeks deployment. Rehearing appears unnecessary on this point and is denied.

c. Dark Fiber

MCI asserts we committed an error of law by not requiring New York Telephone to offer dark fiber (fiber optic cable without active transmission equipment) on an unbundled basis, reiterating its argument that dark fiber is an unbundled network element. New York Telephone refutes MCI's claims, asserting that MCI has offered no reason why the Opinion should be modified. While MCI claims that we offered no legal or technical support for ruling that

the Act does not require access to dark fiber, New York Telephone responds that the determination is supported by the Local Competition Order. We find nothing new in MCI's arguments and deny rehearing.

d. Pole Attachments, Conduits, and Rights-of-Way

MCI argues that the Opinion erred by deferring issues related to pole attachments, conduits, and rights-of-way to a pending proceeding. MCI asserts that the Act requires that the Commission resolve all issues within the nine-month period. MCI's petition for rehearing on this issue will be denied. We resolved this issue by stating that, until these issues were resolved in Case 95-C-0341, "existing access policies and practices remain in place."¹

e. Bill and Collect Charges for Information Services

The Opinion requires MCI to bill its customers for information services offered by non-regulated information providers who are customers of New York Telephone. MCI states the ruling is unlawful. It claims our reliance upon the Common Carriage rules was misplaced, as these rules are directed toward the provision of conduit, and billing and collection is neither a conduit service nor related to the transmission of communications. MCI denies any obligation to bill and collect from its customers for charges owed to another carrier, and reiterates its proposal to offer New York Telephone billing name and address information, which it views as sufficient to discharge its responsibility as a telecommunications carrier. In its view, the requirement to bill and collect for New York Telephone's information provider customers is onerous when viewed in the context of prior decisions lightly to regulate billing and collection services.

New York Telephone disagrees. It points out that the definition of conduit services includes functions integrally related to the provision of conduit, such as billing and collection services. It asserts our authority extends to billing and collection practices, and that the light touch of billing and collection regulation does not extend generally to the telephone

Opinion No. 96-33, p. 25.

companies' billing to their own customers.

New York Telephone provides a network that facilitates local calls to the services the information providers offer, and it arranges to bill and collect charges for calls placed to the information providers' numbers by its own local customers. As competitors such as MCI enter the local telephone market, and themselves provide local services to customers, it is expected that they will assume many of the same obligations as New York Telephone. Accordingly, this request for rehearing is denied.

Requests for Clarification

1. MCImetro Transport and Termination Rates

MCI asserts that the final offer award for New York Telephone concerning charges for New York Telephone-originated calls terminating through MCI's tandem switch¹ appears inconsistent with the November 1996 determination approving MCImetro's interconnection tariff.² In MCI's view, by approving its interconnection tariff we rejected New York Telephone's argument that the incumbent was entitled to a comparably efficient meet point at lower rates pursuant to our September 1995 determination establishing intercarrier compensation.³ MCI further asserts that this issue was not subject to arbitration pursuant to the Administrative Law Judge's ruling. MCI seeks clarification that the November 1996 determination is controlling.

New York Telephone responds that the award is consistent with the Act and reiterates its argument that the September 1995 determination entitles it to lower rates on the ground that meet point rates between local exchange carriers must be symmetrical. The September 1995 order states that equal meet point rates are a reasonable transitional approach, recognizing that where the access a new entrant provides an incumbent is equivalent to a tandem, it will be allowed to charge the incumbent's tandem rates at the meet point. It also provides that new entrants will be required to provide the incumbent

Opinion 96-33, Appendix A, p. 9.

Cases 95-C-1162 et al., MCImetro Interconnection Tariff, Order Approving Tariff Filing (issued November 19, 1996).

Case 94-C-0095, Transition to Competition in the Local Exchange Market, Order Instituting Framework for Intercarrier Compensation (issued September 27, 1995).

appropriate interconnection options within their networks that would allow the incumbent access to more efficient connections or, alternatively, rates lower than the equal meet point rates.

The arbitration award enunciated the general policy requiring symmetry; however, consistent with the MCI metro tariff order, at this point, New York Telephone is required to pay the tandem switching rate. To the extent the September 1995 order allows MCI to charge this rate on a transitional basis but further requires it to provide the incumbent more efficient connections or, alternatively, lower rates, that order is controlling. Moreover, MCI's assertion that this issue should not have been arbitrated is obviated by its submission of the related contract sections for final offer arbitration.

2. Switched Transit Charges

Switched transit service contemplates the use of the incumbent's tandem switch for interconnection between carriers served by that switch. The Opinion concluded the definitions, rates, and rate structure proposed by New York Telephone would be used for switched transit service. MCI requests clarification carrier access charge and that such charge can only be assessed by New York Telephone to the originating carrier if New York Telephone is charged a rate for local termination by the terminating carrier.

New York Telephone offers that the clarification here is largely semantic and it endeavors to make clear what it believes the Opinion requires:

when New York Telephone carries a switched transit call along its network from a MCI customer to an end user who is not an MCI customer, New York Telephone is entitled to pass through to MCI (as the originating carrier) any charges imposed by the terminating carrier, whether those charges are denominated reciprocal compensation charges, carrier access charges, wireless termination charges, or by any other terms. On the other hand, New York Telephone will only pass through to MCI such a charge, no matter what terminology is employed, if New York Telephone is charged by the terminating carrier.

This view is consistent with our arbitration award; MCI's request for clarification is denied on this point.

3. Delay Credits

The Opinion concluded that liquidated damages should not be the only remedy available to MCI in the event of subscriber-specific breach by New York Telephone, and adopted MCI's subscriber-specific credits.¹ New York Telephone did not seek rehearing of this conclusion. MCI seeks clarification of an apparent inconsistency between two sections of the final offer award implementing this conclusion. New York Telephone responds that the Opinion found for MCI only to the extent delay credits were appropriate for subscriber specific services, asserting that this limitation was synonymous with resale services and entitled MCI retail customers to the same credits New York Telephone's customers enjoy, but created no additional remedies for breach for MCI. Any other interpretation, New York Telephone asserts, would subject it to illegal double penalties.

The Opinion allows monetary payments to MCI after a certain threshold of delayed installations affecting specific subscribers, recognizing that liquidated damages alone did not recompense MCI for delays of a magnitude to jeopardize its ability to serve specific subscribers reasonably. The finding for New York Telephone as to Attachment X, paragraph 1.3 simply eliminated redundant contract language. There was no intent to limit the applicability of subscriber-specific credits in the event of delays caused by New York Telephone. Additional payments are warranted in these circumstances.

New York Telephone's reading of this section is unsupported; the Opinion clearly grants MCI the additional remedy, as to subscriber-specific delays. New York Telephone did not petition for rehearing of this conclusion. To the extent clarification is necessary, the Opinion is so clarified. As stated in the Opinion, this determination may be superseded by generic determinations on service quality.

Opinion No. 96-33, p. 42.

4. Operations Support Charges

The Opinion noted some overlap between the rates at issue in this arbitration and those recently considered in the arbitration between New York Telephone and AT&T, and it adopts those rates in this arbitration. A charge specifically reflecting that overlap is the one established for operations support. MCI requests clarification for the operations support charge of \$.0014 per minute of use, and in the absence of a rationale for the charge, asks that it be deleted.

New York Telephone responds that MCI has provided no basis for reconsideration, that the rate was based upon the best information available, that these rates are currently under examination in Cases 95-C-0657 et al., and that the rate set is too low based on its studies.

As the Opinion notes, MCI was silent in this arbitration as to New York Telephone's proposals for rates for operations support. While MCI's request is packaged as a clarification, it really seeks reconsideration or a more extensive explanation than its initial pleading would merit. The operations support service rate facilitates a competitor's use of network elements by assuring that administrative costs are recovered only once in any single element or combination of elements that are charged on a per minute of use basis. In establishing this charge we rejected New York Telephone's proposals for recurring monthly charges and associated per transaction charges. We found the specific rate here to be cost-based and just and reasonable as an interim charge. MCI's request for clarification is, therefore, denied.

THE MFS PETITION

MFS seeks reconsideration of the arbitration determination notwithstanding that it was not a party. Citing the provision of our rules¹ allowing a "person interested" in a Commission determination to seek rehearing, MFS asserts that it is "interested" because it provides local exchange service in New York and has an interconnection agreement with New York Telephone incorporating Commission arbitration decisions for certain rates. MFS contends the determination in this proceeding concerning the

16 NYCRR 3.7; see also Public Service Law 22.

service access charge could affect charges New York Telephone assesses it, and challenges that rate as embedded cost-based, inconsistent with the Act. New York Telephone opposes MFS's petition on its merits.

MFS's rehearing petition is dismissed for lack of standing. The Commission's second procedural notice concerning implementation of the Act states that arbitration awards directly bind only those parties to the arbitration.¹ All the Act arbitrations have been carried out as resolutions of bilateral disputes; other parties' motions to intervene have been denied. To be consistent, this petition is dismissed because, in the arbitration context, MFS is not a "person interested" in the determination. Moreover, inasmuch as MCI also raises this issue on rehearing, there is no possible prejudice to any rights MFS may have under its own interconnection agreement.

CONCLUSION

The petitions of New York Telephone, MCI, and MFS are granted in part, denied in part, and dismissed, consistent with this opinion and order. This opinion and order resolves all the outstanding issues presented for arbitration. The Act requires the party seeking arbitration to provide the Commission, at the same time it submits its arbitration petition, documentation of all resolved issues.² In order to meet the objectives of the Act in developing competitive markets expeditiously, consistent with our long-standing policy, we require that a fully executed interconnection agreement between the parties be submitted for approval no later than 15 days after the issuance of this opinion and order.

The Commission orders:

1. The petitions of New York Telephone, MCI, and MFS are granted in part, denied in part, and dismissed, consistent with the foregoing opinion. Clarification is granted in part and denied in part, also consistent with the foregoing opinion.

2. MCI and New York Telephone are directed to file an

Cases 94-C-0095 et al., Notice of Additional Procedures Implementing the Telecommunications Act of 1996 (issued October 21, 1996).

47 U.S.C. 252(b)(2)(A)(iii).

interconnection agreement for approval no later than 15 days after the issuance of this opinion and order.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary