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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation of Telecommunications Utility Price Regulation  
Pursuant to §196.196(1)(g), Stats.

05-TI-174

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND FINAL ORDER**

**Proceeding**

1993 Wisconsin Act 496 created Wis. Stat. § 196.196 that allows local exchange telecommunication utilities to elect to become price-regulated. Two utilities, Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin (Ameritech Wisconsin), and GTE North Incorporated-Wisconsin Operations (GTE North), have so elected. Wis. Stat. § 196.196(1)(g)1. directs that five years after a utility elects to become price-regulated, or any time thereafter, the Commission may determine whether it is in the public interest to suspend one or more of the provisions of Wis. Stat. § 196.196(1) as it applies to a price-regulated telecommunications utility, or to approve an alternative regulatory method for that utility.

In compliance with Wis. Admin. Code § PSC 163.06(1), Ameritech Wisconsin and GTE North filed reports on July 31, 1998, regarding how competition, economic development, consumer choice, quality of life, societal goals, and universal service have changed during the period in which price regulation has been in effect. On August 31, 1998, each of the companies made a presentation regarding their report to Commission staff and other interested parties.

On November 19, 1998, the staff filed a report (Staff Report) that presented its findings on the impact of price regulation and made recommendations for the future. This report is based on analysis of the July 31, 1998, company reports, other information filed before and during price regulation, and responses to staff data requests in this proceeding. On December 9, 1998, other parties in this proceeding filed proposals making recommendations for the future under price regulation. In large part these proposals contained reactions to the Staff Report recommendations. On December 18, 1998, a technical conference and a prehearing conference were held.

Hearings were held in this proceeding in Madison, Wisconsin, on February 15 and 16, 1999. On March 9, 1999, Commission staff moved to admit an additional document into the record. This document was a stipulation and recommendation to the Public Utilities Commission of Ohio (PUCO) that was prepared by the PUCO's staff after the hearings in this docket had already taken place (Ohio Stipulation). On March 16, 1999, AT&T Communications of Wisconsin, Inc. (AT&T), objected to admitting the Ohio Stipulation, but also moved that if it was admitted into the record, related testimony before the PUCO be admitted as well. On March 17, 1999, Ameritech Wisconsin objected to the AT&T proposed admission of testimony. On March 19, 1999, the Hearing Examiner in this proceeding admitted the Ohio Stipulation as well as the related testimony before the PUCO.

The parties for purposes of review under Wis. Stat. §§ 227.47, 227.52, and 227.53, are listed in Appendix A to this order.

## **FINDINGS OF FACT**

### **THE COMMISSION FINDS:**

#### **Background**

Wis. Stat. § 196.196(1)(g) provides for a review of price regulation five years after a telecommunications utility elects to become price regulated. In making a determination of whether it is in the public interest to suspend one or more of the provisions of Wis. Stat. § 196.196(1) as it applies to a price-regulated telecommunications utility or to approve an alternative regulatory method for that utility, the Commission shall identify the goal to be achieved, the suspension or method to be approved and how the decision is expected to help achieve the identified goals, and the criteria to be used to evaluate success of the change. In addition, in making a determination under Wis. Stat. § 196.196(1)(g) the Commission shall consider if the telecommunications utility is adequately serving geographical areas with diverse income or racial populations.

The review of price regulation involves two basic questions. First, has price regulation worked in Wisconsin? Second, should any aspect of price regulation be changed? There are a number of vehicles available for making changes: (1) suspension of one or more provisions of Wis. Stat. § 196.196(1); (2) approval of an alternative regulatory method; (3) statutory changes for consideration by the legislature; (4) changes to rules contained in Wis. Admin. Code ch. PSC 163; and (5) changes to provisions contained in prior Commission orders.

It is clear that the legislature wanted to give price regulation some time to work. The language of Wis. Stat. § 196.196 is worded very specifically to limit Commission discretion during the first five years. It is also clear, however, that the legislature realized that changes may be necessary after this

initial period. The statutes allow the Commission a great deal of discretion in deciding the issues raised in this docket and in future reviews.

### **Impact of Price Regulation**

The first question to be addressed in this proceeding is whether price regulation has worked in Wisconsin. The Commission finds that although competition may be developing more slowly than was expected when 1993 Wisconsin Act 496 (Act 496) was passed, in many ways price regulation is working in the manner in which it was intended. There has been some positive impact for consumers as a result of price regulation, but there are also some areas that need improvement.

### **Implementation of Commission Decision**

As discussed previously, Wis. Stat. § 196.196(1)(g) provides that five years after a company elects price regulation, the Commission shall determine whether it is in the public interest to suspend one or more of the provisions of Wis. Stat. § 196.196(1) as it applies to that company or to approve an alternative regulatory method for that company. Additionally, the Commission could suggest statutory changes for consideration by the legislature; changes to rules contained in Wis. Admin. Code ch. PSC 163; and changes to provisions contained in prior Commission orders.

The Commission finds that the current price regulation system should be retained with modifications to the rules in Wis. Admin. Code ch. PSC 163 as discussed later in the Findings of Fact. Suspension of one or more provisions of Wis. Stat. § 196.196(1) or imposing an alternative regulatory method on either price-regulated company is unnecessary at this time. While statutory changes in some

areas may improve the current price regulation system, the Commission does not believe that such changes need to be pursued by the Commission at this time. Finally, it is appropriate to make a few changes to provisions contained in prior Commission orders. This approach should allow the Commission to continue the positive aspects of price regulation while correcting weaknesses that currently exist.

Various parties have raised issues and made recommendations that would require development of an alternative regulatory method for one or both companies. Many of these and related issues are currently being actively discussed by various states and on the federal level.<sup>1</sup> The Commission believes that guidance concerning many of these issues should evolve, become clearer, and solidify during the next year or so. As discussions develop and more information becomes available, many of these issues will need to be looked at again. As a result, the Commission should revisit this order one year after it is issued to determine whether discussion and developments on the state and federal levels make action on any of these issues pursuant to Wis. Stat. § 196.196(1)(g), including reconsideration of the use of an alternative regulatory method for one or both companies, appropriate at that time.

### **Price-Regulated Services**

As a result of the Commission's orders in dockets 6720-TI-113 and 2180-TI-111, the services under price regulation for both Ameritech Wisconsin and GTE North are basic local exchange service as defined in Wis. Stat. § 196.01(1)(g), and standard business access lines and usage by small

Docket 05-TI-174

businesses with no more than three access lines (price-regulated services). The Commission's orders in docket 6720-TI-113, dated December 5, 1996, and in docket 2180-TI-111, dated July 17, 1997, removed the basic message telecommunications service (MTS) of Ameritech Wisconsin and GTE North, respectively, from price regulation. In this proceeding, Ameritech Wisconsin proposed that local service to small business (three or fewer access lines) be removed from price regulation. Rather than remove services from price regulation, Commission staff proposed bringing all services or, in the alternative, additional services under price regulation. Other parties suggested that switched access services and wholesale services should be brought under price regulation.

The Commission finds that the current price-regulated services should be retained. The Commission finds that it is premature to remove small business services from price regulation at this time. Based on the record in this proceeding, such small business services are not subject to effective competition.

Regarding staff's proposal and the proposals of other parties to add more services to price regulation, the Commission finds that such proposals are not appropriate at this time. The only services that the statutes permit to be added to price regulation are MTS, services found to be a necessary component of universal service, and, under certain circumstances, advanced telecommunications services essential to the public interest. (Wis. Stat. § 196.196(1)(a)2.)

MTS was removed from price regulation for both Ameritech Wisconsin and GTE North based on findings of effective competition for that service. The Commission finds that the record in this

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<sup>1</sup> For example, the issues of geographic deaveraging, obligations to provide unbundled network elements and combinations thereof, proposed modifications of access charges, and unbundling requirements for advanced

proceeding does not support a finding that effective competition does not in fact exist for these services. The Commission also finds that the record in this proceeding does not support a finding that there is no competition for other services that staff and other parties proposed be brought under price regulation. Without such a finding, the Commission believes that bringing additional services under price regulation goes against the legislative intent of Act 496. Finally, the Commission finds that the proposal to bring access services under price regulation would require a statutory change to Wis. Stat. § 196.196(2). Without such statutory change, this Commission does not believe that it has the authority to bring access services under price regulation.

**Wis. Stat. § 196.196(1)(e)**

This statutory section allows a price-regulated utility to petition to alter its rate structure or increase rates for price-regulated services beyond that allowed under the price cap formula. Staff proposed that Wis. Stat. § 196.196(1)(e) should be modified to allow the Commission authority to adjust a company's price cap index, or alter the rate level or structure, to reflect significant changes in cost allocations to an essential service, or significant decreases in costs of such services which are outside of the control of the telecommunications utility.

The Commission finds that while the proposed statutory change may improve the current price regulation system, the Commission does not believe that it should pursue such a change at this time. The Commission believes that such a change to Wis. Stat. § 196.196(1)(e) would provide it with an additional tool to use in implementing price regulation. However, since this proposal requires a

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services are all currently topics of debate as well as legislative, court, and FCC action.

legislative change, the Commission does not believe that staff resources should be devoted to this effort at this time. If there is a substantial cost shift in provision of service at some time in the future, Commission action on such a change may be appropriate at that time.

### **Future Reviews of Price Regulation**

Wis. Stat. § 196.196(1)(g) provides that in addition to the review of price regulation in this proceeding, the Commission may perform a review of price regulation at any time thereafter, either upon complaint or on the Commission's own motion. Staff proposed that future reviews of price regulation be scheduled every five years unless the Commission receives a complaint or circumstances justify an earlier review date. Other parties proposed that such reviews of price regulation be performed every two years.

The Commission finds that reviews of the level of price regulation should be completed every five years, if needed, until the transition to competition is complete. A review could still occur sooner if a complaint is filed or on the Commission's own motion if, for example, a major change occurs that justifies considering a change in the level of regulation for a price-regulated utility. Setting a future time period for subsequent reviews should allow staff and other parties to better plan for the next review. A 5-year review period should allow sufficient time to implement any changes recommended in this proceeding and enough time for their impact to occur so that it can be properly evaluated. Having the ability to modify the 5-year time period based on the filing of a complaint or on the Commission's own motion should prevent price regulation from becoming an outdated method of regulation before the next scheduled review.

The Commission also finds that there is little direction as to when an earlier review would be appropriate. Therefore, staff should work with any interested parties to develop standards that could be used to evaluate the conditions under which an earlier review would be appropriate.

### **Investment Commitments and Reporting**

Pursuant to Wis. Stat. § 196.196(5), within 60 days of electing price regulation, a telecommunications utility is required to file with the Commission a plan outlining its commitment to invest in telecommunications infrastructure improvements in Wisconsin over a period of not less than six years. In addition, Wis. Stat. § 196.196(5)(c) requires that a price-regulated company file an annual progress report relating to the company's investment in and deployment of infrastructure enhancements. In addition to the requirements found in Wis. Stat. § 196.196(5), both Ameritech Wisconsin and GTE North are required to file construction plans on an ongoing basis. (Ameritech Wisconsin docket 6720-TI-109, and GTE North docket 2180-TI-106.)

The Commission finds that price-regulated companies should no longer be required to file detailed infrastructure investment commitment plans. While such information was a useful tool at the start of price regulation, the importance of such specific infrastructure commitments has decreased. In addition to the decrease in importance, the Commission lacks the authority to impose such commitments on price-regulated companies.

While infrastructure investment commitments are no longer required, the Commission still has a need to keep informed of future investment plans and expenditures of price-regulated companies as competition develops and they transition into more competitive markets. The continued filing of the 5-year construction plans can fulfill this need. These construction plans, with rolling 5-year horizons, should provide useful information on the progress of expenditures and additions to infrastructure by the price-regulated companies. While the companies will be required to file these 5-year construction plans, they will not be locked into meeting either a dollar or a technology commitment. The 5-year construction plans should involve information from each company on budget and technology proposals for the first one or two years and estimates of expenditures for the remaining years.

The 5-year construction plan filing: (1) should provide information for the biennial report to the legislature on the status of investments of advanced telecommunication infrastructure; (2) may be used to review proposed infrastructure benchmarks, if either company chooses to file for this optional infrastructure incentive; (3) may be used to document the deployment of high-speed data services; and (4) may be used to provide a record for the periodic reviews of price cap regulation.

The 5-year construction plans provide the Commission with the information it needs, and the lack of any specific commitments affords Ameritech Wisconsin and GTE North the flexibility to respond to market place conditions. The Commission, therefore, finds that both Ameritech Wisconsin and GTE North should continue to file construction plans with rolling 5-year horizons. Significant variances from one year's filing to the next should be explained in the plan filing. Staff should work with the companies to develop the specific format which should be used and to determine what information is to be reported.

### **Level and Role of Earnings**

Staff maintains that earnings should continue to play a role in future regulation of Ameritech Wisconsin and GTE North. According to staff, high levels of earnings over an extended period of time above that earned by other telecommunications providers of similar services may be an indicator of a lack of competition.

Staff and the Citizens' Utility Board also assert that a one-time rate reduction may be a method to deal with high earnings. In the alternative, staff proposes either a commitment to the Technology for Educational Achievement (TEACH) program or a specific infrastructure commitment. Other parties also suggest that the Commission consider an earnings sharing mechanism.

The Commission finds that while earnings do not have a direct role in regulation of price-regulated companies, they do continue to have an indirect role in the monitoring of price regulation. Earnings continue to have a role as a tool the Commission may use to make comparisons, to evaluate, and to monitor price-regulated companies during the transition to competition. In addition, earnings have a role as an indirect measure of competition.

Regarding the proposal for one-time rate decreases or alternative methods to address high earnings, the Commission finds that a one-time rate reduction or any other method to address high earnings is inappropriate at this time. To the extent that higher earnings are attributable to increased efficiency, the Commission concludes that price regulation has achieved its intended effect. To the extent that higher earnings are attributable to higher prices for nonprice-regulated services, the Commission's options for responding to this situation are limited under current price regulation statutes.

Docket 05-TI-174

In addition, the Commission concludes that is inappropriate to decrease rates for price-regulated services to make up for higher earnings due to nonprice-regulated services. The Commission considers a one-time rate decrease to be a step backwards and inconsistent with the overall objectives of price regulation. Finally, the Commission finds that the appropriate vehicle for looking at the high earnings of a price-regulated company is through the productivity offset pursuant to Wis. Stat. § 196.196(1)(c). The productivity offset is discussed in the next section.

### **Wis. Admin Code ch. PSC 163**

The purpose of Wis. Admin. Code ch. PSC 163 is to effectuate and implement Wis. Stat. § 196.196(1). The rules promulgated in this chapter determine the procedures for electing price regulation, establish the mechanics of price regulation, set reporting requirements, and create miscellaneous provisions to make more specific the requirements of Wis. Stat. § 196.196(1).

Staff proposed that the Commission initiate a rulemaking proceeding to revise Wis. Admin. Code ch. PSC 163 to: (1) extend the time allowed to calculate the annual allowed rate increase or required decrease; (2) modify the incentive and penalty mechanism values to: increase the weightings for quality of service, decrease the weightings for infrastructure, set the maximum incentive or penalty for Ameritech Wisconsin at the maximum set for GTE North, and eliminate the penalty for inadequate infrastructure investment; (3) redefine the factors to consider and the process for establishing infrastructure investment components and benchmarks and make the infrastructure incentives optional based on the annual filing of infrastructure benchmarks by the applicable utility; (4) modify the discretionary incentive or penalty to only be based on customer education programs; (5) clarify the

method for calculating the percentage change in the gross domestic product-price index (GDPPI); and (6) redefine and expand the quality of service components. In addition, staff recommended that as part of any rulemaking docket opened to make the changes recommended above, the Commission should also examine the current productivity factors.

**Time Allowed for Annual Calculation.** Pursuant to Wis. Admin. Code § PSC 163.04(8)(a), the Commission shall issue an order no later than 30 days after a utility's anniversary date authorizing the amount a utility may increase its rates for price-regulated services or mandating the amount it shall reduce such rates. If a hearing is held, the time limit may be extended by 30 days. Staff proposed that each of these time limits be extended from 30 days to 60 days.

The Commission finds that the 30-day deadline in Wis. Admin. Code § PSC 163.04(8)(a) should be replaced with a 60-day deadline, and that the provision to allow an additional 30 days if a hearing is held should be changed to allow an additional 60 days. The current 30-day time frame allows insufficient time for necessary Commission analysis, comments from interested parties, or Commission deliberation.

**Penalty and Incentive Mechanism Value Weightings.** Wis. Admin. Code § PSC 163.04(2)(g) Table 1 sets forth penalty and incentive mechanism values. This table shows the detailed makeup of the total maximum penalty and incentive values of 2 percent for Ameritech Wisconsin and 1 percent for GTE North.

The Commission finds that the penalty and incentive mechanism values shown in Appendix B to this order are reasonable and Wis. Admin. Code ch. PSC 163 Table 1 should be revised to reflect the values shown in Appendix B. These values reflect the continuation of the 2 percent penalty and

incentive for Ameritech Wisconsin. Such values also reflect the increased importance of quality of service. In addition, Appendix B reflects an optional infrastructure investment incentive and penalty as discussed below. In those cases where Ameritech Wisconsin and/or GTE North choose not to exercise the optional infrastructure investment incentive and penalty, the penalty values should be transferred and added to the penalty values for quality of service.

**Infrastructure Investment.** Wis. Admin. Code §§ PSC 163.04(2)(d)1 and 2 require the Commission to establish initial infrastructure investment penalty and incentive components and benchmarks based on a utility's filed investment commitment plan and current technology. Wis. Admin. Code § PSC 163.04(2)(d)7 allows the Commission to compute new company-specific infrastructure benchmarks on each anniversary date, based on the prior-year benchmarks and the company's filed progress report.

Staff recommended changes to two code subsections to improve the infrastructure benchmark setting process. First, modify Wis. Admin. Code § PSC 163.04(1) to provide for the optional filing of proposed infrastructure objectives. Second, modify Wis. Admin. Code § PSC 163.04(2)(d)7 to clarify and redefine the factors the Commission may consider in setting infrastructure benchmarks. These changes eliminate infrastructure penalties and continue infrastructure incentives, but on an optional basis.

The Commission finds that Wis. Admin. Code § PSC 163.04(2)(d) should be revised to continue infrastructure incentives and penalties, but on an optional basis. If a price-regulated utility wishes to be eligible for an infrastructure incentive or penalty, it must file, on its anniversary date, proposed infrastructure objectives to consider in establishing incentives and penalties on the next two anniversary dates. Objectives for both retail-related and wholesale-related infrastructure investments

should be included. The Commission will then review the reasonableness of the proposed objectives and approve or modify them. Objectives should provide incentives for desired improvements for which the utility would otherwise have few economic investment incentives. Areas to be considered include, but are not limited to, investments which improve or promote the following: route diversity, high-speed data transmission, competition, wholesale services, and improvements in switching technology. The Commission also finds that Wis. Admin. Code § PSC 163.04(1) should be revised to provide for an optional filing of proposed infrastructure objectives. If a company does not wish to be eligible for an infrastructure incentive or penalty, the penalty value assigned to infrastructure should be added to the penalty value assigned to quality of service. This will result in an increase in the total possible penalty for inadequate quality of service. Finally, the Commission finds that all applicable sections of Wis. Admin. Code ch. PSC 163 should be revised to refer to not only annual infrastructure commitments but also to the annual infrastructure objectives which may be filed.

**Quality of Service.** Wis. Admin. Code § PSC 163.04(2)(c)2 sets forth five quality of service penalty components. According to Wis. Admin. Code § PSC 163.04(2)(c)10, on each anniversary date the Commission shall compute new industry-wide quality of service standards. These service quality standards are used in calculating any increase in the productivity offset for inadequate service quality on the next anniversary date of each price-regulated telecommunications utility pursuant to Wis. Stat. § 196.196. The Commission may also initiate a review of the appropriateness of the quality of service components pursuant to Wis. Admin. Code § PSC 163.04(2)(c)10.

In docket 05-TI-157, the Commission conducted its most recent review of quality of service standards. In the order in that proceeding, *Findings of Fact, Conclusions of Law, and Second Final*

*Order* (Second Final Order), the Commission approved dual standards for two of the components, eliminated a 10 percent adder to the nationwide median, where applicable, and used a statewide service quality survey in developing one of the standards.

In this proceeding, staff proposed continuing the service quality standards approved in the Second Final Order and adding three new service quality components for customer satisfaction, trunk blockage, and answer speed for business office calls.

The Commission finds that Wis. Admin. Code § PSC 163.04(2)(c) should be modified to incorporate the following findings from the Second Final Order:

1. Create a dual standard utilizing Wis. Admin. Code ch. PSC 165 for Average Time Out of Service and Initial Trouble Reports per 100 Access Lines.
2. Add a provision that the experience of Wisconsin companies is one of the factors upon which new industry-wide quality of service standards should be based.

The Commission also finds that Wis. Admin. Code § PSC 163.04(2)(c) should be modified to include the addition of two new components, trunk blockage, and answer speed for business office calls. Trunk blockage is an important measure of service quality because customers cannot use their telephones if sufficient numbers of circuits have not been installed in the network to satisfy calling demand. Answer speeds for business office calls measures responsiveness to customer requests for installation, service changes, and billing inquiries. This is an important element of service quality because customers want to be able to receive assistance with orders or questions. Slamming, cramming, and other billing abuses have become a widespread problem, and Ameritech Wisconsin and GTE North, as billing companies, are often the first or only point of contact for the customer.

A number of parties suggested that quality of service penalties should be expanded to include wholesale service. The Commission finds that quality of service for wholesale services should be addressed in a separate proceeding. Without establishing performance measures for wholesale service, there is no basis for establishing service quality penalties for these services. The record in this proceeding does not provide a basis for establishing these performance measures.

**Change in GDPPI.** Language in Wis. Stat. § 196.196(1)(c) and Wis. Admin. Code § PSC 163.04(2)(a) provides for the calculation of the change in the GDPPI. In several dockets, there have been differences of opinion expressed interpreting the language in these sections. Most of the differences have related to the fact that the GDPPI index is frequently revised and that such revisions are made not only to the most recent index, but also for indices for previous years.

The Commission finds that the language in Wis. Admin. Code § PSC 163.04(2)(a) should be clarified to reflect the Commission's order in docket 6720-TI-153. The ambiguous language in Wis. Admin. Code § PSC 163.04(2)(a) should be clarified to reflect the use of the most recent quarterly chain-weighted GDPPI and the prior year's corresponding quarterly index, using the same revision series. This should ensure that a revised most recent index is compared to the revised previous index.

**Commission Discretionary Factor.** Currently, Wis. Admin. Code § PSC 163.04(2)(f) lists seven factors the Commission may consider in assigning a discretionary penalty or incentive. Staff recommended that Wis. Admin. Code § PSC 163.04(2)(f) be changed to eliminate the seven factors, and replace them with one, the extent to which the utility has implemented customer education programs.

The Commission finds that the current discretionary penalty and incentive mechanism should be retained. While the Commission believes that customer education is important, the current discretionary provision under Wis. Admin. Code § PSC 163.04(2)(f) based on seven factors is more general and provides the Commission with more flexibility than one based on a single factor. However, the Commission believes that it is appropriate to consider customer education in addition to the other discretionary factors.

**Productivity Factor.** Wis. Stat. § 196.196(1)(c) provides for the use of a productivity offset mechanism in determining the amount a price-regulated company may increase or shall decrease its rates for price-regulated services. Pursuant to this section, the first time the productivity offset may be changed is after September 1, 2000. Wis. Admin. Code § PSC 163.04(2)(b) sets forth the factors the Commission may consider in determining any statewide changes in productivity. Under this rule, the Commission shall provide for a productivity study for the telecommunications industry in the state.

The Commission finds that in connection with the rulemaking proceeding to revise Wis. Admin. Code ch. PSC 163, a second rulemaking proceeding should be initiated to review the productivity offset. The Commission directs the staff to develop a timeline for completing the rulemaking related to the productivity offset. In addition to developing a timeline, the Commission directs staff to develop a plan for completing the statewide productivity study including the existing level of internal expertise and what external expertise may be needed.

### **Competition**

Staff proposed that a task force be established to monitor the level of competition and make periodic reports to the governor and the legislature. As proposed by staff, the task force would be made up of staff, industry representatives, and representatives from citizen's groups.

Currently, staff is reviewing what is being done in Texas and New York regarding carrier-to-carrier issues affecting competition such as: OSS functionality, number portability, and overall performance measures, benchmarks, and reporting obligations as they relate to interconnection and resale. The Commission will direct staff to submit a recommendation to the Commission no later than August 16, 1999, on a proposed forum for monitoring the level of competition and for developing a record on these issues affecting competition.

### **Accounting and Financial Reporting and Monitoring**

Ameritech Wisconsin and GTE North are currently required to file rate-of-return monitoring reports with the Commission. Staff proposed that both companies be required to continue filing financial monitoring reports, although in a more streamlined format. In addition, staff proposed that Ameritech Wisconsin and GTE North be allowed to file an annual report with the Commission in a format currently filed by telephone cooperatives with certain additional schedules. A final issue in this area is the basis of accounting to be used by price-regulated companies for state regulatory purposes. Currently, Ameritech Wisconsin and GTE North maintain their accounting records and report to the Commission on a state regulatory (SR) basis.

The Commission finds that Ameritech Wisconsin and GTE North should continue to file financial monitoring reports. Such reports should be filed in the more streamlined format as proposed by staff in its Staff Report (pages 66-70). In addition, the GTE North balance sheet schedule should be eliminated. Also, staff should continue to work with the companies to identify internal reports which provide the same necessary data that is currently filed. These financial monitoring reports provide the Commission with the necessary information to adequately monitor a company's performance under price regulation.

A Commission/industry workgroup was formed and continues to address the content and format of the 1998 and future annual reports filed by incumbent local exchange carriers, including Ameritech Wisconsin and GTE North. Regarding the level of annual reporting required for Ameritech Wisconsin and GTE North, therefore, the Commission finds that it is appropriate to defer this issue to the workgroup. The workgroup, rather than this docket, is the more appropriate forum for making decisions about annual reporting by the price-regulated companies.

Regarding the basis of accounting and reporting to be used for state regulatory purposes, the Commission finds that SR accounting should continue for the time being. One or both companies may file a specific proposal for a change which the Commission will consider at that time. Any proposal for a change in the basis of accounting and reporting should allow for historical comparisons and address disposition of balance differences for depreciation reserve and any other amounts between the SR and proposed accounting and reporting basis.

### **Excess Fiber**

In 1993 the Commission issued a letter order (docket 05-ST-102) specifying requirements concerning the accounting, recordkeeping, and reporting of fiber optic plant which does not have a reasonably forecasted use (excess fiber). In 1995 the Commission granted Ameritech Wisconsin a waiver of one part of that accounting requirement. However, it specified the need for continued compliance with the other accounting, recordkeeping, and reporting requirements set forth in the 1993 order. Ameritech Wisconsin has requested that it be granted a waiver from those remaining requirements, and consideration of the request was merged into this docket.

The Commission finds that it is reasonable to grant Ameritech Wisconsin a waiver from the excess fiber recordkeeping and reporting requirements contained in the Commission's letter order in docket 05-ST-102. The Commission believes that adequate safeguards are currently in place to address excess fiber activity. Further, complaints regarding specific requests by competitors for fiber would involve an analysis of the incumbent's facilities rather than the dollar amounts that were tracked under the Commission's recordkeeping and reporting requirement. Competitors could pursue complaints at the Commission concerning an inability to obtain excess fiber.

### **Depreciation**

Pursuant to Wis. Stat. § 196.195(12), Ameritech Wisconsin requested the suspension of Wis. Stat. § 196.09 pertaining to depreciation rates (docket 6720-TI-130). The Commission deferred a hearing in that matter to this docket. GTE North petitioned for the same suspension as part of this docket. In considering whether to grant a petition under Wis. Stat. § 196.195(12), the Commission

must determine whether doing so is in the public interest by identifying four factors. (Wis. Stat. § 196.195(12)(b)1.) MCI stated that in order for the Commission to grant a suspension under Wis. Stat. § 196.195(12), it must make a finding under Wis. Stat. § 196.195(2) that effective competition exists. Staff and others stated that no such finding is necessary.

The Commission finds that Wis. Stat. §§ 196.195(2) and (12) are independent of one another and that no finding of effective competition is necessary before applying incentive regulation methods under Wis. Stat. § 196.195(12).

The Commission also finds that it is not in the public interest to waive Wis. Stat. § 196.09 pursuant to Wis. Stat. § 196.195(12) as requested by Ameritech Wisconsin and GTE North. Such requests are hereby denied. The Commission believes that Wis. Stat. § 196.09(9)(c) provides the Commission with a flexible regulatory tool and at the same time provides a telecommunications utility with the ability to propose exceptions to the Commission established generic depreciation ranges.

Wis. Stat. § 196.09(9)(a) provides that the Commission shall create by order guidelines establishing classes of fixed capital that telecommunications utilities use for public utility purposes, a range of annual depreciation rates for each of those classes, and a composite range of annual depreciation rates for all classes of fixed capital. The Commission must review these guidelines biennially. Any telecommunications utility may provide input during the process where these depreciation rates and ranges are established. In addition, a telecommunications utility has the ability to request an earlier review of the depreciation rates and ranges.

In addition, Wis. Stat. § 196.09(9)(c) provides that a telecommunications utility may implement an annual composite depreciation rate, for all classes of fixed capital that is outside the range established under Wis. Stat. § 196.09(9)(a)1., by filing the rate with the Commission. The proposed annual composite depreciation rate shall be effective on the date specified in the filing but not sooner than 90 days from the date of filing with the Commission, unless the Commission determines that the rate is not just and reasonable or in the public interest.

## **Mergers**

The Commission does not have prior approval authority over consolidations or mergers involving telecommunications utilities. Instead, pursuant to Wis. Stat. § 196.805, telecommunications utilities are required to notify the Commission of any consolidation, merger, or acquisition not more than 10 days after the completion of the transaction. The Commission retains continuing supervisory jurisdiction over the telecommunications utility, as necessary to enforce Wis. Stat. §§ 196.204 and 196.219, concerning cross subsidization and consumer protection, respectively.

The Commission has opened files concerning both the SBC Communications Inc. (SBC)/Ameritech Corporation (Ameritech) and the Bell Atlantic Corporation (Bell Atlantic)/GTE Corporation (GTE) mergers for purposes of gathering information. Commission staff is currently monitoring proceedings before the FCC and in other states regarding these mergers. In addition, the Commission filed comments with the FCC in its proceeding involving the merger of SBC and Ameritech after receiving comments from interested parties in docket 138-TI-100.

The Commission finds that it is not appropriate to take any separate action in this proceeding regarding the two mergers. Under current law, the Commission lacks jurisdiction regarding prior approval of these mergers. While it lacks jurisdiction over the mergers themselves, the Commission does retain overall jurisdiction over telecommunications utilities in Wisconsin. The Commission believes that it can address any of the merger-related concerns raised in other jurisdictions after the merger just as it can currently. Additionally, many of these concerns are being addressed in open proceedings, including this one. The decisions that the Commission makes in this proceeding will apply to Ameritech Wisconsin and GTE North whether or not the mergers are completed.

### **Pricing of Services**

A number of proposals were made in this proceeding concerning the pricing of services. Ameritech Wisconsin proposed that the Commission establish cost as a floor for price-regulated services to remove implicit subsidies built into those rates currently. AT&T proposed that the Commission establish a task force to analyze the impact of access pricing guidelines on the status of local competition. GTE North proposed that (1) price-regulated companies be permitted to deaverage prices on a geographic basis subject to the price cap index formula, and (2) Wis. Stat. § 196.196(2) be clarified by indicating that the interstate cap is a ceiling on the average level of intrastate switched access prices and not applied on an element-by-element basis.

Regarding Ameritech Wisconsin's proposal for a cost floor, the Commission finds that the record in this proceeding does not justify the need for Commission action at this time.

Regarding the AT&T proposal for an access charge task force, while the Commission believes access charge reform is an important issue, the Commission finds that this proceeding is not the best vehicle to address access charge reform issues. The Commission has no authority to set access charge levels for price-regulated telecommunications utilities. Accordingly, the Commission finds no basis on which to pursue AT&T's proposal in this proceeding.

Regarding GTE North's proposals, the Commission finds that since no specific proposals have been submitted, it is inappropriate to address these issues at this time. Regarding the proposal for geographic deaveraging, any specific proposal will need to address federal comparability standards, examine the adequacy of universal service funding, and be supported by cost studies. Regarding the access charge proposal, any filing of a specific proposal that includes application of the interstate cap on other than an element-by-element basis will need to demonstrate how the proposal is consistent with the then current statutes.

## **Other**

Several miscellaneous issues and the associated Commission's findings are discussed below.

**1. Filing of plans for improving service to geographical areas with diverse income and racial populations, and rural areas.** The Commission finds that the proposal to require Ameritech Wisconsin and GTE North to file plans for improving service to geographical areas with diverse income and racial populations has merit but is more appropriately addressed in rulemaking docket 1-AC-184 regarding customer service and telecommunications customer assistance programs (TelCAPs).

However, the Commission directs Ameritech Wisconsin and GTE North to file such plans in a manner consistent with rules developed in that proceeding.

**2. Customer impact.** The Commission finds that it is important to continue to monitor the impact of price on consumer choice, services, and customer assistance programs. However, the Commission finds that no specific action in this proceeding is necessary.

**3. Pay telephone pricing.** The Wisconsin Pay Telephone Association (WPTA) originally proposed in this proceeding that the Commission obtain the statutory authority to apply and enforce use of the federal pay telephone pricing for rates charged pay telephone service providers. The WPTA then proposed taking a “first step” toward this result by making a change specific to the price-regulated companies. It proposed changing the price-regulation statute so that it is consistent with the federal pricing mechanism for rates charged to pay telephone providers. The Commission finds that the WPTA proposal is beyond the scope of its jurisdiction.

**4. Customer compensation for delayed or untimely installation or repair.** The Citizens Utility Board proposes that Ameritech Wisconsin and GTE North should be required to compensate their customers for delayed or untimely installation or repair. GTE North testified that it is already compensating retail customers under a voluntary service performance guarantee included in its tariff filings. Wis. Admin. Code § PSC 165.01(3), which addresses standards for telecommunications service, allows the Commission to adopt lesser, greater, other or different requirements as to individual utilities or services. The Commission finds that issues such as delays in receiving service and missed appointments are important customer protection issues. GTE North has already addressed the issue of compensation to customers when installation or repair is not completed as agreed, but Ameritech has

not. As a result, the Commission will direct Ameritech Wisconsin to submit a plan that establishes parameters concerning delayed or untimely installation or repair, including missed or late arrival for appointments, and appropriate compensation to customers when such events occur. This plan should be submitted to the Commission within 60 days of the date this order is issued.

### **FINDINGS OF ULTIMATE FACT**

#### **THE COMMISSION FINDS:**

1. In many ways price regulation is working in the manner in which it was intended, but there are also some areas that need improvement.
2. The current price regulation system should be retained with modifications to the rules in Wis. Admin. Code ch. PSC 163.
3. This order should be revisited one year after it is issued to determine whether discussion and developments on the state and federal levels make action pursuant to Wis. Stat. § 196.196(1)(g), including reconsideration of the use of an alternative regulatory method for one or both price-regulated companies, appropriate at that time.
4. The services currently subject to price regulation should remain so subject. It is premature to remove small business services from price regulation. The record in this proceeding does not justify bringing basic message telecommunications services or any other services under price regulation.
5. While staff's proposed statutory change to Wis. Stat. § 196.196(1)(e) may improve the current price regulation system, such a change will not be pursued by the Commission at this time.

6. Reviews of the level of price regulation should be completed every five years, if needed, until the transition to competition is complete, except that reviews may occur earlier upon complaint or on the Commission's own motion. Staff should work with any interested parties to develop standards that could be used to evaluate the conditions under which an earlier review would be appropriate.

7. Ameritech Wisconsin and GTE North should no longer be required to file detailed infrastructure investment commitment plans. Such companies should continue to file construction plans with rolling 5-year horizons. Significant variances from one year's filing to the next should be explained in the plan filing. Staff should work with the companies to develop the specific format to be used and to determine what information is to be reported.

8. While earnings do not have a role in regulation of price-regulated companies, they do continue to have a role in the monitoring of price regulation and as an indirect measure of competition.

9. A one-time rate reduction or any other method to address high earnings is inappropriate at this time. The appropriate vehicle for looking at the high earnings of a price-regulated company is through the productivity offset pursuant to Wis. Stat. § 196.196(1)(c).

10. It is reasonable to revise Wis. Admin. Code ch. PSC 163 as follows:

a. The 30-day deadline in Wis. Admin. Code § PSC 163.04(8)(a) should be replaced with a 60-day deadline, and the provision to allow an additional 30 days if a hearing is held should be changed to allow an additional 60 days.

b. The penalty and incentive mechanism values shown in Appendix B to this order are reasonable and Wis. Admin. Code § PSC 163.04(2)(g) Table 1 should be revised to reflect these values.

c. Wis. Admin. Code § PSC 163.04(2)(d) should be revised to continue infrastructure incentives and penalties on an optional basis and Wis. Admin. Code § PSC 163.04(1) should be revised to provide for an optional filing of proposed retail-related and wholesale-related infrastructure objectives. Wis. Admin. Code ch. PSC 163 should be revised, where applicable, to refer to not only annual infrastructure commitments but also to the annual infrastructure objectives which may be filed.

d. Wis. Admin. Code § PSC 163.04 (2)(c) should be modified to incorporate the findings from the Second Final Order in docket 05-TI-157, and to add two new components, trunk blockage and answer speed for business office calls. Future orders establishing industry-wide service quality standards should also incorporate the provisions of the Second Final Order and add the two new components.

e. The issue of quality of service for wholesale services should be addressed in another proceeding.

f. The language in Wis. Admin. Code § PSC 163.04(2)(a) should be clarified to reflect the use of the most recent quarterly chain-weighted GDPPI and the prior year's corresponding quarterly index, using the same revision series.

g. The current discretionary penalty and incentive mechanism should be retained. It is appropriate to consider customer education in addition to the other discretionary factors.

h. In connection with the rulemaking proceeding to revise Wis. Admin. Code ch. PSC 163, a second rulemaking proceeding should be initiated to review the

productivity offset. Staff is directed to develop a timeline for completing the rulemaking related to the productivity offset and a plan for completing the statewide productivity study (including the level of existing internal expertise and what external expertise may be needed).

11. Staff is directed to submit a recommendation to the Commission no later than August 16, 1999, on a proposed forum for monitoring the level of competition and for developing a record on carrier-to-carrier issues affecting competition.

12. Ameritech Wisconsin and GTE North should continue to file financial monitoring reports but in the streamlined format proposed in the Staff Report. The GTE North balance sheet schedule should be eliminated. Staff should continue to work with the companies to find internal reports that meet the Commission's information needs.

13. It is appropriate to defer the issue of the level of annual reporting required for Ameritech Wisconsin and GTE North to the Commission/industry work group considering this issue for all incumbent local exchange companies.

14. State basis accounting and reporting should be continued by Ameritech Wisconsin and GTE North. The Commission is willing to consider any specific proposal either company files so long as the proposal allows for historical comparisons and addresses disposition of balance differences for depreciation reserve and any other amounts between the SR and proposed accounting and reporting basis.

15. It is reasonable to grant Ameritech Wisconsin a waiver from the excess fiber recordkeeping and reporting requirements contained in the Commission's letter order in docket 05-ST-102.

16. Wis. Stat. §§ 196.195(2) and (12) are independent of one another and a finding of effective competition under Wis. Stat. § 196.195(2) is unnecessary before applying incentive regulation methods under Wis. Stat. § 196.195(12).

17. It is not in the public interest to waive Wis. Stat. § 196.09 for Ameritech Wisconsin and GTE North. The requests for such waivers are hereby denied.

18. It is not appropriate to take any separate action in this proceeding regarding the mergers between SBC and Ameritech, and Bell Atlantic and GTE.

19. The record in this proceeding does not justify the need for Commission action on Ameritech Wisconsin's proposal at this time.

20. This proceeding is not the proper vehicle for addressing the AT&T proposal for an access charge task force.

21. It is not appropriate to consider GTE North's proposals regarding geographic deaveraging and access charges since no specific proposals were filed. Any specific proposal for geographic deaveraging should address federal comparability standards, examine the adequacy of universal service funding, and be supported by cost studies. Any filing of a specific access charge proposal that includes application of the interstate cap on other than an element-by-element basis should provide an explanation of its consistency with the then current statutes.

22. It is reasonable to consider the proposal to require Ameritech Wisconsin and GTE North to file plans for improving service to geographical areas with diverse income and racial populations in rulemaking docket 1-AC-184 regarding customer service and TelCAPs rather than in this proceeding.

Ameritech Wisconsin and GTE North should file such plans in a manner consistent with rules developed in that proceeding.

23. While it is important to continue to monitor the impact of price regulation on consumer choice, services, and customer assistance programs, no specific action in this proceeding is necessary.

24. The WPTA proposal regarding pay telephone pricing is beyond the scope of the Commission's jurisdiction.

25. Issues such as delays in receiving service and missed appointments are important customer protection issues. GTE North is already compensating retail customers under a voluntary service performance guarantee. It is reasonable to require Ameritech Wisconsin to submit a plan that establishes parameters concerning delayed or untimely installation or repair, including missed or late arrival for appointments, and appropriate compensation to customers when such events occur.

## **CONCLUSION OF LAW**

### **THE COMMISSION CONCLUDES:**

1. It has jurisdiction under Wis. Stat. §§ 196.01, 196.02(1) and (3), 196.03(6), 196.195, 196.196, 196.204, 196.219, and 227.11 and Wis. Admin. Code chs. PSC 163 and 165 to issue an order suspending one or more provisions of Wis. Stat. ch. 196, approving an alternative regulatory method for one or both price-regulated telecommunications utilities, suggesting statutory changes for consideration by the legislature, changing the rules contained in Wis. Admin. Code ch. PSC 163, adopting lesser, greater, other or different requirements concerning standards of telecommunications

service as to individual utilities or services, and changing or waiving provisions contained in prior Commission orders.

2. Wis. Stat. §§ 196.195(2) and (12) are independent of one another and a finding of effective competition under Wis. Stat. § 196.195(2) is not necessary before applying incentive regulation under Wis. Stat. § 196.195(12).

## **ORDER**

### **THE COMMISSION ORDERS:**

1. Ameritech Wisconsin and GTE North shall continue to be regulated pursuant to Wis. Stat. § 196.196 and Wis. Admin. Code ch. PSC 163.

2. Ameritech Wisconsin and GTE North shall no longer be required to file detailed investment commitment plans, but shall continue to file construction plans with rolling 5-year horizons based on the format developed by staff and the companies. Significant variances from one year's filing to the next shall be explained in the plan filing.

3. If Ameritech Wisconsin or GTE North wish to be eligible for an infrastructure incentive or penalty, it shall file for Commission review, on its anniversary date, proposed infrastructure objectives to consider in establishing incentives and penalties on the next two anniversary dates. Objectives for both retail-related and wholesale-related infrastructure investments shall be included.

4. Ameritech Wisconsin's and GTE North's service quality shall be compared to the industry-wide service quality standards for price regulated companies established in the Second Final Order in

Docket 05-TI-174

docket 05-TI-157, and to the standards developed for two new components, trunk blockage and answer speed for business office calls.

5. Ameritech Wisconsin and GTE North shall continue to file financial monitoring reports but in the streamlined format proposed in the Staff Report. The GTE North balance sheet schedule shall be eliminated.

6. Ameritech Wisconsin and GTE North shall continue using state basis (SR) accounting and reporting. Any specific proposal for changing this requirement that either company files shall allow for historical comparisons and address disposition of balance differences for depreciation reserve and any other amounts between the SR and proposed accounting and reporting basis.

7. The excess fiber recordkeeping and reporting requirements contained in the Commission's letter order in docket 05-ST-102 are hereby waived for Ameritech Wisconsin.

8. Ameritech Wisconsin and GTE North shall comply with all applicable provisions of Wis. Stat. §196.09.

9. Any specific proposal filed by Ameritech Wisconsin or GTE North for geographic deaveraging shall address federal comparability standards, examine the adequacy of universal funding, and be supported by cost studies.

10. Any specific proposal filed by Ameritech Wisconsin or GTE North for access reform which includes application of the interstate cap on other than an element-by-element basis, shall explain its consistency with the then current statutes.

Docket 05-TI-174

11. Ameritech Wisconsin and GTE North shall file plans for improving service to geographical areas with diverse income and racial populations in a manner consistent with rules developed in rulemaking docket 1-AC-184 regarding customer service and TelCAPs.

12. Ameritech Wisconsin shall submit a plan that establishes parameters concerning delayed or untimely installation or repair, including missed or late arrival for appointments, and appropriate compensation to customers when such events occur. This plan shall be submitted to the Commission within 60 days of the date of this order.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission

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See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

## APPENDIX A

To comply with Wis. Stat. § 227.47, the following parties who appeared before the agency are considered parties for purposes of review under Wis. Stat. § 227.53.

Public Service Commission of Wisconsin  
(Not a party but must be served)  
610 N. Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

### WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION

by  
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Madison, WI 53719

### CTC COMMUNICATIONS, INC.

by  
Mr. Grant B. Spellmeyer, Attorney  
Axley Brynelson  
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Madison, WI 53703

### AT&T COMMUNICATIONS OF WISCONSIN, INC.

by  
Mr. John J. Reidy, III, Attorney  
AT&T Corporate Center  
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### WISCONSIN PAY TELEPHONE ASSOCIATION, INC.

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by

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AMERITECH WISCONSIN

by

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CENTURYTEL

by

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TCG MILWAUKEE, INC.

by

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GTE NORTH INCORPORATED

by

Mr. Paul Verhoeven  
State Manager - Regulatory Affairs/Tariffs  
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MCI TELECOMMUNICATIONS CORPORATION

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STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

by

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123 West Washington Avenue, P.O. Box 7857  
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SPRINT COMMUNICATIONS COMPANY L.P.

by

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CITIZENS' UTILITY BOARD

by

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122 West Washington Avenue, Suite 900  
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TIME WARNER TELECOM

By

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FRONTIER CORPORATION

by

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*Courtesy Copies:*

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Mr. Dennis Dums  
Citizens' Utility Board  
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Madison, WI 53703

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1 South Pinckney Street, 4<sup>th</sup> Floor  
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Madison, WI 53701-0927

## Penalty and Incentive Mechanism

## 500,000 or Fewer Access Lines

Adjustment Factor	Penalty	Incentive
Quality of Service	.6%	N/A
Infrastructure Investment (see Note 1)	.2%	.8%
Wisconsin Advanced Telecommunications Foundation	.1%	.1%
Commission Discretion	.1%	.1%
Total Maximum Value	1.0%	1.0%

## More than 500,000 Access Lines

Adjustment Factor	Penalty	Incentive
Quality of Service	1.2%	N/A
Infrastructure Investment (see Note 1)	.5%	1.7%
Wisconsin Advanced Telecommunications Foundation	.1%	.1%
Commission Discretion	.2%	.2%
Total Maximum Value	2.0%	2.0%

Note 1: Infrastructure investment incentives and penalties are optional based on the filing of infrastructure objectives. If a company elects not to exercise the option, the penalty value should transfer and be added to quality of service and the incentive value should be eliminated. For example, for companies with 500,000 or fewer access lines, the quality of service penalty would increase to .8 percent with a total maximum penalty value remaining at 1.0 percent. The infrastructure incentive would be eliminated so that the total maximum incentive value would decrease to .2 percent. For companies with more than 500,000 access lines, the quality of service penalty would increase to 1.7 percent with a total maximum penalty value remaining at 2.0 percent. The infrastructure incentive would be eliminated so that the total maximum incentive value would decrease to .3 percent.