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In the Matter of Investigation into )  
 US West Communications, Inc.'s )  
 Compliance with Certain Wholesale )  
 Pricing Requirements for Unbundled )  
 Network Elements and Resale )  
 Discounts )  
 \_\_\_\_\_ )

Docket #T-00000A-00-0194

**POST-HEARING BRIEF OF  
WORLD COM, INC.**

The Arizona Corporation Commission ("Commission") decision in this docket will have a significant impact on whether or not a competitive local exchange market ever develops and flourishes in Arizona. The prices that Qwest is allowed to charge its competitors for interconnection and unbundled network elements can either encourage competition or restrict, and even eliminate, competition. For this reason, WorldCom, Inc., on behalf of its operating affiliates ("WorldCom") has actively participated in this docket, sponsored witnesses, and, in conjunction with AT&T and XO Communications, co-sponsored proposed wholesale prices that are consistent with the federal Telecommunications Act of 1996 (the "Act") and FCC regulations and are pro-

competitive. WorldCom files this Post-Hearing Brief in support of its positions in this proceeding.

WorldCom's brief will focus on collocation and database services but WorldCom supports the positions set forth by AT&T and XO in their closing briefs on wholesale prices related to other interconnection and unbundled network element issues.

WorldCom also supports the position taken by Time Warner Telecom of Arizona opposing Qwest's practice of unilaterally imposing new policies and prices, in general, and the decommissioning policy, in particular.

## **I. COLLOCATION**

### **A. Introduction**

Collocation is the means by which CLECs place telecommunications equipment in a space in order to acquire access to Qwest's unbundled network elements or to interconnect with Qwest's network. This "space" usually is within Qwest's central office. The CLEC pays Qwest for the use of the space. A fundamental aspect of collocation is that Qwest controls the placement of the collocator's equipment in the central office. As a result, Qwest reserves almost total control over the cost their competitors pay for collocation. With no incentive to minimize collocators' costs, there is no assurance that Qwest will follow a "best practices" approach to space planning. In fact, Qwest typically elects to place all collocators in one area of the central office, even if that area requires demolition and reconstruction to "prepare" the space, and even if that space results in longer cabling and more cable racking to connect CLEC equipment than would be the case if Qwest were installing equipment for itself.

**B. General Concerns with Qwest's Proposed Collocation Costs**

Qwest's collocation costs in large part are based on forty-one cageless collocation jobs completed prior to May 1999. None of these jobs were in Arizona and they were not competitively bid. Transcript, pp. 409-410. \*

These studies are based on the current central office technology and design. Qwest, without any support, simply assumed that its current central offices are "forward-looking" for costing purposes. Transcript, pp. 691-692. Qwest's current central offices were built to accommodate different technological requirements for equipment space and activity arrangements. As a result, Qwest's existing central offices have characteristics that reflect planning practices that are no longer efficient. For example, in existing central offices, technologies may have been accommodated by adding floors or extending the building horizontally, rather than using forward-looking strategies that minimize the overall, long-term requirement for equipment space. Roy Lathrop Direct Testimony ("Lathrop Direct"), p. 27. Thus, existing central offices tend to be larger than necessary. This situation is exacerbated by the fact that many central offices have congested overhead cable racking and cable holes. The result is much longer cable lengths than necessary. Lathrop Direct, p. 27.

A central office built today, with competition in mind, would be more cost efficient for CLECs than Qwest's current central offices and should reflect a fully air-conditioned central office, prepared to house telecommunication equipment. Such modern central offices would not need "space preparation" or "conditioning". Lathrop Direct, p. 28. On the contrary, in this case, Qwest's witness indicates that "space

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\* "Transcript" refers to the Reporters' Transcript of Proceedings filed in this docket.

preparation” is an element of the collocation charges and that Qwest does not use a modern, forward-looking central office in its collocation space construction charges. Mr. Hubbard’s discussion with Commissioner Spitzer demonstrated that new central offices built in a growing area, like Phoenix, should result in economies not reflected in Qwest’s cost studies. Transcript, pp. 275-278 and 289-294; Robert F. Kennedy Direct Testimony (“Kennedy Direct”), p. 18.

In addition to using outdated central offices, those 41 cageless collocation jobs include significant costs for which there appears to be little or no support or documentation. The invoices and supporting materials from these 41 jobs lack the detail needed to determine the reasonableness and appropriateness of the costs.

**C. Specific Price Elements**

The Qwest cost studies are replete with errors and overstated costs. The extent and number of these problems cast doubt on Qwest’s collocation cost studies and undermine the credibility of the collocation prices proposed by Qwest in this proceeding.

1. Quote Preparation Fee (“QPF”)

The proposed Qwest QPF is duplicative and contains unreasonably high engineering costs. In response to Mr. Lathrop’s pre-filed testimony that the QPF constituted a double recovery because the same engineering costs were included in QPF as in the space construction charge, Mr. Fleming, on behalf of Qwest, acknowledged the double recovery and suggested crediting the QPF towards Qwest’s space construction charge. Transcript, pp. 401-402; Rebuttal Testimony of Garrett Y. Fleming (“Fleming Rebuttal”), pp. 35-36. The proposed remedy is insufficient in that it assumes that Qwest’s engineering costs contained in the QPF were specifically and explicitly related to

collocation arrangements, that costs were efficiently incurred, that demolition or reconstruction activities were not included in the engineering invoices, and that there were no activities that benefited Qwest or other CLECs. In fact, Qwest's engineering invoices lacked any detail. Roy Lathrop Surrebuttal Testimony ("Lathrop Surrebuttal"), p. 3.

Qwest provides no explanation for increasing its QPF by more than three times the \$1,381.54 that this Commission reviewed and approved in the prior wholesale pricing docket. Lathrop Direct, p. 43. In fact, Qwest's witnesses acknowledged that there is no evidence that Qwest has lost money on its "quote preparation work" under the prior \$1,381.54 price. Transcript, pp. 272-274.

Mr. Lathrop provided reasoned estimates of how much time it should take to prepare a quote. Lathrop Direct, pp. 43-44. He suggests that Qwest's quote preparation fee should include no more than 15 hours. Lathrop Direct, p. 44. In contrast, the quote preparation fee exhibit provided by Mr. Fleming notes activities and hours that are on their face unreasonable. For instance, one hour is allocated for making copies. Multiple hours are listed for preparing a chart, one hour for preparing a form letter, etc. *See* WorldCom Hearing Exhibit 7. In discussions between Commissioner Spitzer and Mr. Hubbard, it became clear that Qwest does not include efficiencies that would naturally accrue with each subsequent quote. Transcript, p. 289.

Qwest does not identify a separate QPF for collocation "augmentations," that is, collocation requests that simply seek to add power or connectivity cabling to an existing collocation arrangement. These requests do not require the same extent of information, verification or design review, and the time required for Qwest to develop a price quote

should be reduced. Lathrop Direct, p. 44. The Commission should require Qwest to provide a separate QPF for augments that is no more than one-fourth of the QPF established in this proceeding.

## 2. Engineering

For caged and cageless collocation, the engineering charge is absorbed within Qwest's respective "space construction" charge. Qwest's engineering charges are overstated and suffer from poor documentation. In response to the discovery requests, Qwest provided redacted invoices, but those invoices are not detailed to specific collocation elements and contain only the total engineering amount charged by the vendor. There is no specification of the task performed; there is no confirmation that costs are explicitly related to specific collocation jobs (and not demolition or space preparation activities); there is no ability to ensure that Qwest also did not benefit from the engineering work conducted simultaneously. Qwest provided no data on the task and time estimates associated with its estimate of engineering cost, which is five times higher than an XO engineer estimated that collocation engineering should cost. Direct Testimony of Rex Knowles ("Knowles Direct"), p. 12; Summary and Surrebuttal of Rex Knowles ("Knowles Surrebuttal"), p. 2. Furthermore, Qwest's approach to engineering collocation is inefficient and Qwest assumes caged and cageless collocation arrangements will be engineered one at a time. Given the number of collocation arrangements, this approach is not only inefficient (and hence more costly), but also ignores Qwest's ability to become more efficient at engineering collocation arrangement as it acquires more experience. Lathrop Direct, pp. 45-46. WorldCom proposes that Qwest's engineering costs are much greater than necessary and should be reduced to one-half of Qwest's

proposed value. Lathrop Direct, p. 46. The engineering invoices are vague and Qwest admits it did no investigation to determine the reasonableness of the vendor costs.

Transcript, pp. 414 and 543-549; WorldCom Hearing Exhibits 4 and 5.

Qwest also did not include a separate engineering charge for collocation augments. The engineering required to augment an existing collocation arrangement requires much less work than engineering a new collocation arrangement and a separate cost should be developed that is based on one one-half of the WorldCom recommendation above. Lathrop Direct, p. 46.

### 3. Floor Space Rental Cost

Qwest's proposed floor space rent contains duplicative costs. Qwest proposes to charge \$3.96 per square foot for floor space rental. See WorldCom Hearing Exhibit 1, §§8.27, 8.3.3 and 8.4.3. This rent is "found" money for Qwest because this central office space cost is recouped by Qwest whether or not a collocation is present because it is part of Qwest's rate base. Transcript, p. 429.

Qwest relied on the *RS Means Construction Cost Data Book*, a text widely used in the construction industry. Transcript, p. 431. Qwest used the median value and then added costs for architectural fees, land costs, site work, landscaping and Qwest's project management. These added costs account for a significant portion of the total investment Qwest developed. Lathrop Direct, p. 48.

*RS Means* states that it does not generally include architectural or land costs or site work. But Qwest erroneously assumes that *RS Means* never includes architectural or land costs or site work. This necessarily leads to double counting of architectural, land and site work costs. Qwest's per square foot investment should be reduced by 10% to

account for this discrepancy. Lathrop Direct, pp. 48-49. Qwest also fails to provide any explanation for its change to a one zone rental rate structure from the three zone rental rate structure, ranging from \$2.06 to \$2.75 per square foot, that it proposed in the prior cost docket. Transcript, pp. 430 and 699.

The floor space rent also contains double counting of HVAC and electrical costs. This double counting arises because HVAC and electrical costs are included in the space construction charge as well as the floor space rent. Transcript, pp. 421-422; Lathrop Direct, pp. 51-52.

Mr. Fleming claims that Qwest's building rent includes only "centralized system" costs while "distribution facilities" costs are included in Qwest's space construction charge. The centralized system serves all users of the central office while the distribution facilities are the specific electrical and mechanical facilities connecting the central system to the collocation space. This structure does not match Qwest's rent cost study that included 70 feet of delivery or distribution line costs for electrical and mechanical facilities in its rent calculation. *See* WorldCom Hearing Exhibit 6, Appendix, p.1. Mr. Fleming suggests that Qwest removed all "distribution facilities" from its rent costs, but Qwest's rent cost study clearly includes HVAC and electrical distribution costs for facilities that connect directly to the collocation space. Qwest could not explain away this double counting except to say that it is adjusted "someplace else." Transcript, pp. 432-437. It appears that the same distribution facilities included in the rent cost also are included in the space construction costs.

In Qwest's rent study, one factor included is an extra space ratio. Extra space is needed around the cage enclosure to allow for maintenance and entry into the cage. In

determining the ratio of useable space to “extra” space, Qwest added two hypothetical models to five actual space allocations in current central offices. The two “models” had the effect of increasing the rent. Transcript, pp. 437-442; WorldCom Hearing Exhibit 6. While Qwest claims actual experience is the best indicator of forward looking costs, actual experience in this case departs from that practice in a case in which it will increase the price to CLECs.

#### 4. Power

Qwest power charges are too high based on comparison to similar charges in other jurisdictions. Qwest states that its DC power usage charge includes the cost of purchasing power from the electric company and the cost of the power plant and maintenance to provide power to CLEC equipment. Under Qwest’s proposal, a collocator would pay \$15.05 or \$18.73 per amp in addition to the power cable charges, depending on whether the usage was less than 60 amps or greater than 60 amps. *See* WorldCom Hearing Exhibit 1, §8.1.3.

On their face, Qwest’s power charges are quite high. By way of contrast, Qwest’s FCC power charges range from \$8.70 per amp to \$12.66 per amp in Arizona. In addition, generally other ILEC power charges are less than \$10.00 per amp. Lathrop Direct, p. 56.

Qwest does not provide any information regarding the source of its power plant investments, which appear to be assembled from a single, identified source. Qwest could not confirm that it used competitive bidding for power plant components. In sum, Qwest does not provide sufficient information to be able to determine whether its power investments are representative of power plants that would be installed in its Arizona central offices. Given the range of central office sizes, it would be more appropriate to

develop an average of the investments for different sized central offices. Lathrop Direct, p. 57.

It is WorldCom's understanding that in response to Mr. Lathrop's direct testimony, Qwest will remove the cost of the BDFB from the per amp cost developed for power fees in excess of 60 amps. Transcript, pp. 386-387.

#### 5. Power Cabling Costs

Qwest's material costs for power and grounding cable are overstated. As shown in industry guides, *RS Means* and *Cobra Wire & Cable*, material costs range from several percent less for power cable to 10% to 15% less for grounding cable than Qwest's proposals for similarly sized cable. Transcript, pp. 711-714; WorldCom Hearing Exhibits 9 and 10. In fact, in Qwest's cost study the actual Phoenix cost for ground wire was below the average, but Qwest chose to use the average, thereby imposing a higher cost on Arizona CLECs. Transcript, p. 714-715. The Commission should adopt an average of the two quotes using the industry guides for power and grounding cable costs, especially in light of the fact that Qwest's costs are probably even lower because of its ability to negotiate discounts. Lathrop Direct, pp. 58-59.

Qwest's power cabling costs estimates are not Arizona specific but are developed by estimating costs in a sample of five central offices without any demonstration that each of these central offices represents one-fifth of the central offices in Arizona. Qwest provided some Arizona specific data on power cable links in its rebuttal testimony that it had refused to provide in discovery, but it has not modified its cost estimates to incorporate that data. Knowles Direct, p. 2; Knowles Surrebuttal, p. 10.

In addition, Qwest's power cable lengths are overstated and inconsistent. Mr. Fleming indicates the average length in Arizona is 177 feet. Fleming Rebuttal, p. 79. Yet, in the space rent study, using a typical central office, Qwest only includes 70 feet as the standard length for cabling. WorldCom Hearing Exhibit 6, Appendix, p.1. This lower number used in their lease cost study should be used rather than the actual figures proposed by Mr. Fleming.

6. Entrance Facilities

Despite some improvements agreed to by Qwest in its rebuttal testimony, Qwest's entrance facilities' costs still contain unnecessary conduit and cable racking costs. In response to the pre-filed testimony of Mr. Lathrop, Qwest modified its entrance facilities proposal. Qwest now proposes to assume a 10% incidence of new separate manholes for CLECs, as opposed to 60% in its original filing. Fleming Rebuttal, p. 31. However, under cross-examination, it was clear that even this 10% figure is without quantifiable support. Qwest acknowledged that it had been assuming that new manholes would be required at each collocation site. Only when challenged by Mr. Lathrop was this estimate lowered. Transcript, pp. 394-396. WorldCom's recommendation that there should be 0% incidence of new separate manholes should be adopted. In addition, Qwest did not accurately consider the total demand for cable racking associated with entrance facilities even under its revised proposal and thus ignores the fact that CLEC cables share cable racking with Qwest cables, especially when using the same manholes. Qwest's model, therefore, calculates collocators' costs that are much greater than the appropriate proportional share of the total cable racking and total support capacity costs. Lathrop Direct, pp. 37-38; Transcript, pp. 284-286.

Qwest's entrance facility prices are based on the unrealistic assumption that the manholes, conduit and cable racking used to provide these facilities are dedicated to the use of only three CLECs, rather than shared with additional CLECs and Qwest itself. Even Qwest's modified rates continue to incorporate these assumptions, as well as the assumption that conduit outside the central office will be placed individually, rather than as part of a construction project to place multiple conduits simultaneously. Knowles Direct, pp. 4-8; Knowles Surrebuttal, p.1.

#### 7. Fencing Costs

Qwest's cost for the fencing component of the standard space construction charge for caged collocation is overstated. In developing fencing costs for caged collocation, Qwest uses a multi-state average, despite the fact that the Arizona-specific costs included in its study are significantly less than average. Lathrop Direct, p. 32; Transcript, p. 704. In developing its standard space construction costs, Qwest used average quotes obtained from 13 vendors. No vendor specifications are identified and apparently no consideration was incorporated to account for cost reductions resulting from placing multiple adjacent cages, which would permit sharing cage walls and thereby reduce the per cage cost. Transcript, pp. 701-702. In addition, no information was included to ensure that the cage construction estimates, which were based on "actual jobs," did not include space preparation activities such as demolition and construction that should not be needed in a "forward looking" central office. It is not uncommon for cage construction activities to include labor and other costs for demolition and construction. Lathrop Direct, p. 53.

Moreover, the cage costs contained in the Qwest rent study (WorldCom Hearing Exhibit 6) are derived from *RS Means* building construction costs data book and includes

16% for general overhead profit, 13% for consulting fees and 5% for real estate project management. Despite the significant costs added to the cage itself, the costs provided from *RS Means* are roughly one-half the costs Qwest used for its cost study. Lathrop Direct, p. 53; Transcript, p. 707; WorldCom Hearing Exhibit 8. The Commission should require Qwest to use the caged costs developed in the *RS Means* study that Qwest acknowledges is reliable since Qwest uses it as the basis of its floor space rent.

8. Terminations

Qwest's costs for certain termination blocks are excessive. A termination is located between a CLEC collocation arrangement and an interconnection distribution frame. One aspect of that termination is a termination block. Once again, a comparison of the Qwest proposal to industry guides (*i.e.* Power Telephone Supply and Verizon Supply) show that the Qwest proposed block costs are substantially higher than the industry guides. Lathrop Direct, p. 59; WorldCom Hearing Exhibit 11; Transcript, pp. 732-733 and 867-869. Interestingly, these industry averages appear to greatly exceed the prices that appear on at least two Qwest invoices for collocation jobs that were provided in response to discovery, raising the question of whether discounts Qwest obtains for collocation components are reflected in its model input prices. Lathrop Direct, p. 59; WorldCom Hearing Exhibit 12. WorldCom recommends that the industry guide DSO block cost numbers be used.

In general, Qwest proposes to charge termination rates that are more than twice the rates the Washington Utilities and Transportation Commission found reasonable based on the charges proposed by another ILEC for the same functionality. This

Commission should similarly conclude that Qwest's rates are excessive and should reduce them accordingly. Knowles Direct, pp. 13-15.

9. Regeneration

Qwest should not be allowed to charge for regeneration. A regenerator, or repeater, is a type of circuit equipment that amplifies or regenerates signals as they travel along cables within a central office. When circuits exceed a certain length, a repeater is used to regenerate the signal. Collocators have no control over where in the central office their equipment is located; consequently, it is Qwest's decision to place a collocator in a position that may require regeneration. The FCC has found that ILECs should not charge for regeneration, because it should not be necessary. The Commission staff has taken a similar position in the Arizona §271 proceeding. *See Arizona Corporation Commission Staff Final Report on Qwest Compliance with Checklist Item No. 1, p. 79.* This is particularly true in a forward-looking central office. Indeed, if regeneration is needed, it is likely caused by Qwest's placement of collocators' equipment far from the devices to which they must connect. Lathrop Direct, p. 63; Transcript, pp. 294-297. If a collocator requires regeneration as a consequence of discriminatory equipment placement within a central office, it should be provided at no charge. In addition, if regeneration costs are subsumed with any existing costs, they should be removed.

In summary, Qwest's collocation cost study and resulting prices are replete with overstated material costs, duplicative charges, inconsistencies, and in many cases, simply lack of documentation. As a result, the Commission should adopt the collocation charges proposed by Mr. Hydock.

10. Installation Times

The invoices Qwest provided to support its installing work activities lacked detail regarding those activities. As a result, Qwest has not shown that the installation costs used as inputs to its collocation cost model are efficient or are even consistent with its contracted amounts. Virtually all the bills list only the total hours spent on the job with the total cost for all functions performed. Since no installation functions are listed, it is not clear whether installation activities were performed efficiently or whether installation included activities that benefited Qwest in addition to collocators. Lathrop Direct, p. 42. For instance, Qwest could never explain why it takes over three hours to “set up” for cable splicing. Transcript, pp. 298-299 and 865-866. In the case of virtual collocation, Qwest made no attempt to estimate standard hours and total charges. Transcript, pp. 392-393 and pp. 721-723.

11. Cable Racking

Qwest’s cable racking costs are excessive. While Qwest and CLECs share virtually all cable racking in the central office, Qwest assumes that 100% of the caged and 50% of the cageless collocation arrangements require “major” (new) cable racking aerial support. The amount of cable racking dedicated to any one collocator would be very small if Qwest placed CLEC equipment in a manner in which it places its own equipment. If Qwest places all collocators in a separate space of the central office and does not use pockets of available space, additional cable racking is required. Lathrop Direct, p. 36.

It does not appear that Qwest assesses a cable racking cost on virtual collocators. There is no cable racking dedicated to CLECs in virtual collocation because the cable

racking (and aerial support) is shared with Qwest's adjacent equipment. This same approach should be used for cageless collocation, since the only difference between virtual collocation and cageless collocation is equipment ownership. It is possible that a caged collocation arrangement could have a small amount of dedicated cable racking, but this would be limited to the amount of cable racking that extends immediately above the last cage in a line of cages. In sum, no cable racking or aerial support should be used to develop costs for cageless collocation. For caged collocation, the percentage of jobs requiring major cable racking and aerial support should be set at 10% and the percentage of jobs requiring any cable racking and aerial support should be set at 20%. Lathrop Direct, p. 37.

12. Double Recovery of Power and Land and Building Costs

Qwest applies power and land and building factors to cable racking and other investments. Qwest applies these factors generally as a means to spread the cost of a central office power plant and the land and building investments over its various services. Collocation service, however, is different from other services in that collocators already pay directly for power and space rental. Other collocation elements, therefore, should not include land and building investment. Thus, Qwest should not apply power or land or building factors to any collocation related investments. To do otherwise would permit Qwest to "over recover" its power and land and building cost. Lathrop Direct, p. 40. Ms. Gude fails to explain why collocators, who also pay directly for power and land and building, should pay more for facilities, like overhead cable racking, that use no power or floor space. Lathrop Surrebuttal, p. 4; Transcript, pp. 967-971.

13. CLEC to CLEC Connections

CLEC to CLEC connections provide a connection between a CLECs non-contiguous collocation space or between two different CLECs collocation spaces in a Qwest central office. Qwest merely provides the route for the connection, and the CLEC must install the connections. Qwest proposes rates that are excessive for what Qwest provides due in large part to Qwest's assumption that it will be required to engineer and construct additional cable racking 5% of the time. *See* WorldCom Hearing Exhibit 1, §8.5. No new cable racking should ever be required, and Qwest produced no evidence to demonstrate to the contrary. Accordingly, Qwest should be authorized to charge no more than the \$244.82 non-recurring and no recurring rates that Qwest formerly charged for such connections in its Arizona central offices. Knowles Direct, pp. 15-16; Knowles Surrebuttal, pp. 2-3.

WorldCom witness, Mr. Lathrop, recommended that the engineering charges for CLEC to CLEC interconnection and line sharing be based on no more than ten hours. Lathrop Direct, pp. 47-48. Qwest adopted Mr. Lathrop's recommendation on CLEC-CLEC interconnection, but did not respond as to line sharing. The same adjustment should be made in the line sharing engineering costs.

Specifically, in response to a question from Commissioner Spitzer, Ms. Million modified her recommended number of hours for CLEC-CLEC engineering to be consistent with Mr. Lathrop's recommendation of ten hours. Ms. Million did not explain why she did not make a similar recommendation for line sharing engineering, for which the functions performed (according to Qwest's cost studies) are identical. Mr. Dunkel also recommended ten hours be used for line sharing engineering. The prospect for

competition would be enhanced by adopting rates consistent with forward-looking, efficient processes.

**D. Individual Case Basis (ICB Pricing)**

Qwest lists numerous ICB charges including adjacent collocation and central office security infrastructure. Such ICB charges should not be allowed because they are hidden and are not supported by cost studies. Lathrop Direct, p. 32.

ICBs also are problematic because they are quantified only on submission of a collocation request and thus the collocator has no idea what the cost of collocation will be. When a CLEC has a business need for a specific collocation space, it is in a vulnerable negotiating position. Qwest can use this leverage to artificially increase the collocator's cost by forcing CLECs to delay their business plans while challenging such ICB charges. Furthermore, charges that simply reimburse Qwest for the time and materials on an ICB basis, provide no incentive for Qwest to pursue efficiencies and improve collocation implementation processes. Lathrop Direct, p. 34. Qwest could not guarantee that such prices would be TELRIC-based and non-discriminatory and acknowledged that the CLEC would have to resort to the dispute resolution process to challenge an ICB. Transcript, pp. 305-307.

With respect to security costs, the FCC has precluded Qwest from imposing more stringent security measures on CLECs than Qwest imposes on its own employees and contractors. Before being permitted to assess any ICB charge, Qwest should be required to prove it has met the FCC standard for imposing security costs. Lathrop Direct, p. 33. The amount of any such security charge should be borne on a *pro rata* basis, using square footage as an allocation. This approach ensures that Qwest has the economic incentive to

minimize the costs that arise from the measure it selects. Lathrop Direct, p. 62; *see also* Transcript, p. 301.

WorldCom understands that Qwest may be developing cost studies for remote collocation and customized routing that will be part of Phase II B. Qwest also should be required to provide cost studies for adjacent collocation. Qwest could not dispute that Verizon has provided cost studies for adjacent collocation. Transcript, p. 311.

**E. Recurring vs. Non-Recurring Charges**

Qwest failed consistently to separate those investments that would be shared or reused (and thus recovered in recurring charges) from those investments that would be dedicated to a specific collocator (and thus recovered through non-recurring charges). This primarily appears in Qwest's cage and cageless construction charges. WorldCom Hearing Exhibit 1, §§8.3.2 and 8.4.2; Lathrop Direct, p. 38. The correct treatment is to develop a non-recurring charge to recover investments that cannot be shared or reused, and to develop a recurring rate to recover the investments that can be shared or reused. For example, the engineering investment should be recovered through a non-recurring charge since it is assumed that collocation arrangements are engineered one at a time. By contrast, overhead cable racking is reusable and those investments should be recovered through recurring charges. Lathrop Direct, p. 50. Qwest just assumed without investigation that many items in space construction, for instance, cannot be shared by Qwest. Transcript, pp. 412-413.

Qwest's proposal to assess a non-recurring charge for space construction would result in complete cost recovery each time a new entrant uses a cage. To avoid this multiple cost recovery, an occupancy factor should be applied to recurring charges for

these reusable assets to recognize the possibility that the cage may be unused for some portion of the cost recovery period. While this raises costs for collocators, it provides Qwest with the opportunity to “overcollect” should the actual occupancy exceed the occupancy factor used to develop the recurring charge. Lathrop Direct, p. 51.

To minimize dispute over the uncertainty associated with utilization over time, the Commission should use a recurring cost spread over a period of five years. This shorter period will balance the risk CLECs face (collectively) for potential cost over-recovery and the risk Qwest faces for potential cost under-recovery. Lathrop Direct, p. 51.

## **II. INFORMATION SERVICES AND DATABASES**

### **A. Market Pricing**

Qwest proposes unsubstantiated, discriminatory market pricing for numerous information services and database elements. Qwest admits that it does not provide any cost studies to support these market-based prices but concedes that a “profit” factor is somehow included. Transcript, pp. 565, 572-573 and 688-689. In fact, no Qwest witness could explain the basis for Qwest’s proposed market prices. More remarkably, Qwest witnesses took the position that the Commission does not need to approve these rates and that they were being provided merely as a courtesy. Transcript, p. 688. This position is in stark contrast to Qwest’s position in the recent retail rate case settlement in which wholesale prices were put into basket 2 and the Commission was told it did not need to consider basket 2 in establishing retail rates because basket 2 would be reviewed by the Commission in separate proceedings. Transcript, p. 689; *see also* A.C.C. Decision No. 63487, p. 5, ll. 21-26. Of equal importance, there is no assurance based on this record that these market prices are not discriminatory. In response to questions, Qwest’s

witnesses could not confirm that these market prices are imputed by Qwest. Transcript, pp. 574. At a minimum, the Commission should strike all market-based pricing in this docket until Qwest provides cost studies for review as well as evidence that these proposed prices are imputed and not discriminatory.

**B. Directory Assistance and Operator Services**

Qwest must continue to offer directory assistance and operator services as an unbundled element at cost-based rates pursuant to 47 U.S.C. §251 (c)(3) until it provides customized routing. UNE Remand Order at ¶462.<sup>1</sup> Qwest is not currently providing customized routing to any CLEC in Arizona even though Qwest says it is willing to provide such service. Transcript, p. 571. A vague offer of service at an ICB rate is not sufficient. Therefore, it is inappropriate for Qwest to propose market prices for directory assistance and operator services.

Even if customized routing is provided, the market-based pricing proposed for directory assistance and operator services should be rejected for the reasons set forth above in Section II (A). The UNE Remand Order makes it clear that operator services and directory assistance must be made available consistent with the non-discriminatory access obligations. Non-discriminatory applies to not only what Qwest charges other carriers, but also what Qwest charges itself. The only way to determine what price Qwest provides directory assistance and operator services to itself is for Qwest to provide a cost study in this proceeding, which it did not do. In sum, Qwest must provide directory assistance and operator services to WorldCom and other CLECs at the same price it provides these services to itself.

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<sup>1</sup> *Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket 96-98, FCC 99-238, released Nov. 5, 1999 ("UNE Remand Order").*

**C. Customized Routing**

Qwest must provide customized routing to WorldCom in a manner consistent with WorldCom's requirements and as prescribed by the FCC in its UNE Remand Order. Qwest admits that it is not now providing customized routing to any CLEC in Arizona. Transcript, p. 571. Qwest does not propose an actual price for customized routing but rather lists it as an ICB price. No cost studies were prepared. Transcript, p. 570. Therefore, it is impossible to determine whether Qwest's rates for customized routing are necessary, reasonable and non-discriminatory. The Commission should reject Qwest's attempt to levy charges in this area unless and until Qwest performs a valid cost study and Qwest provides evidence that it has not already recovered such costs.

WorldCom also objects to Qwest's proposed pricing to the extent that such costs reflect Qwest's individual development costs to implement such a customized routing scheme as between all carriers. CLECs should only be required to pay for routine implementation costs of customized routing. To require otherwise would be unreasonable and discriminatory. Edward J. Caputo Direct Testimony ("Caputo Direct"), pp. 6-7. CLECs should not be penalized if Qwest implements a high cost customized routing solution.

WorldCom also objects to Qwest's customized routing charges to the extent such charges are already included in the switching services. Qwest does not provide enough detail to determine what substantive work is required to justify those charges. In fact, in Ms. Malone's description of this service, it appears most of the work is done by the CLEC. Transcript, pp. 567-568. The Qwest witness was not sure whether Qwest's

current switches already are capable of customized routing or how much work is required to install the line class code in a switch. Transcript, pp. 568-570. It is WorldCom's understanding that customized routing will be addressed in Phase II B of this docket.

**D. Directory Assistance Listing ("DAL") Information**

Qwest must provide DAL information at cost-based, non-discriminatory rates. DAL information is the underlying customer listing information that constitutes the directory assistance database. It is not the same as DA/OS service which is the service related to assisting callers in finding a customer's listing or completing a call. Although the FCC reclassified DA/OS service as UNE only in the absence of customized routing, the FCC identified the DAL database as a call related database. Caputo Direct, p. 8; UNE Remand Order, Executive Summary, ¶15.

Furthermore, even if the DAL database is no longer considered a UNE by the FCC, there is nothing to prevent the State of Arizona from declaring it as such under §251 of the Act.

Qwest remains the only reliable source for DAL information and without such data WorldCom is put at a direct competitive disadvantage. Caputo Direct, p. 9. Because Qwest remains the largest presence in the local market by virtue of its incumbency and gleans its DAL information directly from the customer service order process, it alone has direct access to the most accurate DAL database in the market. Caputo Direct, p. 9. Accordingly, Qwest should offer the DAL database at non-discriminatory, TELRIC-based prices to other carriers.

DAL also is subject to the Act's non-discriminatory provisions regarding dialing parity pursuant to §251(b)(3) of the Act. The FCC encouraged states to set their own

rates consistent with the non-discriminatory and reasonable requirements of dialing parity. *See* DAL Provisioning Order, p. 38.<sup>2</sup> In doing so, the FCC specifically recognized that state imposed rates based on cost-based models utilizing valid cost studies were consistent with dialing parity.

Qwest prices must not only reflect what it charges other carriers, but non-discriminatory pricing must also be relative to what Qwest charges itself. The Commission should ensure that meaningful competition in the directory assistance marketplace exists so that new and innovative directory assistance services are fostered.

Qwest's proposed market rate of 2.5¢ per initial listing for each update is without cost basis. *See* WorldCom Hearing Exhibit 1 at §10.5.1. In fact, the cost of the data is 25 times less than Qwest's price. *Caputo Direct*, p. 11. Such inflated prices threaten to barricade any meaningful competition in the marketplace, to cause competitors to drop out of the market and to stifle innovation.

There have been two publicly available decisions based on cost studies addressing the cost of providing DAL data that have set rates in the range of \$0.01 to approximately \$0.05. These prices were set by the Texas and New York Public Utility Commissions respectively. *Caputo Direct*, p. 12; *see also* Attachments A and B to this Brief, the Texas and New York Orders establishing these prices. The Texas PUC established a cost-based price and required Southwestern Bell to provide DAL at those rates to permit all carriers to use them for both local and interstate purposes. It also should be noted that

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<sup>2</sup> *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC-Docket No. 99-273, FCC 01-27, released January 23, 2001 (DAL Provisioning Order).*

WorldCom does not charge any ILEC, including Qwest, for similar listings it provides at the present time. Caputo Direct, p. 12.

Finally, WorldCom objects to Qwest's insertion of a transport fee of \$0.001 per listing. See WorldCom Hearing Exhibit 1, §10.6.5.1. WorldCom already has extended financial and capital resources to build and maintain its own electronic system, known as an NDM or "Network Data Mover", for receiving DAL information from Qwest. Asking WorldCom to pay Qwest to transport the data over WorldCom's own facilities would be asking WorldCom to pay twice for transport and would unjustly enrich Qwest. Caputo Direct, p. 13. Qwest could not justify or explain this transport fee. Transcript, pp. 578-579 and 895-896.

**E. ICNAM and LIDB**

Both these call related databases have been priced on an ICB basis. For the reasons set forth above, ICB prices are inappropriate. Moreover, prices for such elements must be non-discriminatory. To the extent that individual case basis pricing reflects Qwest's desire to discriminate among carriers, WorldCom objects to Qwest's proposal.

ICNAM should be priced on a "batch" basis. ICNAM service allows CLECs to query Qwest ICNAM database in order to secure listed name information associated with a requested telephone number in order to deliver that information to the CLEC's end users, normally through Caller ID service. Caputo Direct, p. 14. Qwest proposes that ICNAM be billed on a per query basis.

CLECs should be able to obtain the entire contents of the ICNAM database, rather than be restricted to access on a per query basis. Offering the ICNAM database on a "batch" basis is technically feasible and will allow access in the same manner used by

Qwest. Caputo Direct, p. 16. On the other hand, limiting access to a per query basis discriminates against WorldCom and other CLECs by giving Qwest an unfair advantage. It prevents CLECs from controlling the service quality and management of the database and restricts WorldCom's ability to offer other service offerings that would enable it to compete effectively with Qwest in provision of this UNE. Caputo Direct, p. 14.

The alternative of purchasing ICNAM on a batch basis is valuable for several reasons. First, CLECs who operate their own ICNAM database are not restricted to the exact same service and process method as offered and used by Qwest, thus allowing the potential for development of innovative services. Second, for some CLECs, the cost of obtaining the full contents of the database (as a UNE at TELRIC prices) and maintaining their own database may be more economical than requiring them to pay Qwest on a per query basis. Providing the alternative of batch data provides potential cost savings to CLECs. Finally, the CLEC that operates such a database to support services for its own end users also may develop the capability to offer ICNAM databases to other carriers. This situation would have similar public policy benefits to those provided by the resale requirements. Caputo Direct, p. 15.

ICNAM allows the called customer premises equipment, connected to a switching system via a conventional line, to receive a calling party's name and the date and time of the call during the first silent interval in the ringing cycle. This is a very limited time frame within which to determine a name associated with a calling number. If WorldCom maintains its own database, via global access to Qwest's database, a lengthy step in the process would be eliminated, allowing WorldCom to provide service at least as good as Qwest provides for itself. Caputo Direct, pp. 15-16. Further, requiring WorldCom to

“dip” Qwest’s database rather than access its own ICNAM database also forces WorldCom to incur development costs associated with creating a complex routing scheme within its network. Since Qwest already has its own database, it does not incur the same cost associated with implementing and maintaining a routing scheme. Caputo Direct, p. 16. Qwest witnesses could not confirm that any ICNAM charges are imputed to Qwest. Transcript, p. 583. Thus, by enjoying superior access to its ICNAM data, Qwest limits WorldCom to an inferior service they can provide more efficiently, quickly and cheaply. For these reasons, WorldCom should have full batch access to the same ICNAM data that Qwest uses to provide ICNAM services; anything less is discriminatory.

The Michigan and Georgia Public Service Commissions ordered the ILEC to allow full access to the calling name database rather than being restricted to access on a per dip basis. *See* Michigan and Georgia Orders at Attachments C and D.

**F. Category 10 and Category 11 Data**

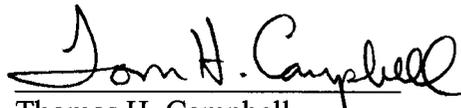
Category 10 and 11 data should be made the subject of Phase II B because such costs already may be included in switching costs. The pricing for this data, which is data used for billing, is based on a per unit basis. The data, however, is provided in multiple units to the CLEC who then reorganizes and returns the data in aggregated groups to Qwest. As a result, a per unit of data charge is necessarily discriminatory.

**III. CONCLUSION**

WorldCom respectfully requests that the Commission adopt the prices jointly sponsored by AT&T, XO and WorldCom and, for the reasons set forth above, reject the

cost studies and resultant prices proposed by Qwest. Qwest's proposed prices will stifle local competition and are based on flawed cost studies.

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**A**

**DOCKET NO. 19075**

<b>PETITION OF MCI</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TELECOMMUNICATIONS</b>	<b>§</b>	
<b>CORPORATION FOR ARBITRATION</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF DIRECTORY ASSISTANCE</b>	<b>§</b>	
<b>LISTINGS ISSUES UNDER FEDERAL</b>	<b>§</b>	
<b>TELECOMMUNICATIONS ACT OF</b>	<b>§</b>	
<b>1996</b>		

**ARBITRATION AWARD**

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## I. INTRODUCTION

The Federal Telecommunications Act of 1996<sup>1</sup> (FTA) requires that when an incumbent local exchange company (ILEC) and a new local service provider (LSP) are unable to negotiate the terms and conditions of interconnection agreements, either of the negotiating parties "may petition a State commission to arbitrate any open issues." FTA § 251(b)(1). The Public Utility Commission of Texas (the Commission) is responsible for arbitrating disputes pursuant to the FTA.<sup>2</sup> The Commission anticipated it would be called upon to resolve disputes under the FTA, and promulgated a dispute resolution rule that established procedures for conducting arbitration proceedings.<sup>3</sup>

On March 18, 1998, MCI Telecommunications Corporation and MCI Access Transmission Services, Inc. (collectively MCI or Petitioner) petitioned the Commission to resolve disputes with Southwestern Bell Telephone Company (SWBT) over the pricing and availability of directory assistance listings in SWBT's directory assistance database.

The Commission's arbitration panel (the Arbitrators) is composed of two Commission staff members: Howard Siegel from the Office of Policy Development and Lynne LeMon from the Office of Regulatory Affairs. Mr. Siegel and Ms. LeMon were sworn in as Arbitrators on July 8, 1998 and conducted the arbitration hearing on July 9, 1998 in accordance with the Commission's dispute resolution rules. The Arbitrators' decisions on disputed issues are found in Section II. of the Arbitration Award. Section III. includes the implementation schedule. Section IV includes the Arbitrators' conclusions.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 251 *et seq.* Hereinafter, all citations to FTA will be to the 1996 Act as codified in the United States Code. (FTA).

<sup>2</sup> The Commission has the authority to conduct the FTA arbitrations pursuant to § 252 of FTA and §§ 14.001, 52.001-002, 60.001-003, and 60.121-128 of Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§11.001-63.063 (Vernon 1998) (PURA).

<sup>3</sup> P.U.C. PROC. R. §§ 22.301 - 22.310 (establishes procedures for mediation, arbitration, and approval of interconnection agreements under FTA).

## II. DECISIONS ON ISSUES PRESENTED FOR ARBITRATION

The following decisions represent the Arbitrators' resolution of issues presented for arbitration by SWBT and MCI. Issues, and their related decisions, are grouped by topic. Because FTA § 252(b)(4) limits issues that may be decided in arbitration to those set forth by the parties, the Arbitration Award addresses only the issues presented for arbitration.

### A. FTA REQUIREMENTS

The parties presented three issues requiring an interpretation of FTA requirements pertaining to directory assistance. The issues are:

- Issue 1      *Does the Federal Telecommunications Act of 1996 (FTA) require SWBT to provide to MCI any and all directory assistance databases, in bulk format with nightly updates, that are used by SWBT and/or affiliates in providing directory assistance services to end users?*
- Issue 2      *Whether SWBT has met the requirements of FTA Section 251(c)(3) for unbundled access to SWBT's directory assistance database by offering MCI the ability to read the information contained in the database, and to enter its own customer information into the database?*
- Issue 3      *Whether SWBT has met the requirements of FTA Section 251(b)(3) by offering MCI access to SWBT's directory assistance listing information in readily accessible tape or electronic format*

### 1. PARTIES' POSITIONS

MCI requests access to SWBT's directory assistance database listings in bulk format,<sup>4</sup> rather than on a dip-by-dip basis.<sup>5</sup> MCI's position is that directory assistance listings and access to the directory assistance database are unbundled network elements (UNEs). According to MCI, FTA § 251(c)(3) requires that directory assistance database listings be provided in bulk format as UNEs at rates based upon total element long run incremental costs (TELRIC).

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<sup>4</sup> The bulk format requested by MCI means that SWBT would provide access to all of its directory assistance listings simultaneously rather than on an individual basis.

<sup>5</sup> Dip-by-dip is the term used by the parties to refer to directory assistance access on a per listing basis.

SWBT argues that there is a distinction between access to directory assistance service, access to the directory assistance database and access to directory listings (also referred to as subscriber list information). According to SWBT, each of these carry distinctly differing obligations under the FTA. SWBT's position is that directory assistance listings are governed by FTA § 251(b)(3), not § 251(c)(3). SWBT reasons that because directory assistance listings are subject to § 251(b)(3) of the FTA, they are not UNEs and the obligation to base the price upon TELRIC does not exist. SWBT believes it meets its obligations to MCI, pursuant to FTA § 251(b)(3), by providing access to directory assistance listings in bulk format at market-based rates.

## 2. DISCUSSION OF THE ISSUES

On September 30, 1997, the Commission established that access to the directory assistance database is a UNE.<sup>6</sup> Similarly, on December 19, 1997, the Commission defined directory assistance listings as UNEs.<sup>7</sup> Because both access to the directory assistance database and directory assistance listings are UNEs, they are governed by FTA § 251(c)(3).

FTA § 251(c)(3) requires an ILEC, such as SWBT, to provide a requesting telecommunications carrier, such as MCI, nondiscriminatory access to network elements on an unbundled basis. Such access must be provided at rates, terms and conditions that comply with the overall requirements of §§ 251 and 252. In particular, FTA § 252(d)(1) states that the just and reasonable rate established for a UNE shall be based upon the cost of providing the UNE, shall be nondiscriminatory and may include a reasonable profit.

A review of the FCC's First Report and Order<sup>8</sup> following enactment of the FTA is useful for evaluating FTA requirements associated with UNEs. A summary of key provisions in the First Report and Order are:

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<sup>6</sup> Docket No. 16189 et al, Arbitration Award, Appendix C, page 45, September 30, 1997.

<sup>7</sup> Docket No. 16189 et al, Arbitration Award, Appendix C, page 4, December 19, 1997.

<sup>8</sup> First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Aug. 8, 1996) (FCC Interconnection Order).

- The FCC concluded that the definition of the term “network element” broadly includes all “facilit[ies] or equipment used in the provision of a telecommunications service,” and all “features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.”<sup>9</sup> (emphasis added)
- The FCC required ILECs to provide unbundled access to call-related databases and directory assistance facilities.<sup>10</sup>
- The FCC cited a shared use arrangement between GTE and Pacific Bell as “one possible method” of access to the directory assistance database and operator service database.<sup>11</sup>

Key provisions in the FCC’s Second Report and Order include:

- The FCC determined that it is not possible to achieve seamless and nondiscriminatory access to directory assistance without requiring access to the underlying databases.<sup>12</sup>
- To meet the requirement of nondiscriminatory access, a LEC must offer competitors access at least equal in quality to the access received by the LEC.<sup>13</sup>

The Arbitrators view MCI’s request for directory assistance listings in bulk format as one possible method of obtaining nondiscriminatory access to SWBT’s directory assistance database. The key term is “nondiscriminatory.” Because SWBT has bulk access to directory assistance listings in its database, MCI is entitled to such access.

To the issue of whether SWBT’s obligation is required by FTA § 251(b)(3) or § 251(c)(3), the Arbitrators note that there is some ambiguity in the FCC’s orders. For example, SWBT argues that the bulk directory assistance listings requested by MCI are not a database or

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<sup>9</sup> Id, ¶ 262.

<sup>10</sup> Id, ¶ 366, 516 and 534.

<sup>11</sup> Id, ¶ 538.

<sup>12</sup> Second Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, ¶ 144 (Aug. 8, 1996) (FCC Interconnection Order).

any other facility specified by the FCC as a UNE. MCI argues that access to bulk directory assistance listings is, in effect, access to the directory assistance database and, therefore, falls under the FCC's interpretation of FTA § 251(c)(3).

The Arbitrators find that this ambiguity in the FCC's orders need not be addressed because even under SWBT's analysis, the Arbitrators believe it is appropriate to treat directory assistance listings, provided in bulk format, as a UNE. UNEs listed by the FCC are not exhaustive. Instead, state commissions have the authority to identify other facilities as UNEs in addition to those identified by the FCC.

With regard to directory assistance listings provided in bulk format, the Arbitrators find the bulk format to be essential to MCI's method of providing directory assistance. Consequently, the Arbitrators deem the bulk format provision of directory listings to MCI, a method for MCI to obtain nondiscriminatory access to the directory assistance database, to be a UNE.

### 3. ARBITRATORS' DECISION

SWBT is ordered to provide to MCI, in readily accessible tape or electronic format, access to any and all directory assistance databases, in bulk format with nightly updates, that are used by SWBT in providing directory assistance services to end users. The databases referred to in this Award are the two SWBT directory assistance databases currently located in Houston, Texas and Dallas, Texas, that, when combined, include directory assistance listings of SWBT customers located in Texas, listings of businesses located in other states that obtain a Texas presence, listings of non-Bell customers and listings of certain customers located in states with exchange areas contiguous to Texas.<sup>14</sup>

#### B. DIRECTORY ASSISTANCE LISTINGS OF INDEPENDENT TELECOMMUNICATIONS CARRIERS

The parties presented three issues requiring a decision on the directory assistance listings of independent telecommunications carriers. The issues are:

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<sup>13</sup> Id.

<sup>14</sup> This order does not require SWBT to provide directory assistance listings to MCI for customers in other SWBT states other than the narrow exceptions listed above.

- Issue 4      *Does FTA require SWBT to provide to MCI the directory assistance databases, in bulk format with nightly updates, of all independent telecommunications carriers who provide their customer listings to SWBT and/or the customer listings of all independent telecommunications carriers who provide such to SWBT?*
- Issue 5      *Whether SWBT is required by the FTA to provide MCI with directory assistance listing information obtained by SWBT pursuant to contractual agreements with ILECs and other competing providers without the express permission of those carriers?*
- Issue 6      *Whether SWBT is required by the FTA to provide MCI with directory assistance listing information obtained by SWBT pursuant to contractual agreements with ILECs and other competing providers, when those carriers specifically have instructed SWBT that it may not provide such information to other competing providers?*

## 1. PARTIES' POSITIONS

MCI's position is that the FTA's interconnection provisions require all telecommunications carriers to provide nondiscriminatory access to directory assistance service and directory listings in bulk. MCI further explains that the value of the directory assistance database lies in its totality and, by omitting the listings of twelve carriers who instructed SWBT not to release their directory assistance listings to MCI, the value of the directory assistance database to telecommunications carriers competing with SWBT is diminished.

SWBT's position is that SWBT should not be required to provide access to the directory assistance databases of independent telecommunications carriers to MCI. However, SWBT acknowledges that the FTA requires independent telecommunications carriers to provide nondiscriminatory access to directory listing information. SWBT believes it must honor the instructions of twelve (12) independent local exchange companies to NOT release their information provided to SWBT for inclusion in the directory assistance database.

## 2. DISCUSSION OF THE ISSUES

FTA § 251(b)(3) clearly and unambiguously imposes a requirement on all telecommunications carriers to provide dialing parity to competing providers of telephone exchange service and telephone toll service, as well as a duty to permit all such providers to have

nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays. [emphasis added] The Arbitrators interpret this section of the FTA to allow MCI access to all directory assistance listings in SWBT's database regardless of the identity of the underlying carrier. This interpretation is consistent with the Commission's treatment of access to white page directory listings in the Arbitration Order dated November 8, 1996.<sup>15</sup>

The Arbitrators' interpretation of FTA requirements is also consistent with the FCC's analysis of the issue. The FCC's Second Report and Order<sup>16</sup> states:

Requiring "nondiscriminatory access to directory listings" means that, if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested.

As stated, the FCC limits such access to "listed" numbers. The FCC places responsibility upon carriers in SWBT's position for ensuring that access is permitted "only to the same information that is available to their own directory assistance customers."<sup>17</sup>

The Arbitrators view the instructions from twelve carriers prohibiting SWBT from releasing the directory assistance listings of their customers, in bulk, to MCI as creating disparate treatment among competitors in contravention of the explicit requirements of the FTA and the FCC's interpretation of the FTA. Nevertheless, the Arbitrators prefer the twelve carriers be provided an opportunity to voluntarily withdraw their contractual prohibitions rather than invite litigious encounters between the parties. Therefore, the Arbitrators establish a grace period for SWBT and MCI to request voluntary compliance from the twelve carriers.

### 3. ARBITRATORS' DECISION

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<sup>15</sup> Docket No. 16189, et al, No. 43. SWBT must provide nondiscriminatory access to all published subscriber listings, regardless of the underlying carrier.

<sup>16</sup> FCC 96-333, ¶ 135, August 8, 1996.

<sup>17</sup> Id.

SWBT shall provide to MCI access to SWBT's directory assistance databases, in bulk format with nightly updates, including SWBT's directory assistance listings and the listings of independent telecommunications carriers who provide their customer's directory assistance listings to SWBT. This requirement is effective immediately for all telecommunications carriers except the twelve that instructed SWBT not to release directory assistance listings in bulk format. The requirement is effective for those twelve carriers on either (1) the date their contractual prohibition against releasing the listings is withdrawn or (2) November 1, 1998, whichever is sooner. On November 1, 1998, even if contractual prohibitions against the release of directory assistance listing information in bulk format have not been withdrawn, MCI, along with SWBT, shall have bulk format access to listings of the twelve carriers who currently have a prohibition against such access.

### C. 911 AND E911 ISSUES

The parties presented three issues requiring a decision on the availability of 911 and E911 directory assistance listings. The issues are:

- Issue 7      *Does FTA require SWBT to provide to MCI the directory assistance databases, in bulk format with nightly updates, of all emergency 911 authorities who provide their 10-digit translated telephone number to SWBT and/or the listings of all emergency 911 authorities who provide such to SWBT?*
- Issues 8      *Whether the "DA listings of all emergency 911 authorities" requested by MCI already are included as part of the "directory assistance listing" information provided to MCI in readily accessible tape or electronic format?*
- Issue 9      *Whether SWBT is required by the FTA to provide MCI with any 911 emergency agency listing information that is not available to SWBT's directory assistance operators as part of SWBT's directory assistance listing information?*

#### 1. PARTIES' POSITIONS

On August 6, 1998, the parties filed a "Stipulation of Understanding" that resolves these issues. The parties agreed that SWBT will provide, to MCI, SWBT's 7 and/or 10 digit listed numbers of all police, fire, ambulance, poison control, and any other emergency service providers. SWBT will also provide such listed numbers for all independent carriers that have given their consent for SWBT to release their directory listing information. SWBT further stipulates that all 7 and/or 10 digit listed phone numbers for such emergency service providers are maintained in SWBT's directory assistance database.

#### 2. ARBITRATORS' DECISION

The Arbitrators accept the terms agreed to by the parties and order the parties to abide by the Stipulation of Understanding. For the twelve carriers that prohibited SWBT from releasing their directory assistance listings in bulk format to MCI, the time limits under B.3. shall apply.

#### D. PRICING ISSUES

The parties presented two issues requiring a decision on the pricing of directory assistance listings. The issues are:

- Issue 10 *In accordance with the Public Utility Commission's (PUC) determination that SWBT must provide unbundled network elements (UNEs) to requesting telecommunications providers at TELRIC-based prices, do TELRIC-based rates apply to SWBT's provision of any and all directory assistance databases, including those of independent telecommunications providers and emergency 911 authorities?*
- Issue 11 *Whether SWBT's directory assistance listing information, provided to MCI in readily accessible tape or electronic format, is a network element under FTA Section 251 (c)(3) and therefore subject to the pricing standards for network elements under FTA Section 252(d)(1)?*

#### 1. PARTIES' POSITIONS

MCI's position is that directory assistance listings and access to the directory assistance database are UNEs. According to MCI, FTA § 251(c)(3) requires that UNE rates be based upon TELRIC. MCI offers three rate design proposals with rates lower than the rates proposed by SWBT. MCI prefers that volume-insensitive costs be recovered through a volume-insensitive charge and volume-sensitive costs be recovered through a volume-sensitive charge.

SWBT's position is that directory assistance listings are governed by FTA §251(b)(3), not § 251(c)(3). SWBT reasons that because directory assistance listings are subject to §251(b)(3) of the FTA, they are not UNEs and the obligation to base the prices upon TELRIC does not exist. Alternatively, SWBT proposes, if the Arbitrators determine that directory assistance listings are UNEs, the establishment of a bulk format rate of \$.0585 per listing.<sup>18</sup>

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<sup>18</sup> The rate of \$.0585 per listing [dip-by-dip access] was established in the Commission's Arbitration Award in Docket No. 16189, et al, December 19, 1997, Appendix B, Page 14.

## 2. DISCUSSION OF THE ISSUES

### a. Pricing Methodology

At the Arbitrators' request, SWBT provided two new cost studies to calculate the cost of providing directory assistance listings in bulk format using a TELRIC methodology and a LRIC methodology. As discussed in response to Issues 1, 2 and 3, access to the directory assistance database and directory assistance listings, including directory assistance listings provided in bulk format, are UNEs governed by FTA § 251(c)(3).

FTA § 251(c)(3) requires an ILEC, such as SWBT, to provide a requesting telecommunications carrier, such as MCI, nondiscriminatory access to network elements on an unbundled basis. Such access must be provided at rates, terms and conditions that comply with the overall requirements of §§ 251 and 252. FTA § 252(d)(1) states that: the just and reasonable rate established for a UNE shall be based upon the cost of providing the UNE; shall be nondiscriminatory; and may include a reasonable profit. This Commission has previously adopted the TELRIC methodology for UNE pricing.

### b. Determination of Rates

SWBT's TELRIC study indicates that a certain category of costs are not volume-sensitive.<sup>19</sup> SWBT proposes the non-volume sensitive costs be recovered through a per listing rate of \$.0064 for directory assistance listings provided to MCI during the initial load. Thereafter, a lower per listing rate would apply for nightly updates of new or revised directory assistance listings.

Some of the costs associated with providing SWBT's directory assistance listings in bulk format are volume-sensitive. To recover volume-sensitive costs, SWBT proposes two options: a price per updated listing of \$.0019 when provided electronically or a price per updated listing of \$.0026 when provided using magnetic tapes.

The Arbitrators generally agree with the format used by SWBT for calculating the costs, with one exception. SWBT estimated that, on average, only 73% of listings in the directory

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<sup>19</sup> Texas 1998-2000, Directory Assistance Listing Cost Study, Total Element Long Run Incremental Cost Study, Form 2.

assistance database would be requested by a carrier for the initial load in bulk format. The Arbitrators prefer to use 100% of bulk format listings as the estimated demand.

The Arbitrators generally agree with SWBT's proposed per listing price structure. The Arbitrators depart from the per listing price structure only with respect to the recovery of non-volume sensitive costs.

The non-volume sensitive costs fall into two categories. First, there are non-volume sensitive costs to be recovered through a flat non-recurring charge to any carrier that requests directory assistance listings in bulk format. Additionally, there are non-volume sensitive costs to be recovered through a flat non-recurring charge to MCI.<sup>20</sup> The non-recurring costs charged to MCI shall be shared among the first four carriers requesting directory assistance listings in bulk format. Thus, if other carriers request access to SWBT's directory assistance database listings in bulk format, MCI will receive a partial bill credit of the non-recurring charge billed to MCI and the other carrier(s) will share these costs. SWBT's costs will be fully recovered.

### 3. ARBITRATORS' DECISION

The Arbitrators hold that TELRIC-based rates shall apply for bulk format access to SWBT's directory assistance database. The rates are listed below in Table 1.0.

**Table 1.0**  
**Rates for Access to Directory Assistance Database Listings in Bulk Format**

Non-recurring set-up charge, general <sup>21</sup>	\$11,500
Non-recurring set-up charge, MCI	\$ 4,800
Price per listing, initial load	\$.0011
Price per listing update, electronic	\$.0014
Price per listing update, magnetic tape	\$.0019

<sup>20</sup> This category includes costs associated with cost study development.

<sup>21</sup> This set-up charge applies to customers who opt to request access to SWBT's directory assistance listings in bulk format pursuant to the Arbitration Award.

SWBT shall bill MCI a general non-recurring charge of \$11,500 to set up the initial load of directory assistance database listings. In addition to the general non-recurring set-up charge, SWBT shall also bill MCI a non-recurring charge of \$4,800 to recover the cost of cost study development. Although the \$4,800 charge shall be billed to MCI initially, the \$4,800 charge shall be shared between the first four carriers (including MCI) who request access to SWBT's directory assistance database listings in bulk format. If one or more additional carriers request bulk access, up to the first three additional carriers shall share in recovery of the \$4,800 cost and MCI shall receive a partial bill credit.

Each directory assistance database listing provided to MCI as part of the initial load shall be priced at \$.0011. Thereafter, each updated listing provided to MCI electronically shall be priced at \$.0014. Each updated listing provided to MCI via magnetic tape shall be priced at \$.0019. These rates were developed using SWBT's cost studies and a forecasted demand of 100% of directory assistance listings in SWBT's database.

#### **E. RESTRICTIONS ON THE USE OF DIRECTORY ASSISTANCE LISTINGS**

The parties presented two issues requiring a decision on the kinds of restrictions applicable to MCI's use of SWBT's directory assistance listings. The issues are:

- Issue 12      *What restrictions and/or requirements, if any, can SWBT impose on MCI's use of the directory assistance databases and/or the customer listings in such databases upon SWBT's provision to MCI of the databases and/or customer listings in accordance with FTA and applicable FCC and/or PUC rulings?*
- Issue 13      *Whether the directory assistance listing information provided by SWBT may be used by MCI for any purpose other than provision of directory assistance services?*

## 1. DISCUSSION OF THE ISSUES

On August 6, 1998, the parties filed a "Stipulation of Understanding" that resolves these issues. The parties agreed that any directory listing information provided by SWBT to MCI, pursuant to the rates, terms and conditions of their interconnection agreement as it currently exists, or as it may be modified or supplemented based upon the Arbitration Award in this proceeding, will be used by MCI solely for the purpose of providing directory assistance telecommunications services to its retail customers. The term "directory assistance telecommunications services" as used in the Stipulation of Understanding includes, but is not limited to, voice, electronic and reverse directory assistance telecommunications services.

## 2. ARBITRATORS' DECISION

The Arbitrators accept the terms agreed to by the parties and order the parties to abide by the Stipulation of Understanding. Additionally, the Arbitrators do not require SWBT to provide to MCI access to unlisted telephone numbers or other information that an end user customer designates as private.<sup>22</sup> The Arbitrators note that any telecommunications carrier requesting the opportunity to opt into the terms and conditions of this Arbitration Award are required to abide by the restrictions in the Stipulation of Understanding and the Award.

## III. IMPLEMENTATION SCHEDULE

The following implementation schedule shall be followed:

November 4, 1998

MCI shall file revisions to its interconnection agreement with Southwestern Bell Telephone Company (SWBT). The pages shall contain a footer stating the revision date.

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<sup>22</sup> FCC 96-333, ¶ 135, August 8, 1996 and FCC 96-325, ¶ 492, August 8, 1996.

November 16, 1998

Deadline for comments on interconnection agreement from interested parties.

At a to be determined open meeting in December of 1998

Commission approval of MCI's interconnection agreement with SWBT.

#### IV. CONCLUSION

The primary objective of the Arbitrators in granting MCI's request for access to the directory assistance database in bulk format is to encourage innovation and new product development within the directory assistance service market - an objective consistent with Congress' intent to encourage competition in local exchange markets through enactment of the FTA.

In this arbitration, MCI represented that it wished to control its own destiny in the directory services market and not be limited by the features and functionalities of SWBT's database software. The Arbitrators' decision will enable MCI to expand its directory assistance product line using the features and functionalities inherent in MCI's database system. As stated in the Stipulation of Understanding filed August 6, 1998, new directory assistance telecommunications services include, for example, voice, electronic and reverse directory assistance services.

MCI pointed out that, without bulk access to the listings in SWBT's directory assistance database, MCI would, as a logistical necessity, be required to coordinate with SWBT to introduce each new directory assistance service. Our decision will fully unbundle this network element and will eliminate the inter-dependency of MCI upon SWBT's configuration of its directory assistance database. Moreover, with the provision of bulk access to MCI, SWBT will not have an insider's preview of MCI's new product introductions and promotions of directory assistance service.

The Arbitrators conclude that this Arbitration Award reflects a resolution of disputed issues that complies with standards set in FTA § 251, any applicable regulations prescribed by the Federal Communications Commission (FCC) pursuant to FTA § 251, FTA § 252(c), FTA § 222, relevant provisions of PURA, and the Commission's dispute resolution rules.

**SIGNED AT AUSTIN, TEXAS on the 13th day of August, 1998.**

**FTA § 252 ARBITRATION PANEL**

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**LYNNE LeMON  
ARBITRATOR**

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**HOWARD SIEGEL  
ARBITRATOR**

**Commission Staff Arbitration Advisors  
Nelson Parish**

**PUC DOCKET NO. 19461**  
**SOAH DOCKET NO. 473-98-1457**

<b>APPLICATION OF SOUTHWESTERN</b>	§	<b>PUBLIC UTILITY COMMISSION</b>
<b>BELL TELEPHONE COMPANY TO</b>	§	
<b>INTRODUCE A NEW OPTIONAL</b>	§	<b>OF TEXAS</b>
<b>SERVICE, NATIONWIDE LISTING</b>	§	
<b>SERVICE, PURSUANT TO</b>	§	
<b>SUBST. R. § 23.25</b>	§	

**ORDER**

This Order approves the amended application<sup>1</sup> of Southwestern Bell Telephone Company (SWBT) to introduce a new optional service called Nationwide Listing Service (NLS), as modified by the nonunanimous stipulation (NUS).<sup>2</sup> This approval, however, is expressly conditioned upon SWBT's tariffed provision of the directory assistance (DA) listings for Texas end-use customers used in the provision of NLS. These listings must be made available to other telecommunications providers at cost-based rates. In reaching the conclusions in this Order, the Commission adopts the Proposal for Decision (PFD) issued by the State Office of Administrative Hearings (SOAH),<sup>3</sup> except as expressly stated in this Order or inconsistent with this Order.

More specifically, this Order approves the rates, terms, and conditions proposed in SWBT's application for NLS, as modified by the NUS. As a condition of this approval, SWBT must provide the DA listings for Texas end-use customers that are used in providing NLS to any requesting "telecommunications provider," as the term is defined in PURA<sup>4</sup> § 51.002(10), pursuant to a tariff. Therefore, both competitive local exchange carriers (CLECs) and

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<sup>1</sup> SWBT amended its application several times after its initial filing. See SWBT Exs. 3-6.

<sup>2</sup> SWBT, the Office of Policy Utility Counsel (OPC), and the General Counsel are parties to the NUS. See SWBT Ex. 11.

<sup>3</sup> The PFD was issued on February 11, 1999, and amended on March 3, 1999.

<sup>4</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-63.063 (Vernon 1999) (PURA).

interexchange carriers (IXCs) may purchase these DA listings from SWBT pursuant to this tariff. SWBT must provide these listings at the cost-based rates approved in Docket No. 19075.<sup>5</sup>

Telecommunications providers purchasing DA listings under SWBT's tariff are prohibited from reselling or transferring them to any other entity. Otherwise, there are no restrictions on those telecommunications providers' use of the Texas DA listings in the provision of service to their retail customers (*e.g.*, the listings purchased under this tariff can be used to answer queries from customers located in other states).

The Commission emphasizes that the approval of NLS and the requirement to tariff certain DA listings at cost-based rates are inextricably intertwined, that is, they are not severable from each other. In the event that a reviewing court determines, on judicial appeal, that the Commission erred in approving NLS and/or conditioning its approval by requiring SWBT to tariff Texas DA listings at cost-based rates, the Commission will on remand address the matters in this Order *in toto*.

### I. Procedural Background

On June 5, 1998, SWBT filed its application to provide NLS. On August 12, 1998, the Commission referred the matter to SOAH. AT&T Communications of the Southwest, Inc. (AT&T), OPC, MCI Telecommunications Corporation and MCI Access Transmission Services, Inc. (collectively, MCI), Texas Association of Long Distance Carriers (TEXALTEL), and the Texas Payphone Association (TPA) intervened. AT&T and TPA subsequently withdrew from the docket.<sup>6</sup>

On March 11, 1999, the Commission issued an interim order approving SWBT's application, conditioned upon requiring SWBT to make all DA listings used in the provision of NLS available to requesting IXCs at interim cost-based rates. The interim cost-based rates for

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<sup>5</sup> *Petition of MCI Telecommunications Corporation for Arbitration of Directory Assistance Listings Issues under Federal Telecommunications Act of 1996*, Docket No. 19075, Arbitration Award (Aug. 13, 1998) and Order Approving Amendments to Interconnection Agreement (Dec. 2, 1998).

<sup>6</sup> For more details on the docket's procedural history, see Section II of the PFD.

these DA listings, which are identical to the rates approved in Docket No. 19075, were set subject to a true-up mechanism.

This Order deviates from the interim order to some degree. First, it permits all "telecommunications providers," rather than just IXCs, access to the DA listings pursuant to a tariff. Second, it requires SWBT to tariff only the DA listings for *Texas end-use customers* that are employed in the provision of NLS.<sup>7</sup> Third, this Order precludes a telecommunications provider purchasing the Texas DA listings from SWBT from reselling or transferring them to another entity.

## II. Nationwide Listing Service

Using NLS, SWBT customers dialing 1-411 will receive directory assistance for nationwide listing information. SWBT will charge a customer who requests a listing outside the customer's local calling area \$0.95 for each request; the NLS charge for each alternately billed request is \$1.10.<sup>8</sup> A customer may seek up to two DA listings per request. If a customer requests a listing for a telephone number that is unavailable or unlisted, the customer will nevertheless be charged for the request. Finally, in the three months after initiating NLS, SWBT must provide a recorded message to its Texas customers who dial 1-411, which explains that NLS is available and states the \$0.95 rate for each request. During this same period, SWBT must also include a separate page in its customers' bills advising customers of the \$0.95 rate on the front page of the bill insert.

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<sup>7</sup> It is doubtful whether any DA listings were purchased under the interim order. In its brief addressing pricing issues, filed on March 18, 1999, MCI complained that SWBT had not yet provided any DA listings in response to a March 16, 1999 request for such. MCI predicated its request upon the Commission's oral ruling on March 11, 1999 that granted interim approval of NLS conditioned on the availability of all DA listings used in the provision of NLS to IXCs. Also, in a letter filed on March 31, 1999, SWBT indicated that DA listings for Texas end-use customers would not be available to MCI until April 11, 1999. SWBT attributed the delay in the availability of these listings to its conversion to a new listing processing system.

<sup>8</sup> The \$0.95 charge applies to requests that are charged directly to the customer either through billing the originating number or by coin collection at a pay telephone. For alternately billed requests, *i.e.*, all other methods of billing, the charge for NLS is \$1.10. GC Ex. 1 at 4, n. 3.

### III. Conditional Approval of NLS

In the preliminary order, the Commission asked the parties to address how CLECs will be ensured equal access to the NLS database of DA listings.<sup>9</sup> The administrative law judge (ALJ) noted, however, that competitive concerns necessarily extend beyond the CLECs' access to the DA listings maintained by SWBT. She observed that SWBT's expansion of its traditional DA service to nationwide DA service will also permit it to compete against IXCs in their provisioning of the same type of service. Given this observation, the ALJ concluded that the nondiscriminatory mandates of PURA § 60.001<sup>10</sup> and the federal Telecommunications Act of 1996 (FTA)<sup>11</sup> § 251(c)(3)<sup>12</sup> must be considered in determining the extent to which CLECs and IXCs must be able to access the DA listings used in the provision of NLS.

The ALJ noted that CLECs in Texas may currently obtain Texas DA listings at cost-based rates by opting into the same terms and conditions established in the interconnection agreement approved in Docket No. 19075. Those same CLECs, however, cannot likewise obtain the other cost-based DA listings that SWBT can obtain internally at cost-based rates, namely the listings of end-users in the other states served by SWBT or its affiliates. In an attempt to achieve parity with respect to the availability of such cost-based DA listings, the ALJ recommended approval of NLS on the condition that SWBT make available all of the listings it acquires at cost-based rates to CLECs and IXCs at cost-based rates.<sup>13</sup> The ALJ concluded that the cost-based rates

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<sup>9</sup> Preliminary Order at 2 (Sept. 24, 1998).

<sup>10</sup> This provision states: "To the extent necessary to ensure that competition in telecommunications is fair to each participant and to accelerate the improvement of telecommunications in this state, the commission shall ensure that the rates and rules of an incumbent local exchange company: (1) are not unreasonably preferential, prejudicial, or discriminatory; and (2) are applied equitably and consistently."

<sup>11</sup> Telecommunications Act of 1996, Pub L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

<sup>12</sup> FTA § 251(c)(3) states: "(3) UNBUNDLED ACCESS.—The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

<sup>13</sup> See PFD at 25-29 for the discussion summarized in this paragraph.

established in Docket No. 19075 were appropriate for this purpose. The ALJ predicated her recommendation for conditioned approval upon PURA § 52.002(a).<sup>14</sup> She interpreted this provision to authorize the Commission to set cost-based rates for *all* of the SWBT listings utilized in providing NLS, even though many of those listings are for end-use customers in other states.

The Commission agrees that SWBT's provision of NLS places it directly in competition with telecommunications providers providing services similar to NLS. Consequently, the Commission must ensure that any approval of NLS does not place SWBT's competitors at a disadvantage, that is, that such approval will not result in any unreasonably preferential, prejudicial, or discriminatory treatment, as required by PURA § 60.001(a).<sup>15</sup> Accordingly, the Commission concurs with the ALJ's conclusion that any approval of NLS should be conditioned upon establishing parity with respect to the availability and cost of the DA listings used in the provision of NLS. *The Commission can achieve such parity, however, only to the extent permitted by law.*

Contrary to the ALJ's conclusion, the Commission finds that PURA § 52.002(a) does not bestow jurisdiction over the DA listings for end-use customers in other states. Only the availability of and appropriate rate for DA listings for end-use customers in Texas are proper issues before this Commission; those same issues, as they relate to SWBT's DA listings for end-use customers in other states, are for regulatory authorities in those states to resolve. To find otherwise would unlawfully usurp those regulatory authorities' jurisdiction over such matters and upset the comity that exists among state regulatory agencies. Nothing precludes telecommunications providers from requesting other state regulatory agencies in SWBT's service area to require SWBT to provide DA listings for end-use customers in those states at cost-based rates, just as SWBT has requested each of those states for regulatory approval of NLS.

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<sup>14</sup> Section 52.002(a) states: "To carry out the public policy stated by Section 52.001 and to regulate rates, operations, and services so that the rates are just, fair, and reasonable, and the services are adequate and efficient, the commission has exclusive original jurisdiction over the business and property of a telecommunications utility in this state subject to the limitations imposed by this title."

<sup>15</sup> The Commission does not find it necessary to look to the FTA to reach this conclusion, given that the issue addressed here is one of state law.

Therefore, this Order addresses only matters within the Commission's jurisdictional purview, *i.e.*, the rates, terms, and conditions related to the provision of DA listings of Texas end-use customers used in the provision of NLS, pursuant to a state tariff.

#### IV. Modifications to the Proposal for Decision

This Order modifies or deviates from the PFD, including findings of fact, conclusions of law, and ordering paragraphs, to the following extent:

First, the conditioned approval of NLS upon SWBT's tariffed provision of Texas DA listings at cost-based rates to other telecommunications providers is premised upon the mandates of PURA § 60.001. The Commission does not find it necessary to rely upon the FTA to reach this conclusion. Therefore, the references to FTA § 251(c)(3) in Section IV.D of the PFD are not adopted.

Second, the cost-based rates adopted in this Order were formulated in a proceeding conducted pursuant to the FTA, Docket No. 19075. As a matter of clarification, the use of those rates here, in the context of a state tariff, does not blur the "parallel tracks" along which the FTA and PURA co-exist without preemptive effect.<sup>16</sup> The rates approved in Docket No. 19075 are based on total element long run incremental cost (TELRIC). Consistent with the PFD, the Commission finds that the circumstances presented in this docket justify the use of TELRIC-based pricing. More specifically, the Commission concludes that it is appropriate to adopt the rates approved in Docket No. 19075 because (1) those rates are consistent with the pricing requirements for discretionary services (the tariffed DA listings constitute a new service) in PURA 58.103(a), P.U.C. SUBST. R. 23.25(j), and P.U.C. SUBST. R. 23.104(f), given that they are above long run incremental cost; (2) DA listings for Texas end-use customers are already available to CLECs at those same rates, pursuant to the FTA; and (3) the use of different cost-based rates for other types of telecommunications carriers (*e.g.*, IXCs) might result in unreasonably preferential, prejudicial, or discriminatory treatment. Therefore, to further clarify

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<sup>16</sup> See *In the Matter of Public Utility Commission of Texas et. al.*, FCC 97-346 (Sept. 26, 1997).

the rationale for adopting the rates approved in Docket No. 19075, in the context of SWBT's DA listings tariff, the Commission adopts new Conclusion of Law No. 8A:

**CoL 8A:** It is appropriate to adopt the rates approved in Docket No. 19075 because (1) those rates are consistent with the pricing requirements for discretionary services (the tariffed DA listings constitute a new service) in PURA 58.103(a), P.U.C. SUBST. R. 23.25(j), and P.U.C. SUBST. R. 23.104(f), given that they are above long run incremental cost; (2) DA listings for Texas end-use customers are already available to CLECs at those same rates, pursuant to the FTA; and (3) the use of different cost-based rates for other types of telecommunications carriers (e.g., IXC) might result in unreasonably preferential, prejudicial, or discriminatory treatment.

Third, the Commission concludes, as a matter of law, that PURA § 52.002(a) does not bestow any authority to set cost-based rates for DA listings for end-use customers in other states, contrary to the ALJ's conclusion. Adoption of the ALJ's interpretation of § 52.002(a) on this issue would undermine the jurisdiction of other state utility commissions. Therefore, the Commission does not adopt the conclusions reached in Section VI.D of the PFD with regard to the interpretation of § 52.002(a) and the scope of the conditioned approval of NLS. Accordingly, Conclusion of Law Nos. 7, 8, and 9 are modified as follows:

**CoL 7:** PURA § 60.001 requires the Commission to ensure that an ILEC's rates are not unreasonably preferential, prejudicial, or discriminatory and are applied equitably. Unless the Commission requires SWBT to tariff the DA listings for Texas end-use customers that are used in providing NLS, at the cost-based rates approved in Docket No. 19075, then an unreasonable preference, prejudice or discrimination, in violation of PURA § 60.001, will occur.

**CoL 8:** Pursuant to PURA § 60.001, SWBT must tariff the DA listings for Texas end-use customers that are used in providing NLS at the cost-based rates set by the Commission in Docket No. 19075: \$.0011 for an initial listing, \$.0014 per electronic update, and \$.0019 per magnetic tape update.

**CoL 9:** The Commission does not have jurisdiction to establish cost-based rates for DA listings for end-use customers in other states.

Fourth, as a matter of policy, the Commission expressly prohibits the resale or transfer of the DA listings obtained pursuant to the tariff. Requiring SWBT to tariff its DA listings in the

manner stated in this Order is predicated upon the objective of realizing a degree of parity among telecommunications providers in the provision of *retail* DA services. Although the PFD does not propose this restriction, imposing this limitation on the use of the tariffed DA listings is not inconsistent with the general objective underlying the ALJ's recommendations to ensure competitors' access to DA listings at cost-based rates for the purpose of competing with NLS. To permit a telecommunications provider to resell or transfer DA listings purchased at cost-based rates for the purpose of a *wholesale* transaction would require the Commission to reconsider the rates approved in this proceeding. The Commission, however, does not impose any other restriction upon the use of DA listings. For example, a telecommunications provider purchasing Texas DA listings from SWBT at cost-based rates may use those listings in the provision of DA service to retail customers located outside of Texas. For these reasons, Finding of Fact Nos. 34A and 34B are adopted:

**FoF 34A:** A telecommunications provider purchasing DA listings for end-use customers in Texas pursuant to the tariff may not resell or transfer those listings to any other entity.

**FoF 34B:** There are no other restrictions upon telecommunications providers' use of DA listings for Texas end-use customers purchased pursuant to the tariff.

Fifth, Ordering Paragraph No. 1 is modified to reflect that the Commission has deviated from the PFD, as specified in this Order, and that SWBT's amended application is approved, as modified by the NUS and this Order. Paragraph No. 1A is added to establish a compliance tariff for NLS, consistent with this Order. Also, in order to effectuate the requirement that SWBT offer other telecommunications providers DA listings for Texas end-use customers at cost-based rates, the Commission adds Ordering Paragraph No. 1A to direct SWBT to file a compliance tariff for such purpose, consistent with this Order.

Sixth, Conclusion of Law No. 5A is added to reflect the legal conclusion reached by the Commission in the Order on Certified Issues:<sup>17</sup>

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<sup>17</sup> Order on Certified Issues at 4 (Oct. 19, 1998).

**CoL 5A:** NLS is not impermissible under the FTA.

Seventh, Finding of Fact Nos. 9A, 9B, and 9C are added to reflect aspects of the docket's procedural history that occurred after the issuance of the PFD.

Finally, this Order also corrects errata in Finding of Fact No. 23. The dial around pattern referenced therein should contain four X's rather than three, *i.e.*, "101XXXX0."

## **V. Findings of Fact, Conclusions of Law, and Ordering Paragraphs**

### **A. Findings of Fact**

#### **Procedural History**

1. Southwestern Bell Telephone Company (SWBT) is a certificated telecommunications utility providing local exchange service in Texas.
2. On June 5, 1998, SWBT filed an application pursuant to P.U.C. SUBST. R. 23.25, seeking to introduce an optional service called Nationwide Listing Service (NLS).
3. AT&T Communications of the Southwest, Inc. (AT&T), Office of Public Counsel, Texas Association of Long Distance Carriers (TEXALTEL), MCI Telecommunications Corporation and MCI Access Transmission Services, Inc. (collectively, MCI), and the Texas Payphone Association (TPA) intervened in the proceeding. AT&T and TPA subsequently withdrew.
4. On August 12, 1998, the Public Utility Commission of Texas (Commission) referred the matter to the State Office of Administrative Hearings (SOAH) for the purpose of conducting a hearing and preparing a proposal for decision.
5. On September 24, 1998, the Commission issued a Preliminary Order in this matter.
6. On October 19, 1998, the Commission issued an Order on Certified Issues.

7. On December 14, 1998, SWBT, OPC, and General Counsel submitted a non-unanimous stipulation (NUS) amending SWBT's application.
8. On December 14, 1998, a SOAH Administrative Law Judge (ALJ) convened a hearing on the merits of SWBT's application, which concluded that same day.
9. Pursuant to P.U.C. SUBST. R. 23.25(d)(6), the operation of the proposed tariff was suspended to a date 120 days after applicant filed all of its direct testimony and exhibits, or March 8, 1999.
- 9A. On March 11, 1999, the Commission issued an interim order requesting briefs on pricing issues and extending the jurisdictional deadline until April 1, 1999.
- 9B. On March 19, 1999, the Commission issued an interim order approving the SWBT application, as modified by the NUS, and requiring SWBT to make all of its DA listings utilized in the provision of NLS to requesting IXCs at a cost-based rate.
- 9C. On March 31, SWBT filed a letter stating that the listings will be available for transfer by April 11, 1999 and extending the jurisdictional deadline until April 8, 1999.

**Application**

10. NLS is a new optional service. SWBT customers or persons using a SWBT local line who dial 1-411 will receive nationwide directory listing information.
11. SWBT currently provides local directory assistance (DA) to customers or persons using a SWBT line who dial 1-411. An SWBT operator is able to offer DA if the number is within the caller's local calling scope.

12. Under NLS, SWBT will charge \$0.95 per request to a customer who requests listings outside the customer's local calling area. The NLS charge for alternately billed requests is \$1.10.
13. If a customer requests a non-local DA listing for a number that is unavailable or unlisted, SWBT will still charge the customer for the NLS service.
14. Pursuant to the NUS, SWBT will provide its customers up to two telephone listings per request.
15. Pursuant to the NUS, for three months after SWBT begins offering NLS, SWBT will provide a recorded message to callers who dial 1-411, explaining that the service is available and stating the \$0.95 rate for non-local calls.
16. Pursuant to the NUS, SWBT will include in its monthly bills a separate page advising customers of the rate for NLS.
17. SWBT plans to issue press releases announcing NLS.
18. Customers in SWBT exchanges have used the 1-411 dialing pattern for local DA for approximately 25 years.
19. In order to supply the DA information used by the NLS operator, SWBT will access and use its DA databases, which are located in Dallas, Houston, Oklahoma City, and St. Louis. For listings outside SWBT's five-state area, it will use DA information supplied and operated by Nortel, a third-party provider of DA listings.

**Public Interest**

20. Customers using NLS will not need to know the area code in order to access DA.

21. Texas consumers will benefit from NLS because of the proliferation of area codes in recent years.

**Dialing Parity**

22. Interexchange carriers (IXCs) currently offer nationwide DA to their presubscribed customers by dialing 1+area code+ 555-1212.
23. IXCs may offer DA services to casual callers (not presubscribed customers) via a dial around pattern, 101XXXX0, or through a toll free number, 1-800-NXX-XXXX.
24. IXCs may offer DA services to their presubscribed customers by dialing 00 or 101XXXX0.
25. AT&T currently is marketing and using the 00 dialing pattern as one means of providing DA.
26. Because SWBT customers have used 1-411 for over 25 years, the four digit number will be easily recognizable and easy to remember.
27. SWBT will need to market the expansion of services under 1-411.
28. A customer may dial extra digits if he or she perceives a benefit such as lower rates or better service.

**Access to SWBT Database Listings**

29. SWBT will not be using the databases of its affiliates in California, Nevada, and Connecticut because there are software and hardware issues that prevent its access to those databases.
30. In *Petition of MCI Telecommunications Corporation for Arbitration of Directory Assistance Listings Issues under Federal Telecommunications Act of 1996*, Docket No. 19075, Arbitration Award (Aug. 13, 1998) (Docket No. 19075), SWBT was required to

provide bulk listings to MCI at TELRIC or cost-based rates. The price per listing for the initial load is \$.0011. The Commission limited the availability of the listings at cost-based rates to MCI's local exchange retail customers.

31. The market-based rate for SWBT's database listings is \$.0585. Third-party suppliers of DA listings and IXCs must purchase SWBT's listings at this price.
32. The price SWBT offers to CLECs for SWBT's listings that are not located in Texas varies. Except for Missouri's listings, which SWBT currently offers for no charge pending that state's cost proceeding, all prices are higher than SWBT's price for its Texas listings.
33. The price SWBT offers to IXCs for all of its DA database listings is \$.0585.
34. Through the expansion of its traditional DA service to nationwide DA service, SWBT seeks to compete against IXCs providing the same service except through other dialing patterns.
- 34A. A telecommunications provider purchasing DA listings for end-use customers in Texas pursuant to the tariff may not resell or transfer those listings to any other entity.
- 34B. There are no other restrictions upon telecommunications providers' use of DA listings for Texas end-use customers purchased pursuant to the tariff.

**Cost and Pricing**

35. SWBT's proposed tariff prices are greater than the long run incremental cost (LRIC) for NLS.
36. The proposed rates meet the requirements for discretionary services because they are below stand-alone cost for the service.

**B. Conclusions of Law**

1. SWBT is a public utility, as defined in the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. § 51.002(8) (Vernon 1999) and a telecommunications utility, as defined in PURA § 51.002(11). It is also an incumbent local exchange company (ILEC) that is regulated pursuant to PURA Chapter 58.
2. The Commission has jurisdiction and authority over this application pursuant to PURA §§ 14.001, 52.002(a), 52.054, 53.001, 55.007(a), 55.009(c), 58.052, and 60.001 and P.U.C. SUBST. R. 23.25.
3. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of the hearing in this proceeding, including the preparation of this Order with findings of fact and conclusions of law, pursuant to PURA § 14.053 and TEX. GOV'T. CODE ANN. § 2003.049(b) (Vernon 1999).
4. The Commission provided notice of this application in compliance with P.U.C. PROC. R. 23.25(i). Notice of the hearing in this proceeding complied with the requirements of TEX. GOV'T. CODE ANN § 2001.052.
5. The effective date of the new service in SWBT's application is appropriately suspended under P.U.C. SUBST. R. 23.25(d)(6).
- 5A. NLS is not impermissible under the FTA.
6. Based on Findings of Fact Nos. 22-28, dialing parity exists for SWBT's competitors as contemplated by Federal Telecommunications Act (FTA) § 251(b)(3) and PURA §§ 55.007(a)(4) and 55.009(c).
7. PURA § 60.001 requires the Commission to ensure that an ILEC's rates are not unreasonably preferential, prejudicial, or discriminatory and are applied equitably. Unless

the Commission requires SWBT to tariff the DA listings for Texas end-use customers that are used in providing NLS, at the cost-based rates approved in Docket No. 19075, then an unreasonable preference, prejudice or discrimination, in violation of PURA § 60.001, will occur.

8. Pursuant to PURA § 60.001, SWBT must offer the DA listings for Texas end-use customers that are used in providing NLS at the cost-based rates set by the Commission in Docket No. 19075: \$.0011 for an initial listing, \$.0014 per electronic update, and \$.0019 per magnetic tape update.
- 8A. It is appropriate to adopt the rates approved in Docket No. 19075 because (1) those rates are consistent with the pricing requirements for discretionary services (the tariffed DA listings constitute a new service) in PURA 58.103(a), P.U.C. SUBST. R. 23.25(j), and P.U.C. SUBST. R. 23.104(f), given that they are above long run incremental cost; (2) DA listings for Texas end-use customers are already available to CLECs at those same rates, pursuant to the FTA; and (3) the use of different cost-based rates for other types of telecommunications carriers (*e.g.*, IXCs) might result in unreasonably preferential, prejudicial, or discriminatory treatment.
9. The Commission does not have jurisdiction to establish cost-based rates for DA listings for end-use customers in other states.
10. Based on Findings of Fact Nos. 35 and 36, the proposed rates meet the costing requirements of P.U.C. SUBST. R. 23.24(j) and P.U.C. SUBST. R. 23.104(f)(3).

### **C. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The amended application of SWBT seeking approval of Nationwide Listing Service (NLS), as modified by the NUS, is approved. This approval, however, is expressly conditioned upon SWBT's tariffed provision of the directory assistance (DA) listings for Texas end-use customers used in the provision of NLS. These listings must be made available to other telecommunications providers at the cost-based rates approved in Docket No. 19075.
  
- 1A. No later than 10 days from the entry of this Order, SWBT shall file a compliance tariff specifying the rates, terms, and conditions of NLS, as approved in this Order. By the same date, SWBT shall file a compliance tariff specifying the rates, terms, and conditions of its DA listings tariff, as approved by this Order. Both compliance tariffs shall be filed in Tariff Control No. 20702, *Compliance Tariffs Pursuant to Final Order in Docket No. 19461, Application of Southwestern Bell Telephone Company to Introduce a New Optional Service, Nationwide Listing Service, Pursuant to SUBST. R. 23.25*. Any party may respond to the compliance tariffs no later than five days after they are filed.
  
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of April 1999.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAT WOOD, III, CHAIRMAN**

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**JUDY WALSH, COMMISSIONER**

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**BRETT A. PERLMAN, COMMISSIONER**

DOCKET NO. \_\_\_\_\_

COMPLAINT OF WORLDCOM	§	PUBLIC UTILITY COMMISSION
AGAINST SOUTHWESTERN BELL	§	
REGARDING SOUTHWESTERN	§	
BELL'S DIRECTORY ASSISTANCE	§	
LISTINGS TARIFF	§	OF TEXAS

**COMPLAINT OF WORLDCOM AGAINST SOUTHWESTERN BELL  
REGARDING SOUTHWESTERN BELL'S DIRECTORY ASSISTANCE  
LISTINGS TARIFF**

WORLDCOM, INC (WCOM) files its Complaint Against Southwestern Bell (SWBT) Regarding SWBT's Directory Assistance Listings (DAL) Tariff and respectfully shows:

**SUMMARY**

Under the guise of an informational notice, SWBT unilaterally undid the Commission's decision in Docket No. 19461. Specifically, SWBT unilaterally increased the initial price of DAL from \$.0011 (\$.0014 and \$.0019 for updates) to \$.04 (\$.06 for updates) per listing. This is nearly a 40 fold increase in price. WCOM respectfully urges the Commission to strike SWBT's informational filing, and reinstate the earlier price for DAL, for the following reasons:

- SWBT's use of an informational filing to undo a prior Commission decision is procedurally improper.
- SWBT's "market based" DAL rates violate the competitive safeguards in Chapter 60 of PURA.
- The Commission's cost based DAL rates from Docket Nos. 19075 and 19461 are still appropriate and permissible under the Federal Communications Commission's (FCC's) Directory Listings Information Order.

Alternatively, the Commission should revoke its approval of SWBT's Nationwide Listing Service (NLS) Tariff, because the Commission explicitly conditioned its approval of the NLS Tariff on the availability of DAL at cost-based rates.

## PROCEDURAL HISTORY

In Docket No. 19461, the Commission set the cost based rate for DAL under state law for SWBT.<sup>1</sup> The Commission set a rate of \$.0011 per listing for an initial load, \$.0014 for electronic updates, and \$.0019 for magnetic tape updates.<sup>2</sup> The Commission set this rate under its state law authority to review SWBT's proposed NLS tariff, stating "[p]ursuant to PURA § 60.001, SWBT must offer the DA listings for Texas end-use customers that are used in providing NLS at the cost-based rates set by the Commission in Docket No. 19075."<sup>3</sup> The Commission explicitly conditioned its approval of the NLS Tariff on the availability of DAL at cost-based rates, stating:

This approval [of the NLS Tariff] is expressly conditioned upon SWBT's tariffed provision of the directory assistance (DA) listings for Texas end-use customers used in the provision of NLS. These listings must be made available to other telecommunications providers at cost-based rates.<sup>4</sup>

On January 22, 2001, SWBT filed an "informational notice" amending its DAL tariff.<sup>5</sup> In that filing, SWBT unilaterally increased the DAL rate from \$.0011 (\$.0014 and \$.0019 for updates) to \$.04 (\$.06 for updates) per listing. WCOM could not find any official Commission order or action explicitly approving the rate increase.

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<sup>1</sup> *Application of Southwestern Bell Telephone Company to Introduce a New Optional Service, Nationwide Listing Service, Pursuant to Subst. R. § 23.25*, Docket No. 19461, Order at 15 (April 8, 1999) (Docket No. 19461 Order). The Docket No. 19461 Order is attached as Exhibit 1.

<sup>2</sup> Docket No. 19461 Order at 15 (Conclusion of Law 8). The Commission initially set these rates in Docket No. 19075. *Petition of MCI Telecommunications Corporation for Arbitration of Directory Assistance Listings Issues under Federal Telecommunications Act of 1996*, Docket No. 19075, Arbitration Award at 13 (August 13, 1998) (Docket No. 19075 Award). The Docket No. 19075 Award is attached as Exhibit 2.

<sup>3</sup> Docket No. 19461 Order at 15 (Conclusion of Law 8).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Informational Notice, Pricing Flexibility Associated with Directory Assistance Listings*, Docket No. 23593 (January 22, 2001) (Informational Notice). SWBT's Informational Notice is attached as Exhibit 3.

## COMPLAINT

Under the guise of an Informational Notice, SWBT unilaterally undid the Commission's decision in Docket No. 19461. WCOM respectfully urges the Commission to strike SWBT's Informational Notice, and reinstate the earlier price for DAL, for the following reasons:

**1. SWBT's use of an Informational Notice to undo a prior Commission decision is procedurally improper.**

SWBT filed its Informational Notice pursuant to PURA § 58.152.<sup>6</sup> This section authorizes incumbent local exchange carriers (ILECs) like SWBT to change nonbasic rates, subject to certain constraints. However, SWBT's filing is not an ordinary change to a nonbasic rate. The Commission approved SWBT's NLS Tariff expressly contingent on the availability of cost based rates for DAL.<sup>7</sup> By changing the DAL rates to "market based" rates that are nearly 40 times higher than the rates approved by the Commission in Docket Nos. 19075 and 19461, SWBT changed the assumptions underlying the Commission's approval of the NLS Tariff. SWBT should have requested a change to the entire NLS Tariff, not just the DAL Tariff. Accordingly, SWBT's unilateral change to the DAL Tariff is procedurally improper.

**2. SWBT's "market based" DAL rates violate the competitive safeguards in Chapter 60 of PURA.**

SWBT's DAL Tariff, as amended, also violates the competitive safeguards in Chapter 60 of PURA. PURA § 60.101 states:

In adopting the pricing rule, the commission shall:

- (1) ensure that each price for a monopoly service remains affordable;
- (2) ensure that each price for competitive service is not:
  - (A) unreasonably preferential, prejudicial, or discriminatory;
  - (B) directly or indirectly subsidized by a noncompetitive service;  
or
  - (C) predatory or anticompetitive; and

<sup>6</sup> Informational Notice at 3; *citing* Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 58.152 (Vernon 1998 & Supp. 2001) (PURA § 58.152).

<sup>7</sup> See Docket No. 19461 Order at 1 ("[t]his approval [of the NLS Tariff] is expressly conditioned upon SWBT's tariffed provision of the directory assistance (DA) listings for Texas end-use customers used in the provision of NLS ... [t]hese listings must be made available to other telecommunications providers at cost-based rates.")

- (3) require that each service recover the appropriate costs, including joint and common costs, of each facility and function used to provide the service.<sup>8</sup>

The "pricing rule" states in relevant part: "The price of a nonbasic service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive."<sup>9</sup>

SWBT's "market based" DAL rates violate the above edicts from the competitive safeguards. Specifically, the rates create a 'preferential, prejudicial, discriminatory, and anticompetitive' price squeeze, because SWBT's holding company is able to provide directory assistance services to customers using DAL that SWBT receives at economic cost while WCOM is required to pay costs that are 40 times higher than the economic costs set by the Commission in Docket Nos. 19075 and 19461. Regardless of the tariffed rate, SWBT's true costs for DAL are the economic costs of maintaining the database because any payment from SWBT's directory assistance affiliate to SWBT for use of the DAL remain within the SBC holding company. There is no impact on SBC's bottom line, beyond the economic costs of maintaining the DAL database. WCOM, on the other hands, incurs a real cost when it pays SWBT "market based" rates that are dramatically above cost. Therein lies the price squeeze.

Indeed, the Commission recognized the anticompetitive effect of combining "market based" DAL rates with SWBT's offer of a competitive directory assistance product in Docket No. 19461. The Commission expressly concluded that "[p]ursuant to PURA § 60.001, SWBT must offer the DA listings for Texas

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<sup>8</sup> See also PURA § 60.001 ("[t]o the extent necessary to ensure that competition in telecommunications is fair to each participant and to accelerate the improvement of telecommunications in this state, the commission shall ensure that the rates and rules of an incumbent local exchange company: (1) are not unreasonably preferential, prejudicial, or discriminatory; and (2) are applied equitably and consistently."); § 60.002(a) ("[t]he commission has exclusive jurisdiction to implement competitive safeguards.").

<sup>9</sup> PUC Proc. R. 26.225(d)(1). Much like a jurisdictional argument in state courts, WCOM is authorized to raise this argument at any time during the lifespan of SWBT's tariff. The ten day notice provision in PURA § 58.153 only affects the effective date of SWBT's tariff. However, upon being challenged, SWBT must prove that its proposed rates and/or tariff are consistent with the provisions of PURA. See n.8, *supra*.

end-use customers that are used in providing NLS at the cost-based rates set by the Commission in Docket No. 19075."<sup>10</sup> The Commission also stated:

The Commission agrees that SWBT's provision of NLS places it directly in competition with telecommunications providers providing services similar to NLS. Consequently, the Commission must ensure that any approval of NLS does not place SWBT's competitors at a disadvantage, that is, that such approval will not result in any unreasonably preferential, prejudicial, or discriminatory treatment, as required by PURA § 60.001(a).<sup>11</sup>

Finally, for emphasis, the Commission stated:

The Commission emphasizes that the approval of NLS and the requirement to tariff certain DA listings at cost-based rates are inextricably intertwined, that is, these are not severable from each other.<sup>12</sup>

By refusing to provide DAL at cost-based rates, SWBT's DAL and NLS tariffs violate PURA §§ 60.001(a) and 60.101 as well as the Commission's explicit directives in the Docket No. 19461 Order.

**3. The Commission's cost-based DAL rates from Docket Nos. 19075 and 19461 are still appropriate and permissible under the FCC's Directory Listings Information Order.**

There is no need to reinvent the wheel. The Commission already set the appropriate cost-based rate for DAL in Docket Nos. 19075 and 19461. Nothing in SWBT's Informational Notice rebuts the Commission's factual findings in those two dockets. SWBT's only rationale for increasing the DAL rates by 4000 percent is:

Initially the prices for DAL service were established based on TELRIC, pursuant to the final order in Docket No. 19075. Consistent with the FCC's Unbundled Network Element Order<sup>13</sup>, however, DAL should now be made available at market-based prices.

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<sup>10</sup> Docket No. 19461 Order at 15 (Conclusion of Law 8).

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> SWBT cites to "FCC Docket No. 96-98, Paragraph 473, Adopted on February 17, 2000."

SWBT's citation to Paragraph 473 of the UNE Remand Order has no applicability to DAL rates. The FCC was addressing switching rates in Paragraph 473, not DAL. Specifically, the FCC states:

In circumstances where a checklist network element is no longer unbundled, we have determined that a competitor is not impaired in its ability to offer services without access to that element. Such a finding in the case of switching for large volume customers is predicated in large part upon the fact that competitors can acquire switching in the marketplace at a price set by the marketplace. Under these circumstances, it would be counterproductive to mandate that the incumbent offers the element at forward-looking prices. Rather, the market price should prevail, as opposed to a regulated rate which, at best, is designed to reflect the pricing of a competitive market.<sup>14</sup>

Accordingly, SWBT's citation to a discussion of switching rates in order to justify a 40 fold increase in DAL is a stretch at best.

Indeed, one day after SWBT filed its Informational Notice, the FCC looked specifically at the issue of DAL rates. In that order, the FCC stated:

Finally, our decision not to impose a specific pricing structure on directory assistance notwithstanding our jurisdiction over DA does not preclude a state commission from doing so.<sup>15</sup> In such cases, the Commission would adopt the state rate as its own, subject to the Title II requirements of reasonableness and nondiscrimination as set forth in this order. Parties that wished to challenge such rates on the basis of non-compliance with Title II could do so before the Commission in an enforcement proceeding.<sup>16</sup>

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<sup>14</sup> CC Docket 96-98, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (FCC 99-238), ¶ 480 (rel. November 5, 1999) (UNE Remand Order); footnotes omitted.

<sup>15</sup> For example, in a February 8, 2000, order (submitted in the record in this proceeding by INFONXX), the State of New York Public Service Commission (NYPSC) set the standard for prices that Bell Atlantic and other LECs may charge, for certain directory information database services, to other carriers and to non-carrier directory assistance providers. See Letter dated March 8, 2000, from Gerard J. Waldron, counsel, INFONXX to Magalie Roman Salas, FCC; submitting Opinion and Order in Module 1 (Directory Database Services), Case 98-C-1375, Opinion No. 00-02, State of New York Public Service Commission (Feb. 8, 2000) (INFONXX March 8, 2000 Ex Parte). In this order, the NYPSC analyzed cost studies provided by Bell Atlantic, INFONXX, and Frontier to arrive at a cost-based price model for the nondiscriminatory provision of directory assistance. *Id.*

<sup>16</sup> CC Docket 99-273, *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, First Report and Order (FCC 01-27), ¶ 38 (rel.

This Commission "impose[d] a specific pricing structure on directory assistance" in Docket Nos. 19075 and 19461. Accordingly, SWBT's erroneous citation to the UNE Remand Order notwithstanding, the Commission's rates in Docket Nos. 19075 and 19461 should remain as the valid and approved DAL rates in Texas.

WHEREFORE, PREMISES CONSIDERED, WCOM respectfully urges the Commission to strike SWBT's Informational Notice and reinstate the earlier Commission-approved price for DAL. Alternatively, the Commission should revoke its approval of SWBT's NLS Tariff.

Respectfully submitted,

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---

January 23, 2001) (DLI Order). The preceding footnote comes from the text of the order. Also, the relevant provisions of the DLI Order are attached as Exhibit 4.

**Certificate of Service**

I certify that a true and correct copy of the above **Complaint** was sent, postage prepaid, via First Class United States Mail or facsimile, this 22nd day of May 2001 to Thomas Ballo, Senior Counsel, Southwestern Bell.

by: \_\_\_\_\_

Jason M. Wakefield

**B**

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

OPINION NO. 00-02

CASE 98-C-1357 - Proceeding on Motion of the Commission to  
Examine New York Telephone Company's Rates for  
Unbundled Network Elements.

OPINION AND ORDER IN MODULE 1  
(DIRECTORY DATABASE SERVICES)

Issued and Effective: February 8, 2000

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CASE 98-C-1357 - Proceeding on Motion of the Commission to  
Examine New York Telephone Company's Rates for  
Unbundled Network Elements.

OPINION NO. 00-02

OPINION AND ORDER IN MODULE 1  
(DIRECTORY DATABASE SERVICES)

(Issued and Effective February 8, 2000)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

Origin of the Proceeding;  
State and Federal Legal Context

This first module of the Second Network Elements Proceeding has examined the prices to be charged by New York Telephone Company d/b/a Bell Atlantic-New York (Bell Atlantic-New York) and other incumbent local exchange carriers for certain directory information database (DDB) services they provide to other carriers and to non-carrier directory assistance (DA) providers and directory publishers.<sup>1</sup> Consideration of these pricing issues here grows out of earlier orders ("the DDB Order"<sup>2</sup>

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<sup>1</sup> A special accelerated track for certain digital subscriber line charges was decided last month. (Opinion No. 99-12 [issued December 17, 1999]).

<sup>2</sup> Cases 94-C-0095, et al, Local Competition Proceeding, Order Regarding Directory Database Issues (issued July 22, 1998).

and the "DDB Rehearing Order"<sup>1)</sup> in which we considered various issues related to these services.

In the DDB Order, we determined, among other things, that, to promote competition, incumbent local exchange companies (ILECs) should provide access to their directory databases to other telephone service providers and to non-carriers requesting such access for the purpose of publishing a directory or providing directory assistance. Access was to be on the same terms as the access provided to the ILEC's own directory publisher or DA provider, and the data were to be offered in both paper and electronic formats. Pricing was to be cost-based and non-discriminatory, with specifics referred to the then-still-pending First Network Elements Proceeding (Cases 95-C-0657 et al.). When DDB information was sold, all companies that contributed listing information to the database were to be compensated in proportion to their contributions.<sup>2</sup>

Various parties requested rehearing of the DDB Order as well as expedited review of Bell Atlantic-New York's compliance tariff, which had been allowed to take effect on a temporary basis. In the ensuing DDB Rehearing Order, we reaffirmed the basic determination that the public interest was served by a competitive directory assistance and directory listing market and that the development of that market required ILECs to offer all directory information service providers access to their directory databases--which we regarded as a "bottleneck" item<sup>3</sup>--at tariffed, non-discriminatory prices based on forward-looking incremental, costs. We directed certain modifications (including substantial price reductions) in the tariffs that had been filed,

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<sup>1</sup> Cases 94-C-0095, et al., supra, Order Resolving Petitions for Rehearing and Clarifying July 22, 1998 Order Regarding Directory Database Issues and Directing the Refiling of Tariffs (issued January 7, 1999).

<sup>2</sup> DDB Order, p. 5. That compensation requirement is the subject of dispute over its precise meaning.

<sup>3</sup> DDB Rehearing Order, p. 13.

and specified that the rates, as so modified, remain temporary pending further examination in this proceeding.

We also clarified the treatment of non-published telephone numbers.<sup>1</sup> We determined that LECs (including competing local exchange carriers [CLECs]) could exchange such numbers among each other, as ILECs had always done, with a notation that the number is to be withheld at the customer's request. In contrast, non-carrier DA providers were to receive only the names and addresses of non-published customers, with the telephone numbers masked; and they were to receive those data only if they agreed (1) to be bound by our privacy principles<sup>2</sup> and (2) not to use the information for any purpose other than informing callers that the telephone number is not published.

The provision of these services is subject to federal law as well. Section 251(b)(3) of the Telecommunications Act of 1996 (the 1996 Act) requires all local exchange carriers "to permit all [competing exchange and toll service providers] to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." The FCC has held that the statute, among other things, "prohibits providing [local exchange carriers] from providing directory assistance database information in a manner that is inferior to that which they

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<sup>1</sup> Several categories of non-disclosed listings need to be delineated. The most concealed are "special non-published" listings, which appear nowhere in the directory assistance database. "Non-listed" listings, used for the most part when customers have multiple numbers in a roll-over group, are included in the directory assistance database but their existence is not disclosed to directory assistance callers. Finally, "non-published" listings (sometimes colloquially and imprecisely referred to as "unlisted") are those withheld from disclosure at the customer's requests; the existence of the number is acknowledged in response to a directory assistance inquiry, but the inquirer is told that number is not published at the customer's request.

<sup>2</sup> Case 90-C-0075, Privacy in Telecommunications, Statement of Principles Regarding Privacy in Telecommunications.

supply to themselves."<sup>1</sup> The pricing of directory listings provided to other carriers other must be nondiscriminatory as among them.<sup>2</sup> Federal law at present imposes no obligations with regard to the provision of DDB information to non-carrier DA providers, though the FCC has a rulemaking pending on that subject.<sup>3</sup>

With respect to directory publishing, §222(e) of the 1996 Act requires "a telecommunications carrier that provides telephone exchange service [to] provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." In applying that provision, the FCC has set "presumptively reasonable" rates for listings provided to directory publishers.<sup>4</sup>

#### The Services and How They Are Provided

Bell Atlantic-New York offers three services whose costs are examined here:

Directory Assistance Listings Transfer (DALT). This service, limited to carriers, provides a copy of Bell Atlantic-New York's directory listings, including non-published and non-

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<sup>1</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al., Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273 (rel. September 9, 1999) (the "FCC Subscriber Listings Order"), ¶152.

<sup>2</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al., CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order (rel. Aug. 8, 1996), ¶101; FCC Subscriber Listings Order, ¶125.

<sup>3</sup> FCC Subscriber Listings Order, ¶170 et seq.

<sup>4</sup> FCC Subscriber Listings Order, ¶103.

listed numbers,<sup>1</sup> from its Automated Telephone Listing Address System (ATLAS) in machine-readable format. It offers a download of the entire set of relevant listings as well as daily updates. At case end, Bell Atlantic-New York's proposed rates are \$28,678 for the download and \$5,347 per month for daily updates;<sup>2</sup> the rates advocated by INFONXX are \$219 for the initial download, an annual charge of \$1,274, and a monthly charge of \$167.<sup>3</sup>

Directory Assistance Listings Service (DALIS). This service, available to non-carriers, is identical to DALT except that non-published numbers are masked (*i.e.*, only names and addresses are provided, along with a notation that the number is non-published at the customer's request) and non-listed information is excluded. Proposed pricing (by both parties) is identical to that for DALT, except that Bell Atlantic-New York's update rate is \$5,229 per month.<sup>4</sup>

Directory Publishers Listing Service (DPLS). This service, offered to publishers of telephone directories, provides a one-time requested subset of listings, excluding non-published and non-listed information, along with periodic updates if requested. Bell Atlantic-New York's proposed pricing is \$.20 per listing in the one-time request and \$.20 per listing in each update; INFONXX did not propose DPLS rates. The FCC's presumptively reasonable rates for these services are \$.04 and \$.06 per listing, respectively.

To state the matter most generally, the provision of each service entails extracting the proper set of data from ATLAS, formatting it in the required manner, and transferring it to the database customer. Some further details of the process

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<sup>1</sup> The DALT tariff states that non-published information is provided solely for directory assistance purposes.

<sup>2</sup> Bell Atlantic-New York's Initial Brief, Attachment A(1).

<sup>3</sup> INFONXX's Initial Brief, p. 62.

<sup>4</sup> Bell Atlantic-New York's Initial Brief, Attachment A(1).

should be noted, however, since they are pertinent to INFONXX's critique of Bell Atlantic-New York's estimated costs.

The ATLAS database contains listings for both New York and New England. An initial data transfer ("full load") comprises two steps: (1) extraction from ATLAS of the pertinent set of data (i.e., for DALT and DALs, all New York State data; for DPLs, the set of data requested by the customer) and (2) reformatting of the data as needed, such as to mask non-published numbers from DALs customers.<sup>1</sup> Daily updates also require several steps: (1) extraction from ATLAS of the updates of DA listings (which excludes "special non-published"); (2) extraction from that file of the New York data (which exclude New England); (3) extraction from that file of the DALT and DALs data, as the case may be; DALT and DALs data both exclude listings for the portion of southwestern Connecticut (in area code 203) served by Bell Atlantic-New York,<sup>2</sup> while DALs also excludes "non-listed" listings and masks "non-published" listings.<sup>3</sup>

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<sup>1</sup> Tr. 177-178; Exhibit 8, Part A, p. 2 of 6.

<sup>2</sup> These listings, though geographically within New England, are not removed with the New England listings because they are served by Bell Atlantic-New York and included in the database used by Bell Atlantic-New York's own DA service. They are nonetheless excluded from DALT and DALs, which are New York-specific services. Bell Atlantic-New York regards this as a matter outside our jurisdiction, inasmuch as it involves out-of-State listings; INFONXX believes we could direct Bell Atlantic-New York to avoid discrimination by either providing its area code 203 listings to DALT and DALs users or withholding it from its own DA function. The matter is not within the scope of this pricing proceeding, except insofar as special treatment of the area code 203 listings is said to impose added costs.

<sup>3</sup> Tr. 177-178; Exhibit 8, Part A, p. 3 of 6, Exhibit 12. Non-listed listings are provided to DALT customers but not to DALs customers so that all carriers have access, for use in emergencies, to all listings in the Bell Atlantic-New York listings database even where the existence of the listing is not disclosed to DA callers.

In addition to DALS, DALT, and DPLS, Bell Atlantic-New York provides access to listings databases on a "per dip" basis through its Directory Assistance Direct Access (DADA) service, the price for which was set, in the First Network Elements Proceeding, at \$.0419 per search. That rate is not at issue here. It also provides access to listings through its electronic white pages service, available to carriers and non-carriers alike; that price also is not at issue here.

Frontier Telephone of Rochester (Frontier) also presented rates for DALS and DPLS. In addition, it proposed a change, opposed by Bell Atlantic-New York, in the existing pricing of inter-ILEC database information exchanges.

#### Procedural History

Following our institution of the Second Network Elements Proceeding, Staff and the parties engaged in a collaborative process to consider its scope. That process comprised separate modules for directory database issues, collocation issues, and unbundled network elements generally, and Administrative Law Judge Joel Linsider confirmed that trifurcation in a ruling issued last June, setting this module to be considered first.<sup>1</sup> In that ruling, the Judge determined as well that even though DALT costs had been studied in Phase 3 of the First Network Elements Proceeding, our assignment of directory database rates to this proceeding contemplated a plenary review that encompassed not only the DALS and DPLS rates never before studied but also DALT costing, which has a bearing on DALS and DPLS.<sup>2</sup>

A hearing before Judge Linsider was held in Albany on September 30, 1999; testimony was submitted by Bell Atlantic-New York, Frontier, and INFONXX. The record comprises 368 pages of stenographic minutes (numbered 49-416) and 35 exhibits

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<sup>1</sup> Case 98-C-1357, Order on Scope and Schedule (issued June 10, 1999).

<sup>2</sup> Ibid., p. 6.

(numbered 1-35). Briefs were filed by the three parties who had submitted evidence and by the New York State Telecommunications Association, Inc. (NYSTA); those parties, except for Frontier, also filed reply briefs. In addition, INFONXX submitted a letter responding to new arguments that Bell Atlantic-New York had raised in its reply brief on the basis of the FCC Remand Order, and Bell Atlantic-New York submitted a reply.

#### OVERVIEW OF PARTIES' POSITIONS

Bell Atlantic-New York and INFONXX submitted competing cost studies and pricing proposals. Frontier also submitted a cost study, which Bell Atlantic-New York questioned in several ways; Bell Atlantic-New York's interest in it grows out of Frontier's proposal to charge other carriers (including Bell Atlantic-New York) at DALs rates for listings.

Bell Atlantic-New York disputes the premise that DDB provisioning is a monopoly service of the incumbent LEC and asserts that they are available from a variety of sources other than itself. In its view, therefore, they should not be subject to TELRIC pricing as a matter of policy; and the FCC Remand Order now clarifies that they are not subject to it as a matter of law. In the absence of that clarification of law earlier in the case, Bell Atlantic-New York presented a TELRIC-based cost study; with the clarification now in hand, it proposes that we remand the matter for additional evidence and argument on the proper costing standard and pricing method. Pending that review, it would leave its proposed rates in place. It regards INFONXX's cost study as grossly flawed, in that it fails to take account of the costs incurred in providing a high quality, highly reliable database service.

Regardless of the costing measure that is used, Bell Atlantic-New York would add to its result, for purposes of setting a price, an above-cost "contribution," so that the price would be set nearer to a market-based level reflecting the value of the service. Consistent with the DDB Order, it would share that contribution with other companies providing directory

listings, but it would in that event increase the price to recover the "clearinghouse" costs of administering that contribution disbursement.

INFONXX challenges Bell Atlantic-New York's presentation in a variety of ways, contending that these services remain monopolized, that above-cost rates therefore are improper, and that TELRIC-based pricing remains appropriate even if not required by the FCC. It maintains Bell Atlantic-New York failed to conduct a proper TELRIC study and that its cost estimate is inflated by, among other things, its premise of an expensive mainframe computer construct rather than a much cheaper personal computer-based network. INFONXX urges rates based on its own cost study, adjusted, however, to recognize some of Bell Atlantic-New York's cost factors that it acknowledges should be included. As a less favored alternative, it offers a series of adjustments to be applied to Bell Atlantic-New York's cost study should we decide to use it as the starting point.

Frontier submitted studies of its DALT and DALC costs. In a more controversial proposal, opposed by Bell Atlantic-New York and INFONXX, it would require Bell Atlantic-New York to begin paying DALC rates for the listings it receives from Frontier. This would change the existing "barter" arrangement, under which Bell Atlantic-New York receives listings from all carriers gratis in exchange for publishing directories.

NYSTA raises several issues related to how independent ILECs that provide data for the DDB are to be compensated and to the reimbursement of Bell Atlantic-New York for its clearinghouse costs incurred in providing that compensation.

### CONTRIBUTORY PRICING

#### Introduction

Bell Atlantic-New York proposes to set rates not on the basis of its calculated TELRIC costs (or the potentially higher non-TELRIC costs that might be determined in a remanded proceeding free of any TELRIC constraint) but at a higher level

that includes a "contribution," representing a "reasonable profit."<sup>1</sup> The contribution would be shared proportionally with all carriers that provide listings to Bell Atlantic-New York's database.

As Bell Atlantic-New York acknowledges, we determined, in the DDB Rehearing Order, that DALT, DALs, and DPLS should be priced on a similar basis at forward looking incremental costs, i.e., without "contribution." We did so on the basis of our findings that "directory databases are controlled by LECs because of their monopoly status [and that] pricing access to the database and directory listings at forward looking incremental costs allows LECs to earn a reasonable profit without taking advantage of their monopoly status."<sup>2</sup> Bell Atlantic-New York nevertheless urges contributory pricing here, arguing, first, that the earlier decision was "explicitly interim," leaving open the possibility of modification on the basis of fuller examination.<sup>3</sup> Second, it points to the statement, in the DDB Order, that "when directory database information is sold, all companies that contribute information to the database should be compensated in proportion to their listing contribution,"<sup>4</sup> and it asserts that shared compensation of this sort would be inconsistent with the pricing of listings at incremental cost, in which case there would be no profit available to share with

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<sup>1</sup> Bell Atlantic-New York's Initial Brief, p. 32. In there explaining its proposal, Bell Atlantic-New York asserts that the allowed return on capital included in its carrying charge factors is, in fact, a cost. But as INFONXX correctly notes in its reply brief (p. 9), return on capital has always been recognized as a "cost," and its status as such has never been a basis for setting utility rates at a level allowing some higher level of "profit." Stated differently, as long as allowed costs include a fair return on capital, there is no reason to suggest that rates need be set above costs in order to avoid confiscating a utility's assets.

<sup>2</sup> DDB Rehearing Order, p. 13.

<sup>3</sup> Bell Atlantic-New York's Initial Brief, p. 10.

<sup>4</sup> DDB Order, p. 5.

others. Finally, Bell Atlantic contends that the cost-based pricing decision reflected the premise, incorrect in its view now, if not also then, that the services at issue were monopoly services. Bell Atlantic-New York claims to have shown that the services are no longer monopoly services, if ever they were, and that its contributory pricing proposal therefore reflects changing circumstances without being inconsistent with the earlier Order.<sup>1</sup> And it asserts that, in determining the proposed level of contribution, it sought to balance the interests of carriers, including but not limited to itself, in being compensated for the value of their listings against the interest of DA providers and directory publishers who would like the listings at the lowest possible cost.

INFONXX disputes all three prongs of Bell Atlantic-New York's argument. It contends, first, that in leaving DDB rates temporary pending evaluation of the underlying cost studies, we did not mean to imply that there was anything tentative about the finding that DDB was a bottleneck. As for the expectation that carriers would be compensated for their listings when DDB information is sold, INFONXX contends there is no sale here and that, in any event, it is illogical to use an inference from one part of an order (on inter-carrier compensation) to dispute a clear statement elsewhere in the order (that prices should be set at cost). Finally, INFONXX vigorously disputes Bell Atlantic-New York's claim to have shown that DDB is not a bottleneck.

INFONXX is clearly correct on the first point; in no way did we suggest that our decision in favor of cost-based pricing was tentative. The remaining two issues require closer examination.

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<sup>1</sup> Bell Atlantic-New York appears to be arguing in the alternative; its third argument posits new circumstances warranting contributory pricing even if the earlier orders precluded it on the theory that the database was a bottleneck. The second, meanwhile, appears to see contributory pricing as contemplated by the earlier orders in order to compensate carriers for their listings.

The Bottleneck Nature of DDB Service

1. Argument

Stressing the need to restrict the price of only bottleneck services, for which competitors have no feasible alternatives, Bell Atlantic-New York insists that "the availability of alternate data sources, the winning track record of non-carrier [directory assistance] providers in the marketplace, and the cost structure of the [directory assistance] business all support a finding that provision of directory listings is not a bottleneck service."<sup>1</sup> It cites in this regard INFONXX's own success in the market and its emphasis in its marketing materials on the quality of its service, all of which INFONXX achieved without subscribing to DALIS. And while INFONXX may have to go through a few more steps and incur some additional costs to compile its database using the alternative sources of information available to it, (including Bell Atlantic-New York's database, accessed through the electronic white pages), it is not thereby precluded from competing effectively, inasmuch as its other inputs--such as labor costs, which INFONXX's witness testified were the most significant cost element in providing directory assistance--may be lower than Bell Atlantic-New York's.

Bell Atlantic-New York adds that once INFONXX subscribes to DALIS, INFONXX will no longer incur the cost of its alternative sources of information, and its resultant savings will substantially exceed the costs it will incur under the proposed DALIS rate. Therefore, Bell Atlantic-New York argues, "under the proposed DALIS rate, INFONXX will receive a premium service (by being able to avoid compiling and updating commercial listings) at a much lower cost than it is paying presently for its allegedly inferior sources of data."<sup>2</sup> Finally, Bell Atlantic-New York argues that providing its database to INFONXX at "bargain basement prices that may not even cover [its] actual

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<sup>1</sup> Bell Atlantic-New York's Initial Brief, page 34.

<sup>2</sup> Ibid., p. 37.

costs of providing the listings"<sup>1</sup> will dampen INFONXX's incentive to innovate, with respect to which it claims a proven track record.

In its Reply Brief, Bell Atlantic-New York finds support for its position in the FCC's determination, in the Remand Order, that healthy competition in the operator service and directory assistance markets obviated the provision of those items as unbundled network elements subject to TELRIC pricing. It asserts that the FCC recognized that the differences in cost, timeliness, and quality among the services offered by OS/DA providers did not warrant a conclusion "that lack of unbundled access to the incumbent's OS/DA service would materially diminish a requesting carrier's ability to offer the services it seeks to provide";<sup>2</sup> similarly, it reasons, differences in quality and price among directory database services do not make Bell Atlantic-New York's service a bottleneck. It cites, among other things, the FCC's statement that "third party OS/DA providers are often able to purchase incumbent LEC OS/DA database information and updates. We are therefore not persuaded that lack of unbundled access to incumbent LEC databases used in the provision of OS/DA necessarily results in quality differences that would materially diminish a requesting carrier's ability to offer service."<sup>3</sup> In sum, Bell Atlantic-New York sees "no basis in economic theory, federal law or public policy for interfering with" what it regards as a working wholesale directory assistance market by requiring it to provide listings at a price limited to forward-looking incremental cost or (in a reference to the other

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<sup>1</sup> Ibid., p. 38.

<sup>2</sup> FCC Remand Order, ¶441, cited at Bell Atlantic-New York's Initial Brief, p. 19.

<sup>3</sup> FCC Remand Order, ¶457 (footnote omitted) cited at Bell Atlantic-New York's Reply Brief, page 20.

aspect of the issue) by "prohibiting reasonable compensation to all carriers for use of their valuable listings."<sup>1</sup>

INFONXX, in contrast, sees no basis for reversing the earlier finding that DDB is a bottleneck. It recounts the history of our determinations in this regard, going back to 1995, including our rejection of Bell Atlantic-New York's claims that the availability of alternative sources of listings should preclude a finding that DDB is an essential facility. It suggests that Bell Atlantic-New York's arguments here could be rejected simply for failure to present any new evidence or changed circumstances, but it goes on nevertheless to address them on their merits.

According to INFONXX, allowing Bell Atlantic-New York to price DDB access above TELRIC would abandon the interest in promoting competition in favor of what INFONXX sees as the traditional regulatory practice of extracting value from monopoly services in order to collect revenues that can be used to price other services below cost.<sup>2</sup> INFONXX also disputes Bell Atlantic-New York's premise that INFONXX's ability to thrive under the existing arrangements demonstrates the absence of any need to change. It asserts that the purpose of TELRIC prices is not "to favor INFONXX, but rather to foster competition in the [directory assistance] market."<sup>3</sup> It adds that it is not now making do without Bell Atlantic-New York's directory database, which remains more accurate than any alternative; rather, it has access to that database but, because that access is through the electronic white pages, it is more costly and less efficient than Bell Atlantic-New York's own access, thereby increasing INFONXX's cost and diminishing the quality of its service. It was precisely this inequality that led to the creation of DALs and DALT, thereby equalizing access to the database; and allowing

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<sup>1</sup> Bell Atlantic-New York's Reply Brief, page 20.

<sup>2</sup> INFONXX's Initial Brief, p. 55.

<sup>3</sup> Ibid., p. 56.

Bell Atlantic-New York to price that access above cost, INFONXX says, would impair that equality and allow Bell Atlantic-New York to continue to enjoy the benefits of its monopoly control. That INFONXX can achieve other cost savings--primarily in labor costs--provides no basis in its view for requiring it to pay contributory prices for DDB access; on the contrary, doing so would impair competition by, in effect, rewarding Bell Atlantic-New York, rather than INFONXX itself, for INFONXX's ability to achieve those efficiencies. Nor is above-cost pricing needed to avoid dampening INFONXX's incentive to innovate productively; that incentive would continue to flow from the prospect of other DA providers being able to cut into INFONXX's market share should INFONXX fail to maintain its efforts.

Inverting Bell Atlantic-New York's claim that we should not require a premium service to be sold at a TELRIC rate, INFONXX argues that the service is premium only because it is unique, and, accordingly, a bottleneck that must be priced at TELRIC in order to prevent Bell Atlantic-New York from using its market influence to extract premium value from the service. Only in that way, it says, can the interest in competition be advanced. INFONXX recognizes that cost-based pricing also might drive competitors to use other, inferior means of access, but it maintains that if they were to choose those forms of access because the price for equal access had been set to recover contribution, neither efficiency nor competition would have been served.

Finally, in its letter responding to Bell Atlantic-New York's reply brief, INFONXX asserts Bell Atlantic-New York misreads the FCC Remand Order. The FCC found that the OS/DA did not have to be made available as an Unbundled Network Element because alternatives existed, and INFONXX stresses that the alternatives on which the FCC relied are supported by the existence of non-discriminatory access to the directory assistance database of the incumbent carriers' DDBs. It adds that the FCC did not prejudge the issue of whether non-carrier directory assistance providers should be granted non-

discriminatory access (at the same prices) to incumbent carriers' DDBs, and says the FCC may yet determine that TELRIC pricing should be applied to directory database services. In any event, it contends, this Commission has made that determination under New York law.

Bell Atlantic-New York responds that the FCC in fact did determine that directory database services are not network elements, inasmuch as it omitted them from the list of call related databases that must be provided as Unbundled Network Elements. All that the FCC required, according to Bell Atlantic-New York, was non-discriminatory access under the 1996 Act §251(b)(3); and non-discriminatory access, which Bell Atlantic-New York already provides, does not require TELRIC pricing. In Bell Atlantic-New York's view, the FCC Remand Order confirms its position by recognizing the competitive nature of the markets for directory database and directory assistance services. It urges us to adapt our rules to reflect changes in the markets and "to stay focused on the mission of promoting competition--and not to be swayed by pleas to protect competitors, particularly unregulated competitors, from having to compete fairly in the healthy market for directory assistance-related services."<sup>1</sup>

With specific reference to DPLS, Bell Atlantic-New York's proposed rate of \$.20 per listing<sup>2</sup> is considerably higher than the rate for DALs and DALT, a distinction Bell Atlantic-New York defends in light of the different underlying costs and the much smaller extractions that DPLS customers typically order. Noting that no directory publisher participated in the proceeding or challenged the proposed rate, Bell Atlantic-New York asserts that the directory market was competitive before the rate was reduced and will continue to be so if it is restored. It notes as well that the FCC recently set presumptively reasonable rates

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<sup>1</sup> Bell Atlantic-New York's December 14, 1999 letter, pp. 3-4.

<sup>2</sup> This is the rate that Bell Atlantic-New York had charged for DPLS before the DDB Rehearing Order directed its reduction to \$.03 per listing.

for this service of \$.04 per listing for initial loads and \$.06 per listing for updates but did not bar carriers from charging higher rates if they were cost-justified. It asserts further that under the FCC's applicable standard, it should be allowed to charge some amount above TELRIC-based costs for sale of listings to directory publishers. It asks that if we decline to approve its proposed \$.20 per listing rate, we at least set rates at the presumptive levels approved by the FCC.<sup>1</sup>

## 2. Discussion

Only one year has elapsed since we determined that directory databases were a bottleneck service that had to be priced at forward-looking incremental cost if competition was to be fostered. Bell Atlantic-New York contends circumstances have changed enough to warrant reversing that finding, but it has not borne the burden of proving that to be so. While other sources of listings are available, none is as reliable and (especially) as timely updated as its own DDB; and while competitors can gain access to Bell Atlantic-New York's DDB through the electronic white pages, that mechanism is less convenient and more costly, thereby impeding the competitor's operations. Bell Atlantic-New York itself characterizes its DDB as "premium," and there is merit to that characterization; but the very qualities that make it premium led us to regard it as a bottleneck last year, and it is no less so now. Accordingly, pricing it at forward-looking incremental cost remains warranted as a means to encourage its efficient use and to avoid potential discrimination between Bell Atlantic-New York's retail DA services and those of competitors.

Bell Atlantic-New York overstates the significance for its position of the FCC Remand Order. The FCC has determined that operator services and directory assistance need not be offered as TELRIC-priced unbundled network elements, and it has clarified that DDB is not within the definition of call-related

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<sup>1</sup> Bell Atlantic-New York's Initial Brief, pp. 39-40.

databases that must be provided as unbundled elements.<sup>1</sup> But of greater significance here is the FCC's conclusion, in finding OS/DA services to be competitive, that requesting carriers can obtain non-discriminatory access to ILECs' directory databases pursuant to §251(b)(3), thereby permitting them to provide OS/DA similar in quality to that of the ILEC itself.<sup>2</sup> The FCC's emphasis on the importance of access to the ILEC's directory database, as elaborated on in the FCC Subscriber Listing Order, bears out the conclusion that incremental-cost-based pricing is appropriate to help ensure non-discrimination.

Accordingly, we reaffirm our view that DDB access is a bottleneck and that competition is furthered by subjecting it to cost-based pricing. Removing contribution from the rates proposed by Bell Atlantic-New York would have the effect of reducing its proposed one-time rates for DALT and DALB by about 50%, its proposed monthly rate for DALT and DALB by about 20%, and its per listing rate for DPLS by about 90%.<sup>3</sup>

#### Compensation for Listings

##### 1. Argument

In urging contributory pricing, Bell Atlantic-New York refers as well to our statement that "when directory database information is sold, all companies that contribute information to the database should be compensated in proportion in their listing contribution."<sup>4</sup> It contends that if there is no profit above cost, there is no compensation to be distributed. INFONXX disputes the applicability of that decision here, contending that the premise for compensation was the sale of the listings and that no sale occurs here inasmuch as the listings remain the property of Bell Atlantic-New York and customers of these

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<sup>1</sup> FCC Remand Order, ¶403.

<sup>2</sup> FCC Remand Order, ¶457.

<sup>3</sup> The actual rates being set are discussed further below.

<sup>4</sup> DDB Order, p. 5.

services simply use the data to provide directory assistance. It adds that we have shown no intention to change the existing system, under which carriers share their listings with Bell Atlantic-New York, and that creating a compensation system would hinder our pro-competition agenda in that it would, among other things, require the creation of a cumbersome clearinghouse for distributing compensation (discussed below), whose costs would have to be borne solely by DALs or DALT customers.

Bell Atlantic-New York responds that INFONXX's claim that listings that are not here sold represents "legalistic hair splitting."<sup>1</sup> While INFONXX believes that the existing barter system for listings (described below in connection with Frontier's proposal) fully compensates carriers for their listings, INFONXX itself contributes neither listings nor services to that system. Bell Atlantic-New York urges us to deny non-carrier DA providers a free ride on the directory database and to allow contribution above the TELRIC cost of the listings.

NYSTA, too, disputes INFONXX's claim that there is no sale of listings here that would invoke the directive that carriers be compensated when listings they have provided are sold. It contends that "when listings are acquired by a DA provider or directory publisher, a sale for use of those listings for a specific purpose has occurred and the carrier whose listings are sold is permitted to be compensated."<sup>2</sup> It argues that INFONXX recognizes as much in its readiness to pay a reasonable rate for its use of Bell Atlantic-New York's listings (i.e., for DALs service); and it sees an inconsistency between INFONXX's willingness to compensate Bell Atlantic-New York for that carrier's listings and its request to receive gratis the listings of other carriers (even though those carriers, who lack economies of scale, may incur costs higher than Bell Atlantic-New York's in providing the listings) simply because Bell Atlantic-

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<sup>1</sup> Bell Atlantic-New York's Reply Brief, p. 21.

<sup>2</sup> NYSTA's Reply Brief, p. 3.

New York is acting as a middleman. NYSTA adds that DALIS service was designed as a convenience for DA providers, to spare them the burden, added cost, and risk of inaccuracy that they would incur if they had to develop their databases by approaching each carrier for listings individually; and it sees no basis for allowing INFONXX to avoid paying for a product it needs.

## 2. Discussion

As a threshold matter, INFONXX urges us to hold that there is no "sale" here for purposes of sharing compensation. We disagree; DALIS, and not some transfer of actual title to the information, is among the types of transaction contemplated.

Bell Atlantic-New York argues that if there is no above-cost profit, there is nothing with which to compensate other companies that provide listings; it implies, in effect, that to require the sharing of purely cost-based revenues would unfairly deny it recovery of its costs. Bell Atlantic-New York makes a fair point that warrants attention, but the issue, in fact, is more complex than the arguments in this case, taken alone, might suggest.

The sharing provision pre-dates the DDB Order and DDB Rehearing Order, going back to our treatment of directory listing matters in the Local Exchange Competition Proceeding, where we said that CLECs would be compensated for providing their listings by receiving "the value of a comprehensive directory, without charge," and that "any additional revenues related to the sale of directory listings to third parties should be shared between the new entrant and incumbent (staff has recommended this be based on a pro rata share of revenues)."<sup>1</sup> We did not then set the rates for the sale of directory listings on an incremental (or any

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<sup>1</sup> Case 94-C-0095, Local Exchange Competition Proceeding, Order Requiring Interim Number Portability, Directing a Study of the Feasibility of a Trial of True Number Portability, and Directing Further Collaboration (issued March 8, 1995), p. 6. The staff recommendations referred to had been set forth a staff report, "Level Playing Field Issues: Number Portability, Directory, and Intercarrier Compensation" (February 15, 1995).

other) cost basis, having not yet come to regard them as bottleneck elements in a fully competitive OS/DA market. In that context, it would certainly be fair for carriers that provided listings to share pro-rata in the revenues derived from their sale. We viewed these sharing arrangements as "equitable during the transitional period" but authorized parties to negotiate alternative, mutually satisfactory terms.<sup>1</sup> Consistent with a later order regarding such transitional policies, these arrangements are subject to review later this year.<sup>2</sup>

Meanwhile, in the DDB Order, we required cost-based pricing of DDB services, but also carried forward the provision for sharing revenues with providing carriers. The relationship between these provisions is among the matters that may be considered when these issues are revisited later this year, but even when rates are set to be cost-based, actual revenues may exceed (or be less than) actual costs. For now, accordingly, we will simply direct Bell Atlantic-New York to submit a proposal for sharing, with carriers that provide listings,<sup>3</sup> a portion of any revenues substantially in excess of costs that it may receive. The plan would provide for after-the-fact reconciliation of costs and revenues and take account of whether revenue sharing arrangements such as these remain reasonable or should be re-examined when we take up these issues again in the Local Exchange Competition Proceeding. The required submission

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<sup>1</sup> Id.

<sup>2</sup> Case 94-C-0095, supra, Opinion No. 96-13 (issued May 22, 1996), mimeo p. 39, order clause 2.

<sup>3</sup> NYSTA raises a concern about the implication, in a Staff report on the collaborative sessions that examined the scope of this proceeding, that only CLECs, and not other ILECs, would receive compensation for listings. (Case 98-C-1357, Summary of Collaboratives (letter from Kathleen Burgess and Timothy Zakriski to Joel A. Linsider, May 7, 1999, attached to Ruling Inviting Comment on Report (issued May 10, 1999)), p. 4.) It requests clarification that when compensation is provided, it would go to ILECs contributing listings as well as CLECs. That indeed was our intention.

is discussed further below, with additional factors to be taken account of in the reconciliation.

### COSTING STUDIES

#### Bell Atlantic-New York's Study

##### 1. The Study

Starting with its existing mechanisms for providing directory database services, Bell Atlantic-New York asserts that it uses "state-of-the-art mainframe computers . . . operated within a first-class, efficient data center system"<sup>1</sup> that satisfies the TELRIC standard of "most efficient technology currently available." Its ATLAS database, which runs on a processor purchased in April 1999,<sup>2</sup> contains approximately 16 million listings (ten million for New York and six million for New England) and provides data not only for the DALT, DALs, and DPLS services but also for Bell Atlantic-New York's own directory assistance, for DADA, for the electronic white pages, and for the yellow pages. Data are extracted from ATLAS for DALT, DALs or DPLS through a two-step process comprising extraction and reformatting of the data. Different reformatting is needed for DALs and DALT, given the need to mask non-published numbers in DALs; a still different process is required for DPLS. Bell Atlantic-New York asserts that "the ATLAS system maximizes sharing of computer processing (and thereby reduces the cost of each service) to the full extent possible."<sup>3</sup>

To extract and update the data, Bell Atlantic-New York uses an IBM mainframe computer, and it vigorously defends its use of that hardware against INFONXX's claim that it would be more efficient to use a server-based, distributed system. Rejecting the premise that mainframe computers are obsolescent, Bell

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<sup>1</sup> Bell Atlantic-New York's Initial Brief, p. 12.

<sup>2</sup> Ibid., pp. 13-14, providing additional data on ATLAS's operations and size.

<sup>3</sup> Ibid., p. 16.

Atlantic-New York contends that the choice between the two systems depends on which is better suited to the applications at hand and that a mainframe system is better here "because of its superior reliability, availability, processing power, system compatibility, and disaster recovery characteristics."<sup>1</sup> It offers data on all of these qualities, asserting that the system's various attributes permit ATLAS to achieve 99.9 percent reliability and availability and to be totally restored and fully operable within 72 hours of a total system disaster. In addition, the system can grow as needed, avoiding the need to replace entire processors. Bell Atlantic-New York maintains further that it achieves economies of scope and scale by concentrating multiple processing capabilities in its three data centers and spreading shared costs across all applications and processors; an ATLAS system operating in isolation, it contends, would be more costly.

Turning specifically to questions of TELRIC compliance, Bell Atlantic-New York argues that its studies are forward-looking, reflecting investments in the most efficient, latest technology, and applying forward-looking reductions to wage and non-wage related expenses. As TELRIC requires, the increment used for purposes of analysis was the entire service, i.e., the provision of directory listings. To isolate ATLAS processing costs, the study divided total expenses and capital costs (comprising computer related investment, building investment, and wage and non-wage expense) for Bell Atlantic-New York's data centers in New York and New England by their total processor usage (measured in million service units [MSU]) to derive an average cost per MSU, which was then applied to calculate the incremental costs associated with DALT, DALS, and DPLS. To this, Bell Atlantic-New York added product-specific expenses associated with technical support, product management, and other activities it regarded as necessary to provide the services in question.

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<sup>1</sup> Ibid., p. 17.

Consistent with TELRIC practice in the First Network Elements Proceeding, Bell Atlantic-New York also applied a joint and common expense factor, but it did so in a novel way. In the First Network Elements Proceeding, the joint and common expense factor was applied only to investments. Bell Atlantic-New York now proposes to apply it against expenses, in order to avoid recovering too much of the joint and common expense from investment-intensive services and too little from services that are not investment intensive. The joint and common expenses themselves are determined in a manner consistent with the First Network Elements Proceeding. Bell Atlantic-New York says it will adjust other network element rates in Module 3 to reflect the new method for applying joint and common expenses, thereby ensuring there is no double counting.

2. Criticisms and Responses

INFONXX denies that Bell Atlantic-New York's cost study meets TELRIC requirements and challenges it on other grounds as well. With respect to TELRIC compliance, INFONXX contends that by considering the costs of its entire data center--which performs services other than those related to DDB--Bell Atlantic-New York failed to limit its study to the incremental costs of providing DDB services. It regards the MSU analysis as, in effect, an embedded cost study that allocates total historical data center costs to the services being examined here. Contending that "the fatal flaw in the [Bell Atlantic-New York] approach is that the \$88.90 cost per MSU is not a measure of incremental cost, but instead an allocation of total cost,"<sup>1</sup> INFONXX contends that the embedded nature of the measure is demonstrated by the fact that the costs assigned to DALs and DALT would increase if some other major processing activity were eliminated from the data center operation, causing the total costs to be allocated over a smaller number of users. INFONXX regards this flaw as overwhelming in its impact, inasmuch as the

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<sup>1</sup> INFONXX's Initial Brief, p. 15.

\$88.90 per MSU figure has a substantial effect on the costs assigned to the services at issue, and it sees no basis for Bell Atlantic-New York's claim that treating DDB related data processing costs separately would increase those costs.

INFONXX challenges as well the forward-looking nature of the study, citing Bell Atlantic-New York's witness's admission that it was not based on a hypothetical system designed to provide only DALS and DALT services using only the most efficient, least cost technology available.<sup>1</sup> Even if Bell Atlantic-New York is using state of the art mainframe technology--a premise INFONXX regards as asserted rather than proven--it has not shown that its existing mainframe technology is the best way to provide DDB services. Bell Atlantic-New York's witnesses had no direct involvement with the data centers, INFONXX says, and they were not technically competent to show that the less costly, PC-based system that INFONXX offered as an alternative was, in fact, insufficiently reliable to be used.

In response, Bell Atlantic-New York insists its studies are forward looking and says they followed the method used for studying OS/DA and DALT costs in Phases 2 and 3 of the First Network Elements Proceeding. We accepted that method there and, in Bell Atlantic-New York's view, INFONXX has shown no basis to depart from it here. It also defends its MSU analysis, contending that it, too, was consistent with methods approved in Phase 2 of the First Network Elements Proceeding and that the costs reflected in the per-MSU figure were properly calculated.

More generally, Bell Atlantic-New York disputes the premise that it should adopt the least-cost technology designed solely to serve a very limited purpose, even if doing so would increase the overall cost of data center operations by forgoing economies from shared facilities and services. INFONXX, it says, uses its server-based computer system only to replicate directory listings created by others; in contrast, Bell Atlantic-New York's

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<sup>1</sup> Ibid., pp. 16-17, citing Tr. 315-316.

system must permit the ATLAS data base to interface with other mainframe-based systems and must be able to dispatch large amounts of data to multiple users simultaneously. It notes that IBM, which provided both Bell Atlantic-New York's own system and INFONXX's, proposed the mainframe-based system knowing the requirements that would have to be met.

In its reply brief, INFONXX insists arguments such as this, based on the prudence of Bell Atlantic-New York's existing system in light of its full range of uses, betoken a failure to understand the TELRIC notion of examining the costs of a hypothetical system designed to provide only the service being studied. It continues to argue that Bell Atlantic-New York is seeking to recover not only the incremental costs of the DDB services here under study but also a portion of the embedded costs of its existing data system. INFONXX asserts these costs already are being recovered through retail rates (set on the basis of rate base and forecast expenses) and that allowing them here would provide for their double recovery.<sup>1</sup> Bell Atlantic-New York maintains, however, that it limited the data center costs reflected in its MSU figure to those properly associated with the services under study.<sup>2</sup>

INFONXX further argues that Bell Atlantic-New York's costs are inflated by its inefficient method for extracting and reformatting data in order to withhold information (including that on area code 203 and non-published and non-listed listings) that it wishes not to share with its DALT and DALS customers. It argues that the multi-step extractions consume large amounts of computer time, imposing correspondingly high costs in view of the high cost per MSU. It insists that Bell Atlantic-New York has failed to show that its two-step initial load process discharges its "obligation to develop the most efficient, least costly

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<sup>1</sup> INFONXX's Reply Brief, pp. 6-8.

<sup>2</sup> Bell Atlantic-New York's Reply Brief, p. 9.

program possible" for populating the DALIS database,<sup>1</sup> and it contends that these reformattings "do not benefit either DALIS or DALT customers; in fact they primarily benefit [Bell Atlantic-New York] by screening out area code 203 listings and [Bell Atlantic-New York's] proprietary [directory assistance] fields as well as masking non-published numbers for DALIS."<sup>2</sup>

Not only does the multiplicity of steps exaggerate the costs, INFONXX says; but the costing method itself--which assigns the cost of each reformatting to the customers using the reformatted data--results in greater costs being assigned to the reformatted DALIS and DALT than to Bell Atlantic-New York's own directory assistance function, thereby requiring Bell Atlantic-New York's DA competitors to pay the costs incurred in order to deny them information that Bell Atlantic-New York wishes not to share with them. INFONXX sees this costing concern as compounding the discriminatorily inferior access afforded to DALT and DALIS customers insofar as the area code 203 data are excluded, and it asks us to direct Bell Atlantic-New York to provide those data to both services. In addition, INFONXX requests reconsideration of our earlier determination that non-published listings should be masked from DALIS users, noting that Bell Atlantic-New York has the right to terminate DALIS service for privacy violations just as it can terminate DALT service; that there is no basis for regarding non-carrier DA providers as less trustworthy in this regard than carriers; and that non-carriers may, in fact, be more reliable than carriers, inasmuch as their sole business is the provision of DA service and they would have more to lose by committing privacy violations that could deny them access to Bell Atlantic-New York's database.<sup>3</sup>

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<sup>1</sup> INFONXX's Initial Brief, p. 21. It notes in this regard that the second step of the initial load process accounts for about 41% of the computer cost.

<sup>2</sup> Ibid., p. 23.

<sup>3</sup> INFONXX's Initial Brief, p. 31.

In response, Bell Atlantic-New York defends its extraction process. It explains that it started with the method used to provide listings for its own directory assistance and simply added the additional step needed to provide data in a format suitable for DALs; and it disputes INFONXX's premise that a separately designed one-step program would have been more efficient and less costly. It contends that its approach shares the cost of common search and extraction functions among a larger number of users, thereby reducing the cost for each, and insures that DALs customers receive the same data as Bell Atlantic-New York does, except for non-published and unlisted listings (and except for the Connecticut listings that, according to Bell Atlantic-New York, are not before us with respect to access or pricing). It adds that it is not now seeking recovery of the additional programming costs incurred in order to achieve the reformatting of the DALs and DALT data.<sup>1</sup>

Next, INFONXX maintains that unit costs are inflated by reason of Bell Atlantic-New York's understatement of the number of DDB access users. For the first step in the extraction of data from ATLAS, Bell Atlantic-New York's study assumed five users: Bell Atlantic-New York itself, one existing DALT customer under contract, one existing DALT customer under tariff, one existing DALs customer under contract, and one potential DALs customer under tariff. INFONXX would add Bell Atlantic-New England, which also receives data from ATLAS through the same extraction process, as well as what it sees as a reasonable forecast of new DALT and DALs customers. Because the second extraction screens out Bell Atlantic-New England listings, INFONXX reasons that it produces, in addition to the Bell Atlantic-New York listings pertinent here, a separate Bell

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<sup>1</sup> Bell Atlantic-New York's Reply Brief, pp. 11-12. It reserves the right to seek recovery of those costs in the consideration of network element development costs generally, which are to be the subject of a separate inquiry related to compliance with the NYNEX/Bell Atlantic merger conditions on which their recovery depends.

Atlantic-New England database and that Bell Atlantic-New England accordingly should be added as a customer for the second step as well. INFONXX asserts that Bell Atlantic-New York made no effort to forecast customer interest in DALs and DALT even though the price had dropped from its initial level, and it suggests that a conservative forecast would add two additional customers for each service.

Bell Atlantic-New York responds that INFONXX has no factual basis for doubling the number of customers and thereby halving the cost that would be allocated to INFONXX itself. With regard to including Bell Atlantic-New England as a user, Bell Atlantic-New York asserts that it already excluded the costs of New England listings from the initial extraction step.<sup>1</sup> Nor does it see any basis for increasing the forecast number of DALs and DALT customers, asserting that INFONXX's witness did not name a single prospective customer; that the decrease in price should have little effect on demand for the service, given that DALs costs are a relatively small portion of the total cost of the DA provider; and that the estimate of its own professional product manager regarding future demand is the best evidence in the record. Recognizing that faulty estimates of demand can result in overstated or understated costs, Bell Atlantic-New York suggests we could direct it to adjust the price of DALs (downward or upward, as the case might be) anytime a new customer signs on or an existing customer leaves.<sup>2</sup>

Finally, INFONXX charges that Bell Atlantic-New York has inflated the labor expenses allegedly incurred specifically to support the three DDB services. According to INFONXX, the

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<sup>1</sup> More specifically, it included only the annual \$8,560 cost of creating the New York portion of the file rather than the \$18,067 cost of creating the entire file that includes New York, New England, and area code 203 listings. Bell Atlantic-New York's Reply Brief, p. 12, citing Exhibit 30.

<sup>2</sup> Ibid., p. 14. Bell Atlantic-New York would not apply this approach to DPLS; its greater number of customers would make such adjustments more complicated and less significant.

activities accounting for these costs are either activities already undertaken to support Bell Atlantic-New York's own directory assistance operation or else activities related to initiating DALs and DALT services but not related to their ongoing administration. The former costs, it argues, should not be recovered from DALs and DALT users at all, while the latter costs, which can be expected to diminish over time, should not be built into recurring monthly fees. INFONXX also compares Bell Atlantic-New York's claimed labor expenses to its own, noting that transferring daily updates from its central database to the production servers at its call centers requires only one hour of labor per day or (at six days a week) 312 hours per year. Applying Bell Atlantic-New York's hourly labor rate to that figure produces an annual labor cost of \$16,380, in contrast to Bell Atlantic-New York's combined labor costs for DALs and DALT of \$137,365.<sup>1</sup>

Bell Atlantic-New York responds that it has simply allocated costs to cost causers; for without the services here at issue, it would need no technical and administrative support for them. It notes that in Phase 3 of the First Network Elements Proceeding, we approved the cost associated with one full-time equivalent employee in connection with DALT service; in the present filing, the cost of that same employee has been allocated among all three services. With respect to INFONXX's comparison of labor times, Bell Atlantic-New York asserts that its employees do more than simply extract updates. It explains that they provide technical support for directory services, 24 hours a day, seven days a week, and have responsibilities such as troubleshooting problems from users, coordinating disaster recovery, and maintaining technical documentation and user passwords. Bell Atlantic-New York notes that this coverage permits it to provide the high quality data that INFONXX says it needs, and it insists that INFONXX should be required to pay its

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<sup>1</sup> INFONXX's Initial Brief, p. 29.

fair share of the associated costs.<sup>1</sup> Bell Atlantic-New York similarly disputes INFONXX's claim that product management costs are front-loaded and should not be recovered through recurring fees; it describes what it sees as ongoing product management functions including negotiating, testing, and delivering services, implementing billing processes, responding to ongoing inquiries, providing monthly revenue reports, and resolving product related issues. It asserts that the costs "do not go away simply because INFONXX would rather not pay them."<sup>2</sup>

#### INFONXX's Study

INFONXX's study was based on its own method for replicating data within its system, which employs linked personal computers rather than a mainframe. Its nationwide database, maintained in its reference server located in Bethlehem, Pennsylvania, includes 150 million listings, ten times the number in ATLAS and 15 times the number in Bell Atlantic-New York's New York database. Updates are made daily at the reference server and then transferred each night to INFONXX's four call centers around the country.

INFONXX analogizes two of its operations to those performed by Bell Atlantic-New York in providing DALs and DALT. It believes Bell Atlantic-New York's extraction of an initial directory database load for a first-time DALs or DALT customer may be compared to INFONXX's full extraction of its reference server database in a situation in which the database in one of its call centers has been damaged and needs to be replaced in full. The only difference, it maintains, is that because it has no need to screen out any data before copying it, INFONXX runs a single program in a single step in contrast to Bell Atlantic-New York's multi-step process. It asserts, however, that the

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<sup>1</sup> Bell Atlantic-New York's Reply Brief, p. 15.

<sup>2</sup> Ibid., p. 16.

additional step should impose little "true incremental cost"<sup>1</sup> if that cost is measured properly rather than by the allocation of embedded charges, as it claims Bell Atlantic-New York has done. For full extraction, INFONXX calculated a cost of two hours of labor at \$14 per hour and \$90 for the purchase and shipping of ten tapes. For the daily update, it calculated a cost of one hour of labor at \$14 per hour. It also calculated investment-related costs of \$2,760 in labor and \$36,500 for hardware and software associated with building a new or replacing an existing production server (call center).

INFONXX's study did not include overhead and joint and common costs; it later proposed to apply Bell Atlantic-New York's TELRIC carrying charge factor, joint and common cost factor, and labor rates. On that basis, and after applying a gross revenue loading factor of 1.0157,<sup>2</sup> it calculates a non-recurring initial load charge of \$219, a recurring annual investment related charge of \$1,274, and a recurring monthly charge for daily updates of \$167.<sup>3</sup>

INFONXX contends that the processes it studied are analogous to those performed by Bell Atlantic-New York and that Bell Atlantic-New York's expressed concerns about the inadequate reliability of the INFONXX system are based not on proof but on the opinion of Bell Atlantic-New York's cost witnesses who have had no direct involvement even with Bell Atlantic-New York's own system; who relied merely on conversations with the product manager; and who were not knowledgeable about the DA industry as a whole. INFONXX asserts that its "data extraction and replication system is a highly efficient, low cost technology"; that it "maintains, updates and transfers a listing database

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<sup>1</sup> INFONXX's Initial Brief, p. 46.

<sup>2</sup> The gross revenue loading factor was developed by Bell Atlantic-New York in Phase 1 of the First Network Elements Proceeding and has been used consistently since. It is intended to recover the PSC assessment and uncollectibles.

<sup>3</sup> INFONXX's Initial Brief, pp. 49, 61.

containing 150 million listings at minimal incremental cost"; and that "the high degree of the reliability can be inferred from the simple fact that DA service is INFONXX's core business and its customers have readily available alternatives."<sup>1</sup> INFONXX insists Bell Atlantic-New York has simply described its own system, without explaining why it had to be configured as it was and without proving that its method for providing the services at issue here produced lower costs.

In its Initial Brief, Bell Atlantic-New York maintained that INFONXX's study failed to include "the vast majority of costs associated with providing directory listings, including: investment related capital (depreciation, return) for the server-based computer, building space, software, federal income tax, gross revenue loading, electricity, air conditioning, heating, computer maintenance, and personnel associated with the reproduction, updating, and distribution of listings" and omitted as well any allocation of joint and common costs.<sup>2</sup> It therefore urged dismissing INFONXX's cost study as failing to comply with TELRIC and for failing to identify the actual costs that would be incurred if Bell Atlantic-New York used the technology favored by INFONXX.

In its brief, INFONXX corrected for some of these criticisms, as already noted, by applying Bell Atlantic-New York's labor rates, carrying charge factor, joint and common cost factor, and gross revenue factor. Nevertheless, in its reply brief, Bell Atlantic-New York contends that INFONXX's cost proposals still fail to comply with applicable requirements. It asserts, among other things, that no costs are included for investments in disaster recovery systems and backup power systems needed for reliable provision of directory database services, and it criticizes INFONXX allocation of annualized investment cost over ten "mythical" users instead of the five users that Bell

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<sup>1</sup> Ibid., p. 47.

<sup>2</sup> Bell Atlantic-New York's Initial Brief, p. 30.

Atlantic-New York expects to use the services.<sup>1</sup> Bell Atlantic-New York contends that INFONXX allows for no recovery of product management costs and provides for only one hour a day of technical support.

#### Discussion

We have already concluded that DDB services should be priced on the basis of forward-looking incremental costs, without contribution, and that the use of TELRIC, though permitted, is not here required by the FCC. The costing studies must be examined in that light.

Turning first to the applicable costing standard, while TELRIC pricing of DDB services is not required by the FCC, we have directed that the services be priced at forward looking incremental cost.<sup>2</sup> In applying that determination, there is no reason to depart from the use of TELRIC, which we used to set DALT rates in Phase 3 of the First Network Elements Proceeding. TELRIC (or, more precisely, TSLRIC [Total Service Long-Run Incremental Cost], since a service rather than an element is being priced), affords a better mechanism than the alternative forward-looking method (Long-Run Incremental Cost) for setting prices over the long term, on the basis of the entire demand for the service. Accordingly, we deny Bell Atlantic-New York's request for a remand to consider other costing methods.

INFONXX's study, advanced by its sponsor as a proper application of TELRIC, has been shown by Bell Atlantic-New York to be seriously flawed. INFONXX sought to remedy some of the worst flaws--the omission of entire categories of costs--during the course of the proceeding by adopting some of Bell Atlantic-New York's own cost factors, but the resulting hybrid, and INFONXX's initial failure to recognize the clear need to take these costs into account, call its effort into question. Beyond

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<sup>1</sup> Bell Atlantic-New York's Reply Brief, p. 17.

<sup>2</sup> DDB Rehearing Order, p. 13.

that, INFONXX proceeds on the unproven premise that a system configured like its own could replicate the functions performed and services provided by Bell Atlantic-New York. As discussed in the previous section, Bell Atlantic-New York's DDB is unique in its reliability and timeliness, and their achievement imposes costs that must be recognized in setting cost-based prices. It simply cannot be concluded that a system based on INFONXX's stand-alone computer technology affords a cheaper way of providing the kind of service INFONXX itself says it needs from Bell Atlantic-New York's database.

But while INFONXX's own study does not provide a reasonable basis for identifying the costs of these services, its criticisms of Bell Atlantic-New York's study raise legitimate issues that must be considered. Our acceptance, in Phase 3 of the First Network Elements Proceeding, of Bell Atlantic-New York's method for pricing DALT provides important support for that method; but INFONXX was not a party to that proceeding, and no other party directed much attention to the service.

A fundamental aspect of INFONXX's critique is the claim that Bell Atlantic-New York's calculation and allocation of MSUs makes its study, in effect, one of embedded costs. But Bell Atlantic-New York has explained how its million-service-unit calculation was based on the incremental costs of serving the total demand for the services at issue, how the data center costs taken into account were properly limited to costs associated with those services, and how the cost per MSU was applied only to service units associated with DDB services. Moreover, the computer equipment whose costs were reflected appears to be state-of-the-art and properly forward-looking. There is no basis for concluding that Bell Atlantic-New York has simply allocated its historical or embedded costs to these services.

Nor has INFONXX shown Bell Atlantic-New York's extraction process to impose unreasonable additional costs. While the initial extraction from ATLAS contains New England and area code 203 data as well as the New York data that move to the later extractions, Bell Atlantic-New York has shown that it takes

account only of the costs of producing the New York portion of the file.<sup>1</sup> Beyond that, there is no reason to believe that a hypothetical single-step extraction process, going directly from ATLAS to DALIS, would be less costly, at least per customer; its costs would be assigned only to DALIS customers instead of being spread to all DDB service customers, as are the costs of the existing multi-step extraction process. Finally, the added costs associated with creating separate DALT and DALIS formats could not fairly be disallowed, since they are incurred to comply with our mandate to deny certain information to non-carriers. (INFONXX's request to revoke that requirement is beyond the scope of this proceeding.)

INFONXX makes a valid point about the sensitivity of price to the forecast number of customers over which costs are spread, but it does not argue persuasively that the customer base should be doubled from that contemplated by Bell Atlantic-New York. In particular, the current price for DALIS and DALT service, substantially reduced pursuant to the DDB Rehearing Order, has been in place for some time and has not called forth additional customers. As noted, Bell Atlantic-New York has suggested a price adjustment mechanism to take account of changes in the number of DALIS customers. We direct it to submit a specific plan for such a mechanism with respect to both DALT and DALIS, on which we will invite comment. The mechanism should incorporate as well, as discussed above, provisions for sharing above-cost revenues with CLECs and other ILECs providing listing information, and it should be limited in its reach to substantial amounts of revenue to avoid unduly cumbersome or costly efforts at fine-tuning.

INFONXX also criticizes Bell Atlantic-New York's labor costs, which it regards as inflated. Here, too, Bell Atlantic-New York defends them on the grounds they are properly allocated to the services at issue and are needed to provide and support the highly reliable service that is so important to DA providers.

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<sup>1</sup> Bell Atlantic-New York's Reply Brief, p. 12, citing Exhibit 30.

Bell Atlantic-New York's arguments are reasonably persuasive, and no adjustment on this account is needed.

One adjustment to Bell Atlantic-New York's costs will be made, however. As noted earlier, Bell Atlantic-New York's study allocated joint and common costs to these services in a manner different from that followed in the First Network Elements Proceeding. That change will be considered comprehensively only in Module 3; and even if it proves worthy of replacing the existing, reasonable method, it should not be applied selectively lest it result in double counting of costs. Accordingly, the effects of that modification will be reversed, and joint and common costs will be applied, at least pending further consideration in Module 3, in the same manner as in the First Network Elements Proceeding.<sup>1</sup>

This adjustment would reduce Bell Atlantic-New York's calculated costs for DALT and DALs one-time transfers by 10%; for DALT and DALs updates by 16%, and for DPLS listings by 17%. Combined with the removal of contribution recommended above, it would reduce Bell Atlantic-New York's proposed one-time charges for DALT and DALs by about 53% and its proposed monthly charges for DALT and DALs by about 32%; rates will be set at those levels. (The actual rates, and their calculation, are shown in Appendix A.) The same adjustment to DPLS costs, together with the removal of contribution, would reduce Bell Atlantic-New York's proposed DPLS rates by about 91%, to a level substantially below the FCC's presumptively reasonable levels of \$.04 per

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<sup>1</sup> See, for an analogous decision, Case 98-C-1357, Opinion No. 99-12 (issued December 17, 1999), mimeo. p. 37.

listing for the initial transfer and \$.06 per listing for updates.<sup>1</sup> We see no need to reduce the DPLS rates below the FCC's presumptively reasonable level (especially since the unique timeliness of Bell Atlantic-New York's database is less crucial for directory publishers than it is for directory assistance providers), and we will set them at \$.04 per listing for the initial transfer and \$.06 per listing for updates.

FRONTIER'S COSTS AND COMPENSATION PROPOSAL

Frontier, which also offers DALs and DPLS, submitted cost studies, which were criticized in some respects by Bell Atlantic-New York. More controversial was its proposal to alter existing arrangements among ILECs for the exchange of directory listings; it is discussed first.

Inter-ILEC Compensation<sup>2</sup>

Under existing "barter" arrangements, Frontier and other ILECs provide their listings information to Bell Atlantic-New York at no cost, in exchange for Bell Atlantic-New York including those listings in the directories it publishes. Bell

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<sup>1</sup> It is noteworthy that the FCC, in determining the "reasonable" pricing standard for the sale of listings to directory publishers, rejected contentions that it should be limited to incremental costs, without any allocation of joint and common costs and overheads, as well as contrary contentions that it should allow for recovery of the "value" of the listings. (FCC Subscriber Listings Order, ¶¶80-92.) It based its presumptively reasonable rates in part on the cost data that Bell Atlantic-New York had submitted here in January 1999. (Ibid., ¶93.)

<sup>2</sup> As Bell Atlantic-New York notes (Initial Brief, pp. 42-43), this issue should be distinguished from the inter-carrier compensation issue discussed above. In the previous context, the question was whether a carrier that receives listings from another carrier and sells them to a third party should compensate the providing carrier, in effect sharing the profit on the sale. Here, the proposal is for carriers to compensate each other for directory listings regardless of whether they are sold to a third party; the compensation would cover the providing carrier's costs.

Atlantic-New York, at least, sees these arrangements as reflecting our determination, in the local competition "Framework Order," that

absent a mutually agreed upon alternative arrangement, incumbent local exchange carriers would be required to publish new entrant telephone listings in their directories; new entrants would not receive any compensation for their listings; and incumbent local exchange carriers would not receive a fee for publishing the listings. Additional revenues from the sale of directory listings to third parties would be shared between the new entrant and incumbent.<sup>1</sup>

In this proceeding, Frontier proposed that Bell Atlantic-New York pay DALs rates to receive Frontier's listings-- in effect, that Bell Atlantic-New York subscribe to Frontier's DALs service in order to get those listings. Frontier argues that Bell Atlantic-New York and Frontier compete with each other to provide DA service to inter-exchange carriers (some of which respond to DA inquiries by routing the calls to a local exchange carrier in the pertinent area) and in the highly competitive market for National Directory Assistance service. In these circumstances, it believes Bell Atlantic-New York is unfairly advantaged by being able to obtain Frontier's listings (numbering about 600,000) at no charge, particularly when Frontier is required to pay for listings it obtains from Bell Atlantic-New York. Frontier sees no conflict between its proposal and the Framework Order, asserting that the order applies to new entrants within a competitive local exchange market, not to ILECs (like Frontier) in a different market; that Bell Atlantic-New York does not publish directories for Frontier, so there is no quid pro quo for Frontier's listings; and that Bell Atlantic-New York itself seems to regard the Framework Order as inapplicable, inasmuch as

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<sup>1</sup> Case 94-C-0095, Local Exchange Competition, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995), p. 17.

it shares with Frontier none of the revenues from its sale of Frontier's listings.

Bell Atlantic-New York objects to Frontier's proposal, charging it "could unravel a delicate system" that well serves both the industry and its customers by enabling existing carriers, new carriers, and non-carrier DA providers to gain access to listings on a one-stop basis.<sup>1</sup> Acknowledging that Frontier incurs a one-time cost when it sends a listing for inclusion in the database, Bell Atlantic-New York nevertheless disputes Frontier's premise that it receives nothing in return. It points out that one Frontier subsidiary (Frontier Communications of AuSable Valley, Inc. [AuSable]) receives DA service from Bell Atlantic-New York (at a price lower than it would be if Bell Atlantic-New York had to pay for listings); that Frontier's customers benefit from callers nationwide being able to find their numbers through Bell Atlantic-New York's database; and that many directory assistance calls to the 716 area code, which is shared by Bell Atlantic-New York and Frontier, are handled by Bell Atlantic-New York. It adds that Frontier can purchase listings from the database, at tariffed rates, any time it chooses.

Frontier responds that AuSable's purchase of DA service should, at most, entitle Bell Atlantic-New York to use AuSable's listings (which account for less than 1% of Frontier's total) in the provision of standard DA service but not for competitive DA service; that if benefits to Frontier's customers warrant Frontier's provision of free listings, then every carrier, including Bell Atlantic-New York, should be required to provide free listings to every DA provider; and that Frontier's ability to use Bell Atlantic-New York's database at tariffed rates is no reason to allow Bell Atlantic-New York to take advantage of Frontier's database for free.

More generally, Bell Atlantic-New York objects to what it sees as a proposal to dismantle the existing barter system.

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<sup>1</sup> Bell Atlantic-New York's Initial Brief, p. 43.

It asserts that "only [it] has been ordered to accept the listings of all carriers in the state in its database, to manage and provide non-discriminatory access to the database and to serve as a clearinghouse to share compensation with other carriers"<sup>1</sup>; it has been compensated in kind by being allowed to use all of the listings in the database at no charge. If we wish to consider Frontier's proposal to charge for listings, it argues, we should do so only in a separate proceeding that re-examines the barter system and ensures that all carriers recover the costs they incur in contributing to or operating the database.

Bell Atlantic-New York next claims that if it is required to pay for Frontier's listings, its obligation should be limited to going-forward costs incurred to provide updates; the listings it already acquired under the barter system should not be subjected to retroactive repricing. Frontier responds that if Bell Atlantic-New York intends to continue to rely on the base listings, it should be required to pay for them; it sees Bell Atlantic-New York's suggestion as having no more merit "than that of a copyright infringer who argues that he should pay only for future infringements but should be entitled to continue to use without royalty all of the copyrighted data that he used in past infringements."<sup>2</sup>

Finally, Bell Atlantic-New York argues that if Frontier's proposal is adopted, Bell Atlantic-New York should be allowed to recover from Frontier any future costs of receiving, verifying, inputting, and maintaining Frontier's listings in the database. It does not recover these costs now, viewing them as part of the barter arrangement, but reserves the right to file revised cost studies, which would increase DALT, DALs, and DPLS rates, if we abandon the existing regime. Frontier regards this

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<sup>1</sup> Bell Atlantic-New York's Reply Brief, p. 24. The clearinghouse issue is discussed in the next section.

<sup>2</sup> Frontier's Initial Brief, p. 9.

suggestion as "little short of outrageous,"<sup>1</sup> inasmuch as Frontier receives no benefit from Bell Atlantic-New York's database, and making it bear these costs would require it to underwrite Bell Atlantic-New York's competitive use of its listings.

INFONXX also opposes Frontier's proposal, contending it is beyond the scope of the proceeding. It argues that requiring inter-carrier compensation for listings would be costly and cumbersome, requiring the performance of clearinghouse functions, and unnecessary, in that increased competition in the DA market, which is facilitated by the availability of DALs and DALT services, provides benefits to all carriers, including Frontier.<sup>2</sup> It sees nothing "to suggest that the Commission wanted to reconsider [the existing, barter] system, let alone to balkanize a uniform statewide system that has served telephone users well."<sup>3</sup>

The existing barter system reflects an interest in promoting competition in local telephone service by ensuring that CLECs' customers' telephone numbers are made as widely and readily available as those of ILECs' customers. Frontier's proposal suggests, in effect, that the system may be outdated, insofar as competition now exists not only in the local telephone service market but also in the directory assistance market, and the barter arrangements skew the latter.

Frontier may have a point, but Bell Atlantic-New York correctly argues that it should be considered, if at all, only in a broader inquiry in which its ramifications can be fully explored. We reserve judgment on the proposal and direct Staff to consider it further and report back promptly with its

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<sup>1</sup> Id.

<sup>2</sup> INFONXX objects in this regard not only to Frontier's proposal but also to Bell Atlantic-New York's plan to compensate contributors of listings when listings are provided to DALs and DALT users.

<sup>3</sup> INFONXX's Initial Brief, p. 52.

assessment of the matter and a list of issues on which comments should be requested from all interested parties.

#### Frontier's Cost Studies

Frontier presented studies showing that its DALs costs were \$69,183 for a full database extract and \$2,075 per month for updates.<sup>1</sup> It adds that for directory assistance updates, based on current volumes, these figures equate to a per listing fee of about \$.06. For DPLS, its calculated costs are \$872 of fixed costs per order, Frontier's variable costs of \$0.264 per listing, and Frontier's directory publishing agent's variable costs of \$.05 per listing, up to a maximum of \$750 per order. According to Frontier, these costs were calculated on the basis of forward-looking TELRIC studies.

Bell Atlantic-New York sees various flaws in the DALs study. First, it contends the study reflects not the actual costs incurred to provide data to Bell Atlantic-New York in the existing manner, which Bell Atlantic-New York finds satisfactory, but, instead, the projected costs of a new DALs product, incorporating upgraded software, for which there are no current customers. Frontier, however, maintains that the existing system is not the most efficient and that its costs (reliance on which would have violated TELRIC) would have been eight to ten times the forward-looking costs it used.

In addition, Bell Atlantic-New York calculates that Frontier's DALs costs are nearly double Bell Atlantic-New York's own. It sees no basis for this divergence, and suggests it may reflect Frontier's failure to use the most efficient, lowest cost processes. It suggests that if any payment is to be required, it be calculated on the basis of Bell Atlantic-New York's costs, which it sees as a reasonable proxy. Frontier responds by disputing the premise that its system is or should be the same as

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<sup>1</sup> It is these costs that Bell Atlantic-New York would be required to pay under Frontier's proposal, previously discussed.

that of Bell Atlantic-New York, a company 20 times its size, and pointing to other cost differences.

Bell Atlantic-New York has raised questions about the construct Frontier used in developing its DALs costs. Moreover, Staff advises that Frontier's one-time cost for DALs does not use the carrying charges we previously approved<sup>1</sup>; that adjustment reduces the cost from \$69,183 to \$57,112, as shown in Appendix B. In view of our decision not to modify the barter system, at least for now, these concerns are moot with respect to Bell Atlantic-New York, and Frontier at present appears to have no other DALs customers. Its DALs rate therefore should be set for now on a temporary basis, subject to refund, at a level reflecting the foregoing carrying charge adjustment. In the event Frontier acquires any DALs customers, it should submit further documentation in support of its costing construct, and we will direct whatever further inquiry appears warranted.

Frontier does have DPLS customers at present, but none of them appeared in the proceeding to criticize its proposed DPLS rates. At the same time, Frontier has not shown why its costs should be so much greater than Bell Atlantic-New York's. Frontier's DPLS rates, accordingly, will be set, like Bell Atlantic-New York's, at the FCC's presumptively reasonable levels.

#### CLEARINGHOUSE ISSUES

Bell Atlantic-New York proposed to distribute compensation to providers of listings by retaining a third-party billing entity (the New York State Access Settlement Pool) and to recover the cost of that arrangement (a one-time start-up fee of \$4,000 and a monthly charge of \$2,500 over the contract's three-year term) through a Clearinghouse Fee added to the charges for

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<sup>1</sup> Cases 95-C-0657 et al. and 93-C-0033 et al., Frontier Telephone of Rochester, Inc. - Open Market Plan, Opinion No. 99-8 (issued July 22, 1999).

the three DDB services. It calculates of fee of \$0.0122 per listing derived from CLECs or other ILECs.

INFONXX regards the clearinghouse fee (which would not be needed if there were no contribution to be distributed to providers of listings) as the insult added to the injury of contributory pricing. It notes that the \$0.0122 administrative fee exceeds the contemplated compensation per listing, which is only \$0.0014. In response, Bell Atlantic-New York recognizes that the administrative costs are high in comparison to the value each carrier will receive and suggests that the answer is not to abandon the clearinghouse or deny legitimate cost recovery, but to provide for payment and distribution of greater contribution amounts. It notes as well that INFONXX overstates the comparison, since the distribution amount is paid with respect to every listing, while the fee amount is imposed only for listings obtained from CLECs and other ILECs.

NYSTA defends the clearinghouse, characterizing it as a necessary adjunct of affording INFONXX and other DA providers the convenience of obtaining listings from a single source instead of having to obtain them separately from all LECs in the state. As such, its costs are properly recoverable.

Distribution of compensation seems to require a clearinghouse, and Bell Atlantic-New York would clearly be entitled to recover the associated costs. At the same time, administrative costs that necessarily far exceeded the distributed compensation would be an argument against providing proportionate compensation and in favor of some other way to address the interests at stake.

The specifics need not be decided now, given our decision not to require compensation immediately. Bell Atlantic-New York should take account of clearinghouse cost issues in the plan it submits for distributing significant excess revenues to listings providers.

The Commission orders:

1. Within 15 days of the date of this opinion and order, New York Telephone Company d/b/a Bell Atlantic New York (Bell Atlantic-New York) and Frontier Telephone of Rochester (Frontier) shall file tariff amendments consistent with this opinion and order. The tariff amendments shall not take effect on a permanent basis until approved by the Commission but shall be put into effect on a temporary basis on one day's notice, subject to refund if found not to be in compliance with this opinion and order. Any party wishing to comment on the tariff amendments should do so by submitting 10 copies of its comments to the Acting Secretary within 15 days of the date the tariff amendments are filed.

2. Within 30 days of the date of this opinion and order, Bell Atlantic-New York shall submit a proposal, consistent with the foregoing opinion, for adjusting DALs and DALt rates to reflect changes in the number of customers for those services and for compensating providers of directory listings in the event revenues from DALs, DALt, or DPLs turn out significantly to exceed costs. Any party wishing to comment on the proposal should do so by submitting 10 copies of its comments to the Acting Secretary within 20 days of the date the proposal is filed.

3. For good cause shown, newspaper publication of the foregoing tariff amendments is waived.

4. This proceeding is continued.

By the Commission,

(SIGNED)

DEBRA RENNER  
Acting Secretary

**Directory Assistance Listing Transfer (DALT) Rates**

<u>Ln</u>	<u>Item</u>	<u>Source</u>	<u>Amount</u>
<b>A. <u>Full Load Rate - Electronic File Transfer</u></b>			
1	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 1, Col C, Ln 6	\$28,678
2	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 2 X Ln	<u>13,779</u>
3	Proposed Rate Without Contribution	Line 1 - Line 2	14,899
4	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 4, Col C, Ln 3	2,357
5	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 4, Col C, Ln 6 - Ln	<u>230</u>
6	Direct Cost Per Customer per Bell Atlantic	Line 3 - Line 4 - Line 5	12,311
7	Reflect Joint & Common CCF on	See Note A	<u>1,153</u>
8	Allowed Rate per Customer	Line 6 - Line 7	<b>\$13,464</b>
<b>B. <u>Full Load Rate - Cartridges</u></b>			
9	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 1, Col C, Ln 12	\$28,678
10	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 8 X Ln	<u>13,736</u>
11	Proposed Rate Without Contribution	Line 9 - Line 10	14,942
12	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 4, Col C, Ln 9	2,364
13	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 4, Col C, Ln 12 - Ln	<u>231</u>
14	Direct Cost Per Customer per Bell Atlantic	Line 11 - Line 12 - Line 13	12,347
15	Reflect Joint & Common CCF on	See Note A	<u>1,153</u>
16	Allowed Rate per Customer	Line 14 - Line 15	<b>\$13,500</b>
<b>C. <u>Daily Updates - Per Month</u></b>			
17	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 1, Col C, Ln 18	\$5,347
18	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 14 X	<u>1,023</u>
19	Proposed Rate Without Contribution	Line 17 - Line 18	4,324
20	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 4, Col C, Ln 15	684
21	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 4, Col C, Ln 18 - Ln	<u>67</u>
22	Direct Cost Per Customer per Bell Atlantic	Line 19 - Line 20 - Line 21	3,573
23	Reflect Joint & Common CCF on	See Note A	<u>64</u>
24	Allowed Rate per Customer	Line 22 - Line 23	<b>\$3,637</b>

**Note A - Commission Adjustment to Reflect Joint & Common Costs Applied to Investments**

This adjustment was calculated by:

- 1) Replacing the carrying charge factor (CCF) for computers on Bell Atlantic's Workpaper Part A, Line 4 (.2449) with the CCF for computers approved by the Commission in Phase 2 as shown in C of the Phase 2 Recommended Decision issued on October 2, 1997 (.2994).
- 2) Replacing the CCF for buildings on Bell Atlantic's Workpaper Part A, Page 12, Line 10 (.2224) with the CCF for buildings approved by the Commission in Phase 1 as shown in Appendix C Schedule 2, Page 3 of Opinion 97-2 (.2324).

## Directory Assistance Listing Service (DALs) Rates

<u>Ln</u>	<u>Item</u>	<u>Source</u>	<u>Amount</u>
<b>A. <u>Full Load Rate - Electronic File</u></b>			
1	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 1, Col C, Ln 24	\$28,678
2	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 20 X	<u>13,779</u>
3	Proposed Rate Without Contribution	Line 1 - Line 2	14,899
4	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 4, Col C, Ln 21	2,357
5	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 4, Col C, Ln 24 - Ln	<u>230</u>
6	Direct Cost Per Customer per Bell Atlantic	Line 3 - Line 4 - Line 5	12,311
7	Reflect Joint & Common CCF on	See Appendix A, Page 1, Note A	<u>1,153</u>
8	Allowed Rate per Customer	Line 6 - Line 7	<b>\$13,464</b>
<b>B. <u>Full Load Rate - Cartridges</u></b>			
9	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 1, Col C, Ln 30	\$28,678
10	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 26 X	<u>13,736</u>
11	Proposed Rate Without Contribution	Line 9 - Line 10	14,942
12	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 4, Col C, Ln 27	2,364
13	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 4, Col C, Ln 30 - Ln	<u>231</u>
14	Direct Cost Per Customer per Bell Atlantic	Line 11 - Line 12 - Line 13	12,347
15	Reflect Joint & Common CCF on	See Appendix A, Page 1, Note A	<u>1,153</u>
16	Allowed Rate per Customer	Line 14 - Line 15	<b>\$13,500</b>
<b>C. <u>Daily Updates - Per Month</u></b>			
17	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 1, Col C, Ln 36	\$5,229
18	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 32 X	<u>982</u>
19	Proposed Rate Without Contribution	Line 17 - Line 18	4,247
20	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 4, Col C, Ln 33	672
21	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 4, Col C, Ln 36 - Ln	<u>66</u>
22	Direct Cost Per Customer per Bell Atlantic	Line 19 - Line 20 - Line 21	3,509
23	Reflect Joint & Common CCF on	See Appendix A, Page 1, Note A	<u>64</u>
24	Allowed Rate per Customer	Line 22 - Line 23	<b>\$3,573</b>

**Directory Publishers Listing Service (DPLS) Rates**

<u>Ln</u>	<u>Item</u>	<u>Source</u>	<u>Amount</u>
<b>A. <u>DPLS Cost Per Listing - One Time</u></b>			
1	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 2, Col C, Ln 3	\$0.2000
2	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 2	<u>0.1795</u>
3	Proposed Rate Without Contribution	Line 1 - Line 2	0.0205
4	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 5, Col C, Ln 3	0.0032
5	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 5, Col C, Ln 6 - Ln	<u>0.0003</u>
6	Direct Cost Per Customer per Bell Atlantic	Line 3 - Line 4 - Line 5	0.0169
7	Increase to reflect FCC presumptive		<u>0.0231</u>
8	Allowed Rate per Customer	Line 6 + Line 7	<b>\$0.0400</b>
<b>B. <u>Daily Updates - Per Listing</u></b>			
9	Bell Atlantic Proposed Rate per Customer	Exh 32, Part C, Pg 2, Col C, Ln 6,	\$0.2000
10	Eliminate Contribution	Exh 32, Part C, Pg 1, Col C, Ln 32 X	<u>0.1781</u>
11	Proposed Rate Without Contribution	Line 9 - Line 10	0.0219
12	Eliminate Joint & Common Expense Factor	Exh 32, Part A, Pg 5, Col C, Ln 33	0.0035
13	Eliminate Gross Revenue Loading	Exh 32, Part A, Pg 4, Col C, Ln 36 - Ln	<u>0.0003</u>
14	Direct Cost Per Customer per Bell Atlantic	Line 19 - Line 20 - Line 21	0.0181
15	Increase to reflect FCC presumptive		<u>0.0419</u>
16	Allowed Rate per Customer	Line 15 + Line 16	<b>\$0.0600</b>

## Frontier Telephone of Rochester

<u>Ln #</u>	<u>Item</u>	<u>Source</u>	<u>Amount</u>
<b><u>I. Directory Assistance Listing Transfer (DALT) Rates</u></b>			
<b><u>Annual Fixed Rate for Full Data Base Extract</u></b>			
1	FTR Proposed Rate per Customer	Exh 11, Sch 2, Pg. 1, Line 8	\$69,183
2	Adjustment to reflect appropriate CCF's	Note A	<u>12,071</u>
3	Rate Allowed on Temporary Basis	Line 1 - Line 2	<u>\$57,112</u>
<b><u>Incremental Rate for Database Updates</u></b>			
4	Monthly Rate Proposed	Exh 11, Sch 2, Pg. 1, Line 23	<u>\$2,075</u>
5	Current Volumes	1,750 X 20 business days	<u>35,000</u>
6	Proposed Rate per Listing	Line 4 / Line 5	<u>\$0.06</u>
7	Rate Allowed per Listing on Temporary Basis	Line 6	<u>\$0.06</u>
<b><u>II. Directory Publishers Listing Service</u></b>			
8	FTR Proposed Rate per Listing for 350,000*	Exh 11, Sch 1, Pg. 3, Line 25	<u>\$0.27</u>
9	Allowed Rate Per Listing for Initial Transfer	FCC Presumptive Rate	<u>\$0.04</u>
10	Allowed Rate Per Listing for Updates	FCC Presumptive Rate	<u>\$0.06</u>

\* FTR's proposed rates based on fixed costs of costs of \$872 per order and variable costs of \$.264 per listing. Exhibit 11, Schedule 1 provided a chart of what the applicable rate would be for various quantities of listings sold.

**Note A - Adjustment to reflect appropriate Carrying Charge Factors (CCF)**

This adjustment was determined by substituting the following CCF's for those proposed by FTR on Exhibit 11, Schedule 2 Page 1:

11	Depreciation	12.50%
12	Rate of Return	7.92%
13	Corporate Operations Expense	2.12%

**C**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of )  
AMERITECH MICHIGAN for approval of )  
cost studies and resolution of disputed issues )  
related to certain UNE offerings. )  
\_\_\_\_\_ )

Case No. U-12540

At the March 7, 2001 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

**Background**

On August 9, 2000, Ameritech Michigan filed an application seeking approval of cost studies related to several unbundled network element (UNE) offerings. Ameritech Michigan also asked the Commission to resolve certain issues that had not been resolved in the collaborative sessions conducted in the context of Case No. U-12320.<sup>1</sup> Ameritech Michigan represented that its proposed UNE offerings satisfy the requirements of the Federal Communications Commission's (FCC) Third Report and Order and Fourth Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC

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<sup>1</sup>Case No. U-12320 is the docket established to examine Ameritech Michigan's compliance with Section 271 of the federal Telecommunications Act of 1996, 47 USC 271, which specifies the conditions for Ameritech Michigan to obtain authority to provide in-region interLATA service.

Docket No. 96-98, FCC 99-238 (released November 5, 1999) (UNE Remand Order) and the Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, In the matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 99-355 (released December 9, 1999) (Line Sharing Order).

On August 18, 2000, Administrative Law Judge (ALJ) Barbara A. Stump presided over a prehearing conference and granted petitions for leave to intervene filed by Attorney General Jennifer M. Granholm (Attorney General); the Competitive Local Exchange Carriers Association of Michigan; Rhythms Links Inc. (Rhythms); Sprint Communications Company L.P. (Sprint); CoreComm Michigan, Inc., DSLnet Communications, LLC, and Vectris Telecom, Inc. (collectively, the Coalition); Long Distance of Michigan, Inc. (LDMI); MCI WorldCom Communications, Inc., Brooks Fiber Communications of Michigan, Inc., and MCImetro Access Transmission Services, Inc. (collectively, WorldCom); Covad Communications Company (Covad); New Edge Network, Inc. (New Edge); Birch Telecom of the Great Lakes, Inc. (Birch); AT&T Communications of Michigan, Inc., and TCG Detroit (collectively, AT&T); KMC Telecom II, Inc., and KMC Telecom III, Inc.; NextLink Michigan, Inc.; JATO Operating Two Corp.; Z-Tel Communications, Inc.; and Focal Communications Corporation of Michigan. The Commission Staff (Staff) also participated in the case.

Cross-examination of the witnesses occurred on October 23, 24, 26, and 27, 2000. The record consists of 2,127 pages of transcript and 54 exhibits. Ameritech Michigan, the Staff, WorldCom, the Coalition, AT&T, and Rhythms filed briefs on November 15, 2000. Ameritech Michigan, the Attorney General, WorldCom, AT&T, and Rhythms filed reply briefs on November 29, 2000.

Because the Commission agreed to read the record, the ALJ did not prepare a proposal for decision.

### Line Sharing

Line sharing is an arrangement in which Ameritech Michigan, as the incumbent local exchange carrier (ILEC), uses the low-frequency portion of the loop to provide voice service to a customer while a data competitive local exchange carrier (data CLEC) uses the high-frequency portion of the loop to provide high-speed data services such as digital subscriber line (DSL) service to the same customer. Ameritech Michigan concedes that federal law requires it to permit line sharing over all-copper loops. On the other hand, Ameritech Michigan takes the position that it is not required to provide line sharing over loops that include fiber facilities. The issue is important primarily with regard to facilities installed as part of Project Pronto, which involves the installation by SBC Communications, Inc. (SBC), Ameritech Michigan's parent corporation, of 25,000 neighborhood gateways with fiber-based next generation digital loop carrier (DLC) technology. Older DLC technologies, which also use fiber facilities, are often not compatible with DSL service.

The Commission concludes that Ameritech Michigan must offer line sharing even if a portion of the loop uses fiber facilities unless it is not technically feasible to do so. A recent FCC order clarifies "that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop . . . ." In the matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 01-26 (released January 19, 2001)

(Reconsideration Order), para 10.<sup>2</sup> The FCC's rules do not distinguish between fiber and nonfiber facilities in specifying an ILEC's obligation to unbundle. Similarly, access to a copper loop for purposes of line sharing is required at any technically feasible point. Therefore, ILECs are obligated to offer line sharing even when a portion of the loop is fiber and they must enable CLECs to transmit data traffic from the copper facility to the central office. In order to do this, the FCC has indicated in its recent Reconsideration Order that the ILEC can fulfill its obligation "at a minimum, by leasing access to the dark fiber element or by leasing access to the subloop element."

Reconsideration Order, para 12. In addition, the FCC has adopted Ameritech Michigan's commitment to provide other alternatives to CLECs in association with the Project Pronto architecture. In the matter of Ameritech Corp., Transferror and SBC Communications, Inc., Transferee For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, FCC 00-336 (released September 8, 2000) (Project Pronto Order).

Specifically, Ameritech Michigan has committed to "provide all carriers (including its Advanced Services Affiliate) access to its Broadband Offering, alone and in combination with a voice offering . . . priced in accordance with the methodology applicable to unbundled network elements under sections 251 and 252 [of the federal Telecommunications Act of 1996 (FTA)]." Project Pronto Order, para 6. The FCC found that, in this manner, CLECs will be provided "with an

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<sup>2</sup>On February 2, 2001, Rhythms made a filing citing the FCC's order as further support for its positions in this case. On February 20, 2001, Ameritech Michigan filed a response asserting that its position is fully consistent with the requirements of the FCC's order. On February 23, 2001, Rhythms filed a response to Ameritech Michigan. On February 27, 2001, WorldCom filed a response to Ameritech Michigan. The Commission was already aware of the FCC's order, and nothing contained in the filings is necessary to resolving the issues in this case.

immediate opportunity to compete against SBC in the mass market.” Project Pronto Order, para 23.

As a group, the CLECs contend that Ameritech Michigan must offer the components of the Project Pronto architecture as separate UNEs and must offer those UNEs to support line sharing. In particular, the CLECs argue that the limitations on Ameritech Michigan’s broadband and combined voice and data service offerings will limit their ability to deploy the alternative DSL architectures that some have chosen to deploy. WorldCom argues that the Commission should require Ameritech Michigan to provide unbundled access to the entire loop, including the fiber subloop. The Coalition says that the alternatives to unbundled access to Project Pronto facilities are onerous and not cost-effective and that access to the facilities on a wholesale basis would not be the equivalent of access on an unbundled basis.

At this time, the Commission will not require the unbundling of Project Pronto. The Commission concludes that Ameritech Michigan’s broadband and combined voice and data service offerings will provide immediate opportunities for the provision of DSL services by Ameritech Michigan’s separate affiliate and CLECs alike. The Commission will require that these offerings be made available pursuant to tariff and interconnection agreement amendments, to be approved pursuant to Section 252 of the FTA, 47 USC 252, and priced according to the UNE methodology. Such offerings must also be made available as part of Ameritech Michigan’s unbundled network element platform (UNE-P) offering as well. The Commission notes that Ameritech Michigan is also obligated to transition a Project Pronto customer back to existing copper pairs if a CLEC “wins” that customer and desires to offer service using other types of DSL service. Project Pronto Order, para 40. The Commission additionally recognizes that the FCC is further investigating issues related to access to the high frequency portion of the loop when an ILEC has deployed fiber

facilities. Reconsideration Order, para 55. It is also investigating issues related to collocation and access to remote terminals. In the matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 00-297 (released August 10, 2000). Further unbundling obligations for Ameritech Michigan may result from either of these proceedings. Similarly, this Commission may review these matters at any time to determine whether Ameritech Michigan's obligations in this regard should be expanded. For now, the Commission concludes that the obligations imposed by this order will provide an immediate opportunity to move forward in the provisioning of DSL services.

#### Line Splitting

Line splitting, as opposed to line sharing, is an arrangement in which a CLEC, rather than Ameritech Michigan, provides voice service over the low-frequency portion of the loop while a data CLEC (which may also be the voice service CLEC) provides data services over the high-frequency portion of the loop. Ameritech Michigan concedes that CLECs may engage in line splitting when they purchase an unbundled loop (if they do all of the necessary work without its assistance), but asserts that it is not required to permit or facilitate line splitting over the UNE-P.

Ameritech Michigan justifies its refusal to permit line splitting over the UNE-P by arguing that the FCC does not currently require line splitting, and cites paragraphs 72 and 73 of the Line Sharing Order in support. It says that the FCC has also been clear that it need not permit line splitting by CLECs purchasing the UNE-P, a view that it says was reaffirmed in the FCC's order addressing SBC's request to provide long distance service in Texas. In the matter of the application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern

Bell Communications Services, Inc., d/b/a/ Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, FCC 00-238 (released June 30, 2000) (Texas 271 Order), para 323-325. It says that this prohibition on line splitting is necessary to avoid improperly burdening it with coordinating maintenance activities for multiple carriers. It says that the CLECs can purchase the UNEs needed to provide service to their customers but must combine the necessary splitter and digital subscriber line access multiplexer (DSLAM) and obtain any needed collocation services.

The Staff asserts that line splitting is a practical way to introduce effective competition by eliminating unnecessary costs and burdens, such as collocation services or a second unbundled loop, to accomplish what is technically feasible with line splitting over the UNE-P without collocation.

The Commission concludes that Ameritech Michigan must permit line splitting over the UNE-P, at least when the CLECs provide the splitter, as the FCC has now ruled. Reconsideration Order, para 16, 18, and 19. Likewise, based on the discussion in the previous section, the Commission concludes that Ameritech Michigan must permit line splitting even when the loop includes fiber facilities.

### Splitters

Both line sharing and line splitting require a device called a splitter to divide the low- and high-frequency portions of the loop. Ameritech Michigan asserts that the FCC has ruled that it cannot be required to provide the splitter, although it has offered, in the context of line sharing, to provide the splitter if requested to do so. When it does so, it proposes to provision splitters on a line-at-a-time basis because it says that the shelf-at-a-time alternative would exhaust the capacity

of its main distribution frames (MDFs). It also says that it will provide the cross-connect between the MDF and the CLEC collocation and will modify its operations support systems (OSS) as necessary to permit line sharing.

Rhythms says that a full array of splitter options should be available, including Ameritech Michigan-owned and CLEC-owned splitters on both a line-at-a-time and shelf-at-a-time basis. It says that the record does not support Ameritech Michigan's fear that the shelf-at-a-time option will exhaust the capacity of the MDFs, particularly because integrated DLC technology and Project Pronto should free up space on the MDFs.

The Coalition says that CLECs should have a choice of configurations: (1) an ILEC-owned splitter located on the MDF, (2) an ILEC- or CLEC-owned splitter located as close to the DS0 termination or MDF as possible, and (3) a CLEC-owned splitter in the CLEC's physical collocation arrangement. It says that the Commission should require Ameritech Michigan to offer splitters on a shelf-at-a-time basis as well as a line-at-a time basis. The Coalition concedes that the Texas 271 Order did not require ILECs to provide the splitters, but, citing paragraph 328 of the order, argues that the decision does not reflect a decision that an ILEC could not be obligated to do so. Furthermore, it says that line splitting is legally indistinguishable from line sharing and therefore, because Ameritech Michigan has agreed to provide splitters for line sharing, it must do the same for line splitting.

AT&T says that Ameritech Michigan should be required to offer splitters on a line-at-a-time basis, as it now does for data CLECs, without requiring collocation. It says that this reflects good engineering practices while minimizing cost. AT&T says that the addition of a splitter is analogous to adding or removing other loop electronics, a service that ILECs routinely provide and

are legally obligated to provide. It agrees with the Coalition that it is discriminatory for Ameritech Michigan to provide the splitter for line sharing while not doing so for line splitting.

WorldCom says that the Commission should require Ameritech Michigan to provide splitters on a line-at-a-time basis rather than relying on the company's voluntary offer to do so and should require it to install them. It says that a UNE-P configuration with the added electronics necessary for line splitting remains a UNE-P configuration and that there is no technical reason why CLECs providing voice service through the use of the UNE-P need any different technical setup than Ameritech Michigan uses for line sharing. It asks the Commission to make clear that Ameritech Michigan may not break apart combinations of network elements when customers migrate from line sharing (with Ameritech Michigan as the voice service provider) to line splitting (with a CLEC as the voice service provider) and may not require the CLEC to use collocation to provide service.

The Staff says that if line sharing and line splitting are to be effective, Ameritech Michigan must be required to provide splitters at a price that is tariffed and set by the Commission. The Staff agrees with the CLECs that splitters should be considered a part of the loop or a loop enhancement, but does not agree that Ameritech Michigan should be required to buy the splitter designated by the CLEC. The Staff recommends that the Commission allow Ameritech Michigan to provide splitters as it sees fit until a CLEC brings a dispute to the Commission, although the Staff also recommends that the CLECs should be permitted to purchase the splitters of their choice. Because splitters might not be placed in a collocation space, the Staff says that Ameritech Michigan should be required to install and maintain all splitters located outside collocation spaces, and the Staff recommends that Ameritech Michigan be required to place all splitters in the most

convenient space available near the MDF. The Staff supports, at least for now, Ameritech Michigan's proposal to provide splitters on a line-at-a-time basis.

The Commission concludes that Ameritech Michigan should be required to offer splitters as it has offered to do, although it should be required to do so pursuant to tariff and for all line sharing arrangements (i.e., even if fiber facilities are present). The Commission agrees with the Staff that splitters should be provided on a line-at-a-time basis and that if a CLEC wants a splitter other than those offered by Ameritech Michigan, it should have the option of purchasing the splitter and having Ameritech Michigan install it. However, the cost of installing and maintaining shall be paid by the CLEC.

The Commission also agrees with the Staff and the CLECs that splitters should be placed as near the MDF as possible, which is reflected in the pricing discussed below. The Commission does not agree with the CLECs that Ameritech Michigan should be required to provide splitters when it is not the voice service provider. This conclusion is consistent with the FCC's view. Texas 271 Order, para 323-329; Line Sharing Order, para 146. The CLECs have the ability to provide splitters in those circumstances and must do so. The Commission recognizes that the FCC is further investigating issues related to whether the splitter should be considered part of the loop, which may change Ameritech Michigan's obligations in this regard.

#### Splitter-Related Costs

Ameritech Michigan proposes a recurring charge of \$1.09 per month for a splitter and \$0.46 per month for a cross-connect. It proposes nonrecurring charges for a cross-connect installation and disconnection of an ILEC-owned splitter totaling approximately \$70.

The Coalition recommends a recurring charge of \$0.89 for line-at-a-time splitters owned by Ameritech Michigan. The Coalition says that the recurring cross-connect charge should be zero and the nonrecurring cross-connect charge should be \$10. It says that Ameritech Michigan's recurring cross-connect charge is based on an inefficient network design and that the nonrecurring charge is also based on inefficient operations and double counting, as well as being inconsistent with the \$10 rate that it has offered Covad.

Rhythms says that Ameritech Michigan's proposed cross-connect charges are inflated and unreasonable. It says that the charges should be based on placing splitters in the most efficient location. Instead, it says, Ameritech Michigan proposes a location that increases costs to the CLECs. It argues that if Ameritech Michigan requires the inefficient placement of splitters, Ameritech Michigan should pay the additional cost of its chosen network design. It argues the cost studies also reflect other improper assumptions that increase the costs.

The Commission approves a rate of \$0.89 for splitters that Ameritech Michigan provides on a line-at-a-time basis. The Commission rejects Ameritech Michigan's proposed costs for cross-connects. The costs must be based on an efficient location for the splitters, regardless of where Ameritech Michigan chooses to place the splitters. The FCC expects that the cross-connects will be within the MDF or close enough that the cost of the cross-connect will not be much higher. Line Sharing Order, para 145. The recurring cross-connect charge for UNEs and the UNE-P is \$0.13 per month. The Commission will therefore approve a rate for the line sharing cross-connect of up to \$0.15. Ameritech Michigan has not offered any reasonable basis for concluding that a nonrecurring charge of approximately \$70 is appropriate when it has agreed to charge Covad \$10 for the installation and disconnection of a cross-connect. 11 Tr. 841. The Commission will therefore approve a nonrecurring charge of \$10 for the cross-connect.

### Price for the High-Frequency Portion of the Loop

Ameritech Michigan proposes that the monthly rate for line sharing be 50% of the monthly recurring unbundled loop rate, which it says is consistent with paragraph 138 of the Line Sharing Order. The resulting rates would be \$5.13, \$5.65, and \$7.09 for access areas A, B, and C, respectively. It says that this division of the rate is reasonable because virtually all loop costs are common when the line is used for both voice and data services, and it is therefore logical to allocate 50% of the cost to each use.

The Staff sees some merit in allocating the cost as Ameritech Michigan proposes because, if a CLEC were to purchase a UNE loop capable of providing both voice and data services, it would expect to incur some cost for the loop. On the other hand, the Staff says that the Commission has decided in previous cases (e.g., Cases Nos. U-11831 and U-11996) that loop costs should not be specifically allocated to services and instead should be offset by revenues from services that use the loop. The Staff notes that Ameritech Michigan has indicated that its current rates fully recover its costs. The Staff recommends that the Commission follow precedent and not allocate any portion of the loop cost to the high-frequency use of the loop. The Staff suggests that there are two options: First, the Commission could set the price for the high-frequency portion at zero. Second, the Commission could allow Ameritech Michigan to charge the data CLECs up to half the cost of the loop if Ameritech Michigan will credit the voice customer with an equal amount.

The Attorney General is not opposed to the principle of allocating the cost of the loop between the voice and data uses. She is opposed to permitting Ameritech Michigan to continue recovering the full cost of the loop through basic local exchange rates while recovering another 50% from the CLEC that uses the high-frequency portion of the loop.

Rhythms and the Coalition say that the FCC requires that the total element long run incremental cost methodology be extended to line sharing. Because the incremental cost of the high-frequency portion of the loop is zero, they argue that the rate must be zero. Rhythms says that a zero rate achieves the proper result for customers without the needless administrative cost and delay of the Staff's credit proposal. The Coalition says that a non-zero rate would subsidize Ameritech Michigan's voice service as well as being discriminatory.

Ameritech Michigan responds that the Staff's credit proposal would result in basic local exchange service being priced below total service long run incremental cost (TSLRIC), in violation of the MTA. As to the zero rate proposal, Ameritech Michigan counters that the CLECs would surely not agree to allocate all of the cost of the loop to the high-frequency use of the loop and none to the voice service. It also says that it is not competitively neutral to price the high-frequency portion of the loop at zero because no CLEC would be able to match that rate when trying to find a data CLEC to use the same line.

The Commission concludes that it must reject Ameritech Michigan's proposal to price the use of the high-frequency portion of the loop at 50% of the unbundled loop rate. Although all or virtually all of the costs are common, as Ameritech Michigan says, it does not follow that the cost should be allocated evenly between the two uses of the loop. The Commission has previously rejected the argument that loop costs should be allocated to specific uses of the loop. Instead, it has taken the view that loop costs should be offset by revenues from the services that use the loop. The Commission finds that the Staff's proposal is reasonable. Ameritech Michigan shall set the recurring charge for the high frequency portion of the loop at zero or may set it at up to one-half of the unbundled loop rate if it credits an equal amount to line sharing customers (i.e., if Ameritech Michigan charges a data CLEC \$5.00, Ameritech Michigan must credit the voice customer \$5.00).

The option that it selects must apply to all line sharing customers, and the second option, if chosen, must be implemented without an allowance for the minimal administrative costs. Ameritech Michigan shall indicate, in the tariff filing required by this order, which option it elects.

#### Loop Qualification

Loop qualification is the process of obtaining information about the characteristics of a loop to determine whether the loop can be used to provide high speed data services. Ameritech Michigan has identified 45 loop qualification elements that it will provide to CLECs. That information is usually available electronically, and Ameritech Michigan proposes to charge \$0.10 for each electronic database "dip." If the information is not available electronically or the CLEC wants information beyond the 45 elements, Ameritech Michigan proposes to charge \$141.38 to cover the cost of manually looking up the information or conducting an on-site visit to collect the information.

The Staff says that, essentially, Ameritech Michigan proposes to charge CLECs for the costs of updating its electronic files. The Staff argues that Ameritech Michigan should be required to keep accurate information, at its own cost, and that the CLECs should be required to pay only the charge for access to the electronic database. The Staff also recommends that if inaccurate information is provided, a refund be made, with a waiver of any cancellation or change service charges necessitated by the incorrect information. The Staff does not object to Ameritech Michigan's proposal to charge for loop qualification information beyond the 45 elements.

Rhythms says that Ameritech Michigan should be keeping its loop qualification information in its databases and the cost to retrieve that information should be zero or nearly so. It says that Ameritech Michigan should not be rewarded for failing to keep the information in that manner and, in any event, has failed to justify the costs it proposes. It further argues that Ameritech

Michigan must provide direct access to all information to which any of its employees have access, whether in databases or back-end systems or records. The Coalition argues that it is not consistent with proper pricing principles to allow any recovery of loop qualification costs.

The Commission concludes that Ameritech Michigan should not be permitted to impose more than the nominal dip charge for the 45 elements that Ameritech Michigan has identified as relevant to loop qualification. The TSLRIC studies are, or should be, based on a network for which such information is available electronically. The CLECs should not have to pay Ameritech Michigan to update or correct its records or to convert the data to an electronic format. The CLECs should also not be penalized if Ameritech Michigan provides inaccurate information. The Commission therefore adopts the Staff's proposed remedy. Finally, if a CLEC requests additional information or requests a manual loop qualification, it must pay the cost of its request.

#### Loop Conditioning

Loop conditioning is the process of removing from existing loop facilities devices such as bridge taps and load coils that impair or prevent the provisioning of high speed data services on the loop. Ameritech Michigan has agreed not to charge for any conditioning of loops under 12,000 feet in length. For longer loops, it proposes a variety of nonrecurring charges depending on the device being removed and the length of the loop, but the charges to remove a bridge tap and a load coil, for example, total nearly \$750 for a single loop. Ameritech Michigan says that the UNE Remand Order, at paragraph 193, authorizes it to recover the cost of conditioning lines.

The Staff says that Ameritech Michigan's network benefits from the conditioning of loops. Consequently, the Staff concludes that Ameritech Michigan is improperly trying to force the CLECs to pay for adding value to Ameritech Michigan's network. The Staff notes that, in the case

of integrated services digital network (ISDN) services, Ameritech Michigan does not require customers to pay a nonrecurring charge for line conditioning. 13 Tr. 1459. Instead, the cost of line conditioning is reflected in the recurring charge. The Staff says that if Ameritech Michigan converted the nonrecurring charge for loop conditioning for line sharing into a recurring charge, such as it does for ISDN, and spread the cost over all lines that will be shared or split during a reasonable period of time, the resulting increase would be minimal.

The Staff also argues that Ameritech Michigan's approved TSLRIC studies reflect the cost of loops that are already conditioned. 12 Tr. 1123. The Staff acknowledges that the FCC has said that the CLECs must compensate the ILECs for the costs of conditioning, but maintains that, with prices for loops at or above TSLRIC, the CLECs are already compensating Ameritech Michigan for loop conditioning.

AT&T and WorldCom agree that Ameritech Michigan should not be permitted to impose a charge for line conditioning. They say that Ameritech Michigan now seeks to charge for activities that Ameritech Michigan has been or should have been performing for the past 20 years and to charge for removing impediments that should never have been installed. WorldCom adds that, in Case No. U-11735, the Commission required Ameritech Michigan to establish loop conditioning charges in Case No. U-11831, which the company did not do, and therefore should not be permitted to do now.

Rhythms argues that Ameritech Michigan's conditioning charges inappropriately assume a different network architecture than that used to establish the recurring charges. It says that Ameritech Michigan is required to maintain its physical plant in conformity with generally accepted industry standards, which it says Ameritech Michigan has not done for years. It also argues that removing impediments and transitioning older plant to more current design standards is

part of ongoing plant maintenance and is included as such in the recurring price of the loop. The Coalition agrees.

The Attorney General says that it is unreasonable and unfair to allow Ameritech Michigan to impose a charge for conditioning that adds value to the loops that Ameritech Michigan owns. Further, she argues that the TSLRIC studies are based on DSL-capable loops, which means that the costs of loop conditioning are already being recovered.

Ameritech Michigan responds that the devices it removes during loop conditioning were previously installed to improve voice service and were fully consistent with engineering standards when installed. It denies that their presence in the network can be viewed as a "defect" that must be remedied. It also disputes the view that conditioning improves the network. Finally, it says that its cost studies do not reflect the costs of conditioning.

The Commission concludes that Ameritech Michigan should be permitted to impose loop conditioning charges, although its proposed charges are excessive. As the FCC has ruled, ILECs are entitled to recover the costs associated with loop conditioning. Therefore, Ameritech Michigan is entitled to recover the costs of loop conditioning, but the cost studies that it offered to support those charges assume excessive labor times and assume that lines are conditioned one at a time rather than in binder groups of 25 lines. Ameritech Michigan shall use the time estimates offered by Rhythms' witness and shall assume that conditioning is done for 25 pairs at a time (rather than the 50 that Rhythms' witness assumed). Those modifications adjust for Ameritech Michigan's failure to account for the work that should be done as a part of routine maintenance and for the economies of doing loop conditioning on a bulk basis. It shall use the cost inputs, such as labor rates, approved in Case No. U-11831.

### Access to OSS

WorldCom says that the Commission must require Ameritech Michigan to modify its OSS to accommodate line splitting and require it to process manual orders until the system is ready.

Rhythms says that the CLECs should have direct electronic access to the OSS. AT&T and the Coalition agree.

The Commission agrees with the CLECs that Ameritech Michigan must make the OSS modifications needed to support line sharing and line splitting. Reconsideration Order, para 20. It also agrees that until that system is fully operational, Ameritech Michigan must process the orders manually.

Ameritech Michigan proposes, as consistent with paragraph 144 of the Line Sharing Order, a recurring rate of \$0.77 per line to recover the OSS development costs, with that rate to be applied for three years or until it recovers the costs.

Rhythms argues that the Commission should not approve any rate at this time because Ameritech Michigan has failed to provide complete documentation, including a showing of the extent to which the OSS changes benefit its own operations. It also disputes Ameritech Michigan's assumed usage volumes and three-year recovery period. The Coalition agrees.

The Commission concludes that it should not approve the proposed OSS development charge. The amortization period is too short. Ameritech Michigan shall use six years as was used in Case No. U-11280, a prior TSLRIC proceeding. See, July 14, 1997 order, Case No. U-11280, p. 21. Further, the assumed number of lines over which Ameritech Michigan proposes to spread the cost is not adequately supported. Ameritech Michigan shall use its most recent projection for line sharing, including the projection for its affiliate, Ameritech Advanced Data Services, and shall add a reasonable projection for line splitting that is now required.

### Intervals for Provisioning Line Sharing

Rhythms, the Coalition, and AT&T propose various intervals for Ameritech Michigan to complete tasks associated with line sharing. Ameritech Michigan responds that these issues are pending in the collaborative process in Cases Nos. U-11830 and U-12320 and should not be addressed in this docket.

The Commission notes that a number of performance measures related to line sharing were proposed by the collaborative group and adopted by the Commission in the February 22, 2001 order in Case No. U-11830. The Commission agrees that the parties should address further issues in the collaborative process.

### Dark Fiber

Dark fiber is fiber not currently in use that does not have electronics connected to it. CLECs are entitled to obtain the use of that fiber to meet their needs. The Staff says that Ameritech Michigan's proposal as revised during the course of this case is reasonable. The Staff disagrees with the CLECs' position that they should be able to dictate where Ameritech Michigan places additional fiber routes. Ameritech Michigan has indicated that it will consider CLEC input in making its decision on where to place fiber. The Staff believes that is enough.

The Coalition argues that the price of interoffice and loop dark fiber should be computed without capacity-related costs to reflect how dark fiber is provided to the CLECs.

The Commission agrees with the Staff that Ameritech Michigan's proposal is reasonable, except with respect to the recapture of dark fiber and the price. The terms and conditions for the recapture of dark fiber from CLECs are addressed by the parties' stipulation filed on January 12,

2001. The Commission finds that the stipulation is reasonable and should be approved. The price of dark fiber should be computed without capacity-related costs, as the Coalition argues.

### Subloop Unbundling

The Staff says that Ameritech Michigan's nonrecurring cost of \$139.73 for subloop unbundling installation is unreasonably high compared to the approved rates for other loops. The Staff notes that the Commission has been very critical of Ameritech Michigan's approach to determining nonrecurring costs in both of Ameritech Michigan's TSLRIC proceedings, Cases Nos. U-11280 and U-11831. The Staff recommends that Ameritech Michigan's nonrecurring cost for subloops, when added together to make a total loop, should not be permitted to be more than 10% higher than the nonrecurring charges for a total loop. Also, consistent with the Staff's support of Rhythms' proposal regarding fiber loops, the Staff recommends that DSL-compatible loops should take into account fiber and copper loops instead of the more expensive copper loops. Rhythms and the Coalition agree that the cost study is flawed.

The Commission agrees with the Staff that Ameritech Michigan has not computed the subloop costs correctly. There is no reasonable basis for concluding that the costs for unbundled subloops should be so much higher than for other loops. In total, the nonrecurring charges for subloops should not exceed the \$17.82 installation charge for the entire loop.

The Coalition recommends a rate of zero for the service order charge because Ameritech Michigan's rate is unsupported and the service order should be easier to process than the initial loop order.

The Commission approves a rate of \$3.16 for the service order charge, the same as for other loops. There is no apparent reason for the cost to be different when the work should be no different whether the CLEC orders a loop or subloop.

#### Access to Databases

WorldCom says that the Commission should require Ameritech Michigan to allow it full access to the calling name database rather than being restricted to access on a per-dip basis. It wants to download the entire database so that it can actively use it in providing Caller ID with name service.

The Commission agrees with WorldCom that the CLECs should have access to the database for use in providing service to their customers. There is no apparent reason for Ameritech Michigan not to implement that proposal.

#### Redlined Tariffs

WorldCom and Rhythms offered redlined versions of Ameritech Michigan's tariffs to implement their proposed changes. The Staff says that the Commission should consider adopting the intervenors' proposed tariffs only after Ameritech Michigan has been given a chance to revise its tariffs and has failed to make the necessary changes.

WorldCom says that it and Rhythms went to great effort to offer tariff language in this proceeding. It says that Ameritech Michigan did not file testimony to address the redlined tariffs, has not claimed that it could not implement those changes, and did not raise any objections in its brief. It says that adopting its language would be consistent with the "baseball" style arbitration used for interconnection agreements, which would be particularly appropriate because the

November 20, 2000 order in Case No. U-12465 deferred issues from that arbitration proceeding to this case.

The Commission concludes that Ameritech Michigan should not be required to use the tariff language offered by WorldCom and Rhythms. The Commission concludes that it is preferable, if possible, not to have multiple parties drafting tariff language. Therefore, Ameritech Michigan should be given the opportunity to modify its tariffs to comply with this order. If it fails to do so, the Commission will reevaluate its decision not to adopt the tariff language offered by others.

Request to Take Notice of Record from Case No. U-12465

AT&T requests that the Commission take notice of the full record in Case No. U-12465, its interconnection arbitration proceeding with Ameritech Michigan. It says that because the Commission deferred issues from Case No U-12465 to this case, the Commission must approve language for its interconnection agreement as well as language for the tariffs. It says that if the Commission adopts its position in this case, it should require Ameritech Michigan to incorporate all relevant contract language into the interconnection agreement, as recommended by the arbitration panel in Case No. U-12465.

The Commission concludes that incorporating the record from Case No. U-12465 is not necessary to resolve the issues in this case. Furthermore, the Commission has agreed to read the lengthy record in this case, and declines to add to that burden with the incorporation of a lengthy record from another docket, only part of which is relevant. On the other hand, the Commission agrees that it is necessary to resolve the contract language for the interconnection agreement at issue in Case No. U-12465. Therefore, the parties should include language in their interconnection agreement that is consistent with the Commission's findings and conclusions in this order. If the

parties are unable to reach agreement, they should each submit, in Case No. U-12465, their last best offer to the Commission, which will pick the language that most closely reflects the holdings in this case.

### Tariff Changes

The Staff takes the position that Ameritech Michigan should not be entirely free to amend tariffs that the Commission has approved. It says that it is unreasonable to suggest that Ameritech Michigan may file a tariff as required by a Commission order and then submit another tariff the next day that reverses the implementation of the Commission's order. It says that Ameritech Michigan should update its tariffs to conform with the final order entered in this case and must not be allowed to change those tariffs without prior Commission approval.

WorldCom says that the Staff's proposal is an improvement over the status quo, but is not enough to prohibit the uncompetitive consequences of allowing Ameritech Michigan to change tariffs and forcing the CLEC to pursue protracted litigation. It prefers its approach, as shown on Exhibit I-1, which it says allows the carriers to focus on resolving disputes and conducting their business rather than focusing on litigation.

The Commission agrees with the Staff that Ameritech Michigan is not free to reverse a Commission order by filing nonconforming tariffs the day after filing conforming tariffs. The Commission adopts the Staff's proposal. Ameritech Michigan must file tariffs that comply with this order. Once it has done so, it must provide notice to all affected customers 30 days prior to the effective date of any proposed change in the rates, terms, and conditions of the tariffs. Customers may file objections within 14 days. After reviewing the objections, if any, the Commission may begin collaborative discussions, initiate a contested case, issue emergency relief orders, or decide

not to take any action. Nonconforming tariffs will not be effective during the pendency of a collaborative discussion or contested case. The Commission does not find it necessary to go beyond that to adopt WorldCom's proposal.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. Ameritech Michigan's application is approved except as modified by this order.

THEREFORE, IT IS ORDERED that, within 30 days, Ameritech Michigan shall file the revised cost studies and tariffs needed to comply with this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle  
Chairman

( S E A L )

/s/ David A. Svanda  
Commissioner

/s/ Robert B. Nelson  
Commissioner

By its action of March 7, 2001.

/s/ Dorothy Wideman  
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of March 7, 2001.

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Its Executive Secretary

In the matter of the application of )  
AMERITECH MICHIGAN for approval of )  
cost studies and resolution of disputed issues )  
related to certain UNE offerings. )  
\_\_\_\_\_ )

Case No. U-12540

Suggested Minute:

“Adopt and issue order dated March 7, 2001 establishing rates, terms, and conditions for Ameritech Michigan to offer line sharing and line splitting, among other services, as set forth in the order.”

**D**

Docket No. 11901-U

**In Re: Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.**

**ORDER**

**Appearances**

On behalf of MCImetro Access Services, LLC and MCI WorldCom Communications, Inc.

David I. Adelman, Attorney  
Martha McMillin, Attorney  
Dulaney O'Roark, Attorney

On behalf of BellSouth Telecommunications, Inc.

Fred McCallum, Attorney  
Michael Twomey, Attorney  
Meredith Mays, Attorney  
Douglas Lackey, Attorney

On behalf of the Commission Staff

Daniel Walsh, Attorney  
Thomas Bond, Attorney

On behalf of the Consumers' Utility Counsel

Kealin Culbreath, Attorney

## **BY THE COMMISSION:**

On February 15, 2000, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively "MCIW") petitioned the Commission to arbitrate certain unresolved issues in the interconnection negotiations between MCIW and BellSouth Telecommunications, Inc. ("BellSouth or BST").

### **I. JURISDICTION AND PROCEEDINGS**

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

The Commission approved the previous interconnection agreement between the parties for the two-year period beginning March 12, 1997. On June 30, 2000, the Hearing Officer entered a Consent Order scheduling testimony, hearings and briefs in this matter. Hearings were held before the Commission on September 11 and 12, 2000.

On October 20, 2000, the parties filed briefs on the unresolved issues. The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

### **II. FINDINGS AND CONCLUSIONS**

#### **1. Issue 1**

**Should BellSouth be allowed to impose a manual ordering charge when it fails to provide an electronic interface?**

The parties do not appear to dispute BellSouth's obligation under section 251(c)(3) of the Federal Act as it relates to the provision of nondiscriminatory access to requesting carriers. BellSouth, however, contends that parity is not the issue. BellSouth argues that it should be able to impose the manual ordering charge ordered by the Commission for this function in Docket No. 7061-U.

MCIW responds that BellSouth would violate section 251(c)(3) if it charged for manual ordering if it provides electronic access for itself. BellSouth states that MCIW's proposed language fails to distinguish for those instances in which neither BellSouth nor MCIW have electronic access. The Federal Act requires parity. If BellSouth provides electronic interfaces for its retail business, it must also provide the same electronic interfaces for CLECs. The Commission finds that for BellSouth to impose a manual ordering charge for those

circumstances in which BellSouth does not provide an electronic interface for MCIW, but does for itself would violate the Section 251(c)(3) of the Federal Act.

The evidence in the record was insufficient for the Commission to determine whether BellSouth's use of ROS for Ordering Complex Services is electronic. Therefore, BellSouth must only charge manual non-recurring ordering charges if it does not provide an electronic ordering process for its retail representatives. Also, the parties must work together in the Commission's Improvement Task Force ordered in Docket No. 7892-U to increase electronic ordering and flow-through for all orderable services.

## 2. Issue 3

### **Should the resale discount apply to all telecommunication services BellSouth offers to end users regardless of the tariff in which the service is contained?**

The dispute between the parties on this issue relates to whether the resale discount should apply to services that BellSouth includes in its access tariffs. ILECs are required to "offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates." 47 C.F.R. § 51.605(a). The FCC has created an exception from this requirement specifically for exchange access services. The FCC has ruled that exchange access services are not subject to the resale requirements of section 251(c)(4). *First Report and Order, In re: Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, CC Docket No. 96-98 ¶ 873 (August 8, 1996).

BellSouth argues that the resale discount should not apply to such services. (BellSouth Post-Hearing Brief, p. 7). In making this argument, BellSouth relies upon the FCC's ruling and further notes that the FCC acknowledged that end users occasionally purchase access services in reaching its conclusion. *Id.* Accordingly, it is reasonable to conclude that the FCC intended for the exception for access charges to apply regardless of whether some end users purchase access services.

MCIW argues, however, that to provide BellSouth with a blanket exemption for access tariff services would allow BellSouth to shelter services from the resale discount by putting them in its access tariffs. (MCIW Post-Hearing Brief, p. 7). MCIW cites both policy and legal reasons against providing BellSouth with this ability. From a policy perspective, MCIW reasons that BellSouth would be able to avoid resale competition by placing retail services in its access tariffs to avoid having to provide the discount. *Id.* As an example, MCIW discusses BellSouth's SmartRing service, which is included in state and federal access tariffs. MCIW states that the SmartRing service included in BellSouth's access tariffs does not differ from the SmartRing service in its private line tariff in any way that would justify making one available for toll access and the other not available for toll access. *Id.*

MCIW's legal argument begins with the definition of "exchange access" in the Federal Act. "Exchange access" is defined as "the offering of access to telephone exchange services or

facilities for the purpose of the origination or termination of telephone toll services.” 47 U.S.C. § 153(40). MCIW argues that “when BellSouth includes in its access tariffs services that are available for use (or are in fact used) for purposes other than toll access, those services may be resold by CLECs at the resale discount.” *Id.* at p. 6.

The Commission finds that BellSouth shall not be allowed to manipulate the pricing of its services by placing services that belong in its private line tariffs in its access tariffs. The FCC’s ruling speaks to exchange access services, and the Federal Act provides a clear definition of “exchange access.” BellSouth is required to offer to MCIW at the resale discount all services that do not meet the definition of exchange access. Therefore, the Commission directs BellSouth to classify as a retail service, and offer to MCIW at the resale discount, all services that are not for the purpose of the origination or termination of telephone toll services.

### 3. Issue 5

#### **Should BellSouth be required to provide OS/DA as a UNE?**

ILECs are required to provide operator services and directory assistance (“OS/DA”) as an unbundled network element, unless they provide “customized routing or a compatible signaling protocol.” *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (released January 14, 2000). At issue, is whether BellSouth provides customized routing or a compatible signaling protocol.

BellSouth contends that it provides various methods of customized routing, including a Line Class Code (“LCC”) and Advanced Intelligent Network (“AIN”) solution. (BellSouth Post-Hearing Brief, p. 8). MCIW claims that neither of these methods suffices to meet the FCC’s requirements because of inefficiencies related to each method. The LCC method would require MCIW to build or lease dedicated transport from every BellSouth end office serving its customers to the corresponding tandems. (MCIW Post-Hearing Brief, p. 9). A major problem with the AIN hubbing method is that if MCIW wishes to use its own OS/DA platform, then it must obtain dedicated trunking from the AIN hub to its platform. *Id.* at p. 10.

BellSouth responds to these complaints by stating that it is not required to accommodate MCIW’s preferred trunking arrangement. (BellSouth Post-Hearing Brief, p. 9). The Commission agrees with BellSouth that it has met the requirement for customized routing, and that therefore, it is not required to provide OS/DA services as UNEs. It is the Commission Staff’s understanding that BellSouth is moving towards implementation of Originating Line Number Screening (“OLNS”). BellSouth is required to file an implementation schedule for OLNS within fifteen (15) days of issuance of the Commission Order. The availability of OLNS at reasonable rates should reduce MCIW’s concerns relating to Issues 5, 15, 19, and 101.

4. **Issue 8**

**Should UNE specifications include non-industry standard, BellSouth proprietary specifications?**

Although industry standards provide useful guidance for the provision and maintenance of UNEs, not every UNE has an industry standard. In the absence of an industry standard, BellSouth proposes the inclusion of non-industry standard technical requirements. Technical Requirement 73600 (TR 73600) details the unbundled loops offered by BellSouth and explains the relationship to any existing industry standard.

MCIW argues that this specification is unnecessary and that it would impose additional requirements on MCIW. However, MCIW witness, Michael Messina testified that where no industry standard existed, "something should be available and referenced in the contract." (Tr. 161). Therefore, BellSouth and MCIW agree that the contract should not remain silent on those areas for which no industry standard exists. The Commission concludes that for UNEs without a national industry standard, the standard developed by BellSouth shall be included in the agreement.

5. **Issue 15**

**When an MCIW customer served via the UNE-platform makes a directory assistance or operator call, must the ANI-II digits be transmitted to MCIW via Feature Group D signaling from the point of origination?**

This issue relates to Issue 5 discussed above. The dispute is over whether BellSouth should be obligated to route OS/DA calls to MCIW via an AIN-II dip. BellSouth has agreed to provide Feature Group D signaling with customized routing to MCIW when MCIW acquires the unbundled network element platform ("UNE-P"); however, BellSouth maintains that the FCC does not require any particular trunking arrangement. (BellSouth Post-Hearing Brief, p. 11). MCIW has proposed that the Agreement provide that "Calls from Local Switching must pass the ANI-II digits unchanged." (MCIW Post-Hearing Brief, p. 14). ANI-II digits provide MCIW with the number of the calling party and any call restrictions on the line. MCIW argues that it is technically feasible for BellSouth to pass the ANI-II digits unchanged using its AIN hubbing method, with the caveat that for one switch type direct trunking to its OS/DA platform would be required. *Id.* at 14.

In order to be consistent with the conclusion reached on Issue 5, the Commission must again find that BellSouth is not required to provide a particular trunking arrangement. Accordingly, when an MCIW customer served via the UNE-P makes a directory assistance or operator call, BellSouth is not required to transmit the ANI-II digits to MCIW via Feature Group D signaling from the point of origination but BellSouth must, and has agreed to provide Feature Group D signaling with customized routing for transmitting the ANI-II digits.

6. Issue 18

**Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by MCIW so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes connected to MCIW switches and to the switches or wire centers of other requesting carriers?**

In its Post-Hearing Brief, MCIW states that “[t]he remaining areas of dispute concern (i) whether BellSouth must provide dedicated transport when more than one transport link is involved; and (ii) whether BellSouth must provide dedicated transport from a point on WorldCom’s network to the switch or other facilities of a third party carrier.” (MCIW Post-Hearing Brief, p. 16). BellSouth argues that both of these proposals by MCIW are contrary to decisions of the FCC and federal court.

The FCC has ordered that ILECs are not required “to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.” *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 ¶324. BellSouth argues that MCIW is requesting that BellSouth construct electronic equipment for dedicated transport. It bases this argument on the most recent language proposed by MCIW on this issue. MCIW has proposed the following language:

Nothing herein shall be construed to require BellSouth to construct facilities to provide dedicated transport where such facilities do not currently exist, except BellSouth shall provide the electronic equipment necessary to provide dedicated transport. (Tr. 364).

BellSouth interprets the language to obligate BellSouth to provide the electronic equipment necessary to provide dedicated transport. However, BellSouth will have to modify its electronics whenever it provides dedicated transport to CLECs. Additionally, electronics are included in the cost of dedicated transport. Therefore, BellSouth is required to provide the electronics for dedicated transport if it currently exists in the network, but BellSouth is not required to construct facilities (including electronics) to provide dedicated transport where such facilities do not currently exist.

BellSouth also claims that MCIW’s argument is contrary to the United States Court of Appeals for the Eighth Circuit’s decision in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000). The Eighth Circuit vacated the FCC’s rules that obligated incumbents to combine previously uncombined network elements on behalf of a requesting carrier. 219 F.3d at 750. However, MCIW claims that it is not asking BellSouth to combine previously uncombined network elements. First, MCIW contests that each link segment constitutes a separate UNE. (MCIW Post-Hearing Brief, p. 16). In addition, MCIW argues that even if the link segments are determined to be UNEs, BellSouth ordinarily combines them in its network. Accordingly, MCIW argues that BellSouth must combine the segments for MCIW. *Id.* at 17.

BellSouth witness, Alphonso Varner, testified that for one of its MegaLink customers BellSouth would combine the loops needed by the customer with the dedicated transport. (Tr. 368-69). MCIW, therefore, is not asking BellSouth to combine previously uncombined network elements. In Docket No. 10692-U, the Commission stated:

To the extent that CLECs seek to obtain other combinations of UNEs that BellSouth ordinarily combines in its network which have not been specifically priced by the Commission when purchased in combined form, the Commission finds that the CLEC can purchase such UNE combinations at the sum of the stand-alone prices of the UNEs which make up the combination.<sup>1</sup>

The evidence supports that BellSouth ordinarily combines these elements in its network. BellSouth is obligated to combine these elements to MCIW upon request at the sum of the stand-alone prices of the elements.

#### 7. Issue 19

##### **How should BellSouth be required to route OS/DA traffic to MCIW's operator services and directory assistance platforms?**

This issue is related to Issues 5 and 15 discussed above. BellSouth argues that it provides customized routing consistent with FCC rules and orders of the Commission. It also claims that it will provide MCI's OS/DA traffic with the same routing as it provides to its own traffic. MCIW has insisted that BellSouth provide shared transport for MCIW's OS/DA traffic over common transport trunk groups from BellSouth's end offices to its tandems. (MCIW Post-Hearing Brief, p. 19). BellSouth insists that operator services and directory assistance end office functions require dedicated trunk groups from BellSouth end offices to the TOPS Platform. (BellSouth Post-Hearing Brief, p. 14).

The Commission finds, consistent with its findings on Issues 5 and 15, that BellSouth is not required to provide shared transport for MCIW's OS/DA traffic. BellSouth meets the requirements set forth by the FCC and this Commission by providing MCIW's OS/DA traffic the same routing as it provides to its own traffic.

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<sup>1</sup> *Order regarding the Cost-based Rates as relates to BellSouth's Unbundled Network Elements*, (February 1, 2000, p. 22 of 23).

**8. Issue 22**

**Should the Interconnection Agreements contain MCIW's proposed terms addressing line sharing, including line sharing in the UNE-P and unbundled loop configurations?**

The Commission finds that this issue is generic in nature and that it would be most fair and efficient for it to be heard in the context of Docket No. 11900-U (Investigation of BellSouth Telecommunications, Inc.'s Provision of Unbundled Network Elements for xDSL Service Providers).

**9. Issue 23**

**Does MCIW's right to dedicated transport as an unbundled network element include SONET rings that exist on BellSouth's network?**

The parties agree that if a SONET ring exists, BellSouth will provide MCIW with dedicated transport over that ring. (BellSouth Post-Hearing Brief, p. 16). The parties also agree that BellSouth does not have the obligation to construct fiber facilities to provide a SONET ring where those facilities do not currently exist. (MCIW Post-Hearing Brief, p. 23). The parties dispute whether BellSouth must provide MCIW with access to an entire existing SONET ring as opposed to segments used for particular point-to-point dedicated transport. The parties also do not agree over whether BellSouth is obligated, upon request, to add SONET functionality to existing fiber transport facilities.

A SONET ring provides redundancy to protect against an interruption of service if a line is cut. (Tr. 386). If MCIW wants transport between two points on a SONET ring, BellSouth has agreed to provide the transport over the segment of the SONET ring. BellSouth claims that providing MCIW with capacity over the entire SONET ring would require BellSouth to re-engineer the ring, which it claims it is not required to do. (Tr. 387-88). MCIW argues that BellSouth is obligated to provide MCIW capacity over the entire ring because its unbundling obligation extends throughout its transport network. (MCIW Post-Hearing Brief, p. 23). The Commission agrees that BellSouth will have to modify its electronics anytime it provides dedicated transport to CLECs. Additionally, electronics are included in the cost of dedicated transport. Therefore, BellSouth is required to provide SONET Rings for dedicated transport if it currently exist in the network but BellSouth is not required to construct facilities (including electronics) to provide dedicated transport where such facilities do not currently exist.

Similarly, the second issue involves MCIW's request that BellSouth add SONET functionality when the fiber is in place but not used as a SONET Ring. The Commission finds that BellSouth is not required to construct the electronics on the fiber ring to give it SONET functionality because the functionality did not originally exist in the network.

10. Issue 28

**Should BellSouth provide the calling name database via electronic download, magnetic tape, or via similar convenient media?**

The calling name database ("CNAM") contains caller name information for BellSouth end users and any other carrier that stores names in BellSouth's database. (Tr. 388). In its December 28, 1999 Order in both Docket Nos. 10418-U and 10135-U, the Commission found that CNAM is a UNE and that it must be provided at a cost-based rate. (Order, p. 8 of 10)<sup>2</sup>. The dispute between the parties is over whether BellSouth should be obligated to MCIW the CNAM via electronic download or similar convenient media. BellSouth wants to provide MCIW access to the CNAM database on a "dip-by-dip" basis, which would require MCIW to request access each time it needs access. (Tr. 388).

MCIW explained that the "dip-by-dip" method of providing access results in delay in delivering the information to the called customer. (Tr. 42). MCIW further argues that it is technically feasible for BellSouth to provide the CNAM via electronic download. (MCIW Post-Hearing Brief, p. 25). Finally, MCIW agreed that it would compensate BellSouth for the costs related to the download. (Tr. 45).

BellSouth argues that it is not obligated to provide an electronic download of the CNAM for MCIW. (BellSouth Post-Hearing Brief, p. 18). BellSouth states that accommodating MCIW's request would require it to "develop new computer programs, address the issue of how to update the download, and perform whatever other work is necessary to make the data available to MCI." *Id.*

However, BellSouth does not claim that it would be technically infeasible to make the necessary changes. Also, the evidence supports the conclusion that MCIW would be able to provide better service if BellSouth provided CNAM via electronic download. (Tr. 44). Since BellSouth does not have to experience the delay that the "dip-by-dip" method would impose upon MCIW, the "dip-by-dip" method cannot be said to be nondiscriminatory. Accordingly, the Commission finds that BellSouth must provide to MCIW the CNAM database via electronic download or via similar convenient media, subject to the condition that MCIW compensates BellSouth for the costs related to providing the electronic download.

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<sup>2</sup> Docket No. 10418-U: *Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.*; Docket No. 10135-U: *MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc.*

11. **Issue 29**

**Should calls from MCIW customers to BellSouth customers served via UniServe, Zipconnect, or any other similar service, be terminated by BellSouth from the point of interconnection in the same manner as other local traffic, without a requirement for special trunking?**

MCIW is not required to bring its own facilities, or lease facilities from BellSouth, to the TOPS Platform in order for MCIW customers to reach subscribers to BellSouth's ZIPConnect service. Because ZIPConnect service uses BellSouth's AIN Platform to perform specialized routing of calls to the 203 NXX code, these calls are delivered to the BellSouth Access Tandem. (BellSouth Post-Hearing Brief, p. 19). Since Uniserve service utilizes operator services switching functionality, MCIW must bring its own facilities, or lease facilities from BellSouth, to the TOPS platform in order for MCIW customers to reach UniServe service subscriber. This condition is consistent with what BellSouth and other telecommunications carriers are required to do. (BellSouth Post-Hearing Brief, p. 19). The Commission finds that in order for MCIW to reach UniServe service subscribers, it must bring its own facilities, or lease facilities from BellSouth, to the TOPS Platform.

12. **Issue 34**

**Is BellSouth obligated to provide and use two-way trunks that carry each party's traffic?**

The parties agree that BellSouth will provide two-way local interconnection trunks upon MCIW's request. The dispute is over whether BellSouth is then obligated to use the two-way trunks if it determines one-way trunks to be more efficient for the given circumstance. MCIW argues that BellSouth is obligated to provide and use two-way trunking upon request. (MCIW Post-Hearing Brief, p. 28). BellSouth responds that its obligation to use the two-way trunks is limited to those instances where traffic volumes are too low to justify one-way trunks. (BellSouth Post-Hearing Brief, p. 20).

Federal regulations require BellSouth to provide two-way trunking upon request if technically feasible. 47 C.F.R. § 51.305(f). BellSouth agrees that it is technically feasible to provide two-way trunking. (Tr. 391). BellSouth also agrees that any efficiencies of two-way trunking will be lost if BellSouth does not use the two-way trunks. (Tr. 393). Allowing BellSouth not to use the two-way trunking based on when it decides two-way trunking is not efficient would undermine the apparent intent of the federal regulation. The Commission finds that BellSouth is required to provide and use two-way trunking upon request.

**13. Issue 36**

**Does MCIW, as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point?**

BellSouth's position is that it should not be obligated to deliver BellSouth originated traffic to a point of interconnection designated by MCIW. (BellSouth Post-Hearing Brief, pp. 22-27). MCIW argues that BellSouth's position is contrary to both the law and sound public policy. (MCIW Post-Hearing Brief, pp. 30-38).

MCIW argues that BellSouth's proposal imposes on MCIW the financial burden of bringing BellSouth's traffic the rest of the way through BellSouth's network and into MCIW's network. In contrast, under MCIW's proposal, each party would be responsible for bringing its originating traffic to the Point of Interconnection and each party would be responsible for transporting and terminating the other party's traffic from the Point of Interconnection. (Tr. 35).

This issue has arisen in subsequent arbitration proceedings currently pending before the Commission. The Commission finds therefore that it is equitable and efficient for the Commission to address this issue along with Issue 46 in a generic proceeding (Docket No. 13542-U). The Commission will hold expedited hearings on these issues.

**14. Issue 37**

**Should BellSouth be permitted to require MCIW to fragment its traffic by traffic type so it can interconnect with BellSouth's network?**

BellSouth's main objection to MCIW's proposed language is that it would prohibit BellSouth from maintaining a separate trunk group for traffic. (BellSouth Post-Hearing Brief, p. 27). In Issue 34, the Commission determined that BellSouth is obligated to provide and use two-way trunks that carry each party's traffic. Therefore, that MCIW's proposed language would prohibit BellSouth from maintaining a separate trunk group for traffic is not a justification to reject the language. The Commission finds that BellSouth shall not be permitted to require MCIW to fragment its traffic by traffic type.

**15. Issue 39**

**How should Wireless Type I and Type 2A traffic be treated under the Interconnection Agreements?**

The difference between a Wireless Type 1 carrier and a Wireless Type 2A carrier is that a Wireless Type 1 carrier uses BellSouth's NXXs, whereas a Wireless Type 2A carrier has its own NXXs. (Tr. 402-03). Currently, BellSouth pays MCIW for traffic that it terminates and bills MCIW for traffic that transits BellSouth's network to the Wireless Type 1 or Type 2A carrier. MCIW's concern is that BellSouth does not pass on MCIW's reciprocal compensation payments

to the wireless carriers. (MCIW Post-Hearing Brief, p. 39). BellSouth's reasoning for not passing on these payments to wireless carriers is that until it has Meet Point Billing capabilities, BellSouth does not have any way of knowing how much to remit to the carriers. (Tr. 404).

BellSouth does not affect the amount of reciprocal compensation paid by MCIW when it does not pass on these payments. The assurance that MCIW seeks from BellSouth is that it will indemnify MCIW in the event that a wireless carrier makes a claim against MCIW for the payments not passed on by BellSouth. (Tr. 404-405). BellSouth witness, Mr. Varner, testified that MCIW should not have to make the same payments twice. (Tr. 405). The Commission agrees that such a result would be inequitable. Therefore, the Commission finds that BellSouth's proposed language should be modified to require BellSouth to either pass on reciprocal compensation payments to the wireless carriers, or to indemnify MCIW as to any claim the wireless carriers may raise concerning those reciprocal compensation payments.

#### 16. Issue 40

**What is the appropriate definition of internet protocol (IP) and how should outbound voice calls over IP Telephony be treated for purposes of reciprocal compensation?**

BellSouth argues that what matters is not the type of network used to transport the call, but rather that reciprocal compensation is not due for a long distance call. (BellSouth Post-Hearing Brief, p. 29). MCIW argues that the question of whether long-distance carriers should pay access charges when they use IP Telephony is beyond the scope of this arbitration proceeding. MCIW argues that the issue is within the FCC's jurisdiction, not the jurisdiction of the Commission.

BellSouth has proposed that "Switched Access Traffic" be defined as it is in BellSouth's Access Tariff. In addition BellSouth has proposed that IP Telephony traffic should be considered switched access traffic. (Attachment 4, Section 9.3.3). MCIW proposed alternative language, but maintains that its preference is for the Commission not to address this issue in this proceeding. (MCIW Post-Hearing Brief, p. 41).

This issue arose in the context of Docket No. 11644-U, *Petition of BellSouth Telecommunications, Inc. For Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act Of 1996*. In that proceeding, the Commission adopted the Commission Staff's recommendation.

However, Staff recommends that the Commission defer ruling on the issue of whether IP telephony is subject to access charges until it has had an opportunity to consider the issue further. While the FCC has not made any definitive rulings on the issue, it did suggest in its April 10, 1998 Report to Congress that some forms of IP Telephony might be telecommunications services rather than information services. The Commission adopts Staff's recommendation. (Docket No. 11644-U, Order, p. 14 of 17, footnote omitted).

Consistent with its decision in Docket No. 11644-U, the Commission will defer ruling on whether IP Telephony is subject to access charges or reciprocal compensation.

**17. Issue 42**

**Should MCIW be permitted to offer tandem services for switched access traffic?**

The parties characterize the central question behind this dispute vastly differently. BellSouth claims that the real issue is that MCIW must pay switched access charges. (BellSouth Post-Hearing Brief, p. 30). MCIW states that the real issue is whether it can provide exchange access using interconnection trunks from BellSouth. (MCIW Post-Hearing Brief, p.42).

BellSouth proposes that the Agreement contain the following language on this issue: "MCIw agrees not to deliver switched access trunks and facilities." Attachment 4, Section 2.3.8. MCIW objects to this language on the grounds that it would allow BellSouth to breach its obligation under 47 U.S.C. 251(c)(2)(A) to provide for the transmission and routing of telephone exchange service and exchange access. (MCIW Post-Hearing Brief, p. 43).

The Federal Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(40). The tandem services for switched access traffic falls within this definition. Therefore, the Commission finds that MCIW shall be permitted to offer tandem services for switched access traffic. In order to ensure that MCIW pays the switched access charges, MCIW shall provide the appropriate billing records for any trunk groups carrying access traffic that would enable BellSouth to bill for the switched access services it provides. The billing records for the trunk groups carrying switched access traffic shall be subject to audit by BellSouth.

**18. Issue 45**

**How should third party transit traffic be routed and billed by the parties?**

MCIW has proposed the following language for the routing and billing of local transit traffic.

9.7.1 For calls that transit BellSouth's network, whether they originate from MCIw and terminate to a third party LEC, CLEC or CMRS provider, or originate from that third party and terminate to MCIw, and transit BellSouth's network, MCIw may require BellSouth to make arrangements directly with that third party for any compensation owed in connection with such calls on MCIw's behalf, or deal directly with that third party, at MCIw's option.

10.71.1 If MCIw requires BellSouth to make arrangements directly with a third party LEC, CLEC or CMRS provider on MCIw's behalf, BellSouth shall

compensate MCIIm for such calls terminating to MCIIm using MCIIm's rates as described herein, and such calls had terminated in BellSouth's network, using BellSouth's rates as described herein.

The intent behind this language is to streamline the billing process for local transit calls. (MCIW Post-Hearing Brief, p. 44). MCIW's proposed language would reduce the number of trunk groups, record exchange, and number of bills for all carriers. *Id.* at p. 45. BellSouth argues that MCIW is trying to skirt its obligation under section 251(b)(5) of the Federal Act to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." (BellSouth Post-Hearing Brief, p. 32). However, under MCIW's proposal, the originating and terminating carriers would need to have an interconnection agreement. (MCIW Post-Hearing Brief, p. 45). In addition, MCIW does not dispute that BellSouth would be entitled to compensation for providing the service.

The Commission finds that the Agreement shall include the language proposed by MCIW, with the modification that the provision must state that the originating and terminating carriers must have an interconnection agreement, and that BellSouth would not have to render payment to the terminating carrier when the originating carrier failed to pay. Also, the language shall state that BellSouth is entitled to compensation for providing the service.

#### 19. Issue 46

##### **Should BellSouth be permitted to impose restrictions on MCIW's ability to assign NPA/NXX codes to MCIW's end-users?**

This issue involves the provision of service to a customer physically located outside the rate center that the NPA/NXX for that customer is assigned. This type of service is called foreign exchange ("FX") service. The parties dispute whether this type of service should be considered local or long distance. BellSouth argues that MCIW should use its NPA/NXXs in such a way that BellSouth can distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth originated calls. BellSouth's concern is that MCIW is not entitled to reciprocal compensation for a long distance call. MCIW argues that FX service constitutes local traffic because of the NXX dialed and BellSouth should pay reciprocal compensation. (MCIW Post-Hearing Brief, p. 46).

As discussed as part of Issue 36, the Commission finds it prudent to address this issue as part of a generic proceeding (Docket No. 13542-U). The Commission will hold expedited hearings that will take up both Issues 36 and 46.

20. Issue 47

**Should reciprocal compensation payments be made for calls bound to ISPs?**

BellSouth argues that reciprocal compensation payments are not due because ISP-bound traffic is not local traffic. The Commission has found previously that ISP traffic is local in nature. See Docket Nos. 10854-U, 10767-U, 9281-U<sup>3</sup>. While reserving its right to seek judicial review from this Commission finding, BellSouth states that it will abide by the Commission's decision in Docket No. 10767-U. In Docket No. 10767-U, the Commission directed the parties to track reciprocal compensation payments, "subject to a true-up mechanism approved by the Commission as warranted by the outcome of the FCC's Rule-Making in CC Docket No. 99-68 on ISP-bound traffic." (Order, p. 4 of 11).

However, subsequent to the Commission's order in Docket No. 10767-U, the Commission addressed this issue in Docket No. 10854-U. In its order in Docket No. 10854-U, the Commission ordered BellSouth to pay reciprocal compensation for calls to ISPs without the payments being subject to a true-up mechanism. (Order p. 7 of 13). The Commission noted that District of Columbia Circuit Court of Appeals decision vacating the FCC's Declaratory Ruling for "want of reasoned decision-making" with regard to the FCC's use of the "end-to-end" analysis returned the status of the issue to an open question for the Commission to decide. Consistent with the Commission's decision in Docket No. 10854-U, the Commission finds that BellSouth must pay reciprocal compensation on ISP-bound traffic and that those payments are not subject to a true-up mechanism.

21. Issue 51

**Is BellSouth required to pay tandem charges when MCIW terminates BellSouth local traffic using a switch serving an area comparable to a BellSouth tandem?**

This issue concerns whether MCIW should receive reciprocal compensation at the tandem rate for traffic transported and terminated via its switch. The Commission has previously concluded that this question turns on whether the CLEC's switch serves a comparable geographic area and that it performs the same functionality. (See, Docket No. 10767-U, *In re: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with*

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<sup>3</sup> Docket No. 10854-U: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*; Docket No. 10767-U: *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*; Docket No. 9281-U *Complaint of e.spire Communications, Inc. Against BellSouth Telecommunications, Inc.*

*BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.)*

The evidence supports that each of MCIW's switches in the Atlanta area serves an area comparable to the service area of any single BellSouth switch. (MCIW Post-Hearing Brief, p. 63). Although MCIW disputes that it is required to demonstrate functional equivalency, it asserts that its switch is functionally equivalent. *Id.* The Commission finds that MCIW's switch is functionally equivalent. Therefore, the Commission finds that BellSouth must pay MCIW at the tandem rate.

**22. Issue 52**

**Should BellSouth be required to pay access charges to MCIW for non-presubscribed intraLATA toll calls handled by BellSouth?**

BellSouth witness, Mr. Varner testified that BellSouth would agree to pay access charges to MCIW when BellSouth, as the intraLATA toll carrier, collects revenues for a non-presubscribed independent telephone company customer's call to a 10-10-XXX number. (Tr. 435-36). Mr. Varner asserts that the main issue is that MCIW wants BellSouth to use equal access signaling on those calls, which BellSouth does not have. The Commission finds that BellSouth is responsible for paying access charges in these instances. Additionally, the parties shall find an appropriate method for billing access charges for these calls.

**23. Issue 54**

**Should security charges be assessed for collocation in offices with existing card key systems, and how should security costs be allocated in central offices where new card key systems are being installed?**

MCIW proposes that security costs for collocation in central offices should be assessed on a pro rata per square foot basis from each carrier, including BellSouth. (MCIW Post-Hearing Brief p. 67). This proposal assigns a cost to each carrier that corresponds to the benefit received by the carrier from the enhanced security services. BellSouth argues that this proposal is unworkable. MCIW's proposal, BellSouth argues, would require constant reassessment of costs every time there is a change in the collocation square footage, and it ignores that certain space in any central office remains unoccupied. (BellSouth Post-Hearing Brief, p. 45).

The Florida Public Service Commission recently addressed this question and concluded that the cost of security arrangements that benefit both the ILEC and the CLECs should be allocated on a pro rata per square foot basis. *In re: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc., Service Territory*, Docket No. 981834-TP, *In re: Petition of ACI Cor d/b/a Accelerated Connections, Inc. etc.*, Docket No. 99-321-TP, Order No. PSC-00-0941-FOF-TP. While the Commission is not bound by this precedent, it agrees with the decision. Basing the cost of enhancements to security arrangements on a pro rata per square foot basis effectively ties the

costs of the improvements to the parties that stand to gain from them. In addition, the Commission holds that a recalculation is not necessary every time any change in the collocation arrangement takes place. A monthly recalculation is equitable and not overly burdensome.

**24. Issue 55**

**Should BellSouth be required to provide a response including a firm cost quote within 15 days of receiving a collocation application?**

The Average Response time intervals established by the Commission in Docket No. 7892-U, *Performance Measurements For Telecommunications Interconnection, Unbundling And Resale*, shall be incorporated in this Interconnection Agreement. The January 16, 2001, order in Docket No. 7892-U set forth two sets of intervals: the first beginning with the effective date of the order; the second becoming effective six months from the effective date of the order. For virtual collocation, the Average Response time interval is twenty calendar days initially, to be reduced to ten calendar days six months from the effective date of the order. For both physical and caged/cageless collocation, the Average Response time interval was set at thirty calendar days initially, to be reduced to twenty calendar days six months from the effective date of the order.

**25. Issue 56**

**Should BellSouth be required to provide DC power to adjacent collocation space?**

This issue concerns whether BellSouth can meet its obligations under the law by providing AC power to adjacent collocation arrangements, or whether BellSouth is required to provide DC power. BellSouth must provide power and physical collocation services and facilities to MCIW on a nondiscriminatory basis. 47 C.F.R. § 51.323(k)(3). BellSouth argues that 47 C.F.R. 51.323(k)(3) does not specify what type of power ILECs must provide to an adjacent arrangement. (BellSouth Post-Hearing Brief, p. 47). The costs, however, that CLECs will incur in converting AC power will result from having to collocate equipment outside of a BellSouth central office. This arrangement would provide BellSouth with inappropriate leverage to discriminate against CLECs. The Commission finds that BellSouth shall be required to provide DC power to adjacent collocation space at MCIW's request where technically feasible.

**26. Issue 59**

**Should collocation space be considered complete before BellSouth has provided MCIW with cable facility assignments ("CFAs")?**

BellSouth cannot bill MCIW until after the collocation space is considered complete. BellSouth argues that the collocation work should be deemed complete prior to the provisioning of CFAs because it cannot issue the CFAs until after MCIW informs BellSouth of the frame

locations and designations of MCIW's cables. Therefore, a delay by MCIW in providing BellSouth with this information would delay BellSouth's ability to bill MCIW.

MCIW does not dispute this point. However, MCIW argues that since it cannot make use of the collocation space for providing service through an unbundled loop or other unbundled network elements without CFAs, it should not be charged for merely occupying the space. (MCIW Post-Hearing Brief, p. 84). The Commission finds that if MCIW informs BellSouth of the frame locations and designation of MCIW cables prior to BellSouth's completion of the collocation space, BellSouth shall provide CFAs prior to collocation space completion. Therefore, in the instance described above, collocation space is not considered complete until BellSouth provides MCIW with CFAs. Conversely, if MCIW does not provide the frame locations and designation of MCIW tie cables, BellSouth cannot be held responsible for not providing CFAs, and accordingly, the collocation is considered complete when the vendor completes its work.

**27. Issue 60**

**Should BellSouth provide MCIW with specified collocation information at the joint planning meeting?**

MCIW argues that specified collocation information is necessary for a CLEC to complete collocation. (MCIW Post-Hearing Brief, p. 87-88). Further, MCIW states that this information is readily available to BellSouth. *Id.* at 88. Therefore, MCIW has proposed language that would obligate BellSouth to provide the exact cable type and cable termination requirements for MCIW provided POT bays that will be used at the joint planning meeting. If the information is not available at the joint planning meeting, MCIW asks that the Commission obligate BellSouth to provide the information within thirty days of the meeting. *Id.* at 85.

BellSouth states that it will provide MCIW with the exact cable location termination requirements either at the joint meeting, or if not available at that time, within thirty days of the meeting. (BellSouth Post-Hearing Brief, p. 48). However, BellSouth claims that MCIW is requesting additional information that is either not readily available or is not required for MCIW to begin its work. *Id.*

The Commission finds that adopting appropriate standards for the provisioning of specified collocation information can enhance the development of competition. Accordingly, BellSouth must provide all the available information requested to MCIW at the joint implementation meeting or within 30 days thereafter. For clarification, however, BellSouth shall only be responsible for providing MCIW with the demarcation point associated with the equipment reflected on the Bona Fide Firm Order. This obligation does not extend to all technically feasible demarcation points because such a request is beyond the scope of providing "certain collocation information."

**28. Issue 61**

**What rate should apply to the provision of DC power to MCIW's collocation space?**

This issue contains two questions. The first concerns what the applicable rate should be for the provision of DC power to MCIW's collocation space. The Commission ordered rates for DC power in Docket No. 7061-U. Those rates shall apply to the provision of DC power to MCIW's collocation space.

The second issue is whether the per amp charge should be applied to the fused capacity BellSouth is required to provide to MCIW, as BellSouth advocates, or if it should be applied only to the capacity used by MCIW, as MCIW advocates. The evidence supports that MCIW's proposal would place an undue burden on BellSouth. BellSouth would have to install a meter for MCIW as well as any other requesting CLEC. (Tr. 180-81). In addition, BellSouth would have to have read the meters. (Tr. 181). The Commission finds that the per amp charge shall be applied to the fused capacity BellSouth is required to provide MCIW.

**29. Issue 62**

**Should BellSouth be required to provision caged or cageless physical collocation space (including provision of the cage itself) within 90 days and virtual collocation within 45 days?**

BellSouth proposes provisioning intervals under ordinary condition of ninety (90) business days for caged and cageless collocation under ordinary conditions and fifty (50) business days for virtual collocation. MCIW proposes intervals of ninety (90) calendar days for caged and cageless physical collocation space and sixty (60) calendar days for virtual collocation.

The Average Response time intervals established by the Commission in Docket No. 7892-U shall be incorporated in this Interconnection Agreement. The intervals are as follows:

Virtual:	Physical/Caged:
50 Calendar Days (Ordinary)	90 Calendar Days
75 Calendar Days (Extraordinary)	

Cageless:  
60 Calendar Days (Ordinary)  
90 Calendar Days (Extraordinary)

**30. Issue 63**

**Is MCIW entitled to use any technically feasible entrance cable, including copper facilities?**

BellSouth concedes that a copper entrance facility is technically feasible. (Tr. 187-188). 47 C.F.R. § 51.323(d)(3) provides that “[w]hen an Incumbent LEC provides physical collocation, virtual collocation, or both the incumbent LEC shall: permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission.” Therefore the Commission finds that MCIW is entitled to use any technically feasible entrance cable, including copper facilities.

**31. Issue 64**

**Is MCIW entitled to verify BellSouth’s assertion, when made, that dual entrance facilities are not available? Should BellSouth maintain a waiting list for entrance space and notify MCIW when space becomes available?**

BellSouth is required to provide at least two interconnection points at a premises “at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points.” 47 C.F.R. § 51.323(d)(2). However, BellSouth has offered to provide documentation, upon request, and at MCIW’s expense, to demonstrate that space is not available for dual entry. (BellSouth Post-Hearing Brief, p. 51). The FCC has declared that a denial of space triggers a requirement that the ILEC permit an inspection. MCIW agrees that if a tour of entrance facilities is needed it should be limited to the entrance facility. (Tr. 191). The Commission agrees with this limitation and concludes that MCIW should be entitled to verify any assertion by BellSouth that dual entrance facilities are not available. The Commission also finds that BellSouth shall maintain a waiting list for entrance space and notify MCIW when space becomes available.

**32. Issue 65**

**What information must BellSouth provide to MCIW regarding vendor certification?**

BellSouth is permitted to approve vendors hired by MCIW to construct its collocation space, provided the criteria used is the same as used in approving vendors for its own purposes. 47 C.F.R. § 51.323(j). BellSouth maintains that as long as it meets this requirement that only it has the right to approve or reject vendors. (BellSouth Post-Hearing Brief, p. 52). MCIW argues that under BellSouth’s proposal it does not have adequate assurance that the same information used by BellSouth to certify its vendors will be provided to MCIW. (MCIW Post-Hearing Brief, p. 102).

BellSouth asserts that it provides MCIW with the same information that BellSouth provides its vendors concerning the vendor certification process (Tr. 893). The evidence reflects that MCIW is provided with adequate and equal information to determine whether a proposed vendor meets BellSouth's certification standards. (Tr. 893). Therefore, the Commission agrees with BellSouth on this issue.

**33. Issue 66**

**What industry guidelines or practices should govern collocation?**

BellSouth claims that MCIW's proposal requires it to comply with standards outside of its control. (BellSouth Post-Hearing Brief, p. 52). MCIW argues it is merely asking that BellSouth comply with industry standards with respect to matters within its responsibility or under its control. (MCIW Post-Hearing Brief, p. 104). In order for a standard to be meaningful, complying with the standard must be within the party's control. Accordingly, the Commission finds that collocation shall be governed by only those industry guidelines or practices within BellSouth's control.

**34. Issue 67**

**When MCIW has a license to use BellSouth rights-of-way, and BellSouth wishes convey the property to a third party, should BellSouth be required to convey the property subject to MCIW's license?**

BellSouth argues that the license granted to MCIW does not authorize MCIW to restrict BellSouth's sale or conveyance of its property. (BellSouth Post-Hearing Brief, p. 53). MCIW argues that BellSouth's position would allow BellSouth to engage in anti-competitive conduct because BellSouth could sell property subject to its facilities remaining on the property but not MCIW's facilities remaining on the property.

The Commission agrees with MCIW. BellSouth's position would provide it with unfair leverage against its competitor. MCIW shall not be required to forfeit its license rights, and possibly strand facilities. BellSouth shall be required to convey the property subject to MCIW's license.

**35. Issue 68**

**Should BellSouth require that payments for make-ready work be made in advance?**

BellSouth proposes that MCIW should be required to make payments for make-ready work in advance. MCIW alleges that this is a delay tactic without any justification in MCIW's payment history. (MCIW Post-Hearing Brief, p. 107). BellSouth states that its proposal includes completion of make-ready work in a non-discriminatory manner. (BellSouth Post-Hearing Brief,

p. 53). Also, BellSouth has proposed to schedule make-ready work within twenty days of receipt of payment from MCIW, unless the period is extended for good cause. *Id.*

The Commission finds that the conditions included in BellSouth's proposal will help avoid use of the advance payment requirement as a delay tactic. The Commission adopts BellSouth's position subject to one modification. As an additional safeguard against use of the advance payment requirement as a delay tactic, the Agreement shall provide that if BellSouth wishes to extend the twenty days after payment is received, it must provide MCIW with written notice and an explanation of the good cause.

**36. Issue 75**

**For end users served by INP, should the end user or the end user's local carrier be responsible for paying the terminating carrier for collect calls, third party billed calls or other operator assisted calls?**

The parties disagree over who should be billed for collect calls, third party billed calls or other operator assisted calls for end users served by interim number portability (INP). BellSouth argues that the local carrier that serves the end user should be responsible for paying for these calls. BellSouth asserts that its position is consistent with the manner in which collect calls and third-number calls are billed when an end user is served by a CLEC using resold facilities or unbundled network elements. (Tr. 749).

MCIW proposes that the end user should be responsible for payment both because it is consistent with industry standard and because BellSouth provides the service. (MCIW Post-Hearing Brief, p. 108). The evidence supports MCIW's claim that the industry practice is for the toll carrier to bill the end use customer directly. (Pre-filed Testimony of MCIW Witness, Don Price, p. 50). Accordingly, the Commission directs that the parties incorporate MCIW's proposed language into the Agreement.

**37. Issue 80**

**Should BellSouth be required to provide an application-to-application access service order inquiry process?**

MCIW believes Issue 80 involves two interrelated subjects: (i) whether BellSouth must permit MCIW submit orders using an ASR; and (ii) whether BellSouth must provide an application-to-application service order inquiry process. (MCIW Post--Hearing Brief p. 109). MCIW asserts that BellSouth should be required to permit it to use the ASR process for DS1 combos at least until BellSouth has made available a tested electronic LSR process for such orders. (MCIW Post-Hearing Brief, p. 109-110).

BellSouth asserts that MCIW is attempting to require BellSouth to maintain an IXC process to handle local service requests ("LSR"). (BellSouth Post-Hearing Brief p. 54).

BellSouth maintains that the national standard for ordering UNEs and resale services is through the submission of a LSR (BellSouth Post-Hearing Brief p. 55).

BellSouth and MCIW shall work together in the Commission's Improvement Task Force ordered in Docket No. 7892-U to increase electronic ordering and flow-through for complex and manually ordered services. Until BellSouth makes available a tested electronic LSR process, MCIW shall be entitled to order DS1 Combos using the electronic ASR process.

**38. Issue 81**

**Should BellSouth provide a service inquiry process for local services as a pre-ordering function?**

MCIW proposes the following language for this issue: "BellSouth shall perform service inquiry as a pre-ordering function as requested by MCIW." (Attachment 8, Section 2.2.1). This information would assist MCIW in managing its customers' expectations, and it would "enable its customers to make plans based on when they expect to receive the services they ordered." (MCIW Post-Hearing Brief p.110-111). BellSouth charges that MCIW is requesting a superior functionality than that provided by BellSouth retail units and explains that its current practice is to use the service inquiry process, which includes a facility check as part of the ordering process. (BellSouth Post-Hearing Brief p. 57).

The Commission finds that the bulk of the information that MCIW is asking for on a pre-order basis is currently available manually via a service order inquiry. Further, information that MCIW seeks is currently in the beta testing process in order to provide electronic pre-ordering functionality. MCIW also requests on a pre-order basis the availability of facilities and the location of the facilities. BellSouth agrees that currently a process does not exist to obtain the information sought by MCIW on a pre-order basis. (Tr. 702). The Commission finds that both CLEC and BellSouth customers would benefit from knowing whether facilities are available at the time an order is taken. The Commission finds that MCIW shall file this request immediately within the Change Management Process for implementation.

**39. Issue 94**

**Should BellSouth be permitted to disconnect service to MCIW for nonpayment?**

BellSouth's position is that it should be permitted to disconnect service to MCIW if it fails to pay billed charges for which there is no good faith dispute. BellSouth states that its concern is that if MCIW is not held to this condition, then other CLECs will opt into this provision. (BellSouth Post-Hearing Brief, p. 59). MCIW expressed the concern that BellSouth is the sole arbiter of whether a dispute over a bill is a good faith dispute. (MCIW Post-Hearing Brief, p. 112). MCIW argued that nonpayment should be resolved through dispute resolution, rather than through disconnect. *Id.* at 113.

The Commission finds that BellSouth should not be able to unilaterally determine that MCIW is not acting in good faith when it disputes a bill. Therefore, BellSouth's proposed language shall be modified to allow disconnect only in those instances in which MCIW does not dispute the bill, provided however, that MCIW must provide BellSouth with written documentation of the billing dispute which clearly shows the basis for MCIW's dispute of the charges. If the parties are still unable to resolve the dispute, then the parties may pursue all dispute resolution measures available under the Agreement.

In addition, MCIW expressed the concern through cross-examination that the language proposed by BellSouth would enable it to disconnect all of its services if MCIW failed to make payment for a given service. BellSouth's witness testified that the intent of the language was that BellSouth only be permitted to disconnect for the service for which MCIW had not made payment. (Tr. 442). The Commission determines that the language shall only allow BellSouth to disconnect for those services for which MCIW has not made payment.

**40. Issue 95**

**Should BellSouth be required to provide MCIW with billing records with all EMI standard fields?**

MCIW's position is that, consistent with the parties' current interconnection agreement, BellSouth should be required to provide MCIW with complete EMI billing records. (MCIW Post-Hearing Brief, p. 114). BellSouth proposes that it provide CLECs with usage records created using EMI guidelines. (BellSouth Post-Hearing Brief, p. 59).

The Commission finds that BellSouth did not show why the provision contained in the parties' current interconnection agreement is unreasonable. Nor did BellSouth adequately explain why an exception to the industry standard should be created. The Commission finds that BellSouth shall be required to provide MCIW with billing records with all EMI standard fields.

**41. Issue 96**

**Should BellSouth be required to give written notice when a central office conversion will take place before midnight or after 4 a.m.?**

BellSouth has agreed to attempt to schedule central office conversions between midnight and 4 a.m. (BellSouth Post-Hearing Brief, p. 60). The parties agree that some notice is appropriate in the event that a central office conversion will take place before midnight or after 4 a.m. However, BellSouth argues that written notice should not be required. Rather, BellSouth proposes that it post notice of its conversion on its website. *Id.* MCIW argues that written notice constitutes more effective notice, and that given the seriousness of a central office conversion, that written notice is more appropriate. (MCIW Post-Hearing Brief, p. 115).

The evidence shows that BellSouth plans for months in advance prior to a central office conversion outside of the hours of midnight through 4 a.m. (Tr. 936). This allows enough time for notice over BellSouth's website to be effective. Since it is also the more efficient form of notice, the Commission finds that it is adequate for BellSouth to post notice of the central office conversions in question on its website.

**42. Issue 100**

**Should BellSouth operators be required to ask MCIW customers for their carrier of choice when such customers request a rate quote or time and charges?**

BellSouth's position is that its practice is to quote only BellSouth's rates. Customers who inquire about long distance rates are advised they should seek that information from their long distance carrier. BellSouth states that its operator services platform does not have the capability to connect to a CLEC's directory assistance platform. (BellSouth Post-Hearing Brief, p. 60). MCIW argues that it merely wishes BellSouth operators to inquire of MCIW local customers for whom BellSouth provides operator services which carrier is their carrier of choice. (MCIW Brief, p. 117).

The Commission finds that if MCIW compensates BellSouth, then BellSouth operators shall be required to ask MCIW customers for their carrier of choice.

**43. Issue 101**

**Is BellSouth required to provide shared transport in connection with the provision of custom branding? Is MCIW required to purchase dedicated transport in connection with the provision of custom branding?**

This issue relates to Issues 5, 15 and 19. "Custom branding" involves BellSouth branding calls to its OS/DA platform in the name of the CLEC whose customer is calling. The question comes down to whether BellSouth's provisioning of selective call routing relieves it from the obligation to provide shared transport with the provision of custom branding.

Consistent with its determinations on the earlier related issues, the Commission finds that BellSouth is not required to provide shared transport in connection with the provision of custom branding. Further, the Commission finds that MCIW is required to purchase dedicated transport in connection with the provision of custom branding.

**44. Issue 107**

**Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreements?**

BellSouth's position is that the language proposed by MCIW regarding a liability cap is not appropriate for inclusion in the Interconnection Agreement. (BellSouth Post-Hearing Brief, p. 61). BellSouth proposes that the only language relating to a liability cap in the Agreement should be the language to which both parties have agreed. *Id.* MCIW argues that the liability cap should only apply to non-material breaches of the Agreement. (MCIW Post-Hearing Brief, p. 112).

The Commission finds that the parties are not required to adopt language regarding a liability cap beyond what they are willing to agree upon through negotiations.

**45. Issue 108**

**Should MCIW be able to obtain specific performance as a remedy for BellSouth's breach of contract?**

MCIW argues that services under the Agreement are unique, and that specific performance is an appropriate remedy for BellSouth's failure to perform. (MCIW Post-Hearing Brief, p. 120) BellSouth responds that specific performance is not a requirement under Section 252. In addition, BellSouth argues that specific performance is not an appropriate subject in this arbitration proceeding. BellSouth recommends that to the extent MCIW can show that it is entitled to obtain specific performance under Georgia law, MCIW can make this showing without such a provision being included in the Agreement. (BellSouth Post-Hearing Brief, p. 62).

The Commission finds that it is not necessary for the Agreement to include a provision entitling MCIW to obtain specific performance for BellSouth's breach of contract. If MCIW wishes to seek specific performance with respect to a particular alleged breach, it may request such relief in its complaint.

46. Issue 109

**Should BellSouth be required to permit MCIW to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise, effective as of the date of MCIW's request? Should BellSouth be required to post on its website all BellSouth's interconnection agreements with third parties within fifteen days of the filing of such agreements with the Georgia PSC?**

The parties do not dispute that the Federal Act obligates BellSouth to make available to MCIW upon request "any interconnection service, or network element provided under an agreement approved under this section to which it is a party." 47 U.S.C. 252(i). At issue, is whether BellSouth's obligation should begin upon MCIW's request or upon amendment to the agreement. BellSouth contends that the obligation does not begin until after the parties amend the Agreement. (BellSouth Post-Hearing Brief, p. 62). MCIW responds that such a provision would provide BellSouth with an inappropriate incentive to delay amendment. (MCIW Post-Hearing Brief, p. 122).

By obligating the local exchange carrier to allow the CLEC to "pick and choose," the Federal Act ensures that the agreement will be amended if the CLEC requests that its agreement include an interconnection service or network element provided in another interconnection agreement of the local exchange carrier. The amendment of the agreement necessarily follows this request. BellSouth should not have the ability to delay the inevitable to the detriment of MCIW. The Federal Act does not require amendment of the agreement prior to BellSouth providing the requested provision. The Commission finds that the more favorable terms and conditions obtained by a third party should be substituted effective as of the date of MCIW's request.

The second part of this issue involves whether the Agreement should obligate BellSouth to post interconnection agreements with third parties within fifteen days of the filing of such agreements with the Georgia PSC. The Commission finds that BellSouth shall be so obligated. Posting the agreements on its website will further the purposes set forth in the Federal Act.

47. Issue 110

**Should BellSouth be required to take all actions necessary to ensure that MCIW confidential information does not fall into the hands of BellSouth's retail operations, and should BellSouth bear the burden of proving that such disclosure falls within enumerated exceptions?**

The parties disagree as to whether the Agreement should require BellSouth to take all "reasonable" actions to protect MCIW's confidential information, as BellSouth proposes, or to take "all actions necessary" to protect the information, as MCIW proposes. The Commission finds that it is sufficient to require BellSouth to take all reasonable actions to protect MCIW's confidential information. A standard that BellSouth must take all actions necessary imposes an unreasonable burden on BellSouth. It is likely that in most situations no matter the level of

precaution taken by BellSouth, MCIW will be able to show that an additional action could have been taken. The Commission also finds that MCIW bears the burden of showing that the actions taken by BellSouth to protect the information were not reasonable.

### **III. CONCLUSION AND ORDERING PARAGRAPHS**

The Commission finds and concludes that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

**WHEREFORE IT IS ORDERED**, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

**ORDERED FURTHER**, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 6<sup>th</sup> day of February, 2001.

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Helen O'Leary  
Executive Secretary

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Lauren McDonald, Jr.  
Chairman

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Date

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Date