Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| Implementation of the Local Competition | ) | CC Docket No. 96-98 |
| Provisions in the Telecommunications Act | ) | |
| of 1996 | ) | |





# COMMENTS OF THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

May 15, 1996

Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

## TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



| | | |
|---|---|---|
| In the Matter of | ) | |
| Implementation of the Local Competition | ) | CC Docket No. 96-98 |
| Provisions in the Telecommunications Act | ) | |
| of 1996 | ) | |

# COMMENTS OF THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

## I. Introduction and Summary of Substantive Arguments:

On April 19, 1996, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) requesting comment on proposed rules to implement Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act). This Section of the 1996 Act deals specifically with local competition provisions. In compliance with the NPRM, the Michigan Public Service Commission Staff (Michigan Staff) herein responds to a number of issues raised by the FCC. As required in its NPRM (¶ 291),[1] a summary of the Michigan Staff substantive arguments urges that only a broad framework of requirements be adopted by the FCC to assure implementation of the 1996 Act. Many alternative specific solutions should clearly be permitted because they would permit recognition of a myriad of differing circumstances faced in various states but would still assure swift implementation of the federal Act and the onset of local competition. Comments on specific issues raised in the NPRM follow.

---

As required by the NPRM, ¶ Numbers contained in parenthesis refer to paragraph numbers of the FCC Notice to which Michigan Staff is responding.

II. General Comments

Michigan Staff shares FCC's belief that a coordinated Federal-State approach is required to assure a smooth implementation of the 1996 Act. We recognize that the 1996 Act provides FCC with a legitimate role to prescribe certain policies that are cognizant of local policies and concerns.

However, particularly with regard to the local competition issues implicit in § 251, application of the following precepts is critical. Broad general national principles should be articulated only where required. A "one-size-fits-all" policy should be avoided to: (1) ensure that competition develops expeditiously in all markets, (2) avoid regulatory gridlock, and (3) minimize unnecessary litigation. FCC policies and rules should complement, not impede or duplicate, State efforts to foster local competition. States must retain flexibility to implement competition and develop pricing policies consistent with local market conditions.

In ¶26, the NPRM suggests that the FCC will pay "due regard to work already done by the states that is compatible the [1996 Act's] ... pro-competitive intent." However, the myriad tentative conclusions and proposals suggest that the FCC is considering a detailed and very prescriptive uniform national approach intended to bind the states. In addition, the FCC tentatively concludes that the reservation of State jurisdiction contained in § 152(b) has no application to § 251 and 252.

Michigan Staff disagrees with both of these suggestions. An examination of the history

and text of the 1996 Act clearly indicates the intent of Congress that the FCC take a broad approach to rules that implement the 1996 Act and that § 152(b) apply to all of Part II of Title II. We submit that the prescriptive Federal overlay suggested by the NPRM is not supported by the text and history of the 1996 Act and is inappropriate from a policy perspective. Even if the 1996 Act could be interpreted to permit such prescriptive rules, the limited time for FCC action suggests that the prudent course would favor the adoption of broad and flexible rules.

Many states have either already issued rules and orders related to interconnection and unbundling or will do so before the FCC's rule is issued in August. Unlike any generic Federal approach, each one of these proposals was developed or is being developed with the existing State regulatory framework and local market conditions in mind. Most, if not all, of these proposals, can claim consistency with the broad terms of the 1996 Act. Competition is already moving forward in states that have attractive markets without FCC rules. Specific rules to guide these states are unnecessary an may be counterproductive. Other states are moving to assure that they meet the duties imposed by the 1996 Act. To avoid blocking the progress that states have made, the FCC's rules should be very general. In passing the 1996 Act, it is unlikely that Congress intended to halt or retard pro-competitive state initiatives or encourage additional litigation over state compliance issues.

## III. Scope of the FCC's Regulations (¶ 27)

Michigan Staff strongly supports FCC specification of only a broad set of rules that

must, at a minimum, be incorporated in local interconnection and resale arrangements to assure compliance with the 1996 Act. Where a number of alternatives may in fact be acceptable under the 1996 Act, Michigan Staff would support FCC designation of a recommended solution, or, at a minimum, a discussion of the advantages and disadvantages of each. However, selection of an alternative as the required solution, when a number of alternatives would be clearly permissible under the 1996 Act, should be rejected.

First, as acknowledged throughout the NPRM, a myriad of alternative solutions have already either been agreed to by interconnecting parties or have been adopted by various state commissions, which clearly promote local competition and are in compliance with federal law.

Second, identifying the "only correct" solution to each issue will severely constrain the introduction of local competition, cause further delays and potentially require unneeded expenditures as providers are required to back-track and arrange for a different type of interconnection than they have already put into place. Michigan is far along the road in its support of a competitive local exchange marketplace. The first license for the competitive provision of basic local exchange service was approved by the Michigan Commission more than eighteen (18) months ago and since then licenses have been granted to five (5) other providers. The first order compelling local interconnection between providers and specifying the rates, terms and conditions for this interconnection was approved more than a year ago in

February, 1995.[2] Michigan law, which codified requirements for local interconnection, was enacted in November, 1995.[3] These advances must not be clouded now with further uncertainty.

Third, a number of alternatives must be available to respond to differing degrees of competition in various states and geographic areas of the country, differing customer needs and desires, differing rate structures for other existing services and differing indirect effects on non-competing providers and customers. Providers must first have an opportunity to negotiate mutually agreeable forms of interconnection which are generally permissible under both state and federal law. State commissions must then have the ability to take a number of considerations into account should agreement between providers not be reached. A maximum degree of flexibility will have the greatest potential for furthering competition while allowing the ability to recognize public interest considerations that must be taken into account.

As will be discussed in more detail below, Michigan law and Michigan Public Service Commission orders are largely in compliance with the 1996 Act, are fully supportive of competition and incorporate general principles for interconnection to achieve that end. In the few instances where a conflict exists, it is usually a case that the one law is more

---

[2]See Attachment 1, the February 23, 1995 Michigan Public Service Commission Order in Case No. U-10647 establishing and approving interconnection arrangements between City Signal, Inc, and Ameritech Michigan.

[3]Attachment 2 is Michigan's 1991 Public Act 179 as amended by 1995 Public Act 216 (Act 179). Interconnection requirements are specified in Article 3A of this Act.

encompassing than the other (rather than in direct conflict with the other) in the paradigm it adopts. Therefore, in Michigan Staff's opinion, the principles which permit the greatest potential for introduction of competition should prevail.

IV. National Standards (¶ 33/34)

The technical standards that currently apply to incumbent LECs should be applied to new LECs. All network providers should be required to follow: (1) the North American Dialing Standards, (2) Part 68 Standards for modular jacks and terminal equipment, (3) service quality standards, and (4) interconnection standards. These should be the minimum standards today to evolve as technology and market needs change. Minimum standards must be fashioned to include access to vital services (e.g. access to 911, Telecommunications Relay Service, etc.)

V. Reciprocal Interconnection Obligations (¶ 45)

For the most part, Michigan law imposes interconnection obligations only on providers serving more than 250,000 end-users in the state.[4] Although there is no obligation for the small provider to establish interconnection arrangements with other providers under Michigan's Act 179, there is no prohibition against such interconnection either. Smaller local exchange providers (LECs), whether competing or non-competing providers, may establish

[4]Sec. 351 of Act 179.

local interconnection arrangements, but they are not obligated to do so.

As discussed in Section II above, Michigan Staff believes that only broad parameters for the implementation of the 1996 Act should be specified by the FCC. Michigan Staff also believes that the terms of interconnection which have to-date been specified by the Michigan Commission are in compliance with the 1996 Act. Michigan Staff also believes, however, that if existing interconnection agreements are not in compliance with the 1996 Act and the FCC's broad implementation standards, that these agreements should be renegotiated within a specific, short-term timeframe (¶ 48). Only in this manner can discriminatory treatment be prevented among the providers seeking interconnection. If existing agreements are in compliance with the 1996 Act, they should be submitted for approval. If not in compliance with the 1996 Act, then modifications should be negotiated and the original agreement with modifications should then be submitted for approval as provided for in the 1996 Act.

With respect to infrastructure requirements, new entrants should not be required to mirror incumbent LEC networks, in terms of exchange boundaries, switching hierarchies, etc. However, certain technical and operational requirements, including unbundling, interconnection, access to shared network functionalities, and number portability are needed to ensure that the networks operate in a seamless fashion.

With respect to local service requirements, existing carriers and new entrants should be required to provide 911, operator services, directory assistance, and connection to interexchange carriers. If the incumbent local exchange carrier provides 911/E911 and

telephone relay services, it should make them available to other carriers on terms comparable to those it imposes upon itself and other providers.

VI. Interconnection (¶ 49)

Michigan Staff agrees that a static definition of technically feasible points for interconnection must be avoided (¶ 56). Instead, in a generic interconnection proceeding in Michigan which is now nearing completion, Michigan Staff proposed a procedure for obtaining further unbundled local network components.[5] In developing its proposal on this issue, Michigan Staff relied in part on early procedures adopted by the FCC regarding requests for availability of components in the Open Network Architecture proceedings. In summary Michigan Staff's proposed procedure permits an opportunity for negotiated settlement between the parties prior to formal Michigan Commission intervention. Only in the event of an impasse does the Michigan Commission become involved. Under the procedure, any LEC is required to respond to a request for an unbundled network element for any exchange where a competitive license to provide service has been granted. The request for further unbundling, however, must include an intent to purchase statement, and, at a later date, a commitment to purchase statement which would obligate the requesting party to purchase if the unbundling occurs. Unbundling for unbundling's sake, therefore, should not be an issue. The procedure also permits refusal of the unbundling request given technical or economic justification.

[5]See Attachment 3.

Under this procedure, states could determine if more points for interconnection are feasible and the LEC to whom the request is made would have the burden to justify if the further unbundling does not occur (¶ 58). The level of technological development in a state's geographic area as well as the degree to which competition is developing can therefore be taken into account by each state in moving forward toward a more competitive environment.

Michigan law also prohibits the establishment of inferior interconnections (¶ 63). Specifically, any provider of basic local exchange service, whether large or small, incumbent or newly licensed, may not:

> "Refuse or delay interconnections or provide inferior connections to another provider."[6]

Such a standard is fully consistent with the principles of the 1996 Act and all LECs are bound by this requirement.

VII. Collocation (¶ 66)

Michigan law[7] requires incumbent providers serving more than 250,000 end-users to make available virtual collocation arrangements for equipment necessary for efficient interconnection of unbundled services. Other forms of interconnection, including physical collocation required by the 1996 Act are also permissible under Michigan law. Michigan Staff

---

[6]Sec. 305(b) of Act 179.

[7]Sec. 356 of Act 179.

supports the required availability of these types of arrangements. Michigan Staff also suggests, however, that physical and virtual collocation arrangements required in earlier FCC proceedings did not specifically address how these arrangements could or would be utilized for local interconnection purposes.[8] Considerable effort has been expended on this issue during the last year in Michigan with competitors requesting and the Michigan Commission agreeing that in some cases, a more simple cross-connect arrangement is what must additionally be provided for local interconnection purposes.[9] Further arguments are still pending on this issue in the Michigan Commission's second interconnection proceeding. Michigan Staff suggests that, even if existing physical and virtual collocation arrangements are appropriate for local interconnection purposes, they may include more functions than are needed for local competition and at a higher cost than will permit local competition to become economically viable.

## VIII. Unbundled Network Elements (¶ 74)

Michigan law requires that providers of basic local exchange service serving more than

---

[8]See page 19, footnote 48 of the FCC's September 17, 1992 Second Notice of Proposed Rulemaking in CC Docket No. 91-141. See also page 4, footnote 8 of the FCC's May 19, 1994 order in CC Docket No. 91-141. Referenced pages are included in this filing as Attachment 4.

[9]See Attachment 5, a Michigan Public Service Commission Order of October 3, 1995 in Case No. U-10647 on this issue.

250,000 end users immediately make available for purchase unbundled loops and ports.[10] In regard to loops in particular, Michigan law requires as a condition of licensure that providers have the ability to provide local service to every person within the geographic area of the license.[11] In the interpretation of the Michigan Commission this includes residential as well as business customers. In Michigan Staff's opinion it is quite unlikely that any newly licensed provider would have the immediate ability to serve many residential areas over its own facilities. The availability of unbundled loops from the incumbent provider makes this possible and brings the potential for competition to a much greater portion of the population. Therefore, Michigan Staff agrees that, at a minimum, ports and more critically loops must be made available (¶ 94). Proposals for subloop unbundling or other unbundling requests should be addressed according to the procedures discussed in Section V above (¶ 97).

Michigan law also requires that the port which must be offered by incumbent providers include the broader definition suggested by the FCC in its notice (¶ 101). Specifically, Michigan law defines a port as follows:

> "'Port' except for the loop, means the entirety of local exchange, including dial tone, a telephone number, switching software, local calling, and access to directory assistance, a white pages listing, operator services, and interexchange and intra-LATA toll carriers."[12]

---

[10]Sec. 355(1) of Act 179.

[11]Sec. 302(1)(a) of Act 179.

[12]Sec. 102(x) of Act 179.

Although this broader definition of a port must under Michigan law be priced at its total service long run incremental cost (TSLRIC) during 1996, nothing in Michigan law appears to limit the ability of a provider to offer the port in a number of components as long as all components are offered and each component is priced at its TSLRIC. In Michigan Staff's opinion this broader definition permits newly licensed providers to purchase, for example, not only "dial tone" but usage on that line as well. This broader definition is therefore appropriate.

Finally, in regard to data base access (¶ 109), Michigan law requires and Michigan Commission orders require non-discriminatory access to databases needed for the provision of basic local exchange service. Michigan law includes examples of required databases.

> "Providers of basic local exchange service shall allow access by other providers, on a nondiscriminatory basis and in a timely and accurate manner, to data bases, including, but not limited to, the line information data base (LIDB), the 800 data base, and other information necessary to complete a call within the exchange, either on terms and conditions as the providers may agree or as otherwise ordered by the Commission."[13]

Michigan Staff emphasizes that nondiscriminatory access must recognize the same use of the service. For example, nondiscriminatory access to directory listings would require that the same rates, terms and conditions be available for all providers who serve a local calling area - whether competitive or non-competitive. It is not relevant what another purchaser must pay for statewide listings to be utilized for other commercial purposes. The similarly situated

[13]Sec. 363 of Act 179.

provider is the appropriate consideration when discrimination is to be judged.

IX. Pricing of Interconnection, Collocation, and Unbundled Network Elements (¶117)

For the reasons discussed above in Section II, Michigan Staff proposes that only broad pricing principles be specified by the FCC which are required for adherence to the requirements of the 1996 Act (¶ 118). It is even more important in the pricing area that states be permitted the ability to take account of the pricing of other local services in the state in establishing the prices for unbundled network components. Michigan law already complies with the 1996 Act in this regard and with many of the proposals made by the FCC in its Notice.

Michigan law and Michigan Commission orders have addressed pricing principles on a number of occasions. TSLRIC is the basis for many of the elements of the Michigan law. For example, during 1996 loops, ports, and termination rates must either remain at levels established by the Michigan Commission in its original interconnection order, or must be priced at TSLRIC levels.

The definition of TSLRIC (¶ 126) adopted by the Michigan Commission in September, 1994 was codified into Michigan law last year. It specifies the following:

> "'Total service long run incremental cost' means, given current service demand, including associated costs of every component necessary to provide the service, 1 of the following:
>
> (i) The total forward-looking cost of a telecommunication service, relevant group of services, or basic network component,

> using current least cost technology that would be required if the provider had never offered the service.
>
> (ii) The total cost that the provider would incur if the provider were to initially offer the service, group of services, or basic network component."[14]

Common overheads and residual costs are not included in this definition (¶ 126), but development and use of unseparated costs are (¶120). Michigan Staff would note in particular that inclusion of residual costs in an attempt to "work back" to embedded investment is in conflict with the provisions of the 1996 Act prohibiting use and reference to traditional rate of return pricing. Inclusion of such costs in a TSLRIC definition is therefore inappropriate.

As competitive providers enter local exchange telephone markets, prices of services at both retail and wholesale level become important. If retail services are priced too far above cost, inefficiency may result. If retail services are priced below cost, efficient entry of competitors may be thwarted

At the wholesale level, pricing of network components is extremely important for the viability of competition for two reasons. First, the incumbent produces essential or bottleneck functions that will be used by entrants to provide service. These essential or bottleneck functions cannot be produced by entrants or obtained on reasonable terms from other sources. Second, the initial phase of retail competition will be based largely on resale of the incumbent's services. If network components are priced too high, a barrier to competitive

---

[14]Sec. 102(ff) of Act 179.

entry may be created. If network components are priced too low, the incumbent may be harmed, as resellers may purchase unbundled services and rebundle them at less than the incumbent's total cost. To prevent anticompetitive pricing, cross-subsidies, and harm to the incumbent, prices must be based on the cost of each element.

Consideration of geographic rate deaveraging for interconnection components (¶ 133) should be left to the judgment of each individual state. In Michigan Staff's opinion, any proposed rate deaveraging must be supported by cost variations as presented by the provider. If no cost studies exist to support such rate variation, deaveraging may result in discriminatory rates, contrary to both state and federal law. In addition, although Michigan law appears to permit some types of rate deaveraging,[15] the 1996 Act appears to prohibit rate deaveraging in some cases.[16] There may be considerable support for a position that if an end-user service cannot be deaveraged, the interconnection components which are utilized in the provision of that service should not be deaveraged as well. States must have the ability to review these factors and establish appropriate rules for the customers in their states.

Rate deaveraging should be permitted only when selective competitive entry warrants such flexibility, subject to a TSLRIC floor constraint. There may also be non-competitive situations that warrant rate deaveraging, such as when a service has wide cost variances, or when averaging may reduce subscription levels, or when deaveraging could provide more

---

[15]The 1995 amendments to Act 179 deleted the requirement that toll rates be averaged.

[16]1996 Act, Sec. 254(g).

accurate market signals due to cost variation.

The advent of competition creates pressure to deaverage local rates to reflect underlying costs. However, the network benefits of maintaining or increasing penetration levels indicate that there may be instances where averaging or other forms of support may be appropriate. Rate averaging will probably not be sustainable in a competitive environment in the long run. Regulators should consider deaveraging based upon market conditions and cost justification. If new carriers are allowed to enter only low cost areas, then the market rates for these areas will fall. If new entrants are required to serve a broad area at an averaged rate, this may effectively block competitive entry and deny consumers in low cost areas the benefits of competition. One way to sustain rate averaging in a competitive environment would be through a system of subsidized rate support.

In regard to appropriate rate ceilings (¶ 134) the bundled service price of the incumbent must represent the ceiling rate for the combined unbundled components. Otherwise, competition against the incumbent services cannot develop. Imputation requirements in fact already exist in the Michigan law.[17] Whether such imputation tests are required on a rate, service or service category basis will be addressed by the Michigan Commission in the very near future. The flexibility to address the issues involved in this determination can easily remain with the state commissions and still assure compliance with the 1996 Act. In further regard to the rate ceiling issue it must be recognized that in order for a provider to compete, it

[17]Sec. 362 of Act 179.

must of course have the ability to recover its own direct costs in the service price it offers its customers, as well as the costs it must pay to the incumbent providers for interconnection components. Therefore, in order to compete, each unbundled component must be priced above TSLRIC but well below the bundled service of the incumbent provider. Michigan Staff also concurs that in any calculation of a ceiling price for unbundled loops (¶ 141), there must be recognition that unseparated costs of that loop are presently recovered in toll rates, local rates, the carrier common line charge and the end user common line charge. Arguments to ignore the interstate recovery of these costs through the end user common line charge were presented to and rejected by the Michigan Commission in its original interconnection proceeding.[18]

Requirements that prices cover TSLRIC are still appropriate regardless of the current pricing of end user services (¶ 143). Under Michigan law, providers are permitted to restructure all regulated service rates in line with determined TSLRIC and by January 1, 2000, must in fact do so.[19] Universal service issues should be considered separately (see Section X below).

Proposals to structure prices in the same manner in which costs are incurred (e.g., usage based recovery for usage based costs) (¶ 150) should be left to the states. The Michigan Legislature, for example, in its consideration of the public interest of the people of the state of

---

[18]See page 57 of Attachment 1.

[19]Sec. 304a.(2) of Act 179.

Michigan, has required providers of basic local exchange service to offer service options which include a certain level of local calling in the flat rated monthly charges that are assessed.[20] Considerable public debate is ongoing in this area where residential customers have voiced a very strong desire for such options. Additionally, it may not be possible for some providers to bill in a way where pricing structures totally reflect the manner in which the costs are incurred. Options for usage based pricing for every usage based cost in this area may be totally inappropriate and technically infeasible. Pricing options must not prohibit competitors or a state commission from considering factors such as these.

In Michigan Staff's opinion, the rate discrimination issue between customers must be rather strictly defined (¶ 156). As discussed in Section VIII above, similarly situated customers must be at the heart of the discrimination assessment. In addition, providers should not be permitted to package numerous desired components to one provider and price these services totally differently to another provider simply because one of fifty components is not desired or needed by the second provider. Again, permissible discrimination must have its basis in cost differences.

As discussed briefly in Section IV above, any existing contracts which are not in compliance with the broad parameters of the policies of the 1996 Act and the FCC's rules must be brought into compliance to assure non-discriminatory treatment (¶157). A transition period may be appropriate, however, to avoid rate shock effects in some instances.

---

[20]Sec. 304(b) of Act 179.

X. Universal Service (¶ 145)

Universal service considerations should not prevent or delay the granting of local service certification. Changes to universal service and high-cost funding mechanisms may need to be considered separately if there is concern that basic rates may rise as a result of competitive entry. Basic rate increases could occur due to several factors, including the movement to more cost-based or deaveraged rates, or loss of economies of scale resulting from reduced demand. Universal service and high-cost fund subsidies should be recovered through competitively neutral mechanisms.

The introduction of competition into the local telecommunications market may require changes to the current implicit and explicit mechanisms used to achieve the existing level of universal service. As has already been observed in the long distance market and in certain local business markets, large customer demands, varying access rates, and cost differences have caused some deaveraging, bypass and rate arbitrage.

In order to be fair to all service providers and to avoid having high-cost fund assistance be a competitive advantage or obstacle, all similarly situated telecommunications providers should be contributors to the fund. Similarly, the allocation mechanism should assess the widest possible array of services to avoid creating competitive advantages/obstacles among various service categories or unnecessarily creating a bypass incentive.

XI. Interexchange Services, Commercial Mobile Radio Services, and Non-Competing Neighboring LECs (¶ 158)

In Michigan Staff's opinion, determination of whether mobile, cellular or PCS providers offer basic local exchange service (¶ 168) is dependent upon the service itself rather than the medium over which it is offered. For example, if the only technically feasible and economically viable alternative to provide local service in a particular geographic area is through wireless technology, this service should be considered basic local service -- regardless of the technology used to provide it. For the most part, however, where such services are not the only nor, in fact, the primary means of providing service they should not be the subject of interconnection requirements being discussed herein. It is the Michigan Staff's belief that only if a provider is licensed as a provider of basic local exchange service and assumes the applicable obligations in a given state for that type of provider, would it be eligible for the appropriate aspects of local interconnection, such as local call termination compensation.

Whether non-competing LECs should be bound by interconnection requirements (¶ 170) is a different situation, however. In Michigan Staff's opinion, non-competing LECs utilize the exact same equipment in exactly the same way as competing LECs in the provisioning of local calling (especially extended area service arrangements). These LECs should be required to pay the same rates for use of incumbent LEC facilities as competing providers must pay. Under Michigan and federal law, small providers are not required to offer the same type of interconnection services (although they are permitted to do so). Neither law, however, permits some LECs to be charged for use of facilities while others are not. The

distinction between a small and large provider should not be considered to mean a distinction between competing and non-competing provider. In Michigan Staff's opinion, the latter type of distinction does not exist in Michigan law. Therefore, for example, if Ameritech Michigan charges a competitive provider to terminate its local calls, it must also charge a non-competing provider or an affiliate to terminate its calls as well. Without this treatment, unreasonable discrimination would occur. At the time that interstate toll competition began, contractual arrangements between the Bell Operating Companies and AT&T were terminated and services were offered via non-discriminatory, tariffed access charges. At the time that intraLATA toll competition began, contractual arrangements between the Bell Operating Companies and other LECs were terminated and services were offered via non-discriminatory, tariffed access charges. Now as local competition evolves, contractual arrangements between incumbent providers must be terminated and services offered via non-discriminatory, tariffed local access charges. The non-competing provider of yesterday is the competing provider of today (e.g., Ameritech Communications Inc. has pending before the Michigan Commission a license application to serve all Ameritech Michigan and GTE exchanges in the state). The same facilities are utilized. Public access to the same rates, terms and conditions is necessary.

XII. Resale Obligations of Incumbent LECs (¶ 172)

In Michigan Staff's opinion, resale prohibitions are not permissible under federal law. In general, Michigan law also prohibits resale restrictions. However, it permits but does not

require the resale of promotions.[21] The 1996 Act is therefore broader in its scope but is not in conflict with Michigan law. Resale restrictions must be removed from all offerings of the incumbent providers. Resale limitations, however, may be appropriate in some instances (¶176) and are permissible under both state[22] and federal law. For example, Michigan believes it is appropriate to limit the resale of residential service to residential customers. This is particularly appropriate in Michigan since flat-rated service options must be offered to residential customers but not to business customers. Therefore, the ability to purchase residential service from an incumbent provider in order to resell it to business customers should be prohibited. Similarly, lifeline services must be resold only to eligible customers. The incumbent provider is eligible under FCC rules and Michigan law[23] to receive reimbursement for lifeline discounts but the ability to restrict the resale of that service to only lifeline eligible customers must also be permitted.

The determination of wholesale rates is addressed more broadly in the 1996 Act but these provisions are not in conflict with Michigan law (¶ 180). Michigan law requires that wholesale rates be offered for basic local exchange service and that wholesale rates be computed by subtracting avoided costs from current retail rates.[24] The 1996 Act requires a

---

[21]Sec. 357(3)(a).

[22]Sec. 357(2) of Act 179.

[23]Sec. 316(4) of Act 179.

[24]Sec. 357(4) of Act 179.

similar determination of wholesale rates but on all the service offerings of the incumbent provider. Michigan Staff suggests that this latter determination of wholesale rates proceed and that it is not in conflict with Michigan law. Providers have the initial ability to determine appropriate wholesale rates. Only if agreement cannot be reached, is it necessary for the regulators to intervene and establish rates according to the provisions of applicable law.

XIII. Transport and Termination (¶230)

As discussed in Section X above, competing and non-competing LECs must pay non-discriminatory rates for the use of incumbent LEC facilities. Local termination charges should be based upon TSLRIC studies. Termination charges should be based on costs incurred. The coexistence of local termination charges and flat rate pricing of local usage is a difficult problem and must be assessed on a state by state basis. The local termination rate should be balanced against flat rate usage in order to equalize the minute of use traffic costs between the entrant and the incumbent.

Rate parity between traffic sensitive local and toll termination charges, if cost justified, could reduce billing expenses and remove arbitrage opportunities. Whether differing local and toll rates or a common termination rate are used, network traffic should ultimately be monitored. At a minimum, traffic measurement would need to occur if overall inter-carrier minutes or distances are out of balance or if there are different rates for local and toll traffic.

Conclusion

The Michigan Public Service Commission Staff strongly supports the concept that the Federal Communications Commission specify only a broad set of rules that must, at a minimum, be incorporated into local interconnection and resale arrangements to assure compliance with the Telecommunications Act of 1996. Many alternatives must be permitted which comply with the broad set of rules and the 1996 Act.

Respectfully Submitted,

William J. Celio
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48910

Ronald G. Choura
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48910

Attachment 1

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *



| | |
|---|---|
| In the matter of the application of CITY SIGNAL, INC., for an order establishing and approving interconnection arrangements with AMERITECH MICHIGAN. | Case No. U-10647 |

At the February 23, 1995 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. Ronald E. Russell, Commissioner
Hon. John L. O'Donnell, Commissioner

## OPINION AND ORDER

## I.

## HISTORY OF PROCEEDINGS

In its October 12, 1994 order in Case No. U-10555, the Commission granted City Signal, Inc., a license to provide basic local exchange service in the Grand Rapids District Exchange, pursuant to Section 302(1) of the Michigan Telecommunications Act, 1991 PA 179 (Act 179), MCL 484.2101 et seq. In doing so, the Commission found that City Signal possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographic area of the license. The Commission also found that the granting of a license to City Signal would not be contrary to the public interest.

The Grand Rapids District Exchange lies within Ameritech Michigan's licensed service area. Consequently, prior to actually commencing basic local exchange service, the law requires that City Signal have interconnection arrangements with Ameritech Michigan. Interconnections arrangements are necessary to enable City Signal's basic local exchange service customers to make and receive calls from Ameritech Michigan's basic local exchange service customers, thereby connecting the two providers' networks. Because City Signal and Ameritech Michigan were unable to agree on interconnection arrangements, City Signal filed an application, on August 5, 1994, to establish those arrangements, pursuant to Section 303(2) of Act 179. That section specifically provides that:

> "A telecommunication provider shall not provide basic local exchange service to customers or end-users located within another telecommunication provider's licensed service area except through interconnection arrangements consented to by the license holder or as approved by the commission pursuant to section 203." [MCL 484.2303(2).]

A prehearing conference was held on September 12, 1994 before Administrative Law Judge James N. Rigas (ALJ). Ameritech Michigan, GTE North Incorporated (GTE), the Michigan Exchange Carriers Association (MECA), AT&T Communications of Michigan, Inc., (AT&T), MCI Telecommunications Corporation (MCI), Teleport Communications Group (Teleport), Americom Telemanagement, Inc., (Americom), and Attorney General Frank J. Kelley (Attorney General) were granted intervenor status. The Commission Staff (Staff) also participated in the proceedings.

With its application, City Signal also filed a motion to establish transitional co-carrier interconnection arrangements. On November 10, 1994, the Commission issued an order granting the motion in part and directing Ameritech Michigan to initiate joint technical trials with City Signal to ensure that the two companies' networks are compatible prior to issuance

of a final order in this case. The Commission also directed City Signal and Ameritech Michigan to file, no later than December 1, 1994, a report outlining the technical parameters of the trials. City Signal and Ameritech Michigan filed a Technical Trial Report on December 9, 1994. On February 16, 1995, City Signal and Ameritech Michigan filed another report, in which they indicated that the test results of phase one of the trial demonstrated the feasibility of integrating their networks.

Cross-examination of direct and rebuttal testimony took place on November 15 through 18 and 21 through 23, 1994. A final day to cross-examine direct testimony reinstated by the Commission's November 23, 1994 order and to cross-examine supplemental rebuttal testimony was held on December 2, 1994. The record consists of 2,277 pages of testimony, which was presented by 18 witnesses, and 97 exhibits that were admitted into evidence.

On December 12, 1994, City Signal, Ameritech Michigan, GTE, MECA, MCI, AT&T, Teleport, and the Staff filed briefs. Except for the Attorney General, those same parties filed reply briefs on December 19, 1994.

On January 20, 1995, the ALJ issued a Proposal for Decision (PFD). On February 1, 1995, exceptions were filed by City Signal, Ameritech Michigan, GTE, MECA, MCI, AT&T, Teleport, and the Staff. The same parties filed replies to exceptions on February 8, 1995. GTE late-filed replies on February 10, 1995.

## II.

## DISCUSSION

### Introduction

During the course of this proceeding, various proposals for interconnection were presented by the parties. City Signal took the position that, in addition to establishing the physical terms of interconnection, the Commission must also establish other terms such as mutual compensation, unbundling, number portability, directory assistance, access to data bases, and so on. MCI, AT&T, Teleport, the Attorney General, and the Staff supported this position. They maintained that such terms are critical to effective and meaningful competition in the basic local exchange service market. According to these parties, meaningful competition means that the existing network must be open and accessible to all competitors on the same basis.

On the other hand, Ameritech Michigan asserted that interconnection, as defined in Section 303(2) of Act 179, is simply the reciprocal ability to hand off traffic from one basic local exchange service provider's network to another basic local exchange service provider's network in a manner that is transparent to the customer. Consequently, Ameritech Michigan argued that the other issues raised by City Signal do not involve interconnection within the scope of Section 303(2). Ameritech Michigan asserted that City Signal and other competitors are simply demanding competitive advantages. As a result, Ameritech Michigan urged the Commission to keep in mind the distinctions between interconnection and subsidization, competition and competitive handicapping, and capital investment and cream skimming. GTE and MECA supported Ameritech Michigan's position.

These fundamental differences generated a tremendous amount of controversy regarding numerous issues. As a result, those issues will be examined on an issue-by-issue basis.

Linkage to InterLATA Relief

Ameritech Michigan originally argued that the Commission must first address the public policy issue of linking certain components of City Signal's interconnection proposal, namely, unbundling and mutual compensation,[1] to Ameritech Michigan obtaining relief from its interLATA restrictions.[2]

Ameritech Michigan asserted that some of City Signal's demands prematurely seek to compel Ameritech Michigan to implement proposals it voluntarily made in its Customers First Plan.[3] Ameritech Michigan stated that one of its greatest concerns in this case is the attempt by a competitor, i.e., City Signal, to pick and choose portions of the Customers First Plan,

---

[1]Unbundling is the identification and separation of components of the local exchange network. Mutual compensation means that carriers compensate each other for termination of traffic on their respective networks.

[2]As a result of the Modified Final Judgment issued in United States v American Telephone and Telegraph Company, 552 F Supp 131 (DC 1982), aff'd sub nom, Maryland v United States, 460 US 1001, 103 S Ct 1240, 75 L Ed 2d 472 (1983), AT&T was required to divest itself of the Bell Operating Companies, including Michigan Bell (now known as Ameritech Michigan). Since January 1, 1984, the effective date of divestiture, Ameritech Michigan has been expressly prohibited from providing interstate and intrastate interLATA service. Likewise, GTE is also prohibited from providing that service. See United States v GTE, Civil Action No. 831298 (DC 1985).

[3]On March 1, 1993, Ameritech, the parent corporation of Ameritech Michigan, filed a petition for declaratory ruling and related waivers to establish a new regulatory model for the Ameritech region with the Federal Communications Commission. In that petition, Ameritech proposed a regional program designated "Customers First: Ameritech's Advanced Universal Access Plan" (Customers First Plan), which would significantly change the nature of competition. In pertinent part, Ameritech indicated that it will open its local telephone network to competition and integrate its network with those of its local competitors, if it obtains the ability to provide interLATA long distance service.

while denying Ameritech Michigan an integral part of that plan--interLATA relief. Ameritech Michigan explained that, in its Customers First Plan, it proposed to unbundle the local loop and port[4] components of its existing basic local exchange service. The plan also included a proposal to fully integrate competitive local exchange carriers (LECs) into the public switched network through physical interfaces and compensation arrangements that go beyond mere physical interconnection. However, Ameritech Michigan submitted, these proposals are expressly conditioned on Ameritech Michigan obtaining interLATA relief.

Ameritech Michigan contended that it would not be appropriate to proceed with unbundling and mutual compensation in the absence of interLATA relief because to do so would have a devastating effect on the company's economic viability. In support of that position, Ameritech Michigan presented the testimony of Dr. Robert G. Harris, an economist and associate professor of business and public policy at the University of California at Berkeley.

Dr. Harris testified that this is a case of targeted entry by City Signal because the Grand Rapids District Exchange is a very lucrative market. According to Dr. Harris, the urban concentration of the Grand Rapids District Exchange provides revenues that Ameritech Michigan needs to subsidize its high-cost customers in residential and rural, low-revenue areas. In Dr. Harris's view, if the Commission grants City Signal the favorable compensation, unbundling, balloting, and number portability it requests, Ameritech Michigan will be placed at a competitive disadvantage. He said that Ameritech Michigan will have to subsidize City Signal by providing universal service, while being unable to provide the same services, i.e.,

---

[4]A port provides dial tone and a telephone number, thereby enabling customers to make and receive calls.

interLATA service, that City Signal or its long distance affiliate, Teledial, can provide. Dr. Harris concluded that without appropriate changes in federal regulatory policy and relief from the Modified Final Judgment (MFJ) restrictions, Ameritech Michigan and its customers will suffer economic harm from imbalanced competition and cream-skimming. (9 Tr. 1459-61.)

Based on this testimony, Ameritech Michigan argued that if the Commission orders unbundling and mutual compensation, the company will quickly lose revenues necessary to continue to earn a reasonable return and meet its service obligations. In Ameritech Michigan's view, the loss of revenues and profitable lines of business will also hamper the company's incentive and ability to deploy a modern telecommunications infrastructure in Michigan. Ameritech Michigan contended that breaking the linkage between unbundling and mutual compensation and interLATA relief will also have a chilling effect on the future willingness of regulated companies to make innovative proposals.

City Signal, MCI, AT&T, Teleport, the Attorney General, and the Staff opposed the conditioning of unbundling and mutual compensation on Ameritech Michigan obtaining interLATA relief. These parties asserted that interconnection arrangements incorporating unbundled loops and mutual compensation should not be deferred until Ameritech Michigan's MFJ restrictions are terminated or waived. The Staff acknowledged that, while restrictions on providing interLATA services and supplier-of-last-resort obligations disadvantage Ameritech Michigan, the company is greatly advantaged in other areas. The Staff pointed out that Ameritech Michigan is an enormous corporation compared to City Signal, and it is presently the only provider of basic local exchange service in Grand Rapids. Moreover, the Staff argued that establishing interconnection arrangements that disadvantage City Signal until the MFJ restrictions are removed is contrary to Act 179.

MCI argued that breaking the linkage to interLATA relief will not create an environment in which Ameritech Michigan's financial viability or universal service is threatened. MCI pointed out that Ameritech Michigan will begin basic local exchange service competition with a 100% market share and customer recognition, which comes from decades of being the only basic local exchange service provider in Grand Rapids. In addition, MCI argued that Ameritech Michigan has the only ubiquitous basic local exchange service network in place. According to MCI, City Signal will need several years to replicate the bulk of Ameritech Michigan's in-place facilities, although it will probably never replicate that company's complete network. Finally, MCI, AT&T, and Teleport cited the February 24, 1994 order in Case No. U-10138, in which the Commission determined that Act 179 favors competition and, therefore, postponing entry into the basic local exchange service market can no longer be justified.

MCI further argued that, in Ameritech Michigan's proposed order on MFJ relief, the interLATA restrictions will not be removed until legal and regulatory barriers to local exchange competition have been removed. To obtain a temporary waiver of those restrictions, MCI submitted, Ameritech Michigan must now show that at least one alternate provider is actually offering basic local exchange service and that Ameritech Michigan has implemented, among other things, unbundling and reciprocal compensation.

The ALJ determined that there is no justification for delaying the consideration of unbundling and mutual compensation until Ameritech Michigan's interLATA restrictions are lifted. The ALJ was not persuaded that breaking the linkage will place Ameritech Michigan at such a competitive disadvantage that its financial viability and universal service will be threatened. The ALJ concluded that it is simply beyond credible belief that a corporation the size of Ameritech Michigan will be as vulnerable to competition from City Signal as Ameritech

Michigan claims. Furthermore, the ALJ found that, inasmuch as Ameritech Michigan's Customers First Plan has not been filed in Michigan, it is irrelevant to this proceeding. The ALJ therefore rejected Ameritech Michigan's proposal to link unbundling and mutual compensation with the lifting of the interLATA restrictions.

Ameritech Michigan excepts to the ALJ's rejection of its arguments regarding linkage. In doing so, Ameritech Michigan relies on the arguments presented in its brief. However, the Commission finds that all of those arguments must be rejected.

The ALJ properly concluded that Ameritech Michigan's proposal to link unbundling and mutual compensation with the lifting of the interLATA restrictions must be rejected. Section 103 of Act 179 provides that:

> "Except as otherwise provided in this act, this act shall not be construed to prevent any person from providing telecommunication services in competition with another telecommunication provider." (MCL 484.2103.)

Consistent with that policy, in its February 24, 1994 order in Case No. U-10138, the Commission stated that if federal policymakers continue to impose restrictions against participation in one market on Ameritech Michigan and GTE, continuing to postpone competitive entry into all other markets can no longer be justified. Furthermore, as pointed out by Staff witness Ann R. Schneidewind, a Technical Specialist in the Commission's Communications Division, there is nothing in the law that requires or even implies that the Commission should defer the granting of a competitive license or approval of interconnection arrangements incorporating unbundled loops and mutual compensation until Ameritech Michigan's MFJ restrictions are terminated or waived. (11 Tr. 2017.)

The Commission also finds that the record supports the conclusion that Ameritech Michigan's claim that it will be highly vulnerable to competition from City Signal lacks merit.

City Signal witness Terry L. Murray, an economist and principal in the consulting firm, Murray and Associates, testified that Ameritech Michigan's claims of serious economic harm are unsubstantiated and highly implausible. Specifically, Ms. Murray testified that:

> "Dr. Harris's claims of serious economic harm are like an echo from the past. Since the late 1950's, the LECs have advanced virtually the identical claims of economic harm, 'imbalanced competition' and 'cream-skimming', as grounds for rejecting every federal and state policy designed to promote competition in telecommunications. Regulators were told that revenues from customer premises equipment ("CPE") were an essential source of cross-subsidy to keep local exchange service affordable and universally available; supposedly even a device as simple as a plastic cup attached to a phone receiver to allow the speaker to have a private conversation held the potential to undermine the entire foundation of universal service in America. (footnote omitted.) But the CPE deregulation failed to produce the predicted cataclysm, and LECs such as Michigan Bell were able to upgrade their networks and to provide affordable service even in rural areas.
>
> "Similar arguments have been advanced against competition for a host of other services, most notably toll services. In each case, regulators have been assured that revenues from the targeted service were essential to the LECs' ability to offer universal service, and in each case, the advent of competition has failed to produce the demise of affordable local exchange service." (12 Tr. 2225.)

Consistent with that testimony, the Commission has already recognized the fact that Ameritech Michigan has previously made exaggerated claims regarding the potential loss of business. In Case No. U-10138, Ameritech Michigan argued that implementation of intraLATA dialing parity would result in catastrophic consequences to Ameritech Michigan and GTE. However, in its July 19, 1994 order in that case, the Commission noted that the Staff's witness, William J. Celio, Director of the Commission's Communications Division, confirmed the fact that, for years, Ameritech Michigan has been predicting dire consequences if the Commission took a particular action. However, the very opposite has occurred. Mr. Celio stated:

> "[S]ince 1984 or thereabouts, we've been listening to Mr. Miller testify how the whole world will end, and Michigan Bell will exit from every meaningful market if the Commission does something. And [in] many cases, the Commission did that

something, and . . . the only thing we've done with Michigan Bell is reduce rates and give refunds, because they were making excessive profits. So I have not seen a negative impact [from] Commission decisions." (July 19, 1994 order in Case No. U-10138, p. 20.)

Similarly, in this case, the Commission is not persuaded that including unbundling and mutual compensation in the interconnection arrangements between City Signal and Ameritech Michigan in the absence of interLATA relief will lead to the financial demise of Ameritech Michigan. In fact, the record supports the conclusion that Ameritech Michigan will actually retain significant competitive advantages under City Signal's proposed interconnections arrangements. Ms. Murray explained that:

"Michigan Bell will retain several competitive advantages. Any competitor that starts with 100% market share and has nearly a hundred years of market presence has an enormous advantage due to customer inertia. Brand loyalty is not simply a phrase in marketing and economics textbooks; it's a marketplace reality. As was evident in the interLATA marketplace, the market share of a dominant firm erodes slowly, even with substantial competitive entry and vigorous marketing by new competitors. Ten years after the divestiture of AT&T, AT&T retains approximately a 65% share of total toll revenues--long after the implementation of equal access in all the major market areas and after years of competition from firms that faced fewer regulatory restrictions on their pricing and terms and conditions of service. I expect that a similar pattern will prevail in the local exchange market.

"Added to the advantage of its dominant market position and enormous size advantage over City Signal, Michigan Bell is also the only competitor with ubiquitous facilities in place, the only competitor with a staff of customer representatives who are already trained and experienced in marketing the full range of local exchange services to the full customer base, the only competitor known and recognized as a provider of local exchange service, and--last but certainly not least--the only competitor that controls bottleneck facilities its rivals must access in order to provide service throughout an exchange area under the terms of Act 179 and this Commission's granting of a license to offer local exchange service." (12 Tr. 2223-24.)

Ms. Murray effectively withstood cross-examination by Ameritech Michigan on this issue. When challenged on her testimony that Ameritech Michigan's revenue base is so large that it is not plausible that the introduction of local exchange competition will result in irreparable financial harm to the company or its ratepayers for the foreseeable future, Ms. Murray

testified that she did not expect Ameritech Michigan to experience any significant competitive losses that would make that company financially insecure. Moreover, Ms. Murray also stated that even if Ameritech Michigan did not get relief from the MFJ restrictions over the next five to seven years, she would be "shocked" if Ameritech Michigan suffered such severe financial losses that it would jeopardize the company's ability to continue to provide service in all areas of its service territory. (12 Tr. 2246-47.)

The Commission therefore rejects Ameritech Michigan's contention that it will be handicapped and placed at a serious competitive disadvantage if the Commission requires unbundling and mutual compensation. That argument misses the point because it incorrectly assumes that City Signal has market power. As Ms. Murray testified on cross-examination, City Signal effectively has no market power and imposes no barriers to entry or exit on any other player in the marketplace. Consequently, she indicated that it is perfectly consistent to say that neither carrier is being handicapped if there are rules in place to correct for Ameritech Michigan's market power, because there is no similar market power to be corrected for City Signal. (12 Tr. 2240-41.)

The Commission also agrees with the ALJ that Ameritech Michigan's Customers First Plan is irrelevant to this proceeding. Although Ameritech Michigan asserts that the Customers First Plan is a progressive, innovative, balanced, and procompetitive proposal, the company has not, as yet, filed that plan with the Commission. Furthermore, even if it were before the Commission, Ameritech Michigan's request for a waiver of the MFJ restrictions is still pending at the federal level, a situation over which the Commission has no authority. Moreover, it appears that Ameritech Michigan has taken a significantly different position regarding these same issues at the federal level. Apparently, Ameritech now agrees that relief

from the interLATA restrictions will be contingent on the company implementing certain changes to permit competition in the local exchange market.

Finally, Ameritech Michigan's position is further undermined by the fact that, in its exceptions, it now states that it supports mutual compensation. Therefore, based on the foregoing discussion, the Commission finds that unbundling and mutual compensation should not be conditioned upon Ameritech Michigan obtaining interLATA relief.

Physical Interconnection

City Signal proposed that both the physical and compensation terms of interconnection be modeled after the current arrangements between Ameritech Michigan and other LECs serving exchanges adjacent to Ameritech Michigan. For local traffic, those arrangements are currently embodied in extended area service (EAS) agreements.[5]

City Signal contended that, as a licensee with the same rights as other LECs, it is entitled to the same quality of interconnection, and on the same terms and conditions that an LEC serving an adjacent service territory has with Ameritech Michigan. According to City Signal, any other type of arrangement for local traffic, such as the relationship between the LECs and the interexchange carriers (IXCs) or cellular carriers, would be discriminatory and result in inferior connections and degraded service to City Signal. MCI, AT&T, Teleport, the Attorney General, and the Staff supported City Signal's position.

Under its proposed arrangements, City Signal stated that the physical connections between the networks should be designed in such a way that traffic can flow freely between customers in a manner that is technically transparent to them. Specifically, City Signal would use its

[5]Extended area service is local calling between adjacent exchanges.

network to establish physical meet-points at Ameritech Michigan end-offices or at common distribution points, such as a designated tandem location.[6] Likewise, Ameritech Michigan would also establish physical meet-points at City Signal's end-offices or use a common hand-off at a designated tandem location. In other words, physical interconnection would be similar to the current meet-point arrangements between Ameritech Michigan and adjacent LECs, except that direct connections to each end-office would be permitted. City Signal explained that these physical interconnections would include all types of traffic--local, toll, operator-assisted, cellular, paging, access, directory assistance, and emergency services.

Ameritech Michigan opposed City Signal's proposed physical interconnection arrangements. Ameritech Michigan explained that the physical arrangements for EAS traffic have historically existed between LECs that served separate geographic areas. Generally, Ameritech Michigan stated, those arrangements involve one LEC extending a two-way facility to the boundary of its geographic area where it meets, and is connected to, a similar facility of the other LEC. According to Ameritech Michigan, the historical reason for the development of this type of arrangement is that the two companies had distinct geographic territories with an adjoining boundary and distinct rights and responsibilities. However, Ameritech Michigan continued, unlike the situation between two adjoining LECs for the hand-off of EAS traffic, alternative exchange carriers and LECs do not serve customers in distinct geographic areas and there is no naturally established boundary between the providers' facilities.

---

[6]A tandem office is a switching center for the switched telephone network that interconnects two or more central offices that cannot be directly connected.

Ameritech Michigan therefore maintained that, in the absence of an agreement between the parties to provide meet-point arrangements, physical interconnection must be based on Ameritech Michigan's tariffed, switched toll access interconnection arrangements, including virtual collocation,[7] which are used by the IXCs. Ameritech Michigan pointed out that those arrangements have been developed through policymaking proceedings at the federal level and adopted by statute in Michigan.[8]

More specifically, for local traffic originating on City Signal's network and terminating on Ameritech Michigan's network, Ameritech Michigan proposed that physical interconnection occur through switched access. The interoffice trunks[9] between City Signal's and Ameritech Michigan's end-offices would be provided either by Ameritech Michigan under its switched access tariffs or by City Signal and interconnected at Ameritech Michigan's end-offices through the latter company's virtual collocation tariffs. For local traffic originating on Ameritech Michigan's network and terminating on City Signal's network, Ameritech Michigan stated that it will deliver this traffic through separate trunk groups from its end-offices to City Signal's end

---

[7]The FCC defines virtual collocation as follows: "[A]n offering in which the LEC owns (or may lease) and exercises exclusive physical control over the transmission equipment, located in the central office, that terminates the interconnector's circuits. The LEC dedicates this equipment to the exclusive use of the interconnector, and provides installation, maintenance, and repair services on a non-discriminatory basis. . . . The interconnecter has the right to designate its choice of central office equipment, and to monitor and control the equipment remotely. (footnote omitted)" (In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, July 14, 1994, p. 8.)

[8]Section 310(6) of Act 179 provides that: "A provider of access services shall make available for intrastate access services any technical interconnection arrangements, including collocation required by the federal government for the identical interstate access services."

[9]A trunk is a telephone circuit with a switch at both ends. A trunk may connect two central office switches, two private branch exchanges, or a private branch exchange and a central office switch.

offices or tandems. In short, Ameritech Michigan wants City Signal to purchase collocation facilities and services for interconnection from Ameritech Michigan. It would provide City Signal with central office space and facilities that are separate from Ameritech Michigan's facilities. Under these arrangements, Ameritech Michigan stated, a provider such as City Signal can use its own transport facilities to connect to Ameritech Michigan's local exchange network. MECA and GTE supported Ameritech Michigan's proposal.

The ALJ determined that Ameritech Michigan should be required to interconnect with City Signal on the same terms and conditions that Ameritech Michigan interconnects with other LECs for local traffic. He agreed with City Signal that interconnection must be provided on an equal and nondiscriminatory basis. According to the ALJ, no credible reason was presented as to why a meet-point interconnection arrangement should not be used when that is the rule with respect to interconnection with other LECs. The ALJ therefore found that Ameritech Michigan's physical interconnection proposal should be rejected and that the logical interconnection point between Ameritech Michigan's network and City Signal's network is at a point in between the two carriers' end offices.

Ameritech Michigan excepts to the ALJ's recommendation. Again, Ameritech Michigan reiterates the arguments presented in its brief. Additionally, Ameritech Michigan asserts that the ALJ did not indicate where the meet-point between Ameritech Michigan's and City Signal's end-offices would actually be. Ameritech Michigan explains that, because there are no natural boundaries established between competing carriers within the same geographic area, this will lead to endless disputes.

In response, MCI states that, contrary to Ameritech Michigan's representation, historical meet-point arrangements are not dependent upon the naturally established boundaries

between adjacent LECs. Rather, MCI points out, Ameritech Michigan itself explains that, "each company was conceptually responsible for 50% of the connecting facility, even if the geographic boundary, which was and is the meet-point, would not be located exactly at the halfway point between the two providers' central offices. The EAS arrangement provided a cost adjustment formula so that each LEC ended up recovering 50% of the facility." (Ameritech Michigan's exceptions, p. 9.) MCI explains that this is precisely the type of interconnection arrangement it proposed and that the ALJ adopted.

The Commission finds that all of Ameritech Michigan's arguments must be rejected because, as a licensed LEC, City Signal is entitled to the same type of co-carrier arrangements that other LECs currently have with Ameritech Michigan. Ameritech Michigan's attempts to distinguish City Signal, and other alternative LECs, from existing adjacent LECs are not persuasive. The fact that interconnection for EAS is between two different geographic areas, while City Signal's interconnection will be within the same geographic area as Ameritech Michigan, is a meaningless distinction that does not justify different arrangements for City Signal. As Ms. Murray testified on rebuttal:

> "The mere fact that City Signal will compete directly for traffic within the service territory now served exclusively by Michigan Bell does not justify differential treatment of City Signal. To apply such disparate treatment to City Signal relative to Michigan Bell would elevate Michigan Bell to the status of a 'preferred' competitor and undermine the Commission's efforts to secure the benefits of local exchange competition for Michigan consumers." (5 Tr. 290.)

The record also supports a finding that, in contrast to the manner of exchanging local traffic between adjacent LECs, Ameritech Michigan's proposal for interconnection with City Signal is needlessly complicated. MCI witness Elizabeth G. Kistner, a consultant specializing in analysis of telecommunications public policy issues, explained that the exchange of local traffic between Ameritech Michigan and City Signal, like the exchange of local traffic between

adjacent LECs, can be accomplished through a simple transmission link between the two carriers, which may be terminated in each carrier's switching office in the same manner as any other interoffice transmission facility. According to Ms. Kistner, collocation of transmission facilities is not required or necessary for this form of network integration. (7 Tr. 815-16.) Ms. Kistner stated that there is simply no technical reason to segregate local traffic to and from City Signal's network onto separate trunks. That configuration would require twice the trunk groups compared to the direct use of two-way trunks, which are regularly used in interconnecting different carriers' networks. Consequently, Ameritech Michigan's proposed arrangements would result in an unnecessary duplication of facilities.

Furthermore, the Commission finds that Ameritech Michigan's proposed arrangements are not economically feasible for City Signal as a newly licensed LEC. Ms. Kistner indicated that, under Ameritech Michigan's collocation tariff, the charges consist of a $8,240 nonrecurring charge and $861 in monthly rent for the space. (7 Tr. 865.) In contrast, Ms. Kistner testified that collocation charges are not included in the EAS agreements that provide for meet-point arrangements. Rather, she indicated that compensation between the carriers is limited to payment for facilities provided by one carrier for the other carrier in accordance with the 50% responsibility requirements. Ms. Kistner explained that Ameritech Michigan and the other LECs do not charge each other on a per minute basis for traffic that is exchanged over the common facilities. (7 Tr. 816.) Instead, as discussed more fully in the next section of this order, each carrier terminates the traffic originated on the other carrier's network in exchange for the reciprocal termination of its own traffic by the other carrier.

Finally, Ameritech Michigan's argument that there is no meet-point specified for the interconnection between Ameritech Michigan and City Signal is not well taken. As MCI

correctly points out, actual boundaries are insignificant between competing LECs because the 50% responsibility rule will be applicable, just as it is between other LECs. In short, each company will be responsible for 50% of the connecting facility, even if the connecting point is not located exactly halfway between the two providers' central offices. To illustrate, GTE's witness, Edward C. Beauvais, Senior Economist for GTE Telephone Operations, confirmed on cross-examination that there is no collocation of GTE facilities at Ameritech Michigan's end-offices. Likewise, there is no collocation of Ameritech Michigan facilities at GTE's end-offices. Instead, Mr. Beauvais explained that Ameritech Michigan and GTE merely cooperate to build the trunk facility between two offices. (7 Tr. 1135). Ameritech Michigan and City Signal should cooperate in a similar manner.

Based on the foregoing discussion, the Commission finds that City Signal, as a licensed LEC, is entitled to physical interconnection arrangements on the same terms and conditions afforded adjacent LECs. Specifically, interconnection for the exchange of local traffic between Ameritech Michigan and City Signal should be available either at the end office, the tandem, or at a mutually agreed upon meet-point. The cost of constructing and maintaining the facility should be shared on a 50/50 basis between Ameritech Michigan and City Signal.

Mutual Compensation

When a telephone call is originated on one carrier's network and terminated on another carrier's network, costs are incurred by the second carrier in terminating that call. Martin W. Clift, Jr., City Signal's Director of Regulatory Affairs, testified that carrier end-user billing and the resulting inter-carrier compensation arrangements are based upon the type of traffic exchanged between the carriers. Mr. Clift indicated that traffic for LECs can be generally categorized as local and EAS, intraLATA toll, access, cellular, and paging. As a general rule,

the carrier that bills the end-user compensates the connecting carrier(s) for helping to deliver the traffic. (5 Tr. 493.) Mr. Clift further explained that, for basic local exchange services, which can involve multiple LECs, compensation for the origination and termination of such traffic is governed by intercompany EAS agreements. (5 Tr. 494.) In short, LECs in Michigan do not compensate each other for terminating local or EAS calls. Instead, they have a "bill-and-keep" arrangement, the rationale being that the traffic between the respective companies is roughly equal, so that mutual billing would net out to zero. Finally, Mr. Clift explained that, for interexchange toll access, City Signal proposes to file with the Federal Communications Commission (FCC) rates that are identical to Ameritech Michigan's access rates. City Signal will mirror those rates for intrastate interexchange access.

City Signal's position is that, as a licensed basic local exchange provider, it is entitled to the same terms and conditions for compensation that exist between Ameritech Michigan and other LECs. City Signal therefore requested that the Commission direct Ameritech Michigan to enter into a mutual compensation arrangement with City Signal for the hand-off of local calls on a bill-and-keep basis consistent with its arrangements with other LECs. MCI, AT&T, Teleport, the Attorney General, and the Staff supported mutual compensation.

The Staff presented recommendations for transitional rates, terms, and conditions for the mutual compensation of each carrier. The Staff proposed a mutual compensation rate of $.05 per local call terminated. In support of that rate, the Staff reiterated that Ameritech Michigan and the other LECs do not pay each other for termination of local calls because the volumes in each direction are assumed to be equal. In contrast, Ameritech Michigan charges IXCs approximately $.10 per call for interexchange toll access calls terminated on Ameritech Michigan's network. As presented in the testimony of Elizabeth Durbin, Supervisor of the

Network Cost Section in the Commission's Communications Division, the $.05 per call rate represents an intermediate step between present LEC compensation for EAS interconnections and charges for toll access. According to Ms. Durbin, these two types of interconnection use many of the same facilities and, furthermore, the $.05 per call rate establishes a first step toward a restructured compensation arrangement. Ms. Durbin stated that compensation arrangements may eventually more closely reflect those for toll access, but any such determination should be deferred to a subsequent proceeding.

The Staff also proposed that, if the number of local calls each LEC terminates on the other LEC's network is within plus or minus 5%, the $.05 rate would not apply. In effect, this would result in the bill-and-keep arrangement that exists today for local traffic between LECs. However, if a significant variation in traffic volumes results, the $.05 rate would permit a provider to recover costs incurred in terminating this larger volume of calls.

AT&T agreed with the Staff that a flat per-call rate should be approved as an interim measure. However, AT&T opposed any bill-and-keep method because it believed that it is inconsistent with the Commission's Cost Principle No. 4 adopted in Case No. U-10620. That principle provides that any function necessary to produce a service must have an associated cost.

MCI supported a bill-and-keep method regardless of traffic variations. However, if the Commission decides to apply discrete charges, MCI argued that the charge should be a per minute rate. MCI stated that the rate equivalent to the Staff's per call rate would be $.015 per minute. MCI also asserted that the billing threshold should be increased to plus or minus 50% to account for skewed traffic balances projected from the use of transitional number portability substitutes. During cross-examination, the Staff agreed that MCI's proposed $.015

per minute rate is comparable to the Staff's $.05 per call rate. However, the Staff continued to recommend a per call termination rate because Ameritech Michigan and City Signal expressed an inability to measure the duration of local calls.

Teleport supported City Signal's proposed bill-and-keep arrangement. However, if the Commission prefers a per call rate, Teleport proposed that it should not exceed half of the rate Ameritech Michigan charges its end-users today for each local call. In Teleport's view, this would reflect the costs related to only the termination of each call.

Supported by MECA, Ameritech Michigan proposed that compensation between it and City Signal be handled through the payment of existing toll access charges. Ameritech Michigan explained that access charges are usage and distance sensitive, and capture the most accurate use of the network by measuring the duration of calls.

For local calls, Ameritech Michigan proposed that tariffed toll access charges should apply as currently described in Ameritech's Tariff F.C.C. No. 2 for the termination of local traffic from City Signal end-users to Ameritech Michigan's end-users. However, until Ameritech Michigan is permitted to provide interLATA services, it did not propose to compensate City Signal for terminating local calls from Ameritech Michigan's end-users to end-users on City Signal's network. For toll traffic between Ameritech Michigan and City Signal, Ameritech Michigan submitted that its tariffed access rates should apply to its provision of service and City Signal's own cost-based access rates should apply for the use of City Signal's facilities.

GTE proposed that the compensation policy for origination and termination of traffic between carriers be based upon a comprehensive origination responsibility plan, whereby end-users must be billed for all calls and compensation must be based upon usage among certified carriers. GTE maintained that each LEC should be allowed to establish a rate structure

consisting of rates that reflect costs on a per minute or per call basis. According to GTE, certified carriers should pay access charges to any other licensed carrier required to complete the call from the originating party.

The ALJ determined that the Staff's proposal offers a reasonable middle ground for a transitional mutual compensation arrangement. He found that the Staff's $.05 per call rate is an intermediate step away from the existing bill-and-keep arrangements between LECs and toward the use of access charges urged by many of the parties. The ALJ was not persuaded, however, that the billing threshold should be increased to plus or minus 50%, because it is unknown at this time whether the traffic balance will be skewed. Instead, the ALJ found that the Staff's 5% variation will reflect billing costs related to small traffic variation, and it will also permit termination costs to be recovered should traffic volumes vary above that level. Finally, the ALJ found that no credible justification was presented to deny compensation to a terminating carrier that incurs costs for completing calls on behalf of an originating carrier. The ALJ therefore recommended that the Commission reject Ameritech Michigan's position and implement the Staff's proposals for mutual compensation on a transitional basis.

Ameritech Michigan, GTE, MCI, AT&T, and Teleport filed various exceptions and clarifications to the ALJ's findings. Most notably, Ameritech Michigan now states that it agrees that terminating carriers should receive compensation for the costs that they incur when completing local calls on behalf of an originating carrier. However, Ameritech Michigan takes issue with the ALJ's recommendation that the Commission adopt a flat rate per local call termination charge and a plus or minus 5% call volume threshold.

Ameritech Michigan argues that the ALJ erred in recommending a terminating local call rate of $.05 because no evidence was presented that this rate adequately recovers the costs

incurred by either Ameritech Michigan or City Signal for terminating local calls. In fact, Ameritech Michigan points out that the Staff acknowledged that its proposed rate was not cost-based but merely represented the mid-point between no charge and a rate of $.10 per call. Consequently, Ameritech Michigan maintains that this proceeding should not be used to set rates when evidence that is necessary to a proper rate determination has not been presented.

In particular, Ameritech Michigan argues that imposition of the same compensation amounts per call terminated on both carriers' networks ignores the differences in the obligations and costs of Ameritech Michigan and City Signal. According to Ameritech Michigan, each company must be required to use its own access charges based on its own costs. In Ameritech Michigan's view, there is simply no basis for allowing City Signal to require Ameritech Michigan to handle traffic through its network and perform multiple switching without paying for that service, as do the IXCs. Additionally, Ameritech Michigan submits, a flat per call rate does not adequately reflect the way in which costs are incurred by the terminating carrier. Ameritech Michigan points out that the cost of call termination is sensitive to both the duration of the call and the amount of transport and tandem switching facilities that are used. Ameritech Michigan argues that because call durations are different between classes of customers, one provider could have significantly higher terminating minutes of use but nearly equal call volumes. Thus, Ameritech Michigan submits that it would be inappropriate to charge anything but the actual per minute distance sensitive usage rates specified in its toll access tariffs.

Ameritech Michigan also disagrees with the ALJ's determination that no compensation should be paid for terminating local calls unless the call volumes terminated by one provider

exceed by 5% the call volumes terminated by the other provider. Ameritech Michigan asserts that this could result in a provider incurring significantly higher costs, but being unable to recover those costs because the call volumes remain within the 5% range that precludes compensation. Furthermore, Ameritech Michigan points out that the ALJ did not indicate how the 5% threshold would work in terms of billing. Specifically, Ameritech Michigan questions whether each carrier would bill for all of its traffic or only that portion over 5%, if the billing threshold is exceeded. Consequently, Ameritech Michigan maintains that, at a minimum, the Commission should reject the 5% factor and adopt a compensation mechanism that is usage sensitive and recognizes the respective costs incurred by carriers for the termination of local traffic. Ameritech Michigan concludes that mutual compensation should be based on current intrastate IXC access rates, which have already been approved by the Commission.

MECA agrees with Ameritech Michigan, adding that the Staff's proposal simply takes Ameritech Michigan's access rates and discounts them. In MECA's view, it makes no sense to change rates that are currently just and reasonable simply to give an advantage to new competitors.

In response, MCI argues that Ameritech Michigan offers no evidence to support its argument that all interconnecting carriers should be classified as its access customers. MCI asserts that Ameritech Michigan could have produced evidence of its costs associated with traffic termination for competing LECs, but it chose not to address that issue in its testimony or to file any cost studies in support of its access charge proposal. Furthermore, MCI continues, Ameritech Michigan's assertion that switched access rates take into account the appropriate usage of the company's terminating facilities and the duration of a call is

completely unsupported by any empirical evidence of record. MCI submits that all parties had fair notice of, and ample opportunity to contest, the Staff's proposals, and Ameritech Michigan's failure to do so indicates that it has no factual basis for its exception.

Furthermore, MCI continues, requiring each carrier to charge its own costs associated with termination, as advocated by Ameritech Michigan and MECA, is inappropriate for new entrants into the market. MCI says that forcing new entrants, which will likely have lower network expenses and cost structures than the LECs, to charge their own costs for terminating traffic would provide a windfall to incumbent LECs.

City Signal responds that MECA wants to require City Signal to pay long distance access charges for termination of local calls, while its own member companies maintain a bill-and-keep arrangement for the same type of calls. City Signal urges the Commission to ignore MECA's predilection for one-sided arrangements that require payments from new entrants while exempting its own members.

Teleport also excepts to the $.05 per call rate, but for different reasons. Teleport argues that this rate is simply too high to facilitate economically viable local exchange competition. Teleport explains that the retail rates for business and residential calling are $.082 and $.062 per message, respectively. If City Signal has to pay Ameritech Michigan $.05 to terminate a call, Teleport asserts, City Signal's margin to cover the originating side of the call and other common overhead costs is only $.032 and $.012, respectively. Teleport reiterates that the Commission should set the rate no higher than $.041 per message for business calling and no higher than $.031 for residential calling.

On the other hand, City Signal and MCI argue that the ALJ erred in not recommending the adoption of City Signal's bill-and-keep proposal. In doing so, they argue, the ALJ

abandoned his key determination that interconnection between City Signal and Ameritech Michigan should be on the same terms and conditions as interconnection between Ameritech Michigan and other LECs, which is a bill-and-keep arrangement. MCI contends that if the Commission adopts the ALJ's recommendation, City Signal will be relegated to the status of a second class carrier because, unlike other LECs, it would have to pay an explicit rate for termination of its calls.

AT&T requests a clarification regarding the ALJ's recommendation. AT&T points out that, for local calls within plus or minus 5%, there is still an obligation to book all costs incurred and all revenues due from the termination of that traffic. According to AT&T, each company must maintain a complete financial accounting of relevant costs and revenues so that it can comply with various Commission rules and statutory requirements.

In response to AT&T's clarification, the Staff states that both LECs should be required to track all costs and revenues due from the termination of local calls in order to determine whether the calling is, indeed, within plus or minus 5%. However, as to the accounting, the Staff believes that the companies should follow generally accepted accounting principles.

The Commission finds that the ALJ properly analyzed this issue and that his recommendation is fully supported by the record. In particular, the Commission is convinced that mutual compensation arrangements are critical for the further development of local exchange competition. As Dr. August H. Ankum, a manager in Teleport's Regulatory and External Affairs Division, testified, without mutual compensation, Ameritech Michigan will continue to operate as if competing carriers are mere customers instead of licensed LECs. (7 Tr. 989.) Dr. Ankum explained why a reasonably priced compensation mechanism is so important to competitors.

"At this early stage of competitive entry, local exchange competitors will capture an insignificant number of subscriber lines. Even if competitors succeeded in capturing 1% of the subscriber lines in a particular serving area, the incumbent LECs will still retain the other 99% of the subscriber lines. The likelihood is great, therefore, that competitors would be required to terminate virtually all of the local calls made by their own customers on the incumbent's network. Conversely, the incumbent will only have to terminate a tiny percentage of calls made by its customers on the competitor's network. Clearly, any imbalance in the pricing of a compensation arrangement will be insignificant to the incumbent but could very well crush the local competitor whose local traffic requires paying the incumbent LEC to terminate calls on the incumbent's network." (7 Tr. 975-76.)

Furthermore, as is evident from its exceptions, Ameritech Michigan has abandoned its one-way compensation proposal. Consequently, it is unnecessary to address that proposal.

After a review of all of the arguments, the Commission finds that the Staff's proposal offers a reasonable middle ground for a transitional mutual compensation arrangement. Given the range of proposals and opinions on this issue, the ALJ properly determined that the Staff's proposal represents an intermediate step away from the existing bill-and-keep arrangements between LECs and toward the use of access charges. In contrast, Ameritech Michigan failed to produce any cost data or evidence contradicting the Staff's proposal.

Nevertheless, the Commission is persuaded that the $.05 per call rate should be restated on a per-minute-of-use basis, because that approach recognizes different customer calling characteristics. Although the Staff supported a per call rate because it believed that Ameritech Michigan does not have the capability to measure the duration of local calls, Mr. Panfil testified on rebuttal that Ameritech Michigan does, in fact, have that capability. (9 Tr. 1508.) In its reply brief, Ameritech Michigan confirmed that it has the ability to measure local calls on a per-minute-of-use basis and that this process is the same one used today to measure and bill for access services. Furthermore, the Staff agreed that $.015 per minute is equivalent to the $.05 per call rate.

The Commission further finds that the 5% billing threshold, calculated on a per-minute basis, is reasonable because it should adequately account for any skewed traffic balances between Ameritech Michigan and City Signal, while reducing billing costs when traffic volumes are essentially balanced. In contrast, the Commission is not persuaded that a 50% threshold will permit cost recovery. In addition, the Commission clarifies that when traffic exceeds the 5% billing threshold, compensation for all calls should be paid, not just the amount that exceeds 5%.

As to AT&T's requested clarification, the Commission finds that, for local calls within the plus or minus 5% threshold, Ameritech Michigan and City Signal should follow generally accepted accounting principles for tracking costs and revenues associated with the termination of that traffic.

Finally, the Commission finds that City Signal's proposal to charge access rates that are identical to Ameritech Michigan's access rates during the transitional period is reasonable. As Mr. Clift explained, Ameritech Michigan's access rates can be considered the market rate for access services in the Grand Rapids District Exchange. Furthermore, as a non-dominant carrier, City Signal may file and use rates with the FCC subject to one-day's notice, and there is no requirement that those rates be based on any preset criteria. (5 Tr. 497.)

In making the foregoing determinations, the Commission specifically rejects the argument that it is giving an advantage to newly licensed competitors. To the contrary, the Commission's finding is an attempt to strike an appropriate balance between the competing interests in this case on a transitional basis. The Commission emphasizes that, like many of the other issues, the compensation arrangements will be examined further in a subsequent

generic proceeding. Consequently, Ameritech Michigan and other parties will have another opportunity to present evidence of traffic exchange costs in that proceeding.

Unbundling

As explained by AT&T witness Ronald E. Sarah, a manager in AT&T's State Governmental Affairs Department, unbundling is "the identification and disaggregation of physical bottleneck components of the local exchange network into a set of 'piece parts' which can be individually provided, costed, priced, and interconnected in such a way as to provision all service offerings, including those offered by the LEC." (8 Tr. 1307.) Staff witness Thomas L. Saghy, an Auditing Specialist in the Commission's Communications Division, explained that a local loop is "the connection between the local subscriber's network interface and the vertical side of the main distribution frame residing in the telephone company central office serving that subscriber. In layman's terms this would be the wire connected from the outside of a person's house to the serving central office." (11 Tr. 2155.)

Ameritech Michigan currently does not offer, and it does not propose to offer, unbundled loops as a service in its tariffs. Rather, the loop facility is only offered bundled with and as a part of other services such as basic local exchange service, Centrex services, or dedicated point-to-point private line services.

In its application, City Signal requested that the Commission require Ameritech Michigan to unbundle its local loops to permit City Signal to provide basic local exchange service to every customer within the geographic area of its license. City Signal represented that it needs to purchase only the unbundled loop, which it would then resell to its customers packaged with its own facilities or services in order to provide basic local exchange service in areas in which it does not have transmission facilities. In short, City Signal stated that the switching

and transport functions that are included in Ameritech Michigan's current services are not necessary, because City Signal will be providing those functions. It is City Signal's position that Ameritech Michigan's refusal to provide unbundled local loops in the absence of interLATA relief constitutes the bundling of unwanted services or products for sale or lease to another provider, contrary to Section 305(1)(m) of Act 179.

In support of its position, City Signal pointed out that even a well-financed competitor that ultimately intends to rely solely on its own network facilities to compete with an incumbent LEC would experience some delay in replicating the ubiquitous local exchange network that an LEC such as Ameritech Michigan already has in place. Under these circumstances, City Signal argued, the only way that a new entrant can hold itself out to provide service to all customers within a given exchange area is to rely on a combination of its own facilities and facilities acquired from the incumbent LEC. City Signal represented that a similar process occurred in the interexchange market, in which new entrants such as MCI and Sprint initially relied extensively on leased AT&T circuits and then gradually replaced those circuits with their own facilities as economics permitted.

City Signal further contended that requiring Ameritech Michigan to provide unbundled local loops is in the public interest. According to City Signal, the offering of unbundled loops will benefit all customers in the Grand Rapids District Exchange by ensuring that there will be a competitive alternative to Ameritech Michigan when City Signal commences its operations. In addition, City Signal submitted that properly structured unbundling can help to avoid wasteful duplication of those facilities that are most efficiently built once and used by all carriers, while at the same time ensuring that the LEC responsible for building and maintaining those facilities is fully compensated for the costs incurred in doing so.

City Signal also requested that the Commission set the price for unbundled loops at the price Ameritech Michigan charges itself. City Signal contended that the appropriate pricing methodology is total service long run incremental cost (TSLRIC). City Signal further argued that if Ameritech Michigan is allowed to charge City Signal rates for unbundled loops with a built-in contribution above economic cost, Ameritech Michigan will be able to underprice City Signal, despite the fact that City Signal will be able to provide the service at a lower cost.

City Signal used information it obtained from Ameritech Michigan in discovery to determine unbundled loop rates for the Grand Rapids District Exchange. Relying on Exhibit A-48, City Signal stated that the incremental cost of the loop portion of a business access line is $7.58 per month, while the incremental cost of the loop portion of a residential access line is $11.12 per month. City Signal therefore contended that those prices support an $8 per month business loop rate and an $11 residential loop rate. City Signal further stated that if the Commission prefers a single rate for all loops, both business and residential, Exhibit A-49 shows the statewide average cost for all business and residential loops is $8.99 per month, which supports a $9 per month loop rate.

City Signal's $8 and $11 rates were based on total company incremental loop costs, meaning combined intrastate and interstate costs. City Signal took the position that if Ameritech Michigan recovers any portion of those costs through federally-imposed end-user common line (EUCL) charges, any EUCL recovery should offset the $8 and $11 unbundled loop rates. City Signal argued that this is appropriate to ensure that Ameritech Michigan does not overrecover its costs.

The Staff supported City Signal's unbundling proposal. It argued that Sections 305(1)(g) and (m) require the provision of unbundled loops. Furthermore, the Staff asserted, Act 179

requires City Signal to provide residential and business service to all customers desiring that service in its licensed exchange area. The Staff agreed with City Signal that, in the short term, this cannot be accomplished unless unbundled loops are available.

The Staff also supported City Signal's proposed pricing for unbundled loops on a transitional basis. The Staff argued that the price must recover the cost of providing the unbundled loop. Thus, the price floor must equal the TSLRIC of the unbundled loop. In addition, the Staff submitted, the price must not exceed the rates Ameritech Michigan charges its own customers for use of these same components or services. The Staff concluded that the $8 and $11 rates meet both of those criteria and, therefore, those rates are reasonable on a transitional basis.

MCI, AT&T, Teleport, and the Attorney General supported City Signal's and the Staff's positions regarding unbundling on a transitional basis. However, MCI, AT&T, and Teleport presented extensive arguments in support of the further unbundling of Ameritech Michigan's network. Specifically, Donald A. Laub, a manager in MCI's State Regulatory and Governmental Affairs Department, testified that City Signal's unbundling proposal does not go far enough to enable a competing LEC to provide basic local exchange service to every person within the geographic area of its license. According to Mr. Laub, further unbundling of the loop into feeder and distribution portions of the loop is essential for the potential development of new technologies, such as personal communications services. He also stated that all signalling functions generated by the incumbent LEC must be made available on an unbundled basis. AT&T's witness, Mr. Sarah, agreed that the local loop must be unbundled into at least three basic network components--loop distribution, loop concentration, and loop feeder.

MCI, AT&T, Teleport, and the Attorney General also supported City Signal's proposed pricing for unbundled loops. MCI argued that, with application of proper TSLRIC, the provision of unbundled loops will not impose any cost burden on the consumers of the other functions, and the price will be free of any subsidy.

Ameritech Michigan opposed being required to offer unbundled loops. Instead, Ameritech Michigan proposed that competing alternative exchange providers use existing services as an alternative to building their own facilities or using other alternatives, e.g., cable television facilities and wireless connections. Ameritech Michigan pointed out that it offers a wide range of tariffed services that can be used for this purpose. According to Ameritech Michigan, these existing services provide the functionality that is requested by City Signal and the intervenors in this case, i.e., a connection from a customer's premise to the alternative exchange carrier's switch. In Ameritech Michigan's view, the most basic service available to an alternative exchange provider is a voice grade private line circuit. Ameritech Michigan witness Daniel J. Kocher, Director of Ameritech's Planning and Implementation, Open Market Strategy, testified that there are no technical or functional differences between a single local distribution channel of voice grade private line and the unbundled loops demanded by City Signal. Mr. Kocher stated that the facility used between the central office and the customer's premises would be the same whether it was associated with an unbundled loop, a local exchange service, or a private line. (10 Tr. 1872.)

Ameritech Michigan also described other existing tariffed services that could be used by an alternative exchange carrier such as City Signal to connect its customers to the City Signal switch. According to Ameritech Michigan, those services include dedicated services or private lines of varying capacities, which provide a point-to-point, non-switched connection from one

customer's premises to another customer's premises. In addition, Ameritech Michigan asserted that switched services may be used for the connection from a customer's premises to City Signal. For example, Ameritech Michigan stated that available options include resale of business lines or trunks under either the shared tenant services (STS) tariff, the Centrex tariff, or switched access services such as a line-side connection through Feature Group A (FGA). Based on the existence of all of these services, Ameritech Michigan argued, unbundled loops are simply not necessary.

In support of its position, Ameritech Michigan argued that the Commission does not have the authority to compel the company to offer unbundled loops. First, Ameritech Michigan argued that the clear intent of Section 305(1)(m) of Act 179 is to preclude a basic local exchange service provider from bundling two or more services or products, thereby forcing customers to buy an unwanted service or product. Supported by MECA and GTE,[10] Ameritech Michigan contended that an example of a prohibited activity under this section would be an attempt to bundle basic local exchange service with toll service. However, these parties argued that this provision cannot be interpreted to allow for the unbundling of existing facilities and their leasing to competitors. Moreover, Ameritech Michigan submitted that Act 179 broadly defines telecommunications services as those "offered to customers for the transmission of two-way interactive communication and associated usage." [MCL 484.2101(t).] According to Ameritech Michigan, components of an existing network, which competitors might find useful for their own purposes, are not services as defined by Act 179. Additionally,

[10]Although GTE generally agreed with Ameritech Michigan's position, both of its witnesses testified on cross-examination that GTE does not necessarily oppose the offering of unbundled loops, but it is concerned about the pricing of those loops.

as indicated earlier, Ameritech Michigan asserted that it has not even sought to offer unbundled loops as a service and the Commission cannot force it to do so.

Ameritech Michigan went on to argue that the Commission has already recognized that Act 179 does not grant it the authority to mandate that Ameritech Michigan, or any other telecommunications provider, lease unbundled loops. Ameritech Michigan stated that, in the 1994 report to the Governor and the Legislature, the Commission recommended that the Legislature consider several amendments to Act 179 prior to the sunset of the law in 1996. According to Ameritech Michigan, the Commission recommended that Section 206(1), which relates to the Commission's authority to order changes in the terms and conditions under which a new telecommunications service is offered, be amended to grant the Commission specific authority to require unbundling. Ameritech Michigan inferred from the proposed amendment that if the Commission believed it already had authority to require unbundling, there obviously was no need to ask the Legislature to amend Section 206(1).

Ameritech Michigan next argued that interconnection is simply an arrangement that allows the hand-off of traffic between two networks. As a result, Ameritech Michigan submitted, the interconnection arrangements required by Section 303(2) of Act 179 are those interconnections necessary to allow a competitive local exchange provider to hand-off local traffic to and from the existing license holder's network. According to Ameritech Michigan, arrangements for the hand-off of traffic between Ameritech Michigan's and City Signal's networks can take a variety of forms, none of which require or include leases of unbundled loops or other elements of its network. To the contrary, Ameritech Michigan asserted, Section 310(6) of Act 179 establishes that the minimum requirement imposed on an access provider is the level of interconnection imposed by the FCC, which is collocation. Ameritech

Michigan therefore concluded that unbundled loops are not a form of interconnection or collocation and, in fact, they are not even a form of access because an unbundled loop by itself, without a connection to a switch, does not provide access to the local exchange network.

Ameritech Michigan also asserted that it would be contrary to public policy to require it to provide unbundled loops. The company contended that there has been no showing of estimates of demand or comparative costs of building facilities versus using existing services versus leasing unbundled loops. Ameritech Michigan argued that it is not the Commission's duty to ensure that a competitor succeed or make a profit on each and every component of its service. The company stated that no substantive evidence was presented to demonstrate why unbundled loops, priced at cost, are essential to competition.

Ameritech Michigan further argued that a Commission order compelling it to offer unbundled loops would constitute an unconstitutional taking or confiscation of its property in violation of both the Michigan and United States Constitutions. In its reply brief, Ameritech Michigan devoted 27 pages to discuss numerous cases that it maintained support its position. Relying on those cases, Ameritech Michigan asserted that it is sufficient to show that a party's right to use its property has been restricted to constitute a taking. In Ameritech Michigan's view, the forced lease of unbundled loops to competitors would be a taking both as a physical deprivation of Ameritech Michigan's property as well as a deprivation of the company's right to operate its network and business in accordance with its original governmental franchise. Moreover, Ameritech Michigan argued that a citizen cannot be compelled to use its own property to perform a service for the benefit of a third party. In Ameritech Michigan's view, whether it is characterized as a service or a lease, unbundling is a permanent physical interference depriving Ameritech Michigan of all use and control of leased loops, thereby

amounting to a physical occupation. Ameritech Michigan concluded that a reading of Act 179 to permit such a taking would render the statute unconstitutional.

Ameritech Michigan went on to argue that further support for concluding that ordering unbundled loops would constitute a per se taking of property can be found in the recent decision in Bell Atlantic Telephone Companies v Federal Communications Commission, 24 F3d 1441 (D.C. Cir. 1994). In that case, Ameritech Michigan asserted, the Court rejected the FCC's position that it possessed the power to compel unbundling through involuntary physical collocation.

Ameritech Michigan next argued that, absent express compensation procedures in a statute, a statute authorizing a taking of property must be held unconstitutional. Here, Ameritech Michigan argued, Act 179 is silent on the issue of compensation to be paid to those who are compelled to unbundled their services, probably because the Legislature never intended to empower the Commission to compel unbundling. Ameritech Michigan therefore concluded that, even if Act 179 could be interpreted to allow compelled unbundling, the statute itself must be found unconstitutional because it fails to provide any safeguards to the rights of the property owner to contest the taking of its property.

As to City Signal's proposed rates for unbundled loops, Ameritech Michigan argued that they are significantly less than prices for existing services. In Ameritech Michigan's view, the lease rates for the unbundled loops would not be compensatory to Ameritech Michigan and are an attempt to force the company to subsidize City Signal's entry into competition. In contrast, Ameritech Michigan argued, even if the Commission were authorized to effect a taking of its loops, the company would be entitled to receive the fair market value of the loops. Ameritech Michigan asserted that, at a minimum, it would be entitled to be

compensated for the contribution it would have received from its own use of the loop facility to provide basic local exchange service. Ameritech Michigan explained that when it uses a loop to provide basic local exchange service, it receives revenues and resulting contribution from not only the monthly rate for the service, but also, for example, from local and toll usage as well as from other services provided to its customers over the loop. If City Signal were to lease the unbundled loop, Ameritech Michigan concluded, Ameritech Michigan would lose the opportunity to generate those revenues and the resulting contribution.

Ameritech Michigan went on to criticize the Staff's support for the pricing of unbundled loops, claiming that it was inappropriate and unreasonable. The company argued that the Staff arbitrarily chose a ratio of costs between the loop and drop components of existing services. The Staff then applied that cost ratio to existing rates for basic local exchange service. However, Ameritech Michigan contended that current basic local exchange rates incorporate residual pricing and rate of return regulation and are not cost-based. Ameritech Michigan further stated that the Staff's analysis inappropriately created a fluctuating unbundled loop rate, based upon application of the federal EUCL charge. The company also argued that the loop rates are based on average cost structures so that the actual loop facility may be more or less costly than the average. In Ameritech Michigan's view, City Signal will choose to build its own facilities where it is less expensive to do so and will use Ameritech Michigan's facilities only where the average cost is less than the actual cost of the loop. Ameritech Michigan concluded that this will result in its subsidizing City Signal's entry into competition.

Many of these same arguments were made by MECA and GTE. In addition, MECA stated that City Signal's request for unbundled loops priced at TSLRIC is designed to avoid

investment in Michigan's telecommunications infrastructure for the sake of corporate profit.

The ALJ found that the Commission has the power to require Ameritech Michigan to provide City Signal with unbundled loops. He was persuaded that Sections 305(1)(g) and (m) of Act 179 require the unbundling that City Signal requests in this case. In contrast, the ALJ found that the position advanced by Ameritech Michigan is far too narrow and would negate the purpose of Act 179 to promote competition. In the ALJ's view, limiting the application of Act 179 as urged by Ameritech Michigan and others would allow a provider to avoid unbundling by simply never offering a service in the first place, a result not intended by the Legislature.

The ALJ further found that Ameritech Michigan's existing services are not adequate to meet the needs of City Signal to allow it to compete in the basic local exchange service market. He was persuaded that the evidence showed that the proposed alternatives would not permit City Signal to provide an economically competitive alternative to Ameritech Michigan's existing service, again contrary to the intent of Act 179. Furthermore, the ALJ was not persuaded, as urged by MECA, that City Signal's request is grounded in its reluctance to invest in the basic local exchange network. Rather, the ALJ agreed with the Staff that this position was necessarily rejected by the Commission when it granted City Signal a license to serve the area.

The ALJ further determined that City Signal's proposed rates of $8 per month for business loops and $11 per month for residential loops are reasonable as transitional rates. The ALJ recognized that a more extensive record could have been made with regard to this issue, but given the time constraints and the number of issues raised, the evidence presented was sufficient to support his determination on a transitional basis. Finally, the ALJ found that

Ameritech Michigan's criticisms of the Staff's analysis of the proposed rates were disingenuous, because it had the opportunity to present its own analysis, but declined to do so.

Ameritech Michigan, GTE, and MECA except to the ALJ's findings. Ameritech Michigan reiterates the arguments presented in its reply brief. Among other things, Ameritech Michigan repeats verbatim its arguments that the Commission lacks authority under Act 179 to compel Ameritech Michigan to offer unbundling and, if the Commission orders the company to do so, it would constitute a taking of Ameritech Michigan's property in violation of the United States and Michigan Constitutions. GTE simply states that the ALJ's determination is contrary to Act 179 and not supported by the record.

MECA also reiterates its arguments that the Commission has no authority to order unbundled loops. In doing so, MECA presents a number of arguments regarding the scope of the Commission's authority under Act 179. For example, MECA argues that the Legislature intended that the Commission work within the framework established in Act 179. That framework consists of a set of different regulations that apply to specified services currently offered by LECs, namely, basic local exchange service, access service, and toll service. MECA contends that there is no indication in Act 179 that the Legislature intended that the Commission dismantle the local network and force a provider to sell or lease parts of that network to other providers, in lieu of providing access service.

MECA also excepts to the ALJ's conclusion that City Signal's request for unbundled loops is not based on its reluctance to invest in the basic local exchange network. First, MECA argues that if City Signal is not reluctant to invest, there is no need for unbundling. Second, MECA states, if the Commission's granting of a license indicates that City Signal has the

resources to invest in its own loops, then there is no economic barrier for City Signal to do so. Third, MECA believes that it is obvious that City Signal proposed unbundled loops because the purpose of unbundled loops is to use them in lieu of investment. Fourth, MECA contends that, even if City Signal is not reluctant to invest, the appropriate regulatory scheme is one in which investment is encouraged and a competitor can make a profit based on its own investment and efficiency. Toward that end, MECA asserts, the shift to competition should not simply shift control of the existing network to other providers, but should be designed to encourage the building of additional facilities, thereby providing reliability and extra capacity which, in turn, will lead to lower prices and new services. In contrast, MECA concludes that the use of unbundled loops and low-cost pricing of those loops will permit competitors to make an economic "killing" in the local exchange market.

City Signal, MCI, AT&T, Teleport, and the Staff all filed replies to Ameritech Michigan's and MECA's exceptions. Like the exceptions, the replies generally reiterate arguments made on brief. Consequently, only those arguments that offer some new insight into this issue will be set forth.

City Signal responds that the Commission's authority to establish interconnection arrangements pursuant to Section 303(2) of Act 179 cannot be examined in a vacuum. Rather, City Signal submits, Section 303(2) must be examined in conjunction with the rest of Act 179, in particular, Section 305. City Signal points out that Section 305 contains a list of acts that a licensed basic local exchange service provider cannot legally do, many of which are directly relevant to interconnection. Thus, City Signal asserts, the Commission cannot set terms of interconnection that would allow Ameritech Michigan to do that which it is forbidden to do under Section 305, in particular, Section 305(1)(g) and (m).

As to Ameritech Michigan's and MECA's interpretation of Section 305(1)(m), City Signal responds that the prohibition in that subsection is a prohibition on bundling service to another provider. City Signal points out that Ameritech Michigan uses the example of bundling long distance service with basic local exchange service. However, City Signal asserts that those are end-user services, not interconnection services between providers. According to City Signal, limiting that subsection to bundling of end-user services ignores the clear wording of the statute.

Furthermore, City Signal contends, Ameritech Michigan continues to try to separate service components from physical components of a service. In Ameritech Michigan's view, City Signal submits, the unbundled loop is only a piece of physical plant unless it is combined with computerized switching services. However, City Signal asserts that the problem with this argument is that all of Ameritech Michigan's services involve a combination of physical plant and services. For example, if Ameritech Michigan leases a private line to City Signal, part of that private line service will be the physical, dedicated line. According to City Signal, there is no distinction between plant and services in determining whether the Commission can unbundle services under Act 179 and, furthermore, the distinction has no meaning in the constitutional sense.

Relying on In re Quality of Service Standards for Regulated Telecommunication Services, 204 Mich App 607 (1994), MCI and the Staff argue that the Commission has those powers and duties that are incidentally or reasonably necessary to administer Act 179. MCI submits that, even if an unbundled loop is characterized as equipment, the Commission would have the powers reasonably necessary to fulfill the intent of Act 179, i.e., to foster competition. Contrary to Ameritech Michigan's contention, City Signal states that there is nothing in

Act 179 that expressly defines the term "service" or limits it only to the final product sold to the customer. MCI argues that it is unreasonable to argue that the Commission has authority to regulate the service, but not the components or equipment that facilitate such service. MCI asserts that it is reasonably necessary for the Commission to conclude that its power to regulate basic local exchange services includes not only the service provided to the customer, but also the components or equipment that facilitate the provision of that service.

The Staff further maintains that the Legislature was aware of unbundling when it enacted Act 179. According to the Staff, the FCC and the federal courts have ordered and upheld the unbundling of a number of components of the network to permit the competitive provision of telecommunications services. In the Staff's view, even the court-ordered divestiture of AT&T constituted an unbundling of the telecommunications network, which required that access to bottleneck facilities be offered to competitors on nondiscriminatory prices, terms, and conditions. The Staff asserts that it cannot be argued that the prohibitions in Section 305 of Act 179 were written with some other understanding of bundling in mind.

The Staff further responds that it is simply not true that unbundling will not promote infrastructure development. The Staff points out that City Signal has made a huge investment in the Grand Rapids area, including construction of a fiber optic cable network with state-of-the-art switching equipment.

Finally, City Signal, MCI, and the Staff respond that unbundling does not constitute the confiscation or taking of Ameritech Michigan's property. At the outset, MCI states that there are cases that indicate that the Commission need not address Ameritech Michigan's constitutional arguments because those cases conclude that the Commission may not have authority to determine the constitutionality of Act 179. Relying on Universal Am-Can Limited

v Attorney General, 197 Mich App 34 (1992), MCI states that Michigan courts have uniformly held that administrative agencies do not have authority to determine the constitutionality of a statute that they administer. In any event, however, MCI asserts that Ameritech Michigan's analysis is faulty because, among other things, requiring the provision of unbundled loops would not constitute a taking of property and no party has suggested that Ameritech Michigan not be compensated for the provision of unbundled loops. City Signal adds that Ameritech Michigan cites dated cases that involve outright takings without reference to the history behind, or the provisions of, Act 179.

Ameritech Michigan, GTE, and MECA also except to the ALJ's determination that the Staff's proposed rates for unbundled loops are reasonable as transitional rates. Ameritech Michigan and MECA again reiterate their argument that pricing an unbundled service must take into consideration the appropriate level of contribution to the common costs of the firm in addition to the incremental cost of providing the service. In contrast, Ameritech Michigan states, the characterization of long-run incremental cost as an appropriate standard for establishing the price of services is simply incorrect because nothing in Act 179 supports such a pricing philosophy. To the contrary, Ameritech Michigan submits, long-run incremental cost, as referenced in Section 308(1) of Act 179, is simply a floor that a provider cannot go below in setting prices. According to Ameritech Michigan, the purpose of LECs determining long-run incremental cost is to demonstrate that services are not subsidized, not to establish appropriate pricing. MECA adds that pricing unbundled loops at less than fully embedded cost would be harmful to ratepayers in the long run.

In Ameritech Michigan's view, the only explicit ratesetting standard described in Act 179 is the requirement that basic local exchange rates be just and reasonable. [Section 304(4).]

Ameritech Michigan maintains that this requirement does not translate to rates set at long-run incremental cost because that would be discriminatory, resulting in rates that are not compensatory and denying Ameritech Michigan the ability to earn a fair return on its assets. Ameritech Michigan concludes that its profitability should not be affected by competition and, therefore, the proposed pricing should be rejected.

Ameritech Michigan again criticizes the Staff's analysis in support of City Signal's proposed pricing. The company maintains that, although the ALJ did not address this issue, the Staff's analysis inappropriately suggested a fluctuating unbundled loop rate based upon application of the federal EUCL charge. Ameritech Michigan submits that, on cross-examination, the Staff's witness did not know whether and how the EUCL charge would apply to unbundled loops and acknowledged that the issue was not within the jurisdiction of the Commission. Furthermore, Ameritech Michigan argues, it is inappropriate to base a loop rate on a basic local exchange rate that applies in addition to the EUCL charge and then to suggest that the loop rate should be reduced by that charge when purchased by a competitor. According to Ameritech Michigan, the Staff did not consider the EUCL charge in applying its ratio to rates and, therefore, the Staff's analysis does not make any sense. Ameritech Michigan concludes that, because it is appropriate and necessary to apply the EUCL charge to unbundled loops, it plans to do so when it voluntarily offers unbundled loops.

City Signal requests a clarification on this issue because the ALJ did not specifically address whether the prices include the EUCL charge. City Signal states that under the Staff's analysis, the $8 and $11 rates are total company cost rates that would include both intrastate and interstate costs. Thus, City Signal states, whether or not a EUCL charge applies to an unbundled loop, it would pay a total of $8 and $11 per loop because the costs on which those

rates are based already include the costs accounted for in assessing an EUCL charge. Because the ALJ adopted City Signal's pricing proposal and the Staff's analysis, City Signal assumes that the ALJ also adopted the Staff's position regarding the applicability of the EUCL charge.

In response, Ameritech Michigan states that City Signal is anxious to have these rates approved because it intends to charge the EUCL charge to its end users and, consequently, it will have a net cost of only $2.73 ($8 minus the business EUCL charge of $5.27) compared to Ameritech Michigan's current business line rate of $10.71. According to Ameritech Michigan, this would give City Signal either a level of margin unheard of in the local exchange business or room to price its services at a level that Ameritech Michigan cannot match.

In response to Ameritech Michigan, the Staff states that the proposed unbundled loop rates are not only compensatory because they include a return on investment, they also make a contribution to Ameritech Michigan's common overheads. The Staff also asserts that it was clear that the $8 and $11 rates included any EUCL charge that would be assessed. Consequently, in adopting the Staff's analysis, there was no need for the ALJ to make a specific reference to the EUCL charge.

The Staff further responds that nothing in Act 179 requires that prices be set to ensure the same level of profit for a provider after the implementation of competition that it had before competition. Nevertheless, the Staff states, Ameritech Michigan's revenues and profits have continued to grow as competition has developed. In fact, the Staff claims, if City Signal purchases Ameritech Michigan's unbundled loops, the latter company's profitability will be less affected because it will be reimbursed for the costs related to that investment rather than being left holding stranded investment due to City Signal's constructing its own duplicative

loops. In any event, the Staff states that it plans to address, in a generic proceeding, the specific level of contribution that would be appropriate in the long run.

After consideration of all of the arguments, the Commission finds that it has authority under Act 179 to require unbundling. Specifically, the Commission derives that authority from Sections 305(1)(g) and (m), which provide that a provider of basic local exchange service may not:

> "(g) Refuse or delay access or be unreasonable in connecting another provider to the local exchange whose product or service requires novel or specialized access requirements.
>
> (m) Bundle unwanted services or products for sale or lease to another provider." [MCL 484.2305(1)(g) and (m).]

The Commission has already found that it has authority to require the unbundling of services. In its September 8, 1994 order in Case No. U-10620, the Commission also relied on Section 305(1)(m). There, the Commission determined that it would be unreasonable to read Act 179 as not giving the Commission authority to enforce that section's prohibition against bundling. The Commission, however, further found that the issue of what constitutes unbundling would be examined in a future proceeding. This case is the appropriate proceeding in which to address that issue.

In reaffirming its authority to require unbundling, the Commission rejects Ameritech Michigan's and MECA's interpretation of Section 305(1)(m), which is that the Commission has the authority only to prevent a provider from bundling one tariffed service with another tariffed service. The Commission is persuaded that had the Legislature intended that the prohibition on bundling apply only to tariffed services, it would have specifically stated that in Section 305(1)(m). It did not do so. Moreover, as City Signal correctly points out, Ameritech Michigan's and MECA's examples of bundling are not appropriate because they

relate to end-user services. In contrast, Section 305(1)(m) prohibits bundling services provided to another provider. Thus, the Commission finds that Ameritech Michigan's and MECA's interpretation of Section 305(1)(m) is incorrect.

Further evidence of the fact that the Commission is not precluded from requiring unbundling of basic local exchange service can be found in Section 202(f)(viii) of Act 179. That section, which lists the items that are to be included in the Commission's report to the Governor and Legislature, states that the Commission must include a method to determine the total long run incremental cost pricing "for each component of the local exchange network and access services." [MCL 484.2102(f)(viii).] Because the Commission has the authority to cost each component of the local exchange network, it follows that the Legislature intended the Commission to have the power to unbundle those components.

Ameritech Michigan's attempt to separate service components from the physical components of a service is not persuasive. Again, as City Signal so aptly points out, all of Ameritech Michigan's services involve some combination of physical plant and services. Thus, such a distinction does not, in any way, undermine the Commission's authority to require unbundling.

In advancing their argument that the Commission has no authority to require unbundling, Ameritech Michigan, GTE, and MECA also overlook the importance of Section 305(1)(g). Although MECA argues that this section supports the use of access service as an alternative to unbundled loops, that interpretation ignores the fact that unbundled loops are, indeed, a form of access. As a new entrant in the local exchange market, City Signal needs the special requirement of unbundled loops to hold itself out to provide service to every customer in its geographic area. Ameritech Michigan is prohibited from refusing that service.

Turning to Ameritech Michigan's argument that the 1994 report to the Governor and the Legislature recognized that the Commission lacks authority to require unbundling, the Commission finds that the company has misinterpreted that report. The proposed amendment discussed in that report relates to Section 206(1) of Act 179, which deals with the offering of new services. In that regard, the Commission merely suggested more clearly defined powers to require changes in terms and conditions under which a service is offered. The proposed amendment has nothing to do with the Commission's authority to establish unbundling as a term of interconnection pursuant to Section 303(2) of Act 179.

Equally misplaced is Ameritech Michigan's argument that compelling it to provide unbundled loops would constitute a confiscation of property in violation of the Michigan and United States Constitutions. The Just Compensation Clause of the Fifth Amendment to the United States Constitution prohibits only uncompensated takings of property. (U.S. Const., Am V.) None of the parties in this case has proposed that Ameritech Michigan not be compensated for its provision of unbundled loops. Indeed, the pricing of those loops was litigated during the course of this proceeding. Consequently, despite Ameritech Michigan's litany of cases on this issue, the concept of the taking of property without just compensation is not applicable to the facts of this case.

The Commission specifically rejects Ameritech Michigan's reliance on the Bell Atlantic case because it is based on a mischaracterization of that decision. Contrary to Ameritech Michigan's representation, the Court in that case vacated the FCC order only insofar as it required physical collocation of competitors' facilities inside the LECs' facilities. The decision did not address the FCC's authority to require unbundling.

The Commission also rejects Ameritech Michigan's interpretation of interconnection because, like its interpretation of bundling, it is too narrow. Section 303(2) of Act 179 empowers the Commission to establish the terms of interconnection, absent agreement between the parties. Nothing in that section of the statute limits the Commission to any particular form of interconnection.

Having found that the Commission has authority to require the unbundling of Ameritech Michigan's local loops, the record also supports the conclusion that unbundled loops are vital to local exchange competition and in the public interest. Ms. Murray testified that unbundling offers customers a competitive alternative to Ameritech Michigan's services in the following manner:

> "[F]or customers that City Signal would serve using Michigan Bell's loop or 'access' facilities, City Signal would provide facilities-based competition for Michigan Bell's switching and transport facilities. Of course, City Signal would also provide these customers with a competitive alternative to Michigan Bell's customer service and billing functions. Finally, City Signal would compete with Michigan Bell in designing creative service offerings and pricing arrangements that would best meet individual customer needs and desires. Therefore, competition in which City Signal includes a Michigan Bell provided loop as one element of a total package of local exchange services could constitute a true competitive alternative to Michigan Bell's bundled local exchange offering." (5 Tr. 278.)

In addition, Mr. Laub testified that unbundling accomplishes several important goals. He stated that:

> "First, it permits potential competitors to purchase only those functions that they need from the incumbent LEC. This permits those network functions that can be provided on a competitive basis to be provided competitively, while limiting the extent of costly and unnecessary duplication of functions for which competition may not be viable. Second, it creates new points of interconnection--new interfaces--between the incumbent LECs and [competitive local exchange service providers].
>
> "Finally, unbundling provides a basis for estimating the total service long-run incremental cost ("TSLRIC") of the use of network functions on a consistent basis. In doing so, the joint application of unbundling and TSLRIC offers a mechanism for the ready detection of subsidy and discrimination in pricing." (6 Tr. 702-03.)

Based on this testimony, the Commission rejects Ameritech Michigan's assertion that no substantive evidence was presented to demonstrate why unbundled loops are essential to competition.

On the other hand, the Commission is not persuaded that further unbundling of the local exchange network, as advocated by MCI, AT&T, and Teleport, is necessary at this time. In fact, Mr. Laub testified that the more comprehensive unbundling is not immediately necessary for entry of competitive firms into the local exchange market. Rather, he indicated that those other unbundled network functions should be adopted in a more generic or permanent proceeding. The Commission agrees that the issue of more extensive unbundling should be addressed in the context of a generic proceeding.

The Commission therefore finds that unbundling is necessary to enable City Signal to hold itself out to provide service to every customer within the geographic area of its license. As Ms. Murray testified, the only way that a new entrant can do this is to rely on a combination of its own facilities and facilities leased from the incumbent LEC. (5 Tr. 280.) It is simply unrealistic to expect a new LEC to be able to initially rely solely on its own facilities to serve all customers in an exchange area. Furthermore, contrary to Ameritech Michigan's contention, the demand for unbundled loops is not speculative. As Ms. Murray explained, a potential demand for unbundled loops exists for every customer in the Grand Rapids area where City Signal has yet to build its own loop facilities. (5 Tr. 283.) Furthermore, even if City Signal built its own network, there would still be a need for unbundling. Ms. Murray testified that certain incumbent LEC facilities will continue to be bottleneck facilities even for competing facilities-based LECs for some time into the future. (5 Tr. 280.) In fact, contrary to MECA's suggestion, City Signal has already made a significant investment in the Grand

Rapids area. However, it needs to combine its facilities with Ameritech Michigan's loops to be able to hold itself out to provide service to every customer in the geographic area of its license.

The Commission also rejects Ameritech Michigan's contention that its existing services will provide viable alternatives for City Signal and, consequently, unbundling is unnecessary. Brad Evans, City Signal's Executive Vice-President, effectively refuted that position.

Mr. Evans, who has over 15 years experience in the telecommunications industry and was formerly one of GTE's top designers and marketers of private fiber optic networks, testified that none of Ameritech Michigan's dedicated point-to-point private line connections are equivalent to the provision of an unbundled loop. He explained that, while an unbundled loop is a basic connection from the serving wire center to the customer's premise, such access is not provided over video and audio connections. Additionally, Mr. Evans testified that a voice grade private line service is not an adequate alternative to unbundled loops, because it provides for two channel terminations and unnecessary transmission equipment. Furthermore, he indicated that the costs for these services include maintenance, testing, and other items or activities are not applicable to the unbundled loops that City Signal is seeking. Mr. Evans further stated that sub-voice grade service does not provide sufficient bandwidth to maintain voice quality and, consequently, it is technically insufficient. As with the voice grade connection, Mr. Evans also stated that digital data and high speed data connections provide for two channel terminations and unnecessary transmission functionality. (5 Tr. 389-90.)

Continuing, Mr. Evans also stated that FGA services provide access to an IXC and, consequently, they are not relevant here. Furthermore, even if they were relevant, Mr. Evans explained that FGA requires an end-user to dial a seven-digit access code before forwarding

the local dialing instructions. As a result, the end-user would have to dial a total of 14 digits to process local calls. (5 Tr. 390.) In addition, although Ameritech Michigan indicated that City Signal could simply resell STS and Centrex services, Mr. Evans stated that City Signal is not interested in doing that. He explained that under those arrangements, Ameritech Michigan would continue to be the local dial tone provider. Under a resale arrangement, calls would originate and terminate on Ameritech Michigan's network and would never touch City Signal's network. Furthermore, Ameritech Michigan would charge City Signal its business rates, even though the services would be provided to residential customers. Mr. Evans concluded that Ameritech Michigan simply proposes to repackage its current products in order to sell them at a higher price to competitors. (5 Tr. 391.)

MCI witness Mr. Laub confirmed that the direct effect of using Ameritech Michigan's proposed alternatives would be to subject City Signal's operations to an anti-competitive "price squeeze." For example, Mr. Laub stated that the minimum rate for a voice grade private line circuit is $23 per line per month. The rates for STS include a flat rate of $10.71 per month and a usage-sensitive rate of $.082 per call. The rates for the resale of Centrex are similar: $9.76 per line per month plus $.082 per call. According to Mr. Laub, City Signal would have to pay Ameritech Michigan wholesale charges that are equivalent to or greater than the retail rates that Ameritech Michigan charges its end-users. Mr. Laub stated that this would result in a price squeeze because, to profit from its own sale of the services, City Signal would have to charge its end-users more than it would pay Ameritech Michigan. Mr. Laub concluded that this would make marketing the services next to impossible. (6 Tr. 712-13.) Based on this testimony, the Commission is persuaded that, despite Ameritech Michigan's constant refrain that it "supports full and fair competition in all aspects of the telecommunications

marketplace,"[11] its proposals would virtually eliminate City Signal's opportunity to effectively compete, contrary to the intent of Act 179.

In conclusion, the Commission finds that Ameritech Michigan's and MECA's positions on the issue of unbundling are inherently inconsistent. On the one hand, Ameritech Michigan and MECA criticize City Signal for allegedly concentrating its marketing efforts on higher-usage customers, claiming that it constitutes cream skimming. On the other hand, Ameritech Michigan does not want to offer City Signal the unbundled loops it initially requires to provide service outside of the higher-usage area. Furthermore, it is apparent that Ameritech Michigan will offer any argument to support its position that it should not be required to provide unbundled loops in the absence of interLATA relief. As a result, the Commission can only conclude that Ameritech Michigan's position is not really about the Commission's authority under Act 179 or any unconstitutional taking of property. Rather, Ameritech Michigan's position is that it will voluntarily offer unbundled loops only when it obtains interLATA relief. Therefore, all of Ameritech Michigan's and MECA's arguments must be rejected.

Turning to the pricing of unbundled local loops, the Commission finds that Ameritech Michigan's, GTE's, and MECA's arguments should be rejected. In its September 8, 1994 order in Case No. U-10620, the Commission refined the definition of and developed a methodology to determine the long-run incremental cost for application under Act 179. The Commission found that TSLRIC is the appropriate cost floor and that it will ensure that all customers who use identical network functions are assigned the same level of cost. The Commission therefore ordered that TSLRIC be applied to determine costs for many unbundled network functions.

---

[11]Ameritech Michigan's brief, p. 3, and exceptions, p. 1.

In this case, City Signal and the Staff were the only parties that presented testimony proposing specific prices for unbundled loops. In doing so, they effectively refuted Ameritech Michigan's contention that the provision of unbundled loop services at rates equal to TSLRIC would constitute a subsidy to City Signal. In particular, Ms. Murray testified that:

> "Economic theory teaches that any rate that recovers appropriately measured long-run incremental costs is fully compensatory and is not subsidized by any other service. Therefore, City Signal's proposed rates fully meet the economic test for avoidance of cross-subsidization, with the possible limited exception of the residential loop rate. The Commission may wish to raise the residential loop rate to $11.25 to avoid any risk of cross-subsidization.
>
> * * *
>
> "Moreover, because the cost of loop services tends to decline with increasing subscriber density, it is likely that Michigan Bell's cost of unbundled loop services in Grand Rapids is lower than its statewide average cost. Therefore, provision of unbundled loop services to City Signal in Grand Rapids at a rate based on statewide average loop costs is likely to provide a contribution above Grand Rapids-specific costs to Michigan Bell." (5 Tr. 287-88.)

In fact, as indicated earlier in this order, Ameritech Michigan specifically stated that the purpose of LECs' determining long-run incremental cost is to demonstrate that services are not subsidized.

The Staff's analysis also demonstrates that City Signal's proposed rates of $8 and $11 actually exceed TSLRIC. In making its determination, the Staff developed a combined unbundled loop rate. The Staff assumed that City Signal's purchase of loops would match the existing ratio of business and residential lines in Grand Rapids, i.e., 26.5% and 73.5%, respectively. Applying that ratio to the proposed unbundled loop rates produced a combined rate of $10.21, which exceeds the $8.99 TSLRIC unbundled loop cost calculated by Ameritech Michigan. Based on Ms. Murray's testimony and the Staff's analysis, the Commission rejects the argument that City Signal's proposed rates will result in a subsidy.

The record also demonstrates that the proposed rates do, in fact, include a contribution to overheads in addition to a return on investment. In any event, as AT&T correctly points out, it is unlikely that, during the transitional period, City Signal will need a large number of loops to serve the customers it acquires in the Grand Rapids area. As a result, any positive or negative effect resulting from the prices will be limited. Moreover, Ameritech Michigan's development of its TSLRIC cost study, as required by the September 8, 1994 order in Case No. U-10620, will make it possible to address this issue more fully in a generic proceeding.

The Commission further finds that the $8 and $11 rates are based on total company costs. Consequently, if Ameritech Michigan assesses a federal EUCL charge for the unbundled loop, that charge should offset the $8 and $11 rates. Not allowing for an offset of any interstate recovery through the EUCL charge would result in a double recovery of interstate costs.

Based on the foregoing discussion, the Commission finds that City Signal's proposed pricing is reasonable on a transitional basis and, therefore, it should be adopted. In contrast, the Commission agrees with the ALJ's conclusion that Ameritech Michigan's criticism of the Staff's analysis is disingenuous because it did not offer its own analysis, despite the fact that it had the opportunity to do so. Although Ameritech Michigan explains that it did not make a presentation because it does not propose to offer unbundled loops, the company could have presented testimony on this issue and chose not to do so.

Local Number Portability

Local number portability is the ability of a customer to change basic local exchange service providers while retaining his or her local telephone number, i.e., the local telephone number is "portable" between carriers. City Signal contended that local number portability is critical to an emerging competitive basic local exchange market, because customers will be reluctant

to change LECs if they have to change their telephone numbers. However, the ability to keep an existing local telephone number when transferring to another provider does not exist today as it does for 800 prefix numbers. City Signal therefore requested that the Commission require Ameritech Michigan to provide an interim solution to number portability through any technically feasible means and to develop a long-range solution such as a data base solution using Signalling System 7 (SS7) technology.[12]

As an interim solution, City Signal proposed to use two services currently offered by Ameritech Michigan--Direct Inward Dialing (DID) and Remote Call Forwarding (RCF). DID provides an alternative number portability solution for large customers or larger groups of telephone numbers. Using DID, a call comes into an Ameritech Michigan central office and is directed to a dedicated DID one-way trunk that transports the call to its final destination, which could be a City Signal central office. RCF enables a customer to remotely forward a call from one central office to another central office. City Signal further proposed that it would also provide number portability in situations in which it assigns the initial number and the customer changes its local exchange service provider.

DID and RCF were not designed to be used as number portability options and, consequently, most of the parties argued that they are fundamentally inadequate solutions on a long-term basis. Nevertheless, none of the parties objected to the use of DID and RCF to effect number portability on an interim basis. MCI, however, recommended that the Commission establish a deadline of one year for Ameritech Michigan to develop a long-term number portability solution.

---

[12]SS7 is a network signalling system, which accommodates enhanced 800 service, wide-area Centrex services, virtual private networks, and other types of advanced telecommunications services.

The remaining issue in dispute relates to the appropriate price for DID and RCF services. City Signal proposed that, as an interim measure, the Commission require that number portability be provided without charge for policy reasons similar to those adopted in other states. More specifically, City Signal and MCI recommended that the Commission adopt a solution similar to that proposed by Rochester Telephone Company before the New York Public Service Commission. That commission allowed the additional switching and transport costs associated with the provision of number portability through DID or RCF to be recovered through a surcharge on telephone numbers, payable by each local exchange service provider based on the number of telephone numbers served by each carrier. (Case 94-C-0095, February 10, 1994.) MCI argued that this approach is premised on the assumption that there is an economic value to having number portability, whether or not a particular customer uses it.

Because cost information regarding DID and RCF was not initially available, the Staff recommended that Ameritech Michigan make those services available to City Signal at equivalent present rates during the transitional period. For DID service, based on Exhibit I-83 and City Signal's and MCI's briefs, this would equate to a rate of between $.58 and $.83 per telephone number per month.

The Staff further proposed that, for termination of a ported DID toll call to a City Signal end-user, Ameritech Michigan would only be able to bill an IXC for the tandem switching rate if it is applicable. On the other hand, City Signal would charge an IXC the local switching and end-office charges. According to the Staff, this will ensure that each LEC receives the appropriate portion of switched access charges with no double billing of IXCs.

For the completion of local calls using DID or RCF, the Staff also proposed that Ameritech Michigan continue to pay City Signal the $.05 local call termination charge for calls terminated on City Signal's network. In other words, the Staff explained, termination charges should continue to apply even in situations in which DID or RCF is used by City Signal, thereby acting as an offset to DID and RCF charges.

MCI asserted that, if there are to be charges for the provision of DID and RCF, they should be set to recover Ameritech Michigan's incremental costs. Based on Ameritech Michigan's responses to MCI's discovery requests, MCI calculated the incremental costs for using DID and RCF to be approximately $.20 and $1.14 per month, respectively.

Ameritech Michigan, on the other hand, contended that these services should not be offered at cost. According to Ameritech Michigan, it would be inappropriate to provide these services to City Signal at incremental cost while other customers must purchase them at tariffed rates. Ameritech Michigan witness William DeFrance, Director of Components and Interconnection for Ameritech's Information Industry Services, testified that DID is currently offered at a rate for purchasing blocks of 20 telephone numbers. However, he indicated that Ameritech Michigan would be willing to offer a per telephone number rate, which he estimated would be $1.50 per telephone number per month. As to RCF, Mr. DeFrance stated that the charge associated with that service is $20.45 per line per month, plus $.082 per call.

Ameritech Michigan also took issue with the calculation of the incremental cost of DID and RCF. Ameritech Michigan stated that DID was developed prior to the emergence of the number portability issue and, consequently, no costs have been developed to provide DID as a number portability solution. Furthermore, Ameritech Michigan submitted that there are a number of deficiencies in the calculations performed by City Signal and MCI. Ameritech

Michigan presented similar arguments relative to RCF and pointed out that the Commission's December 22, 1992 order in Case No. U-10064 found RCF to be an unregulated service. As to the recovery of costs, Ameritech Michigan argued that cost causers should pay for the price of a ported number. The company asserted that any other arrangement would create subsidies from the customers of one provider to the customers of another provider.

Ameritech Michigan also took the position that it would be irresponsible to mandate that a data base number portability solution be developed within one year from the Commission order as suggested by MCI. Ameritech Michigan stated that no evidence was produced to support such a schedule. Rather, Ameritech Michigan pointed out, evidence showed that Ameritech Michigan and AT&T have been working with the industry to develop an appropriate solution. Consequently, Ameritech Michigan submitted, it would be improper to assess a penalty against it because the industry has not as yet developed a true number portability solution. Finally, Ameritech Michigan contended that the Rochester Telephone Company case provides a poor cost model for this proceeding. According to Ameritech Michigan, that case was predicated on a settlement of overearnings involving a comprehensive agreement between Rochester Telephone Company and Time Warner, Inc., encompassing issues that are not comparable to the matters presented in this case.

GTE argued that number portability should not be required until the demand for it is clearly established. GTE also contended that the cost for number portability should be borne by those who want it, because it would be unfair to require providers and customers that have no demand for number portability to subsidize those who want that option.

MECA took the position that number portability is a national issue that must first be resolved at the federal level. MECA therefore recommended that the Commission defer this issue to the FCC.

The ALJ noted that all of the parties recognized that DID and RCF are the only currently available solutions to number portability and that, while they have some limitations, they may be used on an interim basis. The ALJ acknowledged that these services were not originally established to provide a number portability solution. However, he found that they will provide an adequate solution on a transitional basis. The ALJ further found that these services should not be provided to interconnecting carriers free of charge. He was also not satisfied that the Rochester Telephone Company settlement should be used as precedent in this case, because no details regarding the circumstances giving rise to the settlement and the agreement itself were presented.

Although the ALJ agreed with the Staff that Ameritech Michigan should make DID and RCF available to City Signal at equivalent existing rates, he found that MCI's calculation of the incremental costs for those services was reasonable. He concluded that the cross-examination relied on for those calculations supported the conclusion that they did, in fact, represent the incremental cost of the services. The ALJ also found that the Staff's proposal to prevent the double billing of IXCs for calls terminated under these interim solutions is satisfactory and, therefore, he recommended that it be adopted.

Finally, the ALJ was not persuaded that a time limit should be placed on Ameritech Michigan for the development of true number portability. He noted that the record demonstrated that Ameritech Michigan, along with the industry, is working toward development of a technically feasible number portability solution, and no evidence to the

contrary was presented. The ALJ therefore concluded that MCI's proposed deadline was not justified and should be rejected.

MCI excepts to the ALJ's rejection of its proposed deadline for Ameritech Michigan to provide true number portability. According to MCI, without direction from the Commission, Ameritech Michigan will not willingly implement true number portability because it wants to keep its competitive advantages as long as possible. MCI contends that, based on past experience with Ameritech Michigan, the Commission should require Ameritech Michigan to develop a true number portability solution within one year of the Commission's order in this case.

MCI also argues that, until true number portability is implemented, the ALJ should have increased the compensation threshold to plus or minus 50%.[13] MCI points out that it proposed that threshold to recognize the need to provide incentives for Ameritech Michigan to provide true number portability. Additionally, MCI submits, until true number portability is available, it is possible that traffic flows between Ameritech Michigan and a new entrant will be unbalanced in favor of Ameritech Michigan.

MCI goes on to argue that the ALJ also erred in rejecting the approach used by the New York Public Service Commission in the Rochester Telephone Company case. Contrary to the ALJ's finding, MCI asserts, the record is replete with references to the circumstances giving rise to the settlement agreement and the terms of the agreement itself.

On the other hand, Ameritech Michigan argues that the ALJ erred in his recommendation regarding the pricing of both DID and RCF when those services are used for number portability. In particular, Ameritech Michigan states that no cost witness presented testimony

---

[13]This is the same issue that was addressed in the section on mutual compensation.

addressing the cost of DID service when it is used as a number portability option. Ameritech Michigan submits that the Commission should focus on the policy issues related to appropriate pricing of existing services when used as an interim number portability option. Specifically, Ameritech Michigan continues, the Commission should clarify the ALJ's vague recommendation to charge "equivalent present rates" for DID with a determination that, when used as a number portability solution, DID should be priced at a level that is equivalent to the pro rata share of its current rate that represents the DID components used to provide number portability service. Ameritech Michigan also submits that the Commission should refrain from establishing a discrete price for RCF as a number portability option because no evidence was presented regarding the cost of that service when it is used for that purpose. Ameritech Michigan concludes that compelled production of a 1988 cost study, which is the most recent version of RCF costs, and MCI's faulty calculation do not provide support for the establishment of any rate.

Moreover, Ameritech Michigan continues, the Commission has no authority to require it to modify the prices it charges for RCF services because, in its December 22, 1992 order in Case No. U-10064, the Commission determined that RCF is an unregulated service.

MCI responds that its incremental cost calculations are the most accurate cost studies of DID and RCF that exist today. MCI points out that, like its position on compensation for traffic termination, Ameritech Michigan has failed to offer any contrary cost evidence or analysis on the record. Consequently, MCI argues that the ALJ properly rejected Ameritech Michigan's proposal to price DID at its pro rata share of all components used to provide the end-user service, including contribution levels in line with comparable services. According to MCI, it would be fundamentally anti-competitive to price what is a bottleneck service, but

competitively essential, for competitive LECs in the same manner that Ameritech Michigan prices optional end-user basic local exchange services.

Ameritech Michigan also excepts to the ALJ's adoption of the Staff's proposal limiting the company to the assessment of a tandem switch charge for calls terminating from an IXC to a ported number. Ameritech Michigan argues that it should be allowed to continue to charge IXCs all terminating access rates as well as to receive payment from City Signal for DID and RCF. In support of its position, Ameritech Michigan argues that when DID and RCF are used, it continues to incur all of the access costs it would have incurred if the number was retained for its own customer. Specifically, Ameritech Michigan submits, it continues to incur tandem switching, local switching transport, carrier common line, and all other access costs. In contrast, Ameritech Michigan claims that competitive LECs do not incur any access costs in terminating an IXC call to a competitive LEC end-office through RCF or DID number portability arrangements. Ameritech Michigan concludes that the ALJ's recommendation is nothing more than an attempt by MCI, which made this argument, to inappropriately reduce the access charges it pays to Ameritech Michigan and to provide an advantage to a competing LEC.

MCI responds that this is completely erroneous. To the contrary, MCI submits, the competitive LEC incurs all costs of access in terminating an IXC-originated call, just as it would if the IXC could send the call directly to a NXX code resident in the competitive LEC's end-office switch. In other words, it switches the call, transports it, and terminates it to the end-user over a common line facility. Furthermore, MCI maintains that Ameritech Michigan does not incur anything approaching all the costs it claims. For example, MCI points out, Ameritech Michigan does not incur carrier common line expenses because a ported call never

is switched to a local loop by the incumbent LEC. Finally, MCI argues that Ameritech Michigan is compensated for its switching functions associated with DID and RCF because it will receive the incremental costs built into the rates for those services.

AT&T agrees with MCI that Ameritech Michigan's interpretation of this issue should be rejected because it would allow Ameritech Michigan to double recover some expenses and to earn revenues when no costs are actually incurred. AT&T asserts that the ALJ correctly sought to prevent an IXC from being billed access twice when its call is ported between local carriers to achieve interim number portability. According to AT&T, IXCs should not be double-billed for access functions. Instead, AT&T submits, when numbers are ported between local carriers, Ameritech Michigan will be expected to recover some of its costs in the price it charges the new carrier for DID or RCF.

The Commission finds that the ALJ properly analyzed this issue. Given the consensus that DID and RCF are the only currently available solutions to number portability, the Commission finds that they are appropriate only on an interim basis. However, at this time, the Commission is not persuaded that a deadline should be imposed on Ameritech Michigan to develop a long-term solution. Because this is an issue that the entire industry is addressing, it is not appropriate to single out Ameritech Michigan by imposing a deadline or a penalty at this time.

Turning to the rates for DID and RCF, there appears to be some confusion among the parties regarding the ALJ's finding on this issue. To clarify, the ALJ ultimately concluded that MCI's calculation of the incremental costs of providing DID and RCF, rather than the current tariffed rates, was reasonable. The Commission finds that this conclusion is supported by the record. Cross-examination of Mr. DeFrance revealed that the existing rates for DID and RCF

include functions that are not necessary for number portability. For example, Mr. DeFrance acknowledged that the price of DID includes a private branch exchange (PBX) charge of $10.71. Mr. DeFrance agreed that, because a PBX trunk is an outbound trunk, it is not needed to provide portability, which is an inbound service.

The Commission therefore finds that the incremental costs developed by MCI are appropriate for the pricing of DID and RCF on a transitional basis. Specifically, those rates are $.20 per line per month for DID and $1.14 per line per month for RCF. Again, contrary to its contention, Ameritech Michigan had the opportunity to present options for the pricing of number portability options, but it chose not to do so. Consequently, Ameritech Michigan's criticism regarding the development of the appropriate pricing lacks merit.

The Commission also rejects Ameritech Michigan's argument that the Commission has no authority to modify the prices for RCF because it is an unregulated service pursuant to the December 22, 1992 order in Case No. U-10064. Ameritech Michigan ignores the fact that, in the November 23, 1994 order in this case, the Commission noted that, in Case No. U-10064, the RCF service at issue was an existing custom calling feature provided to end-users. In contrast, in this case, City Signal has proposed to purchase RCF (and DID) from Ameritech Michigan to effectuate number portability, which is an interconnection issue. As such, it is a regulated service and the Commission may set the price.

Turning to MCI's proposal that the costs for DID and RCF should be recovered through a surcharge on telephone customers, the Commission finds that it should be rejected. The Commission is not convinced that all customers should be assessed such a surcharge during the transitional period, or that competitive pressure will necessarily force new entrants to absorb the surcharge rather than pass it on to customers.

The Commission also is not persuaded that, until true number portability is implemented, the compensation threshold should be increased to plus or minus 50%. The Commission has already rejected that proposal earlier in this order.

Finally, the Commission finds that the ALJ properly concluded that there should be a limit on the access charges Ameritech Michigan assesses in those instances in which DID and RCF will be used. No evidence was presented to support Ameritech Michigan's assertion that it continues to incur all of the same access costs that it would incur in terminating a call to its own customers. As AT&T so aptly points out, such a scenario intuitively seems impossible given the fact that the new carrier will provide both the end-office switching function that routes the call to its final destination and the end-user loop itself.

Directory Listings

Section 305(1)(i) of Act 179 requires basic local exchange providers to provide directory listing information to all persons requesting that information, including affiliates, without unreasonable discrimination. Section 309(1) of Act 179 requires basic local exchange providers to provide their customers with an annual printed directory. Relying on those provisions, City Signal asserted that the need for common access to a data base of local telephone numbers is an interconnection issue.

City Signal took the position that there is a public need that all numbers within a given community of interest, such as the Grand Rapids District Exchange, be available in a common, centrally maintained data base. City Signal therefore proposed that each carrier be required to submit its list of customers to the data base administrator. Each local exchange provider could then access from that list the numbers needed to provide directory assistance and a complete telephone directory for distribution to its subscribers. In the future, City Signal

stated, a third-party administrator may be required, but in the interim, Ameritech Michigan should provide access to this information without charge.

In support of this position, City Signal pointed out that it is consistent with the manner in which Ameritech Michigan relates to other LECs. Specifically, City Signal cited the existence of "swap agreements" whereby the LECs exchange directory listings without charge. In contrast to that situation, City Signal stated that Ameritech Michigan has proposed to require City Signal to pay Ameritech Michigan to have the numbers of City Signal's customers included in Ameritech Michigan's listings at a one-time charge of $8.35 per listing plus $1.24 per listing per month. However, City Signal requested that it be treated in the same manner as other LECs and that the Commission require Ameritech Michigan to exchange directory information at no charge.

The Staff argued that, although Act 179 does not define the scope of a printed directory, it is reasonable to assume that the scope of that directory should include the local calling area. The Staff proposed that the Commission establish the interconnection arrangements for three parts of the provisioning of directories, i.e., the listing of customer information in a data base, access to and use of that information after it is included in a data base, and the publication of the local directory itself. The Staff maintained that to the extent these services are provided among LECs today, they should be provided under the same rates, terms, and conditions to City Signal. For example, the Staff stated, if Ameritech Michigan continues to make available inclusion in, and use of, directory listing information without charge to other LECs with whom it shares local calling areas, City Signal should be treated in the same manner.

Ameritech Michigan took the position that the subject of directory listings is not an interconnection issue. It argued that Sections 305(1)(i) and 309(1) do not in any way pertain to interconnection arrangements. Rather, Ameritech Michigan argued, those sections demonstrate that the Commission does not have the authority to require Ameritech Michigan to create a common listing data base. The company contended that there is substantial competition for the development of listing information and the publishing of directories that has evolved without the creation of a common data base. Ameritech Michigan therefore asserted that the competitive market should be allowed to work in this area.

As to swap agreements, Ameritech Michigan stated that while they have existed in the past, all of them have been terminated. The company stated that it is currently negotiating with those affected LECs to determine the appropriate compensation for delivery of listing information. Ameritech Michigan further indicated that it is willing to provide City Signal with directory listings under the same terms and conditions as those listings are made available to other directory publishers. Ameritech Michigan concluded that the Commission has no authority to dictate the terms and conditions under which LECs make their listings available, as long as they do so under nondiscriminatory terms and conditions.

The ALJ agreed with Ameritech Michigan that there is nothing in Act 179 that gives the Commission the authority to require the company to create a common listing data base as proposed by City Signal. As to the swap agreements, the ALJ acknowledged Ameritech Michigan's statement that they have been terminated. He also noted Ameritech Michigan's position that it is willing to provide City Signal with directory listings under the same terms and conditions as those listings are made available to other directory publishers. The ALJ

concluded that this complies with the provisions of Act 179. He therefore recommended that the Commission take no action relative to this issue.

The Staff excepts to the ALJ's finding that Ameritech Michigan's stated intention to provide City Signal with directory listings under the same terms and conditions as are available to other directory publishers complies with Act 179. To the contrary, the Staff argues, charges to other directory publishers are not relevant. The Staff points out that, in the past, rates charged other directory publishers were 13¢ to 23¢ per listing, while local listing information has been provided to other LECs free of charge. The Staff concludes that it is not acceptable under Act 179 to treat City Signal differently than other licensed LECs.

City Signal and Teleport filed similar exceptions on this issue. Teleport asserts that facilitating inclusion in, and access to, Ameritech Michigan's white pages listings by City Signal is an interconnection issue, which is necessary to equally integrate all customers into the public switched network. City Signal agrees with the Staff and Teleport and states that it will agree to terms that are consistent with those between Ameritech Michigan and other LECs.

On the other hand, the Staff agrees with the ALJ's recommendation that Ameritech Michigan should not be required to create a comprehensive data base for all local listing information. However, the Staff submits, the issue of whether such a data base already exists is still in question. The Staff points out that Exhibit S-85 indicates that independent LECs have customer information entered into a directory assistance data base without charge to them. The Staff states that it merely proposes that if such a common listing exists and is used by all LECs today in the development of local calling directories, City Signal should be permitted listings in that same data base under the same rates, terms, and conditions.

Finally, the Staff states that it agrees with the ALJ that if City Signal can reach an agreement with another entity to publish its directory, there is no issue to be resolved. However, the Staff argues that no evidence was presented regarding the extent of alternative sources for publication of such information. Because the Staff believes that an alternative must exist to enable City Signal to provide a published directory, the Staff suggests that Ameritech Michigan hold itself out to provide that service to City Signal.

In response, Ameritech Michigan and MECA state that nothing in Act 179 gives the Commission authority to dictate the terms and conditions under which LECs make their listings available, as long as they are made available under nondiscriminatory terms and conditions. According to Ameritech Michigan, the Commission has no authority to impose City Signal's obligations on Ameritech Michigan, to dictate the terms and conditions under which City Signal may choose to have Ameritech Michigan publish directories on its behalf, or to require Ameritech Michigan to create or maintain a common data base for the use and benefit of competitors. Ameritech Michigan points out that the directory information business is highly competitive and customers have many alternatives for listing information. MECA adds that if the Commission concludes that it has the requisite authority, it should also make directories available to other LECs at their option at a reasonable price.

MECA goes on to argue that the Commission should declare that the use of swap agreements in EAS areas does not constitute unreasonable discrimination under Section 305(1)(i) of Act 179. In MECA's view, the ALJ's statement regarding Ameritech Michigan's termination of swap agreements should not be construed to imply that such agreements will no longer be permissible. MECA says that although Ameritech Michigan may have currently terminated most of its swap agreements, they have not yet been replaced by new agreements.

According to MECA, many of its member companies will continue to negotiate for the use of swap agreements in EAS areas. MECA requests that the Commission find that there is a rational basis to continue to allow swap agreements in EAS areas.

The Commission agrees with the ALJ that Ameritech Michigan should not be required to create a common listing data base if one does not currently exists. However, if a common listing does, in fact, exist, City Signal should be permitted listings under the same rates, terms, and conditions as other LECs. Likewise, Ameritech Michigan should provide City Signal with directory listings on the same rates, terms, and conditions as Ameritech Michigan offers to other LECs. The Commission agrees with the Staff that it is not acceptable under Act 179 to treat City Signal differently than other LECs. Toward that end, if Ameritech Michigan wishes to negotiate swap agreements, it is free to do so.

On the other hand, the Commission does not agree that, at this time, Ameritech Michigan should be required to hold itself out to provide a published directory to City Signal. Based on the record, it appears that City Signal will be able to reach an agreement with another entity to publish its directory.

Directory Assistance and Other Data Base Services

Section 102(m) of Act 179 defines local directory assistance as "the provision by telephone of a listed telephone number within the caller's area code." [MCL 484.2102(m).] Section 309(1) of Act 179 goes on to require that a provider of basic local exchange service provide local directory assistance to each customer. [MCL 484.2309(1).]

City Signal indicated that it has identified one of the various competing directory assistance service providers to provide services to it instead of contracting with Ameritech

Michigan. Consequently, City Signal is not asking the Commission to establish any terms and conditions for the provision of this service by Ameritech Michigan.

On the other hand, City Signal has requested that Ameritech Michigan provide access to the Line Information Data Base (LIDB) and the 800 Data Base (800DB).[14] The Staff supported this request and proposed that interconnection to those data bases between City Signal and Ameritech Michigan occur under the same rates, terms, and conditions presently offered to other LECs.

Ameritech Michigan stated that it is willing to enter into negotiations with City Signal for a package of services, including access to LIDB and 800DB. If City Signal simply wishes to purchase LIDB and 800DB, Ameritech Michigan stated that it will provide those services under the rates, terms, and conditions contained in Ameritech Michigan's access tariff, plus any additional rates, terms, and conditions that are set forth in the agreements contained in Exhibits S-25, S-27, and S-33.

The ALJ found that Ameritech Michigan is willing to provide access to the data base services under the rates, terms, and conditions set forth in its access tariff. He noted that there was no showing that Ameritech Michigan intends to discriminate against City Signal in this area. The ALJ therefore recommended that the Commission not take any action on this issue. The Commission agrees with the ALJ.

---

[14]LIDB is the data base used for credit card verification and other alternate billing information. The 800DB is a data base that contains customer information regarding 800 numbers and the IXCs to which the 800 numbers are presubscribed.

Telecommunications Relay Service (TRS) and Emergency Services (9-1-1)

City Signal requested that Ameritech Michigan provide TRS and 9-1-1 services under the same terms and conditions as Ameritech Michigan provides those services to other LECs. The Staff supported this request, and Ameritech Michigan agreed to it.

The ALJ found that City Signal's proposal complies with Act 179. Because the parties were in agreement, he recommended that the Commission not take any action on this issue. The Commission agrees with the ALJ.

Assignment of NXX Codes

Ameritech Michigan serves as the Local Number Administrator for all five area codes in Michigan. City Signal requested that central office code prefixes, i.e., NXXs, be assigned to it for subsequent assignment to its customers. The Staff, GTE, and MCI supported this request, stating that the NXX assignments should be made according to the same rates, terms, and conditions as are applied to other LEC requests for NXXs.

Ameritech Michigan explained that it assigns NXX codes in accordance with the industry's central office code assignment guidelines, which were designed to provide competitively neutral assignment of NXXs and to manage those numbers as a finite resource. Ameritech Michigan represented that it will administer the assignment of NXX codes pursuant to City Signal's request in accordance with those industry guidelines.

Again, because the parties were in agreement on this issue, the ALJ found that no action by the Commission is necessary. The Commission agrees with the ALJ.

Balloting

Balloting is the process by which customers select, or presubscribe to, a particular carrier. City Signal proposed that, within six months of the Commission issuing City Signal a license, all customers in the Grand Rapids District Exchange should receive a ballot to choose their LEC. City Signal contended that the customer inertia that benefits Ameritech Michigan should be offset by adopting a customer balloting plan similar to that adopted when the interexchange market was open to competition in the 1980s. City Signal argued that balloting may be even more important in the context of local exchange competition because the availability of alternative local exchange service providers is so new. Supported by MCI, City Signal requested that this issue at least be considered in any generic proceeding that may ensue.

The Staff, AT&T, GTE, and MECA opposed balloting for local exchange service because of potential customer confusion and cost concerns. The Staff contended that reballoting every time a new entrant is admitted to the market would further exacerbate those concerns. GTE asserted that balloting is simply a clever form of marketing whereby City Signal would use that process to garner new customers at the expense of other carriers.

Ameritech Michigan stated that balloting is not a form of interconnection or a service that is necessary to accomplish interconnection and, therefore, it has no place in this proceeding. Ameritech Michigan also agreed with the Staff and GTE that balloting is unnecessary, it causes customer confusion, and it would give City Signal a subsidized marketing device to win basic local exchange service customers without incurring any marketing cost. Ameritech Michigan pointed out that any newly licensed basic local exchange service provider has already been found to possess sufficient financial, managerial, and technical resources to provide basic

local exchange service when it was issued its license. According to Ameritech Michigan, the ability to market those services to new customers is an integral part of the provision of basic local exchange service.

The ALJ found that City Signal's balloting proposal would cause customer confusion and provide City Signal with a subsidized marketing device. He also agreed with Ameritech Michigan that a newly licensed basic local exchange service provider has been found to possess sufficient financial resources to market its services to customers. The ALJ therefore recommended that City Signal's balloting proposal be rejected.

Although City Signal and MCI except to the ALJ's recommendation, the Commission finds that the ALJ properly analyzed this issue. In particular, the Commission agrees with his conclusion that balloting would cause customer confusion and provide City Signal with a subsidized marketing device. Moreover, reballoting every time a new entrant is admitted into the market would not only be very costly, it would lead to even more customer confusion. The Commission therefore rejects City Signal's proposal.

Fresh Look

City Signal stated that there are certain local exchange customers, primarily Centrex customers, that have purchased service from Ameritech Michigan under long-term contracts. According to City Signal, those customers entered into those long-term arrangements not knowing that they would have an opportunity to choose their local exchange service provider. City Signal asserted that those customers should have the opportunity to take a "fresh look" at their contracts and to change their local telephone company without incurring contract termination penalties. City Signal stated that this proposal would address contractual arrangements that currently exist between Ameritech Michigan and its local customers. City

Signal clarified that it is not proposing that end-users should have a fresh look whenever a new provider enters the market.

In support of its proposal, City Signal relied on the FCC's order in CC Docket 91-131 issued June 9, 1993, in which the FCC adopted rules permitting customers to terminate term agreements with the incumbent LEC, if certain criteria applicable to expanded interconnection were met. City Signal asserted that the FCC adopted this practice in the interest of promoting competition among LECs and alternative access providers. City Signal concluded that the Commission should take similar action to promote local exchange competition.

The Staff took the position that increasing competition in the telecommunications industry should make customers aware of the risk involved in entering into long-term contracts. The Staff also expressed concerns with providing a fresh look each time a new competitor enters the market. MECA asserted that the concept of fresh look is anti-competitive in the long-run and poor public policy. GTE contended that the proposal constitutes interference with the private right of contract, thereby raising significant constitutional questions.

Like balloting, Ameritech Michigan took the position that City Signal's fresh look proposal is not an interconnection issue. Rather, Ameritech Michigan characterized it as an attempt to interfere with contractual relationships with its Centrex customers. According to Ameritech Michigan, the Commission has determined that Centrex services, with the exception of the loop portion that is regulated as basic local exchange service, are unregulated. Consequently, Ameritech Michigan argued, the rates, terms, and conditions of Centrex services, other than the loop, are not within the Commission's regulatory authority.

Furthermore, Ameritech Michigan maintained that City Signal's proposal is not analogous to the situation addressed by the FCC. Here, Ameritech Michigan pointed out, competition

for business systems has been in existence for nearly two decades. According to Ameritech Michigan, every Centrex service that it has sold has been purchased by business customers that have had the opportunity to purchase an alternative service from a variety of competitive providers.

Finally, Ameritech Michigan argued that adoption of City Signal's proposal would introduce chaos into the marketplace, because each time a new basic local exchange service provider entered the marketplace, all long-term contracts would be abrogated. As a result, Ameritech Michigan concluded, no provider would be willing to offer long-term contracts, which require completion of the full term to recover all costs.

The ALJ found that no evidence was presented to support adoption of City Signal's fresh look proposal. He further found that no showing was made that the actions taken by the FCC in its interconnection order should serve as precedent for similar action by the Commission. Finally, the ALJ agreed that Commission action to abrogate long-term contracts would introduce chaos into the marketplace and constitute poor public policy. The ALJ therefore recommended that City Signal's fresh look proposal be rejected.

Although City Signal and MCI except to this recommendation, the Commission finds that City Signal's fresh look proposal should be rejected for a number of reasons. First, the Commission has serious concerns regarding the abrogation of existing contracts, especially those involving a service that is, for the most part, unregulated. Second, the Commission is persuaded that City Signal's proposal could cause chaos every time a newly licensed LEC enters the market. Although City Signal stated that it was not proposing that end-users should have a fresh look whenever a new provider enters the market, that approach would be anti-competitive and discriminatory to other newly licensed providers. Third, the Commission

agrees with the Staff that, given the rapid developments in the telecommunications industry, customers should be aware of the increasing competition in the marketplace. Consequently, customers should be aware of the risk involved in entering into long-term contracts in such an environment.[15]

Tariffing of Services

In Case No. U-10064, the Commission established the regulatory status of services tariffed as of December 31, 1991, under newly enacted Act 179. As a result, the Staff submitted that the services being reviewed in this proceeding and required for local interconnection either were not tariffed at the time of the earlier proceeding or were not offered for the purpose of local interconnection.

The Staff took the position that the interconnection arrangements established in this case constitute access services under Act 179. In support of that position, the Staff relied on Section 102(a) of Act 179, which provides that:

> "'Access' means the provision of access to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunications service within the exchange." [MCL 484.2102(a).]

In the Staff's view, the tariffed interconnection arrangements should include use of essential facilities or services required of basic local exchange service providers that are not broadly available from other service providers and should be provided without unreasonable discrimination. The Staff stated that the end-user regulatory status of a service is not relevant to use of the service for purposes of access. Rather, the Staff argued, once these services

---

[15]In light of the Commission's finding, Ameritech Michigan's December 1, 1994 application for leave to appeal the ALJ's ruling requiring the disclosure of the terms and conditions of Ameritech Michigan's Centrex service contracts is moot.

have been proposed as components of an access arrangement, they are access services under Act 179. For example, the Staff pointed out that AT&T's interLATA directory assistance service to end-users is not a regulated service, but AT&T's interconnection with Ameritech Michigan to provide that service is regulated.

The Staff acknowledged that the availability of interconnection services from other providers was not definitively discussed in this proceeding. Although several parties agreed that most intereonnection services at issue in this proceeding should be offered under tariff, a difference of opinion existed primarily because the competitive availability of all interconnection services has not as yet been explored. Consequently, the Staff proposed that if a further proceeding on these matters is conducted, information on the availability of alternative essential services should be explored further. The Commission could then deregulate any local interconnection services that it determines to be competitively offered if the public interest will continue to be protected. However, in the interim, the Staff requested that the Commission find that all local interconnection services are access services. Those services would then be tariffed specifically or, if under contract, generally tariffed and regulated pursuant to Section 310 of Act 179. Finally, the Staff proposed that if additional LECs are licensed to provide basic local exchange service while permanent interconnection arrangements are still pending, the rates, terms, and conditions of the transitional arrangements established in this case should be available to those LECs.

Ameritech Michigan argued that the Staff's proposal presents a subject that is outside the scope of this case, is premised on an unreasonable interpretation of Act 179, and calls for an unprecedented and unlawful expansion of the Commission's authority over services that were expressly deregulated by Act 179 and subsequently acknowledged as unregulated services in

the Commission's December 22, 1992 order in Case No. U-10064. Ameritech Michigan asserted that no evidence was presented by any party on the regulatory status or treatment of these services under Act 179 other than in response to the Staff's discovery requests. The company further asserted that, pursuant to Section 401(2) of Act 179, the Commission does not have any authority over the provision of many of these services beyond the non-discrimination prohibition in Section 305(i) of Act 179.

Ameritech Michigan also stated that none of the services in question matches the definition of access in Section 102 of Act 179, and a request for those services by another competing basic local exchange provider does not change that. The company pointed out that, indeed, many of those services are expressly identified by Act 179 as services distinct from access, such as directory assistance, TRS, and 9-1-1.

The ALJ was persuaded that the record in this case was not sufficient to merit adoption or rejection of the Staff's proposal. Instead, he concluded that the issue needs to be addressed to a greater degree to permit a properly considered decision. The ALJ therefore recommended that the Commission defer consideration of this matter to a subsequent proceeding.

The Staff excepts to the ALJ's recommendation, arguing that a decision is necessary at this time. The Staff argues that delaying a decision on this matter until the subsequent proceeding may result in discrimination in the interconnection arrangements provided to other newly licensed LECs or require the filing and resolution of separate interconnection cases for each provider licensed during the transitional period. AT&T supports the Staff's position.

In response, Ameritech Michigan reiterates the arguments presented in its briefs. The company adds that tariffing these services would completely eliminate negotiated, mutually

agreeable, contractual arrangements among competing providers. According to Ameritech Michigan, that result directly contradicts the clear intent of Section 303(2) of Act 179, which encourages negotiated arrangements between interconnecting providers. In fact, Ameritech Michigan asserts, tariffing these services could stifle the very form of business relationships that are the hallmark of full and effective competitive markets. Moreover, Ameritech Michigan continues, tariffing these services would inappropriately put the Commission in a position to regulate the provision of these services between LECs, which is something that the Commission has never done over the several decades that such services have been provided under mutually agreeable contracts between Ameritech Michigan and the other LECs. Ameritech Michigan concludes that there is nothing in the record in this proceeding or in Act 179 that supports the Staff's position that any and all services should be tariffed as access when sold to a competing LEC.

Although the Commission agrees with the ALJ that this issue needs to be addressed in more depth, a preliminary decision regarding the status of the services at issue must be made at this time to ensure that other newly licensed LECs are treated in a nondiscriminatory manner. Contrary to Ameritech Michigan's characterization, the interconnection arrangements include essential services that can only be obtained from Ameritech Michigan. Thus, it is critical that they be tariffed and subject to Commission regulation until it can be shown that they should be reclassified as competitive services. The Commission therefore finds that, on a transitional basis, the interconnection arrangements established in this order are access services.

Because the interconnection arrangements established in this order are between Ameritech Michigan and City Signal, the Commission finds that a contract that embodies

those arrangements is permissible. Pursuant to Section 202(c) of Act 179 and the Commission's December 22, 1992 order in Case No. U-10064, if a contract is used, a summary of the services included in the contract, the term of the contract, and the prices in the contract must be included in the intrastate access tariff. If additional telecommunications providers are licensed to provide basic local exchange service while permanent interconnection arrangements are being finalized, the terms and rates of the transitional interconnection arrangements will be available to those newly licensed LECs. This will eliminate the need for the filing and resolution of separate interconnection cases for each provider licensed during the transitional period.

In making this determination, the Commission rejects Ameritech Michigan's argument that this is an unlawful expansion of the Commission's authority over services that were specifically determined to be unregulated in Case No. U-10064. The fact that services were deemed unregulated because they were provided to end-users does not lead to the conclusion that they are unregulated for all purposes. To the contrary, the Commission agrees with the Staff that, when those services are used as components of an access arrangement, they are access services under Act 179. As discussed earlier in this order, this conclusion is consistent with the Commission's November 23, 1994 order in this case.

The Commission also rejects Ameritech Michigan's argument that tariffing these access services would eliminate negotiated contractual arrangements among competing providers because that argument misses the point. Section 310(8) of Act 179 provides that:

> "A provider of access, whether under tariff or contract, shall offer such services under the same rates, terms and conditions, without unreasonable discrimination, to all providers and customers." [MCL 484.2310(8).]

Thus, once interconnection arrangements, which are access services, have been either negotiated by the parties or established by the Commission, subsequent interconnection arrangements cannot unreasonably discriminate against a new provider.

In conclusion, the Commission emphasizes that its determination regarding the regulatory status of the interconnection arrangements established in this order will be reevaluated in a generic proceeding. During that proceeding, additional information on this issue will be explored, and the Commission can deregulate any interconnection service it determines is competitively offered.

Generic Proceeding

The Staff took the position that, because of the numerous complex issues that had to be addressed under the time constraints of Act 179, the interconnection arrangements adopted by the Commission should be transitional. The Staff proposed that the Commission initiate a subsequent proceeding to establish more permanent interconnection arrangements as well as to explore other related issues. The Staff stated that the issues to be addressed in more detail include further unbundling, alternative number portability solutions, alignment of other rates with local access rates, tariffing of local access contracts with MECA companies, imputation and resale, all as more fully set forth on Exhibit S-95. The Staff proposed that the generic proceeding begin on June 1, 1995 and be completed consistent with Commission guidelines. This would allow for the transitional arrangements established in this case to remain in effect for approximately one year.

City Signal supported the Staff's proposal as long as the Commission's order in this case resolves all of the issues necessary to enable City Signal to offer a truly competitive alternative to Ameritech Michigan as soon as City Signal commences operations. Toward that end, City

Signal stated that the crucial issues of unbundling, mutual compensation, and number portability must be resolved. City Signal further stated that the experience it gains from competing in the Grand Rapids District Exchange will prove valuable in examining the issues to be addressed in a generic proceeding. City Signal also agreed with the Staff's presentation of the issues to be addressed in such a proceeding, but also proposed to include consideration of a long-term resolution of the directory data base and fresh look issues.

Teleport and AT&T also supported the Staff's proposal. AT&T recommended that the proceeding address issues that are key to local exchange competition, including the following: the full extent of network unbundling; the non-discriminatory pricing of interconnection to those unbundled components; non-discriminatory, tariffed compensation arrangements applicable to all call types and all classes of providers; number portability; data base access; arrangements for the provision of related local services, such as directory listings, 9-1-1, and relay services; unrestricted resale; access pricing; and imputation.

MCI also supported the Staff's proposal, but argued that the proceeding could begin before June 1, 1995. MCI also referenced four specific areas it believes merit special attention in a follow-up proceeding. The first area is identifying and removing support for universal service from its present hidden position inside incumbent LEC rate structures, and placing it into an independent fund that is "competitively neutral" both in how it is funded and how funds are distributed from it. The other areas are true number portability, further unbundling, and the elimination of protectionism for incumbent LECs while ensuring the establishment of non-discriminatory access to bottleneck facilities.

Ameritech Michigan also supported a generic proceeding. The company argued that it is essential that the Commission carefully address public policy issues relating to local

competition, such as universal service, carrier-of-last-resort obligations, infrastructure, and technological convergence.

MECA asserted that the Staff's proposal for a generic proceeding should be rejected because it does not meet the requirements of Act 179. MECA stated that any proceeding beyond this one would violate the 210-day requirement of Section 203(4) of Act 179. Moreover, MECA argued that there is no need for a future case unless a dispute arises that cannot be resolved through negotiation.

The ALJ was persuaded that the Staff's proposal for a subsequent proceeding has merit and should be adopted. He disagreed with MECA that such a proceeding would circumvent the 210-day requirement of Act 179 because there is nothing in Act 179 that prohibits the Commission from conducting a comprehensive review of the interconnection arrangements established in this case. Additionally, the ALJ rejected MCI's recommendation to commence this proceeding prior to June 1, 1995. The ALJ found that the additional time will be beneficial because it will give all of the parties time to carefully consider the Commission's order in this case and to prepare for a subsequent proceeding. He also found that it will allow for the gathering of additional data from City Signal's experience in basic local exchange competition with Ameritech Michigan.

The Commission finds that the ALJ properly concluded that a subsequent proceeding is needed to provide a broader forum for consideration of the many interconnection issues that are generic to basic local exchange competition. As the ALJ correctly noted, while the record is sufficient to support an order in this case that provides for a transitional interconnection arrangement, this proceeding garnered the participation of a large and diverse number of parties who jointly raised a large number of complex issues. As a result, a subsequent

proceeding should be commenced to further explore many of those issues on a permanent basis. In doing so, the Commission rejects MECA's contention that a subsequent proceeding would violate the 210-day requirement of Act 179. Today's order in this case constitutes a final order for purposes of Section 203(4) of Act 179.

This case highlighted the difficulties of numerous parties litigating complex issues within narrow time constraints. The Commission agrees with the ALJ that more time is necessary to allow the parties to give careful consideration to this order as well as to gather additional information based on City Signal's experience. Furthermore, completion of the generic proceeding within nine months of June 1, 1995 is appropriate and within the Commission's guideline for the completion of cases.

Additionally, contrary to MECA's assertion, conducting a generic proceeding will be a better use of the Commission's and the parties' resources than litigating interconnection arrangements every time a newly licensed LEC seeks those arrangements. Based on the conduct of this case, it appears unlikely that future interconnection arrangements will be established solely through negotiation between the parties. The Commission therefore rejects MECA's contention that there is no need for a future case unless there is a dispute in the future that cannot be resolved by negotiations.

The Commission also rejects MCI's proposal to begin the generic proceeding prior to June 1, 1995. Contrary to MCI's contention, the time between issuance of this order and commencement of the generic proceeding can be used by the parties to begin informal discussions in an effort to narrow the issues as well as to coordinate their participation in that proceeding.

Having found that a generic proceeding should be commenced, the Commission directs that the scope of the proceeding must be limited to those issues that can be adequately considered and resolved in the context of a nine-month proceeding. This must necessarily exclude the issues raised by Ameritech Michigan and MCI. As formulated by Ameritech Michigan, most of its issues are so broad and vague that they are not capable of being resolved in such a proceeding. For example, Ameritech Michigan posits the question, "[i]s regulatory involvement necessary or appropriate in disaster recovery, redundancy, network testing, or other quality of service issues impacted by local competition?" (9 Tr. 1611.) Among other things, it is unclear what disaster recovery has to do with the establishment of permanent interconnection arrangements in a competitive basic local exchange service market. In addition, MCI's proposed issues, such as universal service and elimination of protectionism for incumbent LECs, are beyond the scope of such a proceeding.

In contrast, the Staff's proposed issues are clear, concise, and directly relevant to establishing permanent interconnection arrangements. Accordingly, the Commission finds that the scope of the generic proceeding shall be limited to the following issues:

A. Local Interconnection

1. Unbundling

a. What is the appropriate long-term pricing for an unbundled loop, including consideration of the types of loops and zone pricing?

b. What further unbundling of the remaining local network is required at this time and what are the appropriate prices for those unbundled services?

c. What process should be followed in the future to address additional requests for unbundling? Should procedures differ between large and small LECs?

2. Mutual Compensation

   a. What is the appropriate long-term structure and pricing for local access services including Feature Group A and other jointly provided services?

   b. Is "bill-and-keep" appropriate under any circumstances?

   c. Which services are new and which services that are already offered to other customers/providers would be used for local interconnection as well? If existing services are needed, is there justification for pricing the same service differently for different users?

3. Number Portability

   a. What are the short-term and long-term alternatives for number portability?

   b. What is the appropriate pricing for the short-term number portability alternatives?

   c. How should long-term number portability options be implemented? National basis, regional basis, or state basis?

4. What are the appropriate arrangements for industry data base access and white page listings between LECs?

5. What 9-1-1 and relay interconnection issues, if any, need to be addressed?

6. Should local interconnection services be available to any customer or provider?

B. Other Tariff Restructuring

   1. Should MECA interconnection contracts be tariffed? Should MECA interconnection parameters and competitive LEC local interconnection tariffs be aligned? If so, how and when?

   2. Should toll access tariffs and any other similar offerings be aligned with competitive LEC local interconnection tariffs? If so, how and when? Can toll access prices, based on the FCC's fully allocated cost methodologies, be reconciled with the intrastate costing requirements specified in Act 179 and Case No. U-10620?

3. Do the imputation requirements of Section 311 of Act 179 require the pricing of other services to be altered?

4. Due to the tariffing of local interconnection arrangements, must resale restrictions remaining in existing tariffs be altered in order to comply with Section 311 (3) of Act 179?

5. Are transitions to new prices for other services appropriate? In what context should these proposals be considered?

To facilitate the completion of the generic proceeding in an orderly and timely manner, the Commission adopts the following schedule:

| | | |
|---|---|---|
| June 1, 1995 | - | Newspaper Notice |
| June 15, 1995 | - | Prehearing Conference |
| July 24, 1995 | - | File Direct Testimony |
| September 8, 1995 | - | File Rebuttal Testimony |
| September 25 - October 3, 1995 | - | Cross-examination of Direct and Rebuttal Testimony |
| October 27, 1995 | - | Briefs |
| November 6, 1995 | - | Reply Briefs |
| December 18, 1995 | - | Proposal for Decision |
| January 8, 1996 | - | Exceptions |
| January 19, 1996 | - | Replies to Exceptions |
| March 1, 1996 | - | Commission order |

All licensed LECs should coordinate, and share the cost of, publishing notice of the generic proceeding in newspapers of general circulation.

As alluded to earlier, the Commission encourages the parties to begin informal discussions in an effort to further narrow the foregoing issues. The Commission also encourages parties

with similar positions to coordinate the presentation of their witnesses, thereby minimizing redundant testimony and arguments.

III.

CONCLUSION

In granting City Signal a license to provide basic local exchange service, the Commission recognized that the time has come for competition in the local exchange market. As a result, the granting of that license represented the next logical step in the transition to a more fully competitive telecommunications market. Similarly, today's order represents a significant step toward establishing interconnection arrangements between competing LECs and, consequently, a framework for competition in the basic local exchange service market. In making the transition to competition, the Commission believes that the transitional interconnection arrangements established in this order will not result in competitive handicapping, cream skimming, or subsidization, as feared by some of the parties. Rather, those arrangements are a step toward the development of a network that will be open and accessible to all competitors on the same basis. Although the Commission again emphasizes that many of the issues addressed in this order will be explored further in the generic proceeding, the guiding principle in developing permanent interconnection arrangements must be the recognition that all licensed providers of basic local exchange service have equal status as competitors in the local exchange market.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, R 460.17101 et seq.

b. Physical interconnection arrangements between City Signal and Ameritech Michigan should be on the same terms and conditions as interconnection arrangements between Ameritech Michigan and adjacent LECs.

c. Mutual compensation, unbundling, and number portability are necessary to effective competition and, therefore, they are an integral part of the interconnection arrangements between City Signal and Ameritech Michigan.

d. The Staff's proposal for mutual compensation, as modified by this order, represents a reasonable middle ground and, therefore, it should be adopted on a transitional basis.

e. City Signal's proposal for the pricing of unbundled loops and the Staff's analysis of that proposal are reasonable and, therefore, they should be adopted on a transitional basis.

f. The use of DID and RCF to effect number portability on an interim basis is appropriate.

g. Ameritech Michigan should make DID and RCF available to City Signal at their incremental cost, as calculated by MCI, during the transitional period.

h. Ameritech Michigan should offer directory listings to City Signal on the same rates, terms, and conditions as it offers that service to other LECs.

i. City Signal's balloting and fresh look proposals are not in the public interest and, therefore, they should be rejected.

j. The transitional interconnection arrangements established in this order should be tariffed generally as access services. If additional telecommunications providers are licensed to provide basic local exchange service while permanent interconnection arrangements are being finalized, the rates, terms, and conditions of the transitional interconnection arrangements established in this order should be available to those newly licensed providers.

k. A generic proceeding should be initiated to address, on a permanent basis, the issues set forth on pages 89-91 of this order.

l. Any exceptions or arguments inconsistent with this order and not specifically addressed or determined are rejected.

THEREFORE, IT IS ORDERED that:

A. Physical interconnection between City Signal, Inc., and Ameritech Michigan shall be on the same terms and conditions as interconnection between Ameritech Michigan and adjacent local exchange carriers, as more fully described in this order.

B. The Commission Staff's proposal for mutual compensation, as modified by this order and described on pages 28-29 of this order, is adopted on a transitional basis.

C. Ameritech Michigan shall unbundle its local loops.

D. On a transitional basis, the pricing of unbundled local loops shall be $8 per month per business line and $11 per month per residential line, consistent with the Commission's finding relative to the federal end-user common line surcharge set forth on page 57 of this order.

E. As an interim solution to number portability, Ameritech Michigan shall make available to City Signal, Inc., direct inward dialing and remote call forwarding at rates set at their incremental cost, as described on page 67 of this order.

F. Ameritech Michigan shall offer directory listings to City Signal, Inc., on the same rates, terms, and conditions as it offers that service to other local exchange carriers.

G. City Signal, Inc.'s balloting and fresh look proposals are rejected.

H. The transitional interconnection arrangements established in this order shall be tariffed generally as access services and filed no later than 30 days after issuance of this order. If additional telecommunications providers are licensed to provide basic local exchange service

while permanent interconnection arrangements are being finalized, the rates, terms, and conditions of the transitional interconnection arrangements established in this order shall be available to those newly licensed providers.

I. A generic proceeding shall be initiated to address, on a permanent basis, the issues delineated on pages 89-91 of this order. The schedule for that proceeding, as set forth on page 91 of this order, is adopted.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(SEAL)

/s/ Ronald E. Russell
Commissioner

/s/ John L. O'Donnell
Commissioner

By its action of February 23, 1995.

/s/ Dorothy Wideman
Its Executive Secretary

# MICHIGAN TELECOMMUNICATIONS ACT

Act 179 of 1991
as amended by
Act 216 of 1995

## ARTICLE 1

## GENERAL PROVISIONS

Sec. 101. (1) This act shall be known and may be cited as the "Michigan telecommunications act".

(2) The purpose of this act is to do all of the following:

(a) Ensure that every person has access to basic residential telecommunication service.

(b) Allow and encourage competition to determine the availability, prices, terms, and other conditions of providing telecommunication services.

(c) Restructure regulation to focus on price and quality of service and not on the provider. Rely more on existing state and federal law regarding antitrust, consumer protection, and fair trade to provide safeguards for competition and consumers.

(d) Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in this state through incentives to providers to offer the most efficient services and products.

(e) Improve the opportunities for economic development and the delivery of essential services including education and health care.

(f) Streamline the process for setting and adjusting the rates for regulated services that will ensure effective rate review and reduce the costs and length of hearings traditionally associated with rate cases.

(g) Encourage the use of existing educational telecommunication networks and networks established by other commercial providers as building blocks for a cooperative and efficient statewide educational telecommunication system.

(h) Ensure effective review and disposition of disputes between telecommunication providers

Sec. 102. As used in this act:

(a) "Access service" means access to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunication services within the local exchange. Except for end-user common line services, access service does not include access service to a person who is not a provider.

(b) "Basic local exchange service" or "local exchange service" means the provision of an access line and usage within a local calling area for the transmission of high-quality 2-way interactive switched voice or data communication.

(c) "Cable service" means 1-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services.

(d) "Commission" means the Michigan public service commission.

(e) "Contested case" or "case" means a proceeding as defined in section 3 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.203 of the Michigan Compiled Laws.

(f) "Educational institution" means a public educational institution or a private non-profit educational institution approved by the department of education to provide a program of primary, secondary, or higher education, a public library, or a nonprofit association or consortium whose primary purpose is education. A nonprofit association or consortium under this subdivision shall consist of 2 or more of the following:

(i) Public educational institutions.

(ii) Nonprofit educational institutions approved by the department of education.

(iii) The state board of education.

(iv) Telecommunication providers.

(v) A nonprofit association of educational institutions or consortium of educational institutions.

(g) "Energy management services" means a service of a public utility providing electric power, heat, or light for energy use management, energy use control, energy use information, and energy use communication.

(h) "Exchange" means 1 or more contiguous central offices and all associated facilities within a geographical area in which local exchange telecommunication services are offered by a provider.

(i) "Handicapper" means a person who has 1 or more of the following physical characteristics:

(i) Blindness.

(ii) Inability to ambulate more than 200 feet without having to stop and rest during any time of the year.

(iii) Loss of use of 1 or both legs or feet.

(iv) Inability to ambulate without the prolonged use of a wheelchair, walker, crutches, braces, or other device required to aid mobility.

(v) A lung disease from which the person's expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or from which the person's arterial oxygen tension is less than 60 mm/hg of room air at rest.

(vi) A cardiovascular disease from which the person measures between 3 and 4 on the New York heart classification scale, or from which a marked limitation of physical activity causes fatigue, palpitation, dyspnea, or anginal pain.

(vii) Other diagnosed disease or disorder including, but not limited to, severe arthritis or a neurological or orthopedic impairment that creates a severe mobility limitation.

(j) "Information services" or "enhanced services" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, including energy management services, that is conveyed by telecommunications. Information services or enhanced services do not include the use of such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(k) "Interconnection' means the technical arrangements and other elements necessary to permit the connection between the switched networks of 2 or more providers to enable a telecommunication service originating on the network of 1 provider to terminate on the network of another provider.

(l) "Inter-LATA prohibition" means the prohibitions on the offering of inter-exchange or inter-LATA service contained in the modification of final judgement entered pursuant to a consent decree in United States v. American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982) and in the consent decree approved in United States v. GTE Corp., 603 F. Supp. 730 (D.D.C. 1984).

(m) "LATA" means the local access and transport area as defined in United States v. American Telephone and Telegraph Co., 569 F. Supp. 990 (D.D.C. 1983).

(n) "License" means a license issued pursuant to this act.

(o) "Line" or "access line" means the medium over which a telecommunications user connects into the local exchange.

(p) "Local calling area" means a geographic area encompassing 1 or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

(q) "Local directory assistance" means the provision by telephone of a listed telephone number within the caller's area code.

(r) "Local exchange rate" means the monthly and usage rate, including all necessary and attendant charges, imposed for basic local exchange service to customers.

(s) "Loop" means the transmission facility between the network interface on a subscriber's premises and the main distribution frame in the servicing central office.

(t) "Operator service" means a telecommunication service that includes automatic or live assistance to a person to arrange for completion and billing of a telephone call originating within this state that is specified by the caller through a method other than 1 of the following:

(i) Automatic completion with billing to the telephone from which the call originated.

(ii) Completion through an access code or a proprietary account number used by the person, with billing to an account previously established with the provider by the person.

(iii) Completion in association with directory assistance services.

(u) "Operator service provider" or "OSP" means a provider of operator service.

(v) "Payphone service" means a telephone call provided from a public, semipublic, or individually owned and operated telephone that is available to the public and is accessed by the depositing of coin or currency or by other means of payment at the time the call is made.

(w) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(x) "Port" except for the loop, means the entirety of local exchange, including dial tone, a telephone number, switching software, local calling, and access to directory assistance, a white pages listing, operator services, and interexchange and intra-LATA toll carriers.

(y) "Reasonable rate" or "just and reasonable rate" means a rate that is not inadequate, excessive, or unreasonably discriminatory. A rate is inadequate if it is less than the total service long run incremental cost of providing the service.

(z) "Residential customer" means a person to whom telecommunication services are furnished predominantly for personal or domestic purposes at the person's dwelling.

(aa) "Special access" means the provision of access service, other than switched access service, to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunication service within the exchange including the use of local private lines.

(bb) "State institution of higher education" means an institution of higher education described in sections 4, 5, and 6 of Article VIII of the state constitution of 1963.

(cc) "Telecommunication provider" or "provider" means a person or an affiliate of the person each of which for compensation provides 1 or more telecommunication services.

(dd) "Telecommunication services" or "services" includes regulated and unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage. A telecommunication service is not a public utility service.

(ee) "Toll service" means the transmission of 2-way interactive switched communication between local calling areas. Toll service does not include individually negotiated contracts for similar telecommunication services or wide area telecommunication service.

(ff) "Total service long run incremental cost" means, given current service demand, including associated costs of every component necessary to provide the service, 1 of the following:

(i) The total forward-looking cost of a telecommunication service, relevant group of services, or basic network component, using current least cost technology that would be required if the provider had never offered the service.

(i) The total cost that the provider would incur if the provider were to initially offer the service, group of services, or basic network component.

(gg) "Wide area telecommunications service" or "WATS" means the transmission of 2-way interactive switched communication over a dedicated access line.

Sec. 103. Except as otherwise provided in this act, this act shall not be construed to prevent any person from providing telecommunication services in competition with another telecommunication provider.

ARTICLE 2

MICHIGAN PUBLIC SERVICE COMMISSION

Sec. 201. (1) The Michigan Public Service Commission shall have the jurisdiction and authority to administer this act.

(2) In administering this act, the commission shall be limited to the powers and duties prescribed by this act.

Sec. 202. In addition to the other powers and duties prescribed by this act, the commission shall do all of the following:

(a) Establish by order the manner and form in which telecommunication providers of regulated services within the state keep accounts, books of accounts, and records in order to determine the total service long run incremental costs and imputation requirements of this act of providing a service. The commission requirements under this subdivision shall be consistent with any regulations covering the same subject matter made by the federal communications commission.

(b) Require by order that a provider of a regulated service, including access service, make available for public inspection and file with the commission a schedule of the provider's rates, services and conditions of service, including access service provided by contract.

(c) Promulgate rules under section 213 and issue orders to establish and enforce quality standards for providing telecommunications services in this state.

(d) Preserve the provision of high quality basic local exchange service.

(e) Create a task force to study changes occurring in the federal universal service fund and the need for the establishment of a state universal service fund to promote and maintain basic local exchange service in high cost rural areas at affordable rates. The task force shall issue a report to the legislature and governor on or before December 31, 1996 containing its findings and recommendations. The task force shall consist of all the following members:

(i) The chairperson of the commission.

(ii) One representative from each basic local exchange provider with 250,000 or more access lines.

(iii) Four representatives from providers who, together with affiliated providers, provide basic local exchange or toll service to less than 250,000 end users in this state.

(iv) Two representatives of other providers of regulated services.

(v) One representative of the general public.

(f) On or before January 1, 1997, the commission shall study and report to the legislature and governor on the following matters that have impact on the basic local exchange calling activities of all residential customers in the state:

(i) The percentage of intra-LATA calls and minutes of usage which are charged as basic local exchange calls.

(ii) The average size and range of sizes of basic local exchange calling areas.

(iii) The ability of customers to contact emergency services, school districts, and county, municipal, and local units of government without a toll call.

(iv) Whether there are significant differences in basic local exchange calling patterns between urban, suburban, and rural areas.

(v) The impact on basic local exchange rates which would occur if basic local exchange calling areas are altered.

(vi) The impact when basic local exchange calling areas overlap LATA boundaries.

(vii) The impact on basic local exchange rates which would occur if basic local exchange calling areas are expanded within LATA boundaries.

(g) On or before January 1, 1997, conduct a study of internet access provider locations to determine which exchanges can reach the nearest location only by making a toll call. The commission shall then gather input from internet access providers, local exchange providers, and other interested parties and make a recommendation to the legislature as to the steps needed to allow all local exchange customers to access an internet provider by making a local call.

Sec. 203. (1) Upon receipt of an application or complaint filed under this act, or on its own motion, the commission may conduct an investigation, hold hearings, and issue its findings and order under the contested hearings provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) An application or complaint filed under this section shall contain all information, testimony, exhibits, or other documents and information on which the person intends to rely to support the application or complaint. Applications or complaints that do not meet the requirements of this subsection shall be dismissed or suspended pending the receipt by the commission of the required information.

(3) The burden of proving a case filed under this act shall be with the party filing the application or complaint.

(4) In a contested case under this section, the commission can administer oaths, certify all official acts, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony.

(5) Except as otherwise provided in subsections (2) and (6), the commission shall issue a final order in a case filed under this section within 90 days from the date the application or complaint is filed.

(6) If a hearing is required, the applicant or complainant shall publish a notice of hearing as required by the commission within 7 days of the date the application or complaint was filed or as required by the commission. The first hearing shall be held within 10 days after the date of the notice. If a hearing is held, the commission shall have 180 days from the date the application or complaint was filed to issue its final order. If the principal parties of record agree that the complexity of issues involved requires additional time, the commission may have up to 210 days from the date the application or complaint was filed to issue its final order.

(7) An order of the commission shall be subject to review as provided by section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

(8) If a complaint is filed under this section by a provider against another provider, the provider of service shall not discontinue service during the period of the contested case, including the alternative dispute process, if the provider receiving service had posted a surety bond, provided an irrevocable letter of credit, or provided other adequate security in an amount and on a form as determined by the commission.

Sec. 203a. (1) For all complaints involving a dispute of $1,000.00 or less, or at the option of the complainant, for a period of 45 days after the date the complaint is filed under section 203, the parties shall attempt alternative means of resolving the complaint.

(2) Any alternative means that will result in a recommended settlement may be used that is agreed to by the principal parties of record, including, but not limited to, settlement conferences, mediation, and other informal dispute resolution methods. If the parties cannot agree on an alternative means within 20 days after the date the complaint is filed, the commission shall order mediation. Within the 45-day period required under subsection (1), a recommended settlement shall be made to the parties.

(3) Within 7 days after the date of the recommended settlement, each party shall file with the commission a written acceptance or rejection of the recommended settlement. If the parties accept the recommendation, then the recommendation shall become the final order in the contested case under section 203.

(4) If a party rejects the recommended settlement, then the application or complaint shall proceed to a contested case hearing under section 203.

(5) The party that rejects the recommended settlement shall pay the opposing party's actual costs of proceeding to a contested case hearing, including attorney fees, unless the final order of the commission is more

favorable to the rejecting party than the recommended settlement under this section. A final order is considered more favorable if it differs by 10% or more from the recommended settlement in favor of the rejecting party.

(6) If the recommendation is not accepted under subsection (3), the individual commissioners shall not be informed of the recommended settlement until they have issued their final order under section 203.

(7) An attempt to resolve a contested case under this section is exempt from the requirements of section 203 and the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(8) This section shall not extend or toll the time within which the commission is required to issue its final order under section 203.

Sec. 204. If 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication issue between the parties, including but not limited to, a matter prohibited by section 305, then either telecommunication provider may file with the commission an application for resolution of the matter.

Sec. 205 (1) The commission may investigate and resolve complaints under this act. The penalties under this act shall not be imposed for a violation that occurred more than 2 years before the date the complaint was filed.

(2) If the commission finds, after notice and hearing, that the quality, general availability, or conditions for the regulated service violate this act or an order of the commission under this act, or is adverse to the public interest, the commission may require changes in how the telecommunication services are provided. The commission's authority includes, but is not limited to, the revocation of a license and issuing cease and desist orders.

Sec. 207. The commission shall determine the manner in which local directory assistance service to the end user is to be regulated under this act. The regulations shall include both rates and quality of service.

Sec. 208. (1) If a competitive market for a regulated telecommunication service in which the rate is regulated exists in this state, a provider may file with the commission to classify that service for all providers within the competitive market as a competitive service.

(2) Except as provided under section 321, if a regulated service is classified as competitive, the rate for the service shall be deregulated and not subject to review under this act.

(3) A service is competitive under this section if for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service is available from more than 1 unaffiliated provider and 1 or more of the following apply:

(a) Actual competition, including facilities based competition, exists within the local exchange, group of exchanges, or geographic area.

(b) Both residential and business end-users have service alternatives available from more than 1 unaffiliated provider or service reseller.

(c) Competition and end-user usage has been demonstrated and measured by independent and reliable methods.

(d) Rates and charges for the service have changed within the previous 12-month period.

(e) There is a functionally equivalent service, reasonably available to end users from an unaffiliated provider or supplier.

(4) Except as provided under subsection (5), a service is not competitive under this section if for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, 1 of the providers of the service is an unaffiliated provider of facilities based basic local exchange service to less than 250,000 end-users in this state. A provider may apply to the commission for a review of the service under section 203 to determine whether the service is competitive and the rate deregulated.

(5) Subsection (4) does not apply if there are 3 or more providers of facilities based basic local exchange service throughout the competitive market and 1 or more of the providers is a provider of facilities based basic local exchange service to less than 250,000 end-users in this state.

(6) A provider shall give notice to its customers if a service is to be classified as competitive and its rate deregulated. The notice shall be included in or on the bill of each affected customer of the provider before the effective date of the classification.

(7) The service classification under this section shall take effect 45 days from the date of the notice required by subsection (4).

(8) Upon receiving a complaint filed by a provider or consumer or on its own motion, the commission may require a filing under section 203 to review a competitive classification and issue an order approving, modifying, or rejecting the classification.

(9) A provider shall not file to have a service classified as competitive until the provider has received the approval of the commission of a total service long run incremental cost study for the service to be classified.

(10) Except as otherwise provided by law, the commission or a local unit of government does not have authority over a rate for a service classified as competitive under this section.

Sec. 209. (1) If the commission finds that a party's position in a proceeding under this act was frivolous, the commission shall award to the prevailing party the costs, including reasonable attorney fees, against the nonprevailing party and their attorney.

(2) As used in this section:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the proceeding or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Frivolous" does not mean a complaint filed to challenge a rate alteration increase for basic local service if the complaint has been reviewed by the commission and has not been dismissed by the commission pursuant to section 203(2).

(c) "Prevailing party" means a party who wins in the proceeding.

Sec. 210. (1) Except under the terms of a mandatory protective order, trade secrets and commercial or financial information submitted under this act are exempt from the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2)If information is disclosed pursuant to a mandatory protective order, then the information may be included in the commission's evidentiary record if admissible and remains confidential.

(3) There is a rebuttable presumption that cost studies, customer usage date, marketing studies, and contracts between providers are trade secrets or commercial or financial information protected under subsection (1). The burden of removing the presumption under this subsection is with the party seeking to have the information disclosed.

Sec. 211. Each telecommunication provider of a regulated service in this state shall pay an assessment in an amount equal to the expenses of the commission pursuant to Act No. 299 of the Public Acts of 1972, being sections 460.111 to 460.120 of the Michigan Compiled Laws.

Sec. 213. (1) No later than July 1, 1996, the commission shall promulgate rules for the implementation and administration of this act under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Except as provided in subsection (3), effective September 1, 1996, the following administrative rules shall not apply to telecommunication providers or telecommunication services:

(a) Electric power and communication lines: R 460.581 to R 460.592.

(b) Intrastate telephone services and facilities: R 460.1951 to R 460.1968.

(c) Filing procedures for communications common carriers tariffs: R 460.2051 to R 460.2057.

(d) Consumer standards and billing practices, residential telephone service: R 460.2211 to R 460.2279.

(e) Uniform systems of accounts for Class A and Class B telephone companies: R 460.9041 and R 460.9059.

(3) If the Michigan Supreme Court rules that sections 45 and 46 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969,

being sections 24.245 and 24.246 of the Michigan Compiled Laws, are unconstitutional, and a statute requiring legislative review of administrative rules is not enacted within 90 days after the Michigan supreme court ruling, the commission shall not promulgate rules under this act. Subsection (2) does not apply if the commission is prohibited from promulgating rules under this subsection.

## ARTICLE 2A

## LOCAL UNITS OF GOVERNMENT

Sec. 251. (1) Except as provided in subsections (2) and (3), a local unit of government shall grant a permit for access to and the ongoing use of all rights-of-ways, easements, and public places under its control and jurisdiction to providers of telecommunications services.

(2) This section shall not limit a local unit of government's right to review and approve a provider's access to and ongoing use of right-of-way, easement, or public place or limit the unit's authority to ensure and protect the health, safety, and welfare of the public.

(3) A local unit of government shall approve or deny access under this section within 90 days from the date a provider files an application for a permit for access to a right-of-way, easement, or public place. A provider's right to access and use of right-of-way, easement, or public places shall not be unreasonably denied by a local unit of government. A local unit of government may require as a condition of a permit that a bond be posted by the provider, which shall not exceed the reasonable cost, to ensure that the right-of-way, easement, or public place is returned to its original condition during and after the provider's access and use.

Sec. 252. Any conditions of a permit granted under section 251 shall be limited to the provider's access and usage of any right-of-way, easement, or public place.

Sec. 253. Any fees or assessments made under section 251 shall be on a nondiscriminatory basis and shall not exceed the fixed and variable costs to the local unit of government in granting the permit and maintaining the right-of-ways, easements, or public places used by a provider.

Sec. 254. A provider using the highways, streets, alleys, or other public places, shall obtain a permit pursuant to section 251.

## ARTICLE 3

## REGULATED TELECOMMUNICATIONS SERVICES

### A. BASIC LOCAL EXCHANGE

Sec. 301. (1) A telecommunication provider shall not provide or resell basic local exchange service in this state without a license issued from the commission pursuant to this act.

(2) Pending the determination of an application for a license, the commission without notice and hearing may issue a temporary license for a period not to exceed 1 year.

Sec. 302. (1) After notice and hearing, the commission shall approve an application for a license if the commission finds both of the following:

(a) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographic area of the license.

(b) The granting of a license to the applicant would not be contrary to the public interest.

(2) The commission shall retain a copy of all granted licenses and make all information contained in the licenses available to the public.

(3) Each provider granted a license shall retain a copy of the license at its principal place of business and make the license available for review to the public.

Sec. 303. (1) The commission may alter or amend the geographic area of a license, grant a competing license, or authorize the sale or transfer of a license to another person.

(2) A telecommunication provider shall not provide basic local exchange service to customers or end-users located within another telecommunication provider's licensed service area except through interconnection arrangements as provided by this act.

(3) The sale or transfer of shares of stock of a provider of basic local exchange service is not a sale or transfer of a license or a discontinuance of service.

Sec. 304. (1) Except as provided in section 304a, the rates for basic local exchange service shall be just and reasonable.

(2) A provider may alter its rates for basic local exchange services by 1 or more of the following:

(a) Filing with the commission notice of a decrease, discount, or other rate reduction in a basic local exchange rate. A rate alteration under this subdivision shall become effective without commission review or approval.

(b) Filing with the commission notice of an increase in a basic local exchange rate that does not exceed 1% less than the consumer price index. Unless the commission determines that the rate alteration exceeds the allowed increase under this subdivision, the rate alteration shall take effect 90 days from the date of the notice required under subsection (3). As used in this subdivision, "consumer price index" means the most recent reported annual average percentage increase in the Detroit consumer price index for all items for the prior 12-month period by the United States department of labor.

(c) Filing with the commission an application to increase a basic local exchange rate in an amount greater than that allowed under subdivision (b). The application shall be accompanied with sufficient documentary support that the rate alteration is just and reasonable. The commission shall make a determination within the 90-day period provided for in subsection (5) of 1 of the following:

(i) That the rate alteration is just and reasonable.

(ii) That a filing under section 203 is necessary to review the rate alteration.

(3) Notice to customers of a rate alteration is required for a rate alteration under subsection (2)(b) or (c) and section 304a and shall be included in or on the bill of each affected customer of the provider before the effective date of the rate alteration.

(4) The notice required under subsection (3) shall contain at least all of the following information:

(a) A statement that the customer's rate may change.

(b) An estimate of the amount of the annual change for the typical residential customer that would result by the rate change.

(c) A statement that a customer may comment on or receive complete details of the rate alteration by calling or writing the commission. The statement shall also include the telephone number and address of the commission. Complete details of the rate alteration will be provided free of charge to the customer at the expense of the provider.

(5) Except as otherwise provided in subsections (2) and (6), an altered basic local exchange rate shall take effect 90 days from the date of the notice required by subsection (3).

(6) Upon receiving a complaint or pursuant to a determination under subsection (2)(c), the commission may require a filing under section 203 to review a proposed rate alteration under subsection(2)(c). The commission's final order may approve, modify, or reject the rate alteration.

(7) In reviewing a rate alteration under subsection (6), the commission shall consider only 1 or more of the following factors if relevant to the rate alteration as specified by the provider:

(a) Total service long run incremental cost of basic local exchange services.

(b) Comparison of the proposed rate to the rates charged by other providers in this state for the same service.

(c) Whether a new function, feature, or capability is being offered as a component of basic local exchange service.

(d) Whether there has been an increase in the costs to provide basic local exchange service in the geographic area of the proposed rate.

(e) Whether the provider's further investment in the network infrastructure of the geographic area of the proposed rate is economically justifiable without the proposed rate.

(8) A provider shall be allowed only 1 rate increase for each class or type of service during any 12-month period.

(9) A provider shall not make a rate alteration under this section until the rate has been restructured under section 304a.

Sec. 304a. (1) Upon filing with and approval of the commission, a basic local exchange provider shall restructure its rates for basic local exchange,

toll, and access services to ensure that the rates are not less than the total service long run incremental cost of providing each service.

(2) The provider may determine when each rate is restructured and may phase in the rate restructuring until January 1, 2000. After January 1, 2000, the provider's rates for basic local exchange, toll, and access services shall not be less than the total service long run incremental cost for each service.

(3) The rate restructuring may include, but is not limited to, 1 or more of the following:

(a) Touchtone capability and associated charges into basic local exchange service at rate levels no greater than the sum of the current basic local exchange service rates and the touchtone service rates. Residential customers with rotary dial service may retain such service at their current rate.

(b) Within basic local exchange rates, all or part of the existing rate elements and charges for other services that are designed to recover the costs associated with the local exchange network.

(c) Restructure existing basic local exchange rates to reflect the existing variations in costs to provide basic local exchange services based upon differences in geographic areas, classes of customers, calling patterns and volumes, technology, and other factors.

(4) The commission shall have 45 days from the date of a filing under this section to review the proposed rate restructuring to ensure that rates are not less than the total service long run incremental costs of the service, or that the rate restructuring brings rates that are below such costs closer to the costs. If the commission is unable to make a determination within the allowed 45 days under this subsection, the commission shall have an additional 45 days to review the rate restructuring.

(5) If the commission does not complete its review within the time period required under subsection (4), the rate restructuring is considered approved under this section. The basic local exchange provider may implement the restructured rates 10 days following commission approval or the end of the period provided for commission review, whichever is earlier.

(6) Except as provided in subsection (7), for purposes of this section and the act, providers who, together with any affiliated providers, provide basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state may determine total service long run incremental cost through preparation of a cost study or may determine that their total service long run incremental cost is the same as that of a provider with more than 250,000 end-users.

(7) A provider of basic local exchange service with less than 15,000 end-users in this state may determine that their total service long run incremental cost is the same as that of a provider with more that 250,000 end-users.

Sec. 304b. (1) A provider of basic local exchange service shall develop and offer various rate plans that reflect residential customer calling patterns that shall include, but not limited to, all of the following at the option of the customer unless it is not technologically feasible:

(a) A flat rate allowing unlimited personal and domestic outgoing calls.

(b) A flat rate allowing personal and domestic outgoing calls up to 400 calls per month per line. Calls in excess of 400 per month may be charged at an incremental rate as set by the provider under section 304. If a customer has more than 1 line at the same location that appears on the customer's bill, the allowable calls under this subdivision shall be the aggregate of all the lines regardless from which line the calls originate. A person who is handicapped or is voluntarily providing a service for an organization classified by the internal revenue service as a section 501(c)(3) or (19) organization, or a congressionally chartered veterans organization or their duly authorized foundations, is exempt from the 400 calls per month limitation and shall receive a flat rate allowing unlimited calls per month. A person exempt from the call cap under this subdivision shall not be charged a rate greater than the flat rate charged other residential customers for 400 calls.

(c) A flat rate allowing personal and domestic outgoing calls of not less than 50 nor more than 150 per month, per line. Providers may offer additional plans allowing personal and domestic calls of not less than 150 per month nor more than 400 per month, per line. Calls in excess of upper per call limit per month may be charged at an incremental rate as set by the provider under section 304. If a customer has more than 1 line at the same location that appears on the customer's bill, the allowable calls under this subdivision shall be the aggregate of all the lines regardless from which line the calls originate.

(d) A rate determined by the time duration of service usage or the distance between the points of service origination and termination.

(e) A rate determined by the number of times the service is used.

(f) A rate that includes 1 or more of the rates allowed by this section.

(g) A rate that includes toll-free calling to contiguous Michigan local calling exchanges.

(2) If an option required under subsection (1) is not being offered by the provider on January 1, 1996, the provider shall set the initial rate for the option.

(3) A provider who, together with any affiliated providers, provides basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state is not required to provide a rate plan required under subsection (1) if it is not economically feasible to provide the rate plan.

Sec. 305. (1) A provider of basic local exchange service shall not do any of the following:

(a) Discriminate against another provider by refusing or delaying access service to the local exchange.

(b) Refuse or delay interconnections or provide inferior connections to another provider.

(c) Degrade the quality of access service provided to another provider.

(d) Impair the speed, quality, or efficiency of lines used by another provider.

(e) Develop new services to take advantage of planned but not publicly known changes in the underlying network.

(f) Refuse or delay a request of another provider for information regarding the technical design, equipment capabilities and features, geographic coverage, and traffic patterns of the local exchange network.

(g) Refuse or delay access service or be unreasonable in connecting another provider to the local exchange whose product or service requires novel or specialized access service requirements.

(h) Upon a request, fail to fully disclose in a timely manner all available information necessary for the design of equipment that will meet the specifications of the local exchange network.

(i) Discriminate against any provider or any party who requests the information for commercial purposes in the dissemination of customer proprietary information. A provider shall provide without unreasonable discrimination or delay telephone directory listing information and related services to persons purchasing telephone directory listing information to the same extent and in the same quality as provided to the provider, affiliates of the provider, or any other listing information purchaser.

(j) Refuse or delay access service by any person to another provider.

(k) Sell, lease, or otherwise transfer an asset to an affiliate for an amount less than the fair market value of the asset.

(l) Buy, lease, or otherwise acquire an asset from an affiliate of the provider for an amount greater than the fair market value of the asset.

(m) Bundle unwanted services or products for sale or lease to another provider.

(n) Perform any act that has been prohibited by this act or an order of the commission.

(o) Sell services or products, extend credit, or offer other terms and conditions on more favorable terms to an affiliate of the provider than the provider offers to other providers.

(p) Discriminate in favor of an affiliated burglar and fire alarm service over a similar service offered by another provider.

(2) A provider of cellular telecommunication services shall not do either of the following:

(a) Unreasonably provide services, extend credit, or offer other terms and conditions on more favorable terms to an affiliate of the provider or to its retail department that sells to end users than the provider offers to other providers.

(b) Unreasonably use rates or proceeds from providers, directly or indirectly, to subsidize or offset the costs of cellular service offered by the provider, or an affiliate of the provider, to other providers or to end users.

(3) Until a provider has complied with section 304a, the provider of a rate regulated service shall not provide that service in combination with an unregulated service in section 401 or an unbundled or resold service under section 357 at a price that does not exceed the total service long run incremental cost of each service.

Sec. 306. Except as provided in section 312B, a telecommunication provider of basic local exchange service is not required to provide toll

services. If a telecommunication provider that provides basic local exchange service does not offer toll or have interconnection with a toll provider, the commission shall order a toll provider to interconnect with the telecommunication provider upon terms that are fair to both providers.

Sec. 307. (1) Educational institutions shall have the authority to own, construct, and operate a telecommunication system or to purchase telecommunication services or facilities from an entity capable of providing the service or facility.

(2) Educational institutions that provide telecommunication services offered in subsection (3) shall not be subject to regulation under this act or by any other governmental unit.

(3) Except as provided in subsection (6), educational institutions may only sell telecommunication services required for, or useful in, the instruction and training, including work training, of students and other people utilizing the institution's educational services, the conducting of research, or the operation of the institution. The services shall not be considered basic local exchange services as long as they are used for the instruction and training of students and other people utilizing the institution's and training of students and other people utilizing the institution's education services, the conducting of research, or the operation of the institution. Educational institutions may initiate and maintain cooperative arrangements with telecommunication providers without the institutions being subject to this act.

(4) Upon the request of an educational institution, telecommunication providers may provide to an educational institution services for the transmission of interactive data, voice and video communications between the institution's facilities or to the homes of students or employees of the institution, regardless of whether the exchanges are in the same or different LATAs.

(5) The rates for services provided to an educational institution by a provider under this section shall be determined by an open bid process.

(6) Except for a state institution of higher education, if an educational institution has excess capacity, it may sell the excess capacity subject to subsection (3) and to both of the following:

(a) The amount of capacity sold shall not exceed 25% of the institutions total capacity.

(b) The capacity shall not be sold below the total service long run incremental cost of the provider of basic local exchange service in the service area of the educational institution. If there is more than 1 provider in the service area, the educational shall use the lowest total service long run incremental cost.

Sec. 308(1) Basic local exchange or access rates or proceeds from the sale, lease, or transfer of rate acquired assets shall not be used, directly or indirectly, to subsidize or offset the costs of other products or services offered by the provider or an affiliate of the provider by providing such other products or services at less than the total service long-run incremental cost.

(2) A provider of basic local exchange service shall not sell or transfer capital assets used to provide the service for an amount less than

the fair market value to any other provider or affiliated entity for the purpose of providing an unregulated service.

(3) A provider of basic local exchange service shall notify the commission when it transfers, in whole or in part, substantial assets, functions or employees associated with basic local exchange service to an affiliated entity, indicating the identity of the affiliated entity, description of the transaction and the impact on basic local exchange service.

(4) In an investigation under this section or under section 203, the commission shall have the authority to review the books and accounts of both the provider and affiliated entities of the provider.

Sec. 309. (1) A provider of basic local exchange service shall provide to each customer local directory assistance and, at no additional charge to the customer, an annual printed telephone directory.

(2) A provider of interzone service, as defined in tariffs on file with the commission on December 31, 1991, shall continue to provide the service pursuant to the terms of the tariffs. A provider may alter interzone service rates pursuant to provisions of section 304.

(3) A provider of basic local exchange service shall provide each customer at no additional charge the option of having access to 900 prefix services blocked through the customer's exchange service.

Sec. 309a. (1) A provider of telecommunication service, including, basic local exchange service, may provide cable service if the provider has received a franchise agreement from the local unit of government to provide cable service.

(2) If a new provider of cable service seeks to offer the service in an area that has an incumbent provider of cable service operating under a franchise agreement, in negotiating a franchise agreement during the term of a franchise agreement entered into prior to July 1, 1995, the local government unit may consider terms and conditions of the franchise agreement of the incumbent provider, existing cable franchise fees, development of new services, the state of technology, and other factors.

Sec. 309b. A provider of inter-LATA toll service in Michigan shall take no action prohibited under state or federal labor laws to discourage or prevent its employees from seeking union representation, pursuing collective bargaining or engaging in any other activities protected, including, but not limited to, the closing of an office or facility in Michigan to prevent organizing.

B. TOLL ACCESS SERVICE

Sec. 310. (1) Except as provided by this act, the commission shall not review or set the rates for toll access services.

(2) A provider of toll access services shall set the rates for toll access services. Access service rates and charges set by a provider that exceed the rates allowed for the same interstate services by the federal government are not just and reasonable. Providers may agree to a rate that is less than the rate allowed by the federal government. If the providers cannot agree on a rate, a provider may apply to the commission under section 204.

(3) Two or more providers that each have less than 250,000 access lines may agree to joint toll access service rates and pooling of intrastate toll access service revenues.

(4) A provider of toll access service shall make available for intrastate access services any technical interconnection arrangements, including collocation, required by the federal government for the identical interstate access services

(5) A provider of toll access service, whether under tariff or contract, shall offer the services under the same rates, terms and conditions, without unreasonable discrimination, to all providers. All pricing of special toll access services and switched access services, including volume discounts, shall be offered to all providers under the same rates, terms, and conditions. Until allowed by the federal communications commission, volume discounts on switched access are prohibited under this subsection.

(6) If a toll access service rate is reduced under section 304a, then the provider receiving the reduced rate shall reduce its rate to its customers by an equal amount.

Sec. 311. (1) A telecommunication provider of both basic local exchange service and toll service shall impute as provided under section 362 to itself its prices of special toll access service and switched access for the use of essential facilities it uses in the provision of toll, WATS, or other service for which toll access service is a component.

(2) All other providers of intrastate special toll access service, switched toll access services, toll, or WATS shall impute to themselves in the aggregate on a service by service basis their individual cost of special or switched toll access service or its equivalent in their pricing.

(3) Telecommunication services that utilize special or switched toll access service shall be made available for resale by the telecommunication provider offering the service.

C. TOLL SERVICE

Sec. 312. (1) Except as provided by this act, the commission shall not review or set the rates for toll service.

(2) A provider of toll service may charge the same rate for the service on its routes of similar distance.

(3) The commission shall require that toll service is universally available to all persons within the state.

(4) Adjacent exchange toll calling plans as ordered by the commission on June 19, 1991 shall remain in effect under this act until altered by order of the commission. A provider of toll service shall implement an optional discount plan for calling to exchanges within 20 miles of a customer's home exchange. The plan shall not violate the conditions delineated in the commission's order in case number U-9153, dated September 26, 1989.

Sec. 312a. Effective January 1, 1996, if a waiver to the inter-LATA prohibitions has been granted for a specific service area and the service area has 2 or more providers of local exchange service, the provider of basic local

exchange service shall provide 1+intra-LATA toll dialing parity within the service area that is subject to the waiver.

Sec. 312b. (1) Except as otherwise provided in subsection (2) OR (3), a provider of basic local exchange service shall provide 1+intra-LATA toll dialing parity and shall provide inter-LATA toll service to an equal percentage of customers within the same service exchange on the following dates:

(a) To 10% of the customers by January 1, 1996.

(b) To 20% of the customers by February 1, 1996.

(c) To 30% of the customers by March 1, 1996.

(d) To 40% of the customers by April 1, 1996.

(e) To 50% of the customers by May 1, 1996.

(2) If the inter-LATA prohibitions are removed, the commission shall immediately order the providers of basic local exchange service to provide 1+intra-LATA toll dialing parity.

(3) Except for subsection(1)(A), subsection(1) does not apply to the extent that a provider is prohibited by law from providing either 1+intra-LATA toll dialing parity or inter-LATA toll service as provided under subsection(1).

(4) Except as otherwise provided by this section, this section does not alter or void any orders of the commission regarding 1+intra-LATA toll dialing parity issued on or before June 1, 1995.

(5) The commission shall immediately take the necessary actions to receive the federal waivers needed to implement this section.

(6) This section does not apply to a provider of basic local exchange service with less than 250,000 access lines.

D. DISCONTINUANCE OF SERVICE

Sec. 313 (1) A telecommunication provider that provides either basic local exchange or toll service, or both, may not discontinue either service to an exchange unless 1 or more alternative telecommunication providers are furnishing the same telecommunication service to the customers in the exchange.

(2) A telecommunication provider proposing to discontinue a regulated service shall file a notice of the discontinuance of service with the commission, publish the notice in a newspaper of general circulation within the exchange, and provide other reasonable notice as required by the commission.

(3) Within 30 days after the date of publication of the notice required by subsection (2), a person or other telecommunication provider affected by a discontinuance of services by a telecommunication provider may apply to the commission to determine if the discontinuance is authorized pursuant to this act.

Sec. 314. (1) A provider of a regulated service shall not discontinue the regulated service for failure by a customer to pay a rate or charge imposed for an unregulated service. For purposes of this section, the commission may determine how payments are allocated between regulated and unregulated services.

(2) The commission shall determine when and under what conditions a provider of basic local exchange service may discontinue service under this section.

## E. SERVICES FOR THE HEARING IMPAIRED

Sec. 315. (1) The commission shall require each provider of basic local exchange service to provide a text telephone-telecommunications device for the deaf at costs to each individual who is certified as deaf or severely hearing-or speech-impaired by a licensed physician, audiologist, or qualified state agency, and to each public safety answering point as defined in section 102 of the emergency telephone service enabling act, Act No. 32 of the Public Acts of 1986, being section 484.1102 of the Michigan Compiled Laws.

(2) The commission shall require each provider of basic local exchange service to provide a telecommunications relay service whereby persons using a text telephone-telecommunications device for the deaf can communicate with persons using a voice telephone through the use of third party intervention or automatic translation. Each provider of basic local exchange service shall determine whether to provide a telecommunications relay service on its own, jointly with other basic local exchange providers, or by contract with other telecommunication providers. The commission shall determine the technical standards and essential features of text telephone and telecommunications relay service to ensure their compatibility and reliability.

(3) The commission shall appoint a 3-person advisory board consisting of a representative of the deaf community, the commission staff, and providers of basic local exchange service to assist in administering this section. The advisory board shall hold meetings, open to the public, at least once each 3 months, shall periodically seek input on the administration of this section from members of the deaf, hearing, or speech impaired community, and shall report to the commission at least annually. The advisory board shall investigate and make recommendations on the feasibility of hiring a reasonably prudent number of people from the deaf or hearing impaired and speech impaired community to work in the provision of telecommunication relay service.

(4) Rates and charges for calls placed through a telecommunication relay service shall not exceed the rates and charges for calls placed directly from the same originating location to the same terminating location. Unless ordered by the commission, a provider of a telecommunications relay service shall not be required to handle calls from public telephones except for calls charged collect, cash, to a credit card, or third party number.

(5) Notwithstanding any other provision of this act, a provider may offer discounts on toll calls where a text telephone-telecommunications device for the deaf is used. The commission shall not prohibit such discounts on toll calls placed through a telecommunication relay service.

(6) The commission shall establish a rate for each subscriber line of a provider to allow the provider to recover costs incurred under this section and may waive the costs assessed under this section to individuals who are deaf or severely hearing impaired or speech impaired.

## F. LIFELINE SERVICES

Sec 316. (1) The commission shall require each provider of residential basic local exchange service to offer certain low income customers the availability of basic local exchange service at a rate below the regulated rate.

(2) The basic local exchange rate for low income customers, except as provide in subsection (3), shall be 20% or $4.00 which shall be inclusive of any federal contribution, whichever is greater, below the regulated rate. To qualify for the reduced rate under this subsection the person's annual income shall not exceed 150% of the federal poverty income standards as determined by the United States office of management and budget and as approved by the state treasurer.

(3) The basic local exchange rate for low income customers 65 years of age or more shall be 25% or $4.00 which shall be inclusive of any federal contribution, whichever is greater, below the regulated rate.

(4) The commission shall establish a rate for each subscriber line of a provider to allow the provider to recover costs incurred under this section.

(5) The commission shall take necessary action to notify the general public of the availability of lifeline services including, but not limited to, public service announcements, newspaper notices, and such other notice reasonably calculated to reach those who may benefit from the services.

## G. OPERATOR SERVICE PROVIDERS

Sec. 317. (1) The commission shall adopt operating requirements for operator service providers. The requirements shall include the following:

(a) That an OSP shall furnish each entity with which the OSP contracts to provide operator service a sticker, card, or other form of information for each telephone that has access to the operator service. The information shall include the name of the operator service provider, a toll-free customer service telephone number, and a statement that charges imposed by the operator service provider may be obtained by calling the toll-free telephone number. The operator service provider shall require by contract that the entity receiving the information display the information on or near each of the telephones that has access to the service.

(b) Prior to the connection of each call, the operator service provider shall do all of the following:

(i) Announce the operator service provider's name.

(ii) Quote, at the caller's request and without charge, the rate and any other fees or surcharges applicable to the call charged by the operator service provider.

(c) Allow a caller to choose the carrier of his or her choice by doing either of the following:

(i) After informing the caller that the rates for the call may not reflect the rates for a call from the location of the caller and receiving the caller's consent, transfer the caller to the carrier of his or her choice without charge.

(ii) Instruct the caller how to reach his or her carrier of choice by dialing the carrier's 950, 1-800, or 10-xxx access service method.

(d) Allow callers to the operator service provider to reach emergency services without charge.

(2) An operator service provider shall not provide operator services in this state without first registering with the commission. The registration shall include the following information:

(a) The name of the provider.

(b) The address of the provider's principal office.

(c) If the provider is not located in this state, the address of the registered office and the name of the registered agent authorized to receive service of process in this state.

(d) Any other information that the commission may require.

(3) The registration shall be accompanied with a registration fee of $100.00.

(4) The registration is effective immediately upon filing with the commission and the payment of the registration fee and shall remain in effect for 1 year from its effective date.

(5) A registration may be renewed for 1 year by filing with the commission a renewal registration on a form provided by the commission and the payment of a renewal fee of $100.00.

(6) Except as otherwise authorized by the commission, a provider under this section shall not charge a rate for operator services or toll service that is greater than 300% of the state average rate for operator or toll service by providers of regulated toll service.

(7) A provider shall not discontinue basic local exchange service for failure by a person to pay an OSP charge.

(8) In addition to any other penalty under this act, a person who is charged for the use of an operator service provider or is denied access to emergency services in violation of this section may bring a civil action against the OSP to recover actual damages or $250.00, whichever is greater, plus all reasonable attorney fees.

## H. PAYPHONE SERVICES

Sec. 318. (1) A provider of basic local exchange service shall not discriminate in favor of its or an affiliate's payphone service over similar services offered by another provider.

(2) A provider of payphone service shall comply with all nonstructural safeguards adopted by the federal communications commission for payphone service.

Sec. 319. (1) The commission shall determine the rate that a provider of toll service is to compensate a provider of payphone service for calls made on a payphone of the provider that utilizes the toll service and avoids customer direct compensation to the provider of the payphone service.

(2) The rate of compensation determined under subsection (1) shall be based on a per-call basis and shall be at the total service long run incremental cost of providing the payphone service.

(3) Until a determination can be made under subsection (1), the toll service provider shall compensate the provider of the payphone service on a per-call basic at a rate of 25 cents for each call.

(4) A provider of payphone service with less than 10,000 payphones may determine total service long run incremental cost through preparation of a cost study or may determine that their total service long run incremental cost is the same as that of a provider with more than 10,000 payphones.

(5) A provider of payphone service shall not receive compensation under this section unless the provider has registered under section 320.

Sec. 320. (1) A person shall not provide payphone service in this state without first registering with the commission. The registration shall include all of the following information:

(a) The name of the provider.

(b) The address and telephone number of the provider's principal office.

(c) If the provider is not located in this state, the address and telephone number of the registered office and the name and telephone number of the registered agent authorized to receive service of process in this state.

(d) The specific location of each payphone in this state owned or operated by the provider. Information required under this subdivision shall be made available to the local unit of government solely for the enforcement of the reporting, repairing, and replacement standards under subsection (8). The information required to be provided under this subsection shall be considered commercial information under section 210, and the information submitted shall be exempt from the freedom of information act, Act No. 442 of the Publics Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Registration shall be accompanied by a registration fee of $100.00.

(3) The registration is effective immediately upon filing with the commission and the payment of the registration fee and shall remain in effect for 1 year from its effective date.

(4) A registration may be renewed for 1 year by filing with the commission a renewal registration on a form provided by the commission and the payment of a renewal fee of $100.00.

(5) The commission shall establish a toll-free number that can be dialed to report to the commission a payphone that is inoperative. The toll-free number shall be conspicuously displayed by the provider on or near each payphone.

(6) If the commission receives a report pursuant to subsection (5), it shall immediately notify the provider of the inoperative payphone.

(7) After consulting with providers of payphone service, local units of government, and other interested parties, the commission shall promulgate rules or issue orders under section 213 to establish and enforce quality standards in the providing of payphone service.

(8) Except as provided in subsection (9), a local unit of government shall not regulate payphone service.

(9) A local unit of government may enforce the reporting, repairing, and replacement of inoperative payphones within its jurisdiction by adopting an ordinance that conforms to the standards established by the commission under subsection (7). A local unit of government shall not impose standards greater than those established by the commission.

## I. REGULATED RATES

Sec. 321. Except as otherwise provided under section 304a, a provider of a regulated telecommunication service shall not charge a rate for the service that is less than the total service long run incremental cost of providing the service.

## ARTICLE 3A

## INTERCONNECTION OF TELECOMMUNICATION PROVIDERS WITH THE BASIC LOCAL EXCHANGE SERVICE

Sec. 351. Until January 1, 2000 and except for section 361, this article does not apply to providers who, together with any affiliated providers, provide basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state on January 1, 1996.

Sec. 352. (1) Until January 1, 1997, the rates of a provider of basic local exchange service for interconnection under this article shall be at the provider's total service long run incremental cost of providing the service. After January 1, 1997, the rate for interconnection shall be just and reasonable as determined by the commission.

(2) The rates for unbundled loops, number portability, and the termination of local traffic shall be at the rates established under commission case U-10647 and shall remain in effect until new total service long run incremental cost studies for such services have been approved by the commission.

Sec. 353. The commission shall issue a report and make recommendations to the legislature and governor on or before January 1, 1998, involving the issues, scope, terms, and conditions of interconnection of telecommunication providers with the basic local exchange service.

## A. JOINT MARKETING

Sec. 354. (1) Except as otherwise provided in subsection (2), until inter-LATA prohibitions are removed for providers of basic local exchange service, a provider of basic local exchange service shall not do any of the following:

(a) Jointly market or offer as a package a basic local exchange service together with an inter-LATA toll service or condition a rate for basic local exchange service on the customer also ordering an inter-LATA toll service.

(b) Discriminate against providers of toll service by not making available customer names and addresses that are available to an affiliate of the basic local exchange provider.

(2) Subsection (1)(A) does not apply to a Michigan facility based provider or to the extent that a provider is providing 1+ intra-LATA toll dialing parity under section 312b.

B. SERVICE UNBUNDLING

Sec. 355. (1) On or before January 1, 1996, a provider of basic local exchange service shall unbundle and separately price each basic local exchange service offered by the provider into loop and port components and allow other providers to purchase such services on a nondiscriminatory basis.

(2) Unbundle services and points of interconnection shall include at a minimum the loop and the switch port.

Sec. 356. A provider of local exchange service shall allow and provide for virtual co-location with other providers at or near the central office of the provider of local exchange service of transmission equipment that the provider has exclusive physical control over and is necessary for efficient interconnection of the unbundled services. Provider may enter into an agreement that allows for interconnection on other terms and conditions than provided under this subsection.

C. RESALE OF LOCAL EXCHANGE SERVICE

Sec. 357. (1) A provider of local exchange service shall make available for resale on nondiscriminatory terms and conditions all basic local exchange services that on January 1, 1996 it is offering to its retail customers. Resale shall be provided on a wholesale basis.

(2) Except for restrictions on resale, a provider of local exchange service may include in its wholesale tariffs any use or class of customer restrictions it includes in its retail tariffs.

(3) A provider of local exchange service is not required to offer for resale either of the following:

(a) A package of services where basic local exchange service is jointly marketed or combined with other services, or for any promotional or discounted offering of basic local exchange service.

(b) Services for which the provider does not have existing facilities in place to service the intended end user, or any service offered for the first time subsequent to March 1, 1996.

(4) No later than January 1, 1996, each provider of local exchange service shall file tariffs with the commission which set forth the wholesale rates, terms, and conditions for basic local exchange services. The wholesale rates shall be set at levels no greater than the provider's current retail rates less the provider's avoided costs.

(5) After January 1, 2000, wholesale rates shall not be less than the provider's total service long run incremental cost of the services.

## D. NUMBER PORTABILITY

Sec. 358. (1) As used in this section, "number portability" means the capability for a local exchange customer at a particular location to change providers of basic local exchange service without any change in the local exchange customer's telephone number, while preserving the full range of functionality that the customer could obtain by changing telephone numbers.

(2) No later than January 1, 1999, a provider of basic local exchange service shall provide number portability.

(3) If the commission determines that it is economically and technologically feasible to provide number portability before the date required under subsection (2), the commission shall order providers of basic local exchange service to provide the service before that date.

(4) Until number portability is available, a provider of basic local exchange service shall make available to other providers direct inward dialing and remote call forwarding

## E. TERMINATION RATES

Sec. 359. (1) No later than January 1, 1996, a provider of basic local exchange service shall establish a rate charge for other providers of basic local exchange service for the termination of local traffic on its network as provided under section 352

(2) This section does not prohibit providers of basic local exchange service from entering into an agreement for the exchange of local traffic on other terms and conditions. Any compensation arrangements agreed to between providers under this subsection shall be available to other providers with the same terms and conditions on a nondiscriminatory basis.

## F. DIRECTORY ASSISTANCE

Sec. 360. (1) No later than January 1, 1996, a provider of basic local exchange service shall establish a rate to other providers of basic local exchange service for providing directory assistance.

(2) This section does not prohibit providers of basic local exchange service from entering into an agreement to provide for the exchange of providing directory assistance on other term and conditions.

## G. ATTACHMENT RATES

Sec. 361. (1) As used in this section:

(a) "Attachment" means any wire, cable, facility, or other apparatus installed upon any pole or in any duct or conduit, owned or controlled, in whole or in part, by a provider.

(b) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable grade clearance and includes the space which separates telecommunication and power lines.

(2) A provider shall establish the rates, terms, and conditions for attachments by another provider or cable service.

(3) The rates, terms, and conditions shall be just and reasonable. A rate shall be just and reasonable if it assures the provider recovery of not less than the additional costs of providing the attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the attachment, by the sum of the operating expenses and actual capital costs of the provider attributable to the entire pole, duct, or right-of-way.

(4) An attaching provider or cable service shall obtain any necessary authorization before occupying public ways or private rights-of-way with its attachment.

(5) A public utility that directly provides a regulated telecommunication service or cable service shall establish the rates, terms, and conditions for attachments as provided under this section.

(6) This section shall not be construed to limit the commission's authority to regulate the rates, terms, and conditions of attachments upon poles or in ducts or conduits owned or controlled by utilities engaged in the transmission of electricity for light, heat, or power.

## H. IMPUTATION

Sec. 362. (1) The rate of a provider of local exchange services is subject to subsection (2) if all of the following apply:

(a) The provider has a service that competes with a service of another provider.

(b) The other provider utilizes a service, including any unbundled service element or basic network component, from the provider of local exchange service that is not available within the relevant market or geographic area from any other provider of local exchange service.

(c) The provider of local exchange service uses that same noncompetitive service or its functional equivalent.

(2) The rate of a telecommunication service shall exceed the sum of both of the following:

(a) The tariffed rates, including access, carrier common line, residual interconnection, and similar charges, for the noncompetitive service or its functional equivalent that is actually used by the provider of local exchange service, as those rates would be charged a customer for the use of that service.

(b) The total service long run incremental costs of the other components of the provider of local exchange service.

## I. CUSTOMER DATA BASE

Sec. 363. Provider of basic local exchange service shall allow access by other providers, on a nondiscriminatory basis and in a timely and accurate manner, to data bases, including, but not limited to, the line information data base (LIDB), the 800 data base, and other information necessary to complete a call within the exchange, either on terms and conditions as the providers may agree or as otherwise ordered by the commission.

ARTICLE 4

UNREGULATED SERVICES

Sec. 401. (1) Except as otherwise provided by law or preempted by federal law, the commission shall not have authority over enhanced services, paging, cellular, mobile, and answering services, video, cable service, pay-per-view, shared tenant, private networks, financial services networks, radio and television, WATS, personal communication networks, municipally owned telecommunication system, 800 prefix services, burglar and fire alarm services, energy management services, except for state institutions of higher education the reselling of centrex or its equivalent, payphone services, and the reselling of an unlicensed telecommunication service. The foregoing services shall not be considered part of basic local exchange service.

(2) Except as otherwise provided by this act, the commission shall not have the authority over a telecommunication service not specifically provided for in this act.

Sec. 402. (1) A provider of an unregulated service may file with the commission a tariff which shall contain the information the provider determines to be appropriate regarding the offered service.

(2) The commission shall retain a tariff field under this section and make all information contained in the tariff available to the public.

Sec. 403. A provider of unregulated telecommunication services shall not at any time refuse, charge, delay, or impair the speed of the connecting of a person to a telecommunication emergency service.

ARTICLE 5

PROHIBITED ACTIVITY

Sec. 502. A provider of a telecommunication service shall not do any of the following:

(a) Make a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a telecommunication service that is false, misleading, or deceptive.

(b) Charge an end-user for a subscribed service that the end-user did not make an initial affirmative order. Failure to refuse an offered or proposed subscribed service is not an affirmative order for the service.

(c) If an end-user has canceled a service, charge the end-user for service provided after the effective date the service was canceled.

(d) If a residential end-user has orally ordered a service, fail to confirm the order in writing within 15 days after the service is ordered.

(e) State to an end-user that their basic local exchange service or other regulated service will be discontinued unless the end-user pays a charge that is due for an unregulated service.

Sec. 503. (1) The commission shall promulgate rules under section 213

that establish privacy guidelines in the providing of telecommunication services.

(2) The rules promulgated under this section shall include, but need not be limited to, protections against the releasing of certain customer information and customer privacy intrusions.

(3) A person who obtains an unpublished telephone number using a telephone caller identification service shall not do any of the following without the written consent of the customer of the unpublished telephone number:

(a) Disclose the unpublished telephone number to another person for commercial gain.

(b) Use the unpublished telephone number to solicit business.

(c) Intentionally disclose the unpublished telephone number through a computer data base, on-line bulletin board, or other similar mechanism.

Sec. 504. Each regulated telecommunications provider shall file with the commission a small and minority owned telecommunication business, as defined by the department of management and budget, participation plan within 60 days of the effective date of this act. Competing telecommunication providers shall file such a plan with the commission with their application for license. Such plan shall contain such entity's plan for purchasing goods and services from small and minority telecommunications businesses and information on programs if any, to provide technical assistance to such businesses.

ARTICLE 6

PENALTIES, REPEALS, AND EFFECTIVE DATES

Sec. 601. If after notice and hearing the commission finds a person has violated this act, the commission shall order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Except as provided in subdivision (b), the person to pay a fine for the first offense of not less than $1,000.00 nor more than $20,000.00 per day that the person is in violation of this act, and for each subsequent offense, a fine of not less than $2,000.00 nor more than $40,000.00 per day.

(b) If the provider has less than 250,000 access lines, the provider to pay a fine for the first offense of not less than $200.00 or more than $500.00 per day that the provider is in violation of this act, and for each subsequent offense a fine of not less than $500.00 or more than $1,000.00 per day.

(c) A refund to ratepayers of the provider of any collected excessive rates.

(d) If the person is a licensee under this act, that the person's license is revoked.

(e) Cease and desist orders.

Sec. 602. The commission shall assure that none of the amounts paid pursuant to section 601 or any other related defense costs are passed through to the provider's customers in any manner.

Sec. 603. The following acts and parts of acts are repealed:

| Year of Act | Public Act Number | Section Numbers | Compiled Law Sections (1979) |
|---|---|---|---|
| 1883 | 72 | | 484.51 |
| 1913 | 206 | 1 to 3f | 484.101 to 484.103f |
| | | 4 to 11a | 484.104 to 484.111a |
| | | 12 to 14 | 484.112 to 484.114 |
| | | 19 to 24 | 484.119 to 484.124 |
| | | 26 | 484.126 |
| 1913 | 383 | | 469.491 to 469.493 |

Sec. 604. (1) This act is repealed effective January 1, 2001.

(2) Section 312b of Act No. 179 of the Public Acts of 1991, being section 484.2312b of the Michigan Compiled Laws, is repealed effective July 1, 1997.

(3) Sections 206, 207a, 212, 307a, 501, and 605 of Act No. 179 of the Public Acts of 1991, being sections 484.2206, 484.2207a, 484.2212, 484.2307a, 484.2501, and 484.2605 of the Michigan Compiled Laws, are repealed.

(4) Section 3g of Act No. 206 of the Public Acts of 1913, being section 484.103g of the Michigan Compiled Laws, is repealed.

# PROCEDURE FOR OBTAINING FURTHER UNBUNDLED LOCAL NETWORK COMPONENTS

1. The provider seeking additional unbundled network components shall issue a written "Request for Proposal for Network Components" which shall be sent to the provider from which the components are sought. The "Request" shall include an "intent to purchase" statement which identifies the quantity and geographic location of the needed components.

2. The provider shall respond to the "Request" within 30 days. The response shall include the following information as appropriate:

   A. The price for the component(s) requested, both recurring and non-recurring.

   B. The date of the availability of the component, but not more than 90 days from the response to the "Request."

   C. Denial of the request or refusal to offer the component. This shall be accompanied by a detailed justification for the refusal. This refusal shall be based on technical or economic reasons, not competitive reasons.

3. Upon receipt of a proposal, the provider seeking the component will place an order for the components including a commitment to purchase and specifying quantities identified in the intent to purchase statement in its request for proposal. Responses to "Request" shall be valid for a period of 30 days.

4. Upon receipt of a denial, refusal or nonperformance under an accepted order to provide the requested component, the provisions of current Michigan law will govern.

Attachment 4

FCC 92-441

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Expanded Interconnection with Local Telephone Company Facilities | ) | CC Docket No. 91-141<br>Transport Phases I & II |
| | ) | |
| | ) | |
| Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board | ) | CC Docket No. 80-286 |

# SECOND NOTICE OF PROPOSED RULEMAKING

Adopted: September 17, 1992 Released: October 16, 1992

Phase I
Comment Date: December 4, 1992
Reply Date: December 21, 1992

Phase II
Comment Date: December 21, 1992
Reply Date: January 22, 1993

Separations
Joint Board Comment Date: December 21, 1992
Joint Board Reply Date: January 22, 1993

By the Commission: Commissioners Marshall and Barrett issuing separate statements.

## Table of Contents

the multi-frequency signalling protocols associated with Feature Group D switched access. As a result, BellSouth argues that industry organizations such as the Exchange Carriers Standards Association's T1 Committee would be a more appropriate forum for consideration of this issue.[47]

45. Fully competitive provision of switched transport networks would appear to require access to certain signalling features and functions within the LEC network. We propose to require that the LECs provide interconnectors access to the signalling features and functions within the LEC network that interconnectors need to create switched access networks to compete with the LECs.[48] These functions would appear to include, among other things, access to the signalling information necessary to perform tandem switching functions, whether provided through in-band signalling or out-of-band signalling through CCS systems.[49] We believe that such signalling should be made available at both end office and tandem switches.[50]

46. We invite interested parties to comment on these tentative conclusions and proposals. In particular, we invite comment on whether there are other features or functions to which LECs should be required to give interconnectors access and whether such access could have an effect on public switched network reliability. We also ask parties to comment on whether these signalling functions should be treated as BSEs within our ONA framework. Parties are invited to submit information on any technical difficulties that such requirements might entail, and to suggest possible solutions to such technical problems.

2. Collocation of Equipment in LEC Central Offices

47. In the context of the interconnection of competing switched access networks in a "network of networks," we tentatively conclude that collocation of competitors' switches in LEC central offices is neither necessary nor desirable. We also tentatively conclude that interconnectors should not be entitled to place in the central office, or designate for their

---

47 Ex Parte Letter from W.W. Jordan, Director - Federal Regulatory, BellSouth, to Donna Searcy, Secretary, FCC (July 8, 1992).

48 In this Notice, we do not address expanded interconnection for the provision of subscriber loops. We also do not address the interoperability of LEC local switches and other parties' switches required for competitive provision of local exchange service.

49 For example, LECs use carrier identification signalling to direct tandem-switched traffic to the appropriate IXC. Accordingly, such signalling must be available to an interconnector if the interconnector is to provide a service that competes with LEC access tandem functions.

50 Under our current rules, interconnectors, just as other parties using the switched access network, will have access to the federally tariffed Basic Serving Arrangement (BSA) elements provided under our Open Network Architecture (ONA) policies.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-118

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Expanded Interconnection with Local Telephone Company Facilities | ) | CC Docket No. 91-141 Transport Phase II |

# THIRD REPORT AND ORDER

**Adopted: May 19, 1994** **Released: May 27, 1994**

**By the Commission: Commissioner Barrett issuing a statement.**

TABLE OF CONTENTS

opportunity for interconnectors to provide alternative transmission services to LEC-provided direct-trunked transport and entrance facilities by collocating transmission facilities in LEC end offices, tandems, serving wire centers (SWCs), and certain remote nodes.[4] As a result of those two actions, interconnectors now are able to provide special access and switched transport transmission services in competition with the LECs.

5. Only LECs, however, currently can provide tandem switching functions. Third parties cannot now provide such functions because they generally do not have access to the signalling information necessary to switch and route traffic to IXCs. Thus, virtually all tandem-switched transport currently must be routed through LEC tandems, and switched by the LECs at that point; interconnectors can provide only the link between the LEC tandem and the IXC point-of-presence (POP).

6. In a Second Notice of Proposed Rulemaking (Notice), which is the subject of this proceeding, we proposed to broaden the scope of our access initiatives to address this limitation.[5] Specifically, we proposed to require LECs to provide other parties access to LEC signalling information to enable such parties to offer tandem switching functions.[6] Under this proposal, interconnectors would be able to offer tandem-switched transport, using their own tandems, in competition with the LECs. In addition, third parties, such as IXCs, could obtain economies by aggregating their traffic from end offices on a single direct trunk, routing that traffic to a third-party tandem, and switching it at that point. We address this proposal below.

---

serving that POP, called a serving wire center (SWC). Direct-trunked transport facilities are used to transmit traffic between a LEC SWC and end office (or between any two customer-designated LEC offices) when such traffic requires no tandem switching. Tandem-switched transport facilities are used to transmit traffic between the LEC end office and SWC (or tandem) when such traffic requires tandem switching. Dedicated signalling transport is transport between IXCs' SS7 networks and LEC signalling transfer points (STPs). See Transport Rate Structure and Pricing, Second Report and Order, 9 FCC Rcd 615, 618 n.7 (1994) (Baskets and Bands Order).

[4] Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7407-7409, ¶¶ 53-57.

[5] Expanded Interconnection with Local Telephone Company Facilities, Second Notice of Proposed Rulemaking, 7 FCC Rcd 7740, 7747, ¶ 40 (Notice).

[6] Id. We declined to address expanded interconnection for provision of subscriber loops, as well as interoperability of LEC local switches and other parties' switches required for competitive provision of local exchange service. Id. at 7748 n.48.

Attachment 5



STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

| | | |
|---|---|---|
| In the matter of the application of **CITY SIGNAL, INC.**, for an order establishing interconnection arrangements with **AMERITECH MICHIGAN.** | ) ) ) ) ) | Case No. U-10647 |

At the October 3, 1995 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John L. O'Donnell, Commissioner
Hon. John C. Shea, Commissioner

ORDER CLARIFYING PRIOR ORDER

On February 23, 1995, the Commission issued an order establishing interim interconnection arrangements between City Signal, Inc., and Ameritech Michigan for the provision of basic local exchange service in Grand Rapids, Michigan.[1] In pertinent part, the Commission required that the transitional interconnection arrangements established in the order be tariffed generally as access services and filed no later than 30 days after issuance of the order.

On March 27, 1995, Ameritech Michigan filed a revised Tariff M.P.S.C. No. 25R, which included, among other rates, additional recurring and non-recurring charges for number

[1]Interconnection arrangements are necessary to enable City Signal's basic local exchange service customers to make and receive calls from Ameritech Michigan's basic local exchange service customers, thereby connecting the two providers' networks.

portability options. On that same date, City Signal filed a motion for tariff clarification, in which it argued that there was no record evidence to support the additional recurring and non-recurring charges.

On June 5, 1995, the Commission issued an order granting City Signal's motion. The Commission found that, based on the current record, Ameritech Michigan should not be permitted to assess either non-recurring charges relative to direct-inward dialing, remote call forwarding, and unbundled loops or an end-user common line charge for the use of direct-inward dialing for local number portability. The Commission noted that neither City Signal nor Ameritech Michigan proposed any non-recurring charges in this proceeding and, therefore, only those charges that the Commission specifically approved in its February 23, 1995 order should have been included in Ameritech Michigan's tariff.

On June 14, 1995, Ameritech Michigan filed a petition for rehearing and reconsideration and motion to vacate the Commission's order. Ameritech Michigan filed an amended petition and motion on June 26, 1995. City Signal, MCI Telecommunications Corporation (MCI), and the Commission Staff (Staff) filed responses by July 5, 1995. On August 14, 1995, the Commission issued an order denying Ameritech Michigan's petition and motion.

In the meantime, on July 24, 1995, the Staff filed a request for clarification of the Commission's February 23, 1995 order. On August 1, 1995, Ameritech Michigan filed a response in opposition to the Staff's request. City Signal filed a response in support of the Staff's request on August 7, 1995. MCI filed a similar response on August 10, 1995.

On August 11, 1995, Ameritech Michigan filed a motion to strike City Signal's response. The Staff filed a response to that motion on August 25, 1995.

In its request for clarification, the Staff states that, as of the filing of its request, Ameritech Michigan has not submitted a tariff that accurately incorporates the provisions of the Commission's order and Act 179. According to the Staff, as Ameritech Michigan has revised disputed portions of the proposed tariff, it has changed language in undisputed portions, causing new controversy and further passage of significant periods of time. The Staff outlines the four versions of the proposed interconnection tariff that Ameritech Michigan has filed to date, none of which, in the Staff's view, complies with the Commission's order. As a result, the Staff states that, five months after the issuance of the Commission's order, there has been no resolution of one of the most fundamental and significant facets of the interconnection arrangement--the interconnection of the unbundled loop.

More specifically, the Staff states that, in a meeting held on March 16, 1995, Ameritech Michigan indicated its position that unbundled loops can only be interconnected with City Signal's facilities through use of Ameritech Michigan's collocation tariff, Ameritech Virtual Optical Interconnection Service (AVOIS). The Staff states that in its March 17, 1995 letter to Ameritech Michigan, it advised the company that requiring the use of AVOIS for the purpose of local service interconnection was contrary to the Commission's February 23, 1995 order. Thereafter, in its March 27, 1995 tariff, Ameritech Michigan included another option for interconnection of unbundled loops whereby it would extend facilities to meet City Signal at the first manhole (or other nearby location) outside the central office. The tariff provided that the first 1,000 feet would be provided without charge and it deleted the AVOIS requirement. The Staff further states that in the June 30, 1995 version of the proposed tariff, Ameritech Michigan revised that language to limit the use of the 1,000 foot option to situations in which fewer than 96 loops are requested from a specific central office, thus

raising an issue addressed and ostensibly resolved five months ago. Then, the Staff continues, in Ameritech Michigan's July 18, 1995 version of the proposed tariff, the company deleted the 1,000 foot option completely and indicated that it would instead negotiate arrangements for interconnection of a limited number of unbundled loops.

The Staff argues that there is no authorization whatsoever in the Commission's February 23, 1995 order in this case to charge City Signal the collocation rates contained in the AVOIS tariff. The Staff points out that the Commission specifically rejected the use of collocation tariffs for the purpose of local interconnection because it was not economically feasible for City Signal as a new entrant in the basic local exchange service market. The Staff states that Ameritech Michigan apparently believes that because the Commission used the example of trunk-to-trunk interconnection when rejecting the AVOIS tariff, the use of that tariff for other local interconnection purposes is acceptable, e.g., connection of Ameritech Michigan's unbundled loops to City Signal's facilities. However, the Staff believes that Ameritech Michigan's interpretation is incorrect because, in the Staff's view, requiring City Signal to pay a $7,000 non-recurring charge and a $300 per month recurring charge when some arbitrary number of loops is requested is precisely the kind of economic infeasibility to which the Commission referred in its order.

The Staff further contends that, contrary to Ameritech Michigan's earlier assertion, virtual collocation tariffs were not designed to apply to interconnections between basic local exchange service providers. Rather, the Staff submits, federal collocation tariffs provided for interconnection of competitively provided special access services, switched transport services, and switched access signalling. The Staff represents that the inquiry held at the Federal Communications Commission on these tariffs never investigated the interconnection

requirements, much less the appropriate pricing structure, of collocation for basic local exchange services. In fact, the Staff continues, federal collocation tariffs apply only to fiber interconnections, not to the copper interconnections that unbundled loops use. Thus, the Staff asserts that these federal collocation tariffs are simply not relevant in this case.

The Staff requests clarification of the Commission's intent regarding its orders in this case. The Staff states that if the Commission intended to simply outline interconnection concepts and permit Ameritech Michigan to develop tariffs reflecting how Ameritech Michigan believes interconnection should be structured, then the Commission should state so more clearly. On the other hand, the Staff states, if the Commission intended its order to encompass its entire approach to local interconnection arrangements including prices, terms, and conditions, then the Commission should reiterate that intention.

City Signal and MCI support the Staff's request for clarification. City Signal explains that, since it first initiated its local service offerings, Ameritech Michigan has consistently changed the methods by which City Signal can interconnect for unbundled loops. However, City Signal and MCI assert that nowhere in the Commission's order is Ameritech Michigan authorized to require the use of virtual collocation and its high charges. City Signal points out that Ameritech Michigan itself realized this when it included in its tariff a meet-point option within 1,000 feet of its central office. However, City Signal states that Ameritech Michigan subsequently removed this option after City Signal actually tried to order that arrangement.

City Signal goes on to argue that the record in this case does, in fact, support interconnection options other than virtual collocation. City Signal points out that Brad Evans, President of City Signal, testified that City Signal should interconnect its network with Ameritech Michigan's unbundled loops at a common point on either adjacent property or on

Ameritech Michigan property. He explained that City Signal could then place its connecting equipment on either property and Ameritech Michigan could bring its cross-connect, or tie, cable to that point so that the two companies could interconnect at a neutral point. In short, Ameritech Michigan's unbundled loops would be connected to City Signal's network through a simple tie-cable arrangement, rather than having to locate equipment in Ameritech Michigan's central office.

City Signal asserts that Ameritech Michigan is opposed to the Commission's order and, consequently, it wants to delay competition under the terms of that order as long as possible, hoping that it will obtain interLATA authority before providing these services to its competitors. In City Signal's view, Ameritech Michigan comes up with a different "snag" each time it files a tariff, with the express intent of delaying competition while it advertises to the public that it favors competition.

City Signal recommends that, because Ameritech Michigan will likely continue to delay interconnection, the Commission take stern action, including directing Ameritech Michigan to provide unbundled loops at an established demarcation meet-point within 1,000 feet of Ameritech Michigan's central office at a location chosen by City Signal. City Signal further recommends that the Commission direct Ameritech Michigan to size its facility to accommodate City Signal's 12-month forecast of customer demand as well as direct that Ameritech Michigan and City Signal work together to complete each meet-point facility within 30 days of the request for meet-point interconnection. Finally, City Signal requests that the Commission impose sanctions against Ameritech Michigan pursuant to Section 601 of Act 179.

In response, Ameritech Michigan states that the Commission should deny the Staff's motion. Ameritech Michigan contends that there is only one issue in dispute, i.e., how a

competitor is to connect to an unbundled loop. Consequently, Ameritech Michigan submits, there is no support for the Staff's overly broad statement that Ameritech Michigan has not submitted a tariff that accurately incorporates the provisions of the Commission's February 23, 1995 order and Act 179. Ameritech Michigan states that it has made every reasonable attempt, since filing its initial tariff on March 27, 1995, to accommodate City Signal's desire to have a means, other than AVOIS, of connecting limited quantities of unbundled loops to City Signal's facilities in Ameritech Michigan's more rural offices.

Ameritech Michigan further argues that the Staff's filing leaves out several significant facts. Ameritech Michigan points out that it included the 1,000 foot option for connection of one or two unbundled loops in its tariff after the Staff raised the issue in discussions with Ameritech Michigan. It states that the language was included to satisfy the Staff's claim that virtual collocation would be too expensive for City Signal in situations in which City Signal was interested in serving one or two end-users out of a particular central office in Ameritech Michigan's more rural Grand Rapids exchanges. In fact, Ameritech Michigan continues, its various tariff responses have been designed to ensure that City Signal, on an interim basis, is able to select an alternative to AVOIS for connection of limited quantities of unbundled loops in Ameritech Michigan's more rural central offices. However, Ameritech Michigan states that each of its tariffs was returned with a letter from the Staff stating that the tariff was unacceptable because it was not supported by the Commission's order.

Ameritech Michigan next responds that the Commission's discussion and rejection of virtual collocation specifically related to interconnection of the two companies' networks for the exchange of local traffic over interoffice trunks. In Ameritech Michigan's view, the Commission's determination did not apply to the connection of unbundled loops to City

Signal's facilities. Moreover, Ameritech Michigan states, the Commission's stated reason for rejecting virtual collocation does not apply to unbundled loops, because existing licensed local exchange carriers (LECs) do not purchase or connect to unbundled loops. In fact, Ameritech Michigan points out that the Commission's discussion of unbundled loops is contained in a separate section of the Commission's February 23, 1995 order entitled "Unbundling." That section does not contain any discussion of how an unbundled loop would be connected to City Signal's network because that was not the subject of any proposals made in the context of this case by City Signal or any other party. According to Ameritech Michigan, the Commission's silence on this issue indicates that the Commission did not preclude the use of virtual collocation to connect City Signal to Ameritech Michigan's unbundled loops.

Ameritech Michigan further argues that the Staff's request seeks to have the Commission make a determination with respect to every possible facet of interconnection in this interim case. However, Ameritech Michigan submits, the current arrangements are interim because the Commission correctly determined that interconnection of competing basic local exchange service providers is a complex undertaking, which involves new services, unbundling of old services, and a new way of approaching the provision of telecommunications services to customers. In Ameritech Michigan's view, this is the very reason a generic interconnection proceeding was established in Case No. U-10860. Ameritech Michigan maintains that, instead of forcing a specific arrangement for the interim period, the Commission should allow the parties to reach whatever additional arrangements are necessary to make the interim arrangements work, recognizing that these arrangements will not prejudice positions the parties may take on this issue in the generic case.

In its motion to strike, Ameritech Michigan submits that City Signal's response misrepresents the facts because it wants the Commission to believe that Ameritech Michigan has prevented the implementation of local competition in the Grand Rapids exchange. To the contrary, Ameritech Michigan states, it has filed and implemented tariffs that have enabled City Signal to deploy its network, interconnect with Ameritech Michigan, and use unbundled loops through a collocation arrangement. Ameritech Michigan states that although it and City Signal disagree regarding the use of virtual collocation, Ameritech Michigan has included, in each version of its tariff, a provision that waives all recurring and nonrecurring charges for virtual collocation used for the purpose of connecting to unbundled loops. According to Ameritech Michigan, City Signal has had a collocation arrangement with Ameritech Michigan in the Grand Rapids central office since prior to the Commission's order and is using that arrangement to connect to unbundled loops. Additionally, Ameritech Michigan says that since the date of the order, City Signal has ordered virtual collocation arrangements in three additional Grand Rapids offices.

Ameritech Michigan goes on to argue that it has an effective tariff on file for interconnection arrangements. The company submits that, under Act 179 and existing Commission orders, there is simply no preapproval required for access tariffs used for interconnection arrangements, and there is no procedure whereby the Staff may arbitrarily reject or suspend tariffs pending Commission action. To the contrary, Ameritech Michigan argues that access tariffs are effective upon filing, and the Staff has not been delegated the authority to reject or suspend tariffs.

Ameritech Michigan next argues that City Signal's pleading is really a request for reconsideration or reopening of the record in this proceeding because it is requesting that the

Commission establish a procedure for connection to unbundled loops that was never included in the Commission's order. Ameritech Michigan disagrees that City Signal's proposal is supported by the facts in this case but, in any event, it maintains that City Signal's request is not timely. Ameritech Michigan argues that if the Commission were to reopen the record to consider alternatives for connection to unbundled loops, Ameritech Michigan should have the opportunity to present its position on the technical feasibility, costs, and appropriate pricing for such services.

In response to Ameritech Michigan's motion to strike, the Staff reiterates that the problem with collocation is that it was not designed for local interconnection and, furthermore, it is more costly and requires more equipment than is justified or necessary for local service. Moreover, the Staff states that the disputed part of the tariff requires City Signal to purchase collocation services for purposes of interconnecting unbundled loops at offices where City Signal is not already collocated for interconnection of other services. The Staff points out that City Signal is only purchasing unbundled loops where collocation already exists, i.e., in one office. In the Staff's view, City Signal has begun to order collocation from other offices only because Ameritech Michigan refuses to offer any other type of interconnection service.

Additionally, the Staff says that even though Ameritech Michigan represents that it will not charge City Signal the recurring and non-recurring charges associated with collocation tariff, that service still requires City Signal to purchase equipment to put in Ameritech Michigan's central office, which is not required for the simple cross-connection of an unbundled loop to City Signal's network.

In response to Ameritech Michigan's argument regarding the Staff's role in reviewing the tariffs, the Staff states that, under Section 301 of Act 179, Commission approval of access

tariffs is required in two situations: if the proposed intrastate access rates exceed interstate access rates or if the affected parties cannot agree to an access rate. In this case, the Staff points out, City Signal filed an application requesting that the Commission set the interconnection arrangements because it and Ameritech Michigan could not agree. Consequently, after an extensive contested case proceeding, the Commission issued its order establishing access rates and requiring Ameritech Michigan to file conforming tariffs. According to the Staff, requiring tariffs to be filed subsequent to issuance of an order is reasonable and consistent with the Commission's standard practices and procedures. Furthermore, the Staff states that the Commission may rely on the Staff to ensure that all tariffs that are filed pursuant to the order actually comply with that order. In this case, the Staff submits, Ameritech Michigan's tariffs do not comply with the Commission order and, consequently, the Staff has rejected those tariffs.

Finally, the Staff argues that City Signal's pleading is not a motion for rehearing because additional pleadings seeking clarification and enforcement of Commission orders are not automatically deemed petitions for rehearing. In the Staff's view, City Signal's pleading is focused on the original Commission order and correctly points out that Ameritech Michigan's "foot dragging" has successfully impeded competition in the basic local exchange service market.

In its February 23, 1995 order in this case, the Commission rejected virtual collocation for the hand-off of local traffic because, as a LEC, City Signal is entitled to the same type of co-carrier arrangements that other LECs currently have with Ameritech Michigan. The Commission further found that virtual collocation, as a means of interconnection, is needlessly complicated and not necessary. Furthermore, the Commission found that Ameritech

Michigan's proposed arrangements are not economically feasible for City Signal as a newly licensed LEC. The Commission relied on record testimony indicating that, under Ameritech Michigan's collocation tariff, the charges consist of a $8,240 nonrecurring charge and $861 in monthly rent.[2] The Commission therefore concluded that interconnection for the exchange of local traffic between Ameritech Michigan and City Signal should be available either at the end office, the tandem, or a mutually agreed upon meet-point.

In light of the foregoing findings, the Commission rejects Ameritech Michigan's interpretation of the Commission's order. Contrary to Ameritech Michigan's argument, the fact that the Commission did not repeat these findings regarding interconnection in the section on unbundling does not lead to the conclusion that the Commission authorized Ameritech Michigan to require virtual collocation, with its additional equipment and charges, as the means to connect unbundled loops to City Signal's facilities. The Commission rejected all of Ameritech Michigan's arguments regarding unbundled loops and their pricing and, instead, adopted City Signal's and the Staff's proposal. Thus, reading the Commission's order as a whole, it is clear that the Commission did not authorize Ameritech Michigan to require virtual collocation as the means for City Signal to connect to Ameritech Michigan's unbundled loops. Contrary to Ameritech Michigan's interpretation, the Commission's silence on the issue of interconnection of Ameritech Michigan's unbundled loops to City Signal's network does not indicate that the Commission approved the use of virtual collocation for that purpose.

Although the Commission did not specifically address the issue of physical interconnection in the context of unbundled loops, City Signal did, in fact, present such a proposal. Mr. Evans

---

[2]As indicated earlier in this order, Ameritech Michigan acknowledges that it will not be assessing these charges.

testified that unbundled loops should be connected to City Signal's network through a simple tie-cable arrangement, rather than having to locate equipment in Ameritech Michigan's central office. (5 Tr. 448-51.) In fact, Ameritech Michigan included this option in its March 27, 1995 tariff, i.e., it would extend its facilities to meet City Signal at the first manhole outside the central office. Thus, it is apparent that there are interconnection options other than virtual collocation.

The Commission also rejects Ameritech Michigan's suggestion that it has the authority to determine the appropriate tariffs and that its filed tariffs are immediately effective. Although Ameritech Michigan relies on Section 301(3) of Act 179, which states that a provider of access services shall set the rates for access services, the company ignores other language in Section 301, which states that prior approval of access rates is, in fact, required if the proposed rates exceed the interstate rates or if the affected parties cannot agree to an access rate. In this case, Ameritech Michigan and City Signal could not agree and, consequently, the Commission was required to establish appropriate rates, terms, and conditions for interconnection. Ameritech Michigan was then required to file a tariff that complied with the Commission's order. Had Ameritech Michigan filed such a tariff, only then would it have been immediately effective. However, Ameritech Michigan failed to do so and the Staff properly rejected the tariff.

The Commission further finds that Ameritech Michigan's motion to strike should be denied for two reasons. First, City Signal's responsive pleading does not constitute a motion for rehearing but, rather, merely supports the Staff's motion for clarification and seeks enforcement of the Commission's February 23, 1995 order. Second, the Commission is persuaded that Ameritech Michigan's motion is more in the nature of a reply to City Signal's

response, which is not provided for in the Rules of Practice and Procedure before the Commission.

In conclusion, the Commission directs Ameritech Michigan to file, within 10 days of issuance of this order, a tariff that complies with the foregoing clarification. To avoid further disputes regarding the tariff, the Commission specifically orders Ameritech Michigan to provide to City Signal unbundled loops on other than a collocation basis. Failure to comply with this order may result in the imposition of sanctions against Ameritech Michigan pursuant to Section 601 of Act 179.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(103) et seq.; and the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

b. The Staff's request for clarification should be granted.

c. Ameritech Michigan's motion to strike City Signal's response should be denied.

THEREFORE, IT IS ORDERED that:

A. The Commission's February 23, 1995 order is clarified as discussed in this order.

B. Ameritech Michigan shall, within 10 days of issuance of this order, file a tariff that includes the provision of unbundled loops to City Signal, Inc., on other than a collocation basis.

C. Ameritech Michigan's motion to strike the response of City Signal, Inc., is denied.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

( S E A L )

/s/ John L. O'Donnell
Commissioner

/s/ John C. Shea
Commissioner

By its action of October 3, 1995.

/s/ Dorothy Wideman
Its Executive Secretary