ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by BellSouth Telecommunications, Inc. for approval of arbitration of an interconnection agreement with US LEC of Florida Inc. pursuant to the Telecommunications Act of 1996.	)))))	Docket No. 000084-TP

REBUTTAL TESTIMONY OF TIMOTHY J. GATES ON BEHALF OF US LEC OF FLORIDA, INC.

October 27, 2000

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Timothy J. Gates. My business address is as follows: 15712 W. 72nd Circle, Arvada, Colorado 80007.

Q. ARE YOU THE SAME TIMOTHY J. GATES WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut certain statements made by BellSouth witness Cynthia K. Cox in her direct testimony filed in this Docket on September 21, 2000, with regard to Issues 3, 5 and 8.

ISSUE 3 – Do provisions of the 1996 Act limit BellSouth's ability to designate a Point of Interface to send traffic to US LEC?

ISSUE 5 - Having established the POI, is each party obligated to provide the facilities necessary to transport traffic from that POI to end users on its network?

Q. PLEASE BRIEFLY DESCRIBE THE DISPUTE ON THESE POINTS.

A. In spite of FCC regulations that are clearly in diametric opposition with its position, BellSouth contends that it may designate points of interface at which, US LEC and BellSouth exchange traffic. US LEC argues that it should be allowed to choose the points at which it interconnects with BellSouth in order to maximize efficiencies, and to minimize costs associated with interconnecting with BellSouth, and that US LEC should be under no obligation whatsoever to interconnect at the points designated by BellSouth. Further, US LEC argues that BellSouth cannot require US LEC to provide

facilities to transport BellSouth-originated traffic from a POI designated by BellSouth. Essentially, US LEC wants only to be able to interconnect with BellSouth's network in a manner in which US LEC can efficiently lower its costs and that is entirely consistent with the Telecommunications Act of 1996 (Act) and FCC regulations.

Q. IS THE LANGUAGE PROPOSED BY BELLSOUTH AT ODDS WITH THE TELECOMMUNICATIONS ACT OF 1996 AND FCC REGULATIONS?

A. It certainly is. As noted in my direct testimony, § 251(c)(2) of the Act requires incumbent LECs such as BellSouth "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network...(B) at any technically feasible point within the carrier's network." The FCC has held that § 251(c)(2) grants competing carriers such as US LEC the right to choose the points of interconnection.[1] In other words, the FCC has held that competing carriers such as US LEC are the carriers that have the right to designate points of interconnection, not incumbents such as BellSouth. The FCC made this finding consistent with § 251(c)(2) of the Act, and in order to allow carriers "to choose the most efficient points at which to exchange traffic, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."

Q. HAVE YOU REVIEWED THE TESTIMONY OF BELLSOUTH WITNESS, MS. CYNTHIA COX AS IT RELATES TO THIS ISSUE?

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[1]First Report and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Rel. August 8, 1996 at ¶ 172.

A. Yes I have.

Q. HOW DO YOU CHARACTERIZE THE MAIN IDEAS OF MS. COX'S TESTIMONY REGARDING ISSUE 3?

A. As I understand it, the essence of Ms. Cox's testimony regarding Issues 3 and 5 can be condensed into the following themes - first, US LEC's proposal to interconnect at one point of interface would create hardships for BellSouth, because BellSouth's network is comprised of many distinct local networks and second, BellSouth does not object to US LEC interconnecting at a single point on the BellSouth network, so long as US LEC assumes all of the financial responsibilities associated with the interconnection. BellSouth's positions are untenable for a number of reasons, which I will address below.

Q. IS MS. COX'S CHARACTERIZATION OF THE NETWORK AS BEING MADE UP OF MULTIPLE, SEPARATE AND DISTINCT CALLING AREAS CONSISTENT WITH HOW OTHERS WITHIN BELLSOUTH VIEW THEIR NETWORK?

A. No, apparently, Ms. Cox would take issue with her Chairman and CEO's views of BellSouth's network. At a recent speaking engagement, BellSouth Chairman and CEO, Mr. Duane Ackerman boasted about the integrated nature of BellSouth's wireline network, especially as it relates to data, saying that BellSouth's network is "the most robust local network in the U. S., if not the world", and that the network is "not about a series of stand-alone internet data centers", but "about an integrated e>business network platform, available to all of our customers wherever they are". Mr. Ackerman attributes BellSouth's ability to provide advanced services to its customers to the integration of its existing network facilities consisting of "Internet

points-of-presence, central offices, SONET rings and Fast Packet switches".[2] Clearly, the network about which Mr. Ackerman is speaking is not plagued by the limitations Ms. Cox presents in her testimony.

Q. IN HER TESTIMONY MS. COX INDICATES THAT BELLSOUTH DOES NOT OBJECT TO US LEC INTERCONNECTING AT A SINGLE POINT OF INTERCONNECTION.[3] DOES THIS ALLEVIATE US LEC'S CONCERNS?

A. No, it does not, nor is Ms. Cox's testimony consistent with BellSouth's proposed language at 1.7.2 of the interconnection agreement which would allow BellSouth to designate multiple points of interconnection - in each BellSouth local calling area. Having this ability to pick and choose the points at which US LEC would be forced to interconnect with the BellSouth network would have serious negative consequences on US LEC, and would transfer to BellSouth the decisions on how US LEC deploys its network in Florida, (assuming that under the conditions proposed by BellSouth, US LEC would find it economically feasible to continue to compete in Florida at all), without regard to whether such points of interconnection were the most efficient points at which US LEC could exchange traffic with BellSouth. Not only would the language proposed by BellSouth be altogether inconsistent with the Act and FCC regulations, which obligate BellSouth to provide interconnection for US LEC facilities at points designated by US LEC, but such language would also severely limit US LEC's ability to expand existing

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[2]Remarks of Duane Ackerman at the Goldman Sachs 2000 Communicopia IX Conference, October 4, 2000.

[3]See testimony of Cynthia K. Cox at page 10.

networks and to enter new markets in Florida. This limiting language is entirely inconsistent with what the FCC and Congress intended for ILEC interconnection obligations to accomplish, that being, "to pave the way for the introduction of facilities-based competition with incumbent LECs".[4]

Q. CAN YOU COMMENT ON MS. COX'S ASSERTION AT PAGE 10 OF HER TESTIMONY THAT US LEC'S PROPOSAL TO INTERCONNECT AT A SINGLE POINT OF PRESENCE IS "FINE"?

A. As noted above, Ms. Cox's testimony that BellSouth does not object to US LEC interconnecting at a single point on the network is inconsistent with the language BellSouth has proposed for ¶ 1.7.2 of the interconnection agreement. If BellSouth has taken this position, it appears that its proposed language will have to be modified.

Second, BellSouth's position that it does not object to US LEC interconnecting at a single point on the network is tied to an additional restriction: if US LEC interconnects at a single point, BellSouth contends that US LEC must bear any additional costs that arise from bringing traffic to the single point of interconnection with US LEC's network. In Ms. Cox's view of the world, bearing the costs of the facilities on its side of the point of interconnection would unfairly burden BellSouth. The additional costs (which Ms. Cox claims would flow directly to BellSouth) are as much a barrier to entry as requiring US LEC to establish multiple points of interconnection and, as I discuss below, are prohibited by both the Act and FCC regulations.

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[4]FCC First Report and Order, CC Docket No. 96-98 and CC Docket No. 95-185 ¶ 172.

Q. ARE BELLSOUTH'S POSITIONS AS STATED BY MS. COX IN HER TESTIMONY CONSISTENT WITH FEDERAL LAW AND FCC REGULATIONS?

A. No. By not objecting to US LEC's interconnecting at a single point, but then adding additional, overly burdensome cost restrictions, BellSouth is plainly trying to skirt the clear intent of the Act and the FCC's interconnection rules. As noted above, the FCC states very clearly at ¶ 172 of the *Local Competition Order* that competing carriers may choose the most efficient points at which to exchange traffic with incumbent LECs thereby lowering the competing carriers' cost of among other things, transport and termination of traffic.

The FCC's intent was to give CLECs a clear, low cost path of entry into the local market. BellSouth's position misleadingly appears to comply with the FCC's standards, by saying that the single point of interconnection is "fine", but by imposing additional costly restrictions on such interconnections, BellSouth is at odds with the spirit of the FCC regulations, and is essentially barring the pathway to entry the FCC envisioned.

Q. AS IT IS DESCRIBED BY MS. COX, BELLSOUTH'S POSITION PROVIDES US LEC WITH FLEXIBILITY TO DESIGN ITS NETWORK ANY WAY IT WISHES. IS THIS AN ACCURATE CHARACTERIZATION?

A. No. Each of the options described by Ms. Cox at page 10 of her testimony create only the fiction of flexibility. The options she identifies would only create financial burdens for US LEC that were not intended by the FCC. In each instance, US LEC would be faced with the prospect of incurring

tremendous costs in order to provide service to Florida consumers, regardless of whether they are customers of BellSouth or US LEC. These costs constitute a barrier to US LEC's entry into the local market in Florida, and serve to protect BellSouth's existing customer base. The language proposed by BellSouth is therefore clearly at odds with the stated intent of the FCC when it developed its interconnection rules in order to comply with Congress's goal of creating conditions that will facilitate the development of competition in the telephone exchange market.[5]

Q. MS. COX TESTIFIES THAT US LEC SHOULD BE FINANCIALLY RESPONSIBLE FOR COSTS THAT RESULT FROM CARRYING CALLS FROM LOCAL CALLING AREAS LOCATED WITHIN THE BELLSOUTH NETWORK TO US LEC'S POINT OF INTERFACE. DO YOU AGREE?

A. No. What BellSouth is doing is asking the Commission to force US LEC to pay for facilities that are located on the BellSouth side of the point of interconnection. In other words, BellSouth is proposing that US LEC pay BellSouth when BellSouth customers use the BellSouth network. Ms. Cox testifies that if BellSouth is not compensated by US LEC, that BellSouth would have to "eat" these costs. I find this characterization to be misleading. The appropriate arrangement is very clear: it is BellSouth's responsibility to provide the facilities between its customers and US LEC's point of interconnection. Conversely, from the point of interconnection, US LEC is responsible for the facilities between the point of interconnection and its customers, wherever those customers might be located.

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[5] *Id.* ¶ 179.

Q. MS. COX APPEARS TO INDICATE IN HER TESTIMONY AT PAGE 16 THAT THESE COSTS ARE NOT RECOVERABLE BY BELLSOUTH. IS THAT TRUE?

A. No. Ms. Cox's testimony in this area is also misleading since BellSouth is compensated for its portion of the call through local rates, vertical features (i.e., call waiting, call forwarding, star codes, etc.), EAS arrangements, subscriber line charges and other subsidies, such as access charges, that support local rates. Given the existence of these profit centers, the Commission should not be distracted into thinking that BellSouth will not recover the costs associated with compliance with these FCC regulations.

Q. WHAT ARE THE COMPETITIVE CONSEQUENCES OF BELLSOUTH'S PROPOSAL?

A. As I discussed in detail in my direct testimony, BellSouth's proposal would have negative impacts on competition in Florida, and limit Florida citizens' access to advanced services. BellSouth's proposal would serve to increase US LEC's costs of entering the market in Florida, either by forcing US LEC to establish multiple points of interconnection with BellSouth, or by foisting other additional costs onto US LEC. These costs are clearly an economic barrier to entry in Florida, and serve to protect BellSouth's existing market share.

As US LEC evaluates its plans to enter markets around the country, it undoubtedly considers such costs. If US LEC has to bear not only its own costs associated with entering the market, but also the additional costs that BellSouth seeks to impose, Florida may become a lower priority state for US LEC--and most likely for other CLECs, as well. Under these circumstances,

US LEC's presence would be diminished in Florida, and Florida citizens would not benefit from this providers presence in the market and the services it offers.

ISSUE 8 – Should US LEC be allowed to establish its own local calling areas and assign its NPA/NXX for local use anywhere within such areas, consistent with applicable law, so long as it can provide information permitting BellSouth as the originating carrier to determine whether reciprocal compensation or access charges are due for any particular call?

Q. HAVE YOU REVIEWED THE TESTIMONY OF BELLSOUTH WITNESS, MS. CYNTHIA COX, AS IT RELATES TO THIS ISSUE?

A. Yes, I have.

Q. IN HER TESTIMONY REGARDING THIS ISSUE, MS. COX DISCUSSES AN ORDER THAT WAS RECENTLY ISSUED BY THE MAINE COMMISSION. CAN YOU COMMENT ON THE ORDER SHE REFERS TO?

A. Yes. Obviously, different state Commissions are free to establish different standards relating to interconnection agreements. It is my opinion that the Maine Commission took an extremely pro-incumbent stance on this issue, a stance that I feel will have negative competitive consequences in the state of Maine, and a stance that I do not recommend the Florida Commission take in this arbitration. Instead, I recommend that the Florida Commission decide this issue based on the evidence presented in this case, including the evidence I present in my direct testimony. However, if the Commission is inclined to review the decisions of other Commissions on this issue, then the Commission should contrast the Maine decision with the recent conclusions

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of the Michigan Commission, which, when considering the same issue, reviewed the Maine Commission's findings and declined to follow the harsh results reached in Maine.[6]

Q. HOW DOES US LEC's POSITION COMPARE TO THE MICHIGAN ORDER?

A. US LEC's position is completely consistent with the Michigan Commission's Order. I have attached to my testimony copies of the decision of the Arbitration Panel designated by the Michigan Public Service Commission adopting, as modified by the panel, an arbitration agreement between Coast to Coast Telecommunications Company and Michigan Bell Telephone Company d/b/a Ameritech Michigan and the Final Order of the Michigan Public Service Commission adopting the arbitrated agreement as Exhibits __ (TJG-1) and __ (TJG-2), respectively. The Michigan Commission rejects the very same arguments made by BellSouth in this case with respect to the classification of intra NXX calls as anything other than local, finding that "intra NXX calls are to be considered local for rating purposes, despite their actual routing".[7] Additionally, the Michigan Commission found that the use of a virtual NXX does not impact the ILEC's financial and/or operational responsibilities, finding that under the virtual NXX framework, the costs to the ILEC do not differ, but are "the same as when the call is undisputedly local".[8]

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[6]Order Adopting Arbitrated Agreement issued by Michigan Public Service Commission, Case No. U-12382, August 17, 2000.

[7]Id. at Page 9.

[8]Id. at Page 6.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Exhibit __ (TJG-1)
Docket No. 000084-TP

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the petition of **COAST TO COAST TELECOMMUNICATIONS, INC.** for arbitration of interconnection rates, terms, conditions, and related arrangements with Michigan Bell Telephone Company, d/b/a Ameritech Michigan.	)))))	Case No. U-12382

DECISION OF ARBITRATION PANEL

I.

HISTORY OF PROCEEDINGS

On February 12, 2000, Coast to Coast Telecommunications, Inc. (Coast) filed a Petition for Arbitration (Petition) with the Commission, seeking arbitration of an interconnection agreement with Michigan Bell Telephone Company d/b/a Ameritech Michigan (Ameritech), pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 (1996 Act) and in accordance with the procedure adopted by the Commission in its July 16, 1996 Order in Case No. U-11134. Coast's Petition set forth forty (40) issues, not including subparts, numbered 0-39.

An Arbitration Panel (Panel) was designated consisting of Administrative Law Judge George Schankler and Commission Staff members Margaret Wallin and Tom Saghy.

On May 8, 2000, Ameritech filed its response to the Petition (Response). Ameritech's Response set forth two additional issues and indicated that the parties had resolved three issues.

Per the Panel's direction, on May 22, 2000, the parties filed a Joint Submission setting

forth the contract language disputed by the parties and an issue status matrix that indicated which of the issues had been resolved, which of them might still be resolved and which of them were unresolved.

On May 24, 2000, the Panel held a prehearing conference with the parties for the purpose of addressing procedural matters, including a schedule in this proceeding, and the definition and narrowing of the remaining issues. The Panel directed the parties to meet face-to-face and attempt to resolve as many issues as possible. On June 1, 2000, the parties met and reduced the number of remaining issues to ten.

On June 8, 2000, per the Panel's directive, the parties made oral presentations to the Panel on arbitration Issues 2 (Additional Switches), 5 (Foreign Exchange Service) and 6 (Reciprocal Compensation). The parties also indicated that they had resolved two more issues, bringing the number of outstanding issues for arbitration down to eight.

On June 20, 2000, each party filed a Proposed Decision of the Arbitration Panel, both of which indicated that one more issue had been resolved, bringing the number of outstanding issues for arbitration to seven.

II.

RESOLVED AND UNRESOLVED ISSUES

Of the original 42 issues submitted for resolution in this arbitration, only seven remain pending. Although the parties once indicated that four of these seven issues might be resolved by mutual agreement, we have been advised that the parties have negotiated these issues to

impasse and that agreement is no longer likely. Thus, in accordance with the requirements of the Commission's Order in Case No. U-11134, the Panel will consider each of the remaining issues, which are:

Issue 2	Additional Switches
Issue 5	Foreign Exchange Service
Issue 6	Reciprocal Compensation
Issue 10	Contract Services
Issue 26	Entire Agreement
Issue 28	Right to Purchase from Tariff
Issue 41	Indemnification for Collocation Premises.

III.

PROPOSED FINDINGS AND CONCLUSIONS

Our decision today is limited by the specific standards for arbitration set forth in the 1996 Act, and it is limited solely to the issues raised in the Petition and Response. See, 47 USC 252(b)(4)(A). Our resolution of open issues and any imposition of conditions upon the parties must meet the requirements of § 251 of the 1996 Act and the FCC's implementing regulations. As the Commission ordered in Case No. U-11134, our decision on each issue is limited to selecting the position of one of the parties on that issue, unless the result would be clearly unreasonable or contrary to the public interest.

Section 252(b) of the 1996 Act provides that either party to a negotiation of an

interconnection agreement may petition the Commission to arbitrate open issues in the negotiation. As explained below, Ameritech and Coast were unable to resolve certain issues by negotiation, and Coast petitioned the Commission to arbitrate the unresolved issues in accordance with § 252(b) of the 1996 Act.

The parties were given proper notice of this proceeding. As required by federal law, and as determined by the Commission in its July 16, 1996 Order in Case No. U-11134, the Commission has jurisdiction to arbitrate and resolve the open issues between Petitioner and Ameritech. The Panel has considered the open issues, and finds as follows:

ISSUE 2: Additional Switches

Can Ameritech require Coast to establish multiple points of interconnection whenever it deploys additional switches in a LATA or otherwise wishes to establish interconnection with additional Coast central offices in that LATA.

DISCUSSION AND DECISION:

The parties' disagreement on Issue 2 centers on whether or not, in the event Ameritech deploys an additional switch, Ameritech should be allowed to connect such new switch to Coast's network, at Ameritech's sole cost and obligation, without the necessity of Coast's express permission to do so. Ameritech maintains this is necessary in order to (i) efficiently manage its own network, (ii) provide alternate routing in the event of tandem exhaust or a network problem, and (iii) prevent a situation in which Coast would arbitrarily deny Ameritech's request for interconnection between switches in the same local calling area so it can utilize Ameritech's

foreign exchange service, described below, and shift transport costs to Ameritech that should otherwise be borne by Coast. (See June 8, 2000 Presentation Transcript "Tr" pp. 54-55)

The contract provision at issue is Section 3.5.1: **Additional Switches**

> If Requesting Carrier deploys additional switches in a LATA after the Effective Date or otherwise wishes to establish Interconnection with additional Ameritech Central Offices in such LATA, Requesting Carrier shall provide written notice thereof to Ameritech, consistent with the notice provisions of Section 3.4.1 and 3.4.2, to establish such Interconnection. The terms and conditions of this Agreement shall apply to such Interconnection, including the provisions set forth in 3.4.3. **If Ameritech deploys additional switches in a LATA after the Effective Date or otherwise wishes to establish Interconnection with additional Requesting Carrier Central Offices in such LATA, Ameritech Michigan shall be entitled, upon written notice thereof to Requesting Carrier, to establish such Interconnection and the terms and conditions of this Agreement shall apply to such Interconnection.**

Ameritech maintains that the bold language should be included in the parties' agreement. Coast opposes this language because it gives Ameritech the unilateral right to interconnect with Coast at its sole discretion. Coast is willing to establish such interconnections at Ameritech's request but wants to retain the right to review such requests prior to implementation.

The Panel agrees with Coast that it should retain some right to review proposed interconnections to its network and that Ameritech's proposed mandatory, unqualified language is not consistent with that view. The Panel believes that, as a practical matter, Ameritech will be able to interconnect with Coast in a manner that meets its needs, but any disputes which may arise can be resolved by the Commission, in any event. The Panel adopts Coast's position on this issue.

ISSUE 5: Foreign Exchange Service

When Coast assigns an NXX to a Coast customer, should Coast be required to compensate Ameritech for delivering a call to Coast's switch, if Coast in turn routes the call to a geographic location that is not associated with the NXX?

DISCUSSION & DECISION:

This issue concerns what Ameritech contends is Coast's provision of foreign exchange services, or any similar service that Coast may call by a different name, to retail customers. A foreign exchange service allows a customer to obtain an NXX code for a geographic area different from the area where the customer is actually located. Calls made from persons in the geographic area assigned to the NXX code are able to reach the Foreign Exchange customer for the price of a local call since Ameritech's billing system recognizes intra-NXX calls as local. Ameritech states that its billing system bills the caller at the fixed rate for a local call and the rate varies depending upon the class of service and local calling plan and "For most residential 'call plan' customers, the rate is effectively 0¢." Ameritech PDAP, page 11. Ameritech claims that it has no opportunity to recover transport costs from Coast or the caller. Ameritech maintains that Coast should compensate it for the transport provided in hauling the call to Coast's switch so that Coast and its FX customers do not get a "free ride" and over-utilize FX services that Ameritech claims it would otherwise be subsidizing on Coast's behalf.

Ameritech also objects to the reciprocal compensation obligations imposed on it for these calls. This is particularly troublesome because, Ameritech claims, FX calls tend to have longer holding durations than other local calls. Ameritech contends that Coast should either compensate Ameritech for the transport of these calls or provide Ameritech with a point of interconnection

(POI) in each local calling area associated with an NXX assigned to a Coast FX customer. In that manner, Ameritech states the costs of inter-exchange transport will appropriately be borne by Coast and its FX customer. Ameritech insists that the proposed contract language in the "Appendix FX" best solves the problem and provides for the above described two options.

Coast states that Ameritech's argument is a thinly veiled attempt to circumvent prior Commission rulings in Bierman v CenturyTel, MPSC Case No. U-11821, and Baraga v Ameritech, Case No. U-12284, which stand for the proposition that the NXX determines if a call is local, not the routing of the call. Coast states that Ameritech's attempt to characterize standard traffic configurations upon which CLEC's rely to provide local service as a type of special or extraordinary situation which requires additional compensation is a subtle but potentially devastating attack on the ability of CLECs to provide competitive service. Coast states that one type of arrangement which might frequently fall under Ameritech's definition of FX service is ISP traffic. Coast states that Ameritech's proposal is a side door attempt to recoup reciprocal compensation which it pays to Coast for such traffic. Coast states that it has been providing local service for only three years, through a single switch located in Pontiac, and that Ameritech delivers all its traffic there. Coast maintains that its current configuration will not be the same forever. Coast states that it is in the process of investing an additional $50 million in its system, and that it is waiting for the cities to give approval before laying fiber and placing facilities. The panel notes Coast currently has two right-of-way Case Nos., U-12354 and U-12462, pending before the Commission dealing with Coast's placement of facilities in the cities of Birmingham and Rochester, respectively. Coast states that upon obtaining this approval, the single point of

interconnection in Pontiac will change.

Ameritech's representation that it effectively receives no compensation for local calls from its customers in the situation at issue here concerns the panel. Ameritech's statement that "For most residential 'call plan' customers, the rate is effectively 0¢." is misleading since these residential plans include an allowance for calls. Thus, compensation for local calls is included in the local exchange customers' monthly rate. The Panel notes the May 8, 2000 Illinois Commerce Commission decision in Case 00-0027, an arbitration between Focal Point Communications and Ameritech Illinois on a similar FX issue. In that case the Illinois Commission rejected Ameritech's proposed requirement for the CLEC to establish additional POIs within each local calling area where FX is provided, a position similar to Ameritech's fall-back option in the present arbitration. Although the Illinois decision did not address Ameritech's preferred Appendix FX, it addressed and rejected the same arguments concerning the need for some way to avoid giving the CLEC a "free ride." The Panel agrees with the analysis employed by the Illinois Commission that, as the network is now configured, there is no free ride to remedy.

The following facts support the Panel's determination on this issue:

1. Coast currently provides service to its customers through one switch which is located in Pontiac. This current configuration is authorized under the FTA.

2. Ameritech is obligated to deliver all of Coast's traffic to its Pontiac switch.

3. Ameritech's billing system identifies NXX to NXX calls as local and cannot distinguish such calls by ultimate destination.

4. Ameritech agrees that it incurs no additional costs related to what it refers to as FX calls under the current Coast configuration. (Tr. 69)

5. Ameritech admits that "There's been a definition of a local call. From an NXX to NXX is a local call." (Tr. 64)

At present Coast operates from a single switch located in Pontiac, to which Ameritech is obligated to deliver all of Coast's traffic. Ameritech incurs no additional costs for the traffic it delivers to Coast's switch in Pontiac, regardless of its ultimate destination after being delivered to Coast. Ameritech's billing system cannot identify calls for which it requests to be compensated. Coast's configuration of a single switch eliminates the potential for a "free ride" since Ameritech is obligated to deliver all Coast's traffic to Coast's only switch, its Pontiac switch.

Further, the Panel notes Coast's plans to build additional facilities, which may alleviate some of Ameritech's concern regarding what it calls a "free ride". Finally, the Panel concludes that it must reject Ameritech's proposal that Coast establish additional POI's because neither federal or state law requires it.

ISSUE 6: Reciprocal Compensation

Should the parties compensate each other for delivering Internet traffic to each other's Internet service provider (ISP) customers and, if so, at what rate?

DISCUSSION AND DECISION:

Coast takes the position that the Commission has jurisdiction to determine whether calls delivered to ISPs should be viewed as "local" calls subject to reciprocal compensation. In exercising that jurisdiction, Coast says the Commission should conclude, consistent with applicable law, including this Commission's previous decisions on this issue, that calls delivered

to an ISP are no different from any other local traffic the parties exchange and should be treated as local calls subject to reciprocal compensation. Further, because calls to ISPs are local calls, the reciprocal compensation rates for termination must be symmetrical and based on Ameritech's total long run incremental costs (TELRIC). By law, any new rate structure must be based on a cost study that meets the TELRIC standard, and no new rates can be based on studies that do not meet this standard.

Ameritech's proposal for the interconnection agreement is that reciprocal compensation should not be paid for ISP traffic. In its response to Coast's petition, and in its presentation to this Panel, Ameritech contends that the Commission is without jurisdiction to decide this issue in this proceeding. Under Ameritech's theory, calls to ISPs are interstate calls subject to the jurisdiction of the FCC. However, Ameritech also contends that, in the event the Commission decides it has jurisdiction to decide Issue 6, then the Commission should find that ISP traffic is not subject to the reciprocal compensation requirements of the 1996 Act. Ameritech argues, as a policy matter, that it should not be required to compensate Coast for delivering ISP traffic because the costs Coast incurs when it delivers the traffic are not caused by Ameritech, but by ISPs. Alternatively, Ameritech argues that, if the Commission determines that compensation is due, it should, at most, be based on Coast's actual costs of delivering traffic which Ameritech contends is less than the costs of terminating voice traffic.

The Panel adopts the position and contract language proposed by Coast on this issue. As this Commission has held on several prior occasions, ISP bound traffic is local traffic subject to the same reciprocal compensation treatment as all other local traffic. Thus, the rates to be

charged to ISP bound traffic are those rates that Ameritech and Coast agreed are applicable to the termination of local traffic.

The Commission repeatedly has addressed the issue as to whether it has jurisdiction to decide whether ISP traffic is subject to reciprocal compensation.

The case law is well known to the parties and the Commission. The Panel merely cites the most recent Commission Order in Case No. U-12284, Baraga Telephone Company v Ameritech:

> "The Commission therefore concludes as it has in the orders discussed above and for the reasons set out in those orders, that calls placed to an ISP within a customers' local calling area are local calls for which the originating carrier owes reciprocal compensation to the terminating carrier pursuant to any applicable interconnection agreement or tariff . . ."

The Commission continues to hold that ISP calls are local calls subject to reciprocal compensation, and the Panel sees no reason to force Coast to forego such compensation by prohibiting it in this interconnection agreement. The Panel adopts Coast's position on this issue.

The Panel notes that during the cause of this proceeding, Ameritech has offered alternative proposals should its position be rejected. The Panel must choose between the positions of the parties and not an array of proposals advanced by one of the parties. The Panel will not consider alternative proposals.

ISSUE 10: Contract Services

What resale discount rate should apply should Coast assume an Ameritech retail contract involving a service for which the Commission has not yet set a discount rate? Whether

Ameritech's failure to produce a valid copy of a retail contract when requested by Coast should result in nullifying the contract as to Coast.

DISCUSSION AND DECISION:

Coast contends that if it assumes a retail contract from Ameritech involving a service for which the Commission has not yet set an appropriate discount rate, then Coast should receive the Commission approved rate for a new resale customer, 18.15%. Coast recognizes that the Commission has set a discount rate for assumed contracts and the language it proposes acknowledges this. Coast proposes that Ameritech's avoided cost methodology calculation be rejected.

Coast also argues that, if Ameritech cannot produce a valid copy of a retail contract within ten business days of a request for such a contract, then the contract should be deemed to be null and void and not binding on Coast. It asserts that it should not be expected to assume all responsibilities under a contract, including any termination liability without proof as to the nature and extent of those responsibilities and liabilities. Coast wants to avoid the need to litigate these questions whenever Ameritech fails to supply a copy of the contract.

Ameritech states that the dispute on this issue centers on three items: (1) What is the appropriate discount to apply when Coast assumes a contract from Ameritech and the Commission has not prescribed a specific discount? (2) Should the language requiring Coast to sign an "Agreement to Assume Ameritech Contracts" be deleted and Coast be given language to assure that it can assume any end-user contract? (3) Should Coast be allowed to insert language in the agreement that would terminate Ameritech's agreements with its end-users in the event it cannot

produce a valid executed copy of the requested agreement within ten business days?

Regarding the discount rate, Ameritech takes the position that were a situation to arise that did not fall into one of these two categories provided for by the Commission's Order in Case No. U-11831, a discount based on its avoided costs with such contract service should be calculated and used. Ameritech proposes that Coast obtain a copy of the contract from its new end-user. If the end-user does not have a copy of the contract Coast should then contact Ameritech's retail unit for a copy.

The Commission in its Order in Case No. U-11831 set two specific discount rates one for new customer/services (18.15%) and one for assumed contracts of (3.42%). In its Order in Case No. U-12043 the Commission affirmed that it had set a specific avoided cost discount for assumed contracts in Case No. U-11831, applicable from the time of the Commission's Order dated November 16, 1999.

The Panel rejects Ameritech's position that there may be instances in which the resale discount does not fall within one of these categories, which would require that a new avoided cost calculation be made. As noted earlier, the Commission currently has two specific discount rates as discussed in its Order in Case No. U-11831 dated November 16, 1999. The Panel finds that the Commission's Order did not contemplate exceptions to these discounts. Either one discount or the other would apply in all circumstances. Should Ameritech determine that there is a need for a new calculation, it should follow the procedures necessary to obtain a Commission redetermination.

The Panel finds for Ameritech regarding its proposal that Coast be required to sign its

"Agreement to Assume Ameritech Contracts". The Panel sees no reason for Coast not to sign such an Agreement. As stated by Ameritech the blanket form simply serves to acknowledge to Ameritech that it will undertake all of the terms and conditions of the contract that it assumes.

Finally, the Panel finds that Ameritech's wholesale unit should be required to provide Coast with a validly executed contract, upon request, within ten business days, as proposed by Coast. If Ameritech cannot produce the contract, then Coast should be entitled to treat that customer as a new customer not subject to any contractual obligations or reduced assumed contract discount rate. The Panel is not persuaded by Ameritech's suggestion that its wholesale operation cannot communicate with the retail operation in such situation. In the Panel's view, Coast has a right to expect that all of Ameritech's operations will coordinate and work together to provide the needed information.

Contract language to reflect these determinations will be jointly provided by Coast and Ameritech.

ISSUES 26 and 28: Entire Agreement and Right to Purchase from Tariff

Whether Coast should be prohibited from purchasing products and services pursuant to an Ameritech tariff.

DISCUSSION AND DECISION:

Ameritech proposes in Section 29.18 of the interconnection agreement language that states that the agreement is the entire agreement between the parties and that the agreement supercedes all prior understandings, proposals, communications, and existing arrangements. It further provides that the agreement is the exclusive arrangement under which the parties may purchase

from each other the products and services described in Sections 251 and 252 of the 1996 federal Act, regardless of the terms of any tariff. Ameritech takes the position that the agreement should supercede any tariff even without this provision. But having lost on this issue in a complaint proceeding involving MCImetro Access Transmission Services, Inc., (MCI) in Case No. U-12035, Ameritech seeks to remedy what it terms the "contractual shortcoming" perceived by the Commission in that case.

Ameritech further argues that its proposed language is consistent with federal statutory language that requires carriers to implement Sections 251 and 252 of the 1996 Act through interconnection agreements, not tariffs. Ameritech further states that its language is consistent with the traditional principles surrounding the coexistence of tariffs and individual contracts. It asserts that the Sierra-Mobile doctrine[1] requires that a contract negotiated pursuant to federal law takes precedence over any tariff addressing the same matter. In other words, Ameritech argues, such contracts cannot be modified or altered in any way by different or conflicting terms in a tariff.

Ameritech argues that allowing Coast to choose different terms in a generally available tariff after negotiating the interconnection agreement could effectively deprive Ameritech of the benefit of the bargain it negotiated. For example, it states, the ability to plan for staffing might be affected by Coast's unilateral decision to alter the manner in which it chooses to submit its orders. Ameritech points to the Commission's February 9, 2000 order in Case No. U-12043, in

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[1]United Gas Pipeline Co v Mobile Gas Service Corp, 350 US 332; 76 Sct 373; 100 Led 373 (1956) and FPC v Sierra Pacific Power Co, 350 US 348; 76 Sct 368; 100 Led 388 (1956).

which the Commission stated:

> "Coast's attempt to combine favorable provisions of the resale tariff, i.e., the resale discount, with favorable provisions that it originally negotiated in the contracts is unreasonable. If successful, it would give Coast a better arrangement than it bargained for when it signed the contracts, and, at the same time, one more advantageous than what Coast or any other reseller could obtain from Ameritech Michigan by proceeding only under the resale tariff at the present time."

Order, p. 9. Ameritech states that Coast's request to operate under both the agreement and tariffs, as it sees fit, is fundamentally improper for the same reasons articulated by the quoted portion of the Commission's order in Case No. U-12043.

Coast proposes that Section 29.18 agreement state that the contract terms cannot be changed, except by a writing signed by an officer of each party, and exclude the restrictive language proposed by Ameritech. And it proposes Section 30.4, which provides a specific reservation of Coast's right to purchase products or services, whether retail or resale, from any tariff in effect on the date that it places an order. Coast argues that if an amendment to the interconnection agreement is required for emerging services, Coast will be disadvantaged by the delay required for amending the agreement and obtaining Commission approval of that amendment. Instead, Coast argues, it should be able to readily avail itself of new technologies by purchasing products or services pursuant to generally available tariffs.

Moreover, Coast argues, the Commission addressed a similar issue in its January 3, 2000 order in Case No. U-12035, in which the Commission agreed with MCI that it should be permitted the option to purchase products and services pursuant to the provisions of a generally applicable tariff rather than the terms it negotiated for interconnection. It reasoned that the parties

could have agreed to include a provision in their interconnection agreement prohibiting such purchases, but had not done so. Further, Coast states, the Commission found that the MCI's reliance upon tariff provisions was "not barred by the interconnection agreement, state law, federal law, or the Sierra-Mobile doctrine." Order p. 21. Therefore, Coast asserts, adoption of its language is similarly not barred by any applicable law.

The Panel concludes that adopting the language for Sections 29.18 and 30.4 proposed by Coast is more reasonable and better promotes competition within the state. In the Panel's view, adopting Coast's proposed language does not violate the Sierra-Mobile doctrine or any other state or federal law or precedent. Further, it is consistent with the Commission's findings in both Case No. U-12043 and Case No. U-12035. In the latter case, the Commission recognized that the parties had been free to negotiate a provision like that which Ameritech proposes here, although they had not done so. In the present case, the parties have not reached an agreement on this issue and the Panel has found no authority for imposing such a provision on Coast.

Further, the Panel finds that adoption of Coast's language will not permit Coast to choose advantageous provisions of tariffs to mix with its negotiated provisions, thus unilaterally modifying the contract. Coast may either purchase a service or product under a generally available tariff, with all of its conditions, rates, and terms, or it may purchase that service or product pursuant to the negotiated/arbitrated agreement, with its concomitant conditions, rates, and terms. But Coast may not mix provisions of one with the other without obtaining an amendment to the contract. Ameritech is not required to provide products or services on terms to which it has not agreed, either in designing its tariffs or negotiated/arbitrated interconnection

agreement.

The Panel concludes that Ameritech's proposed language would likely dampen competition. Ameritech's proposed language not only covers all those products and services available under the contract, but all products and services subject to Sections 251 and 252 of the 1996 federal Act. Thus, pursuant to Ameritech's language, Coast would potentially be unable to purchase a product or service not covered in the interconnection agreement, but available to other CLECs through tariff provisions. In contrast, the Panel finds that adopting Coast's language will allow Coast to purchase any available service pursuant to Ameritech tariff, regardless of whether it is covered by the interconnection agreement. Adoption of Coast's language should also reduce delays in Coast's ability to obtain and offer new products and services.

Therefore, the Panel concludes that Ameritech's proposed Section 29.18 should be rejected and Coast's proposed Sections 29.18 and 30.04 should be adopted.

ISSUE 41: Indemnification for Collocation Premises

Whether Ameritech should indemnify Coast for any loss to Coast caused by Ameritech in the course of performing work in the space in which Coast is collocated.

DISCUSSION AND DECISION:

Coast has agreed to language proposed by Ameritech that requires Coast to indemnify Ameritech and Coast proposed Section 12.10.7, which includes language that would make that indemnification reciprocal. In other words, Coast seeks a contract provision that would require Ameritech to indemnify Coast and hold it harmless for any injuries to persons or property that occur due to work performed in the collocation space by Ameritech, its employees, agents, or

vendors.

Ameritech takes the position that the proposed provision is not necessary. It its view, Coast must be held to indemnify Ameritech for damage caused by Coast because Coast's collocation increases the risk of damage or injury. But, Ameritech argues, there is no need for Coast's proposed reciprocal provision because Coast's risk is not increased by virtue of the collocation arrangement.

The Panel finds that Coast's proposed language making the indemnification mutual and reciprocal is the most reasonable. The Panel recognizes a risk to Coast, once it has collocated in an Ameritech space, whenever Ameritech performs work in the collocation space. In the Panel's view, Ameritech should be required to protect against the risk created by its own employees or agents.

IV.

CONCLUSION

Therefore, for the reasons enumerated above, the Panel recommends that the Commission approve of the interconnection agreement as modified by this Decision of the Arbitration Panel.

THE ARBITRATION PANEL

George Schankler

Margaret Wallin

Tom Saghy

June 29, 2000
Lansing, Michigan
dp

ISSUED AND SERVED: July 5, 2000

Exhibit __ (TJG-2)
Docket No. 000084-TP

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the petition of **COAST TO COAST TELECOMMUNICATIONS, INC.**, for arbitration of interconnection rates, terms, conditions, and related arrangements with **MICHIGAN BELL TELEPHONE COMPANY, d/b/a AMERITECH MICHIGAN.**	)	Case No. U-12382

At the August 17, 2000 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER ADOPTING ARBITRATED AGREEMENT

On February 12, 2000, Coast to Coast Telecommunications, Inc., (Coast) filed a petition seeking arbitration of an interconnection agreement with Ameritech Michigan pursuant to Section 252 of the federal Telecommunications Act of 1996 (the federal Act), 47 USC 252, the federal rules promulgated pursuant to the federal Act, and the Commission's July 16, 1996 order in Case No. U-11134, which established procedures for arbitrating interconnection agreements. According to the petition, the parties are currently operating under an interconnection agreement executed on

March 17, 1997 and approved by the Commission on June 25, 1997 in Case No. U-11375.[1] The petition listed 40 issues.

On April 19, 2000, Administrative Law Judge George Schankler appointed himself, Tom Saghy, and Margaret Wallin to the arbitration panel.

On May 8, 2000, Ameritech Michigan filed a response to the petition, in which it raised two additional issues.

On May 22, 2000 the parties submitted a joint filing that set out the proposed contract language in dispute and provided a status matrix of issues. That matrix revealed that little progress had been made in negotiations. On May 24, 2000, the panel met with the parties and directed them to meet (with each side represented by persons with authority to agree to terms) in an effort to resolve some of the numerous outstanding issues. That meeting occurred on June 1, 2000 after which the number of issues had been reduced to 10.

On June 8, 2000, the parties presented their respective positions before the arbitration panel concerning specific issues for which the panel had requested presentations. At that time, the parties indicated that two additional issues had been resolved. Following their presentations, the parties each filed a Proposed Decision of the Arbitration Panel (PDAP) on June 20, 2000, which indicated that an additional issue had been resolved. On July 5, 2000, the arbitration panel issued the Decision of the Arbitration Panel (DAP).

On July 17, 2000, Ameritech Michigan filed objections to the recommendations of the arbitration panel on which it did not prevail. Those issues are addressed below.

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[1] The three-year term of that agreement has been extended pursuant to the May 1, 2000 amendment (the third amendment), which was approved by the Commission on June 5, 2000.

Additional Points of Interconnection

The parties disagreed concerning whether Ameritech Michigan should be permitted to require Coast to allow additional points of interconnection at any Coast central office upon written notice from Ameritech Michigan that it would do so. Coast objected to Ameritech Michigan's proposed language because it desired to retain the right to review requests for interconnection prior to implementation. The panel agreed with Coast on this issue, based on its determination that Coast should be permitted to retain a right to review any proposed interconnections to its network. The panel further stated its belief that, as a practical matter, Ameritech Michigan would be able to interconnect with Coast in a manner that meets its needs, but that should a dispute arise, Ameritech Michigan could bring the issue before the Commission for resolution.

Ameritech Michigan objects and argues that the panel failed to adequately consider the lack of merit to Coast's opposition to Ameritech Michigan's proposed language. Ameritech Michigan argues that Coast's objections are without substance and that any costs to Coast would be minimal. It states that Coast's original objection to this language, its belief that Ameritech Michigan might impose on Coast the obligation to create a joint fiber meet, is dispelled by noting contract language requiring both parties' agreement for joint fiber meets. Ameritech Michigan argues that Coast's admitted preference that additional trunks come directly from an end office rather than from the tandem should have led the panel to adopt Ameritech Michigan's language.

Ameritech Michigan further argues that the panel failed to consider or address the legal arguments that Ameritech Michigan raised. The company maintains that the federal Act does not preclude Ameritech Michigan from connecting an additional switch in its network to the parties' existing points of interconnection. Moreover, Ameritech Michigan argues, it has a right under the federal Act to "retain responsibility for the management, control and performance of its own

network." FCC First Report and Order, ¶203.[2] In order for it to fully realize that right, Ameritech Michigan argues, the proposed language must be included in the contract. Moreover, Ameritech Michigan argues, this language merely makes additional interconnections equally available to both parties.

Finally, Ameritech Michigan argues that if the Commission allows this result to stand, Ameritech Michigan will be forced to negotiate or litigate with each competitive local exchange carrier (CLEC) on the design of Ameritech Michigan's network. It projects that a CLEC could arbitrarily refuse to allow Ameritech Michigan to establish appropriate network connections, which, Ameritech Michigan argues, would negatively affect network design and reliability.

The Commission finds that the arbitration panel appropriately rejected Ameritech Michigan's arguments and adopted Coast's position on this issue. As noted by the Federal Communications Commission (FCC), Section 251 of the federal Act imposes additional requirements on incumbent local exchange carriers (ILEC), including the requirement to permit interconnection at any technically feasible point on the ILEC's network. See 47 USC 251(c). Ameritech Michigan cites no similar provision for CLECs.

Although Ameritech Michigan argues that its only intentions are to protect its network functioning, the language it proposed did not limit its ability to demand interconnection to instances in which such interconnection is needed or desirable for handling local traffic. Rather, Ameritech Michigan proposed language that would give it absolute power to determine whether additional interconnection is necessary. There is no limiting language requiring the request to be reasonable or supported by any particular criteria. The Commission finds that Ameritech Michi-

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[2] In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC Order No. 96-325, 11 Fccr 15449 (1996).

gan's proposed broad language is not required for it to maintain control of its network. Although Ameritech Michigan is correct that there is no provision in the Act that would prohibit incorporating this provision in the interconnection agreement, the company cites no provision that would require allowing the ILEC to impose unwanted interconnection on the CLEC at the former's unfettered discretion.

Foreign Exchange (FX) Service

As described in the DAP, FX service allows a customer to obtain an NXX code[3] for a geographic area different from the area where the customer is actually located. Calls made from persons in the geographic area assigned to that NXX code are able to reach the FX customer for the price of a local call because Ameritech Michigan's billing system recognizes intra-NXX calls as local. Ameritech Michigan took the position that its "Appendix FX" should be added to the contract. That appendix would require either that Coast compensate Ameritech Michigan for these calls and remove them from the category of calls for which Ameritech Michigan pays reciprocal compensation or that Coast establish a point of interconnection in each local calling area associated with an NXX assigned to a Coast FX customer. In that manner, Ameritech Michigan argued, the costs of interexchange transport will be borne appropriately by Coast and its FX customer.

The arbitration panel rejected Ameritech Michigan's position. It reasoned that the following facts supported its decision:

1. Coast currently provides service to its customers through one switch, which is located in Pontiac. This current configuration is authorized under [the federal Act].

[3] The NXX code is the first three digits of the seven-digit telephone number.

2. Ameritech [Michigan] is obligated to deliver all of Coast's traffic to its Pontiac switch.

3. Ameritech [Michigan]'s billing system identifies NXX to NXX calls as local and cannot distinguish such calls by ultimate destination.

4. Ameritech agrees that it incurs no additional costs related to what it refers to as FX calls under the current Coast configuration. (Tr. 60)

5. Ameritech [Michigan] admits that "There's been a definition of a local call. From NXX to NXX is a local call." (Tr. 64)

DAP, pp. 9-10.

The arbitration panel noted that because all calls terminated on Coast's network must be delivered to Coast's switch in Pontiac, the costs to Ameritech Michigan to deliver an FX call to Coast is the same as when the call is undisputedly local. Thus, the panel reasoned, Ameritech Michigan's argument that Coast receives a free ride for FX service must be rejected, citing the May 8, 2000 decision of the Illinois Commerce Commission (ICC) regarding an arbitrated agreement between Focal Communications Corporation of Illinois (Focal) and Ameritech Illinois. The panel further noted Coast's stated plans to build additional facilities, which the panel believed would alleviate some of Ameritech Michigan's concerns. Finally, the arbitration panel rejected Ameritech Michigan's alternative that Coast should be required to establish an additional point of interconnection (POI) in each area for which it has an NXX that it has assigned to an FX customer.

Ameritech Michigan objects to the arbitration panel's conclusions and argues that the panel effectively ruled that Ameritech Michigan must (1) forgo intraLATA toll revenues to which it would otherwise be entitled, (2) pay for the transport of what is marketed as a local call, but is not truly a local call, and (3) continue to pay reciprocal compensation on what is actually an interexchange call. Ameritech Michigan claims that each of these effects is erroneous and contrary to law.

Ameritech Michigan states that although it does not dispute the truth of the facts relied upon by the arbitration panel in reaching its decision, it does dispute the relevance of those facts. In Ameritech Michigan's view, FX service is not local exchange service, but is an interexchange service and should be rated as such between carriers. It cites and heavily relies upon the reasoning of the Maine Public Utilities Commission (Maine PUC) in New England Fiber Communications, LLC, d/b/a Brooks Fiber, Docket No. 99-593, issued June 30, 2000.

Ameritech Michigan reiterates that these are essentially toll calls that merely look like local calls to the end-user because of the assignment of the NXX associated with the area. Ameritech Michigan states that the FX customer customarily bears the cost of the FX service, because it is the party benefitting from the fiction that toll calls to it appear to the calling party to be local. When transporting calls across two networks, argues Ameritech Michigan, the carrier providing the FX service compensates the originating carrier for the use of its network in provisioning the FX service and then charges its FX customer accordingly.

As in the Maine case, Ameritech Michigan argues, Coast does not create a different, greater local area through its FX service, nor does it provide competing local exchange service in any meaningful sense. Ameritech Michigan urges the Commission to hold, as the Maine Commission did, that the CLEC "is free to offer calling areas of its own design so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local). . . . What Brooks is doing . . . is offering free interexchange calling to customers of other LECs . . . in effect attempting to redefine the local calling areas of other LECs." Id., p. 14.(emphasis in original.) Ameritech Michigan argues that the Commission should not equate the rating of calls for end-users with the appropriate rating of calls between carriers. It argues that merely because Coast may not charge

the caller for this FX service does not require a finding that Coast should not pay for the service provided by Ameritech Michigan to permit the call to be completed.

Ameritech Michigan goes on to state that if the arbitration panel's result is adopted, Coast will enjoy an unfair competitive advantage. It argues that Coast may offer FX service to information service providers (ISPs) or other customers for much less than other carriers can, because it will not be paying the full costs of the service. Moreover, although Coast stated it has plans to expand its number of POIs in Michigan, the result reached by the arbitration panel will create a disincentive for Coast to implement those plans.

Finally, Ameritech Michigan argues that the precedents relied upon by the arbitration panel are distinguishable from the instant case. It points out that the ICC decision does not address the Appendix FX, which Ameritech Michigan seeks to have added to the contract in this case. Moreover, Ameritech Michigan argues, the Commission's April 12, 1999 decision in Case No. U-11821, a complaint case involving CenturyTel, does not dictate the arbitration panel's result. In that case, argues Ameritech Michigan, the Commission fined CenturyTel for violating its tariffs when it billed the end-user for toll charges associated with her ISP traffic to an adjacent exchange, despite the tariff's listing that NXX as local. In that context, says Ameritech Michigan, the Commission found that routing and rating need not be the same. But, Ameritech Michigan argues, the decision relates to the CLEC's relationship to the end-user. Likewise, says Ameritech Michigan, the Commission's February 22, 2000 order in Case No. U-12090, a complaint case involving Coast and GTE North Incorporated (GTE), does not relate to FX service and relies upon GTE's local calling tariffs for the premise that a call made by a GTE end-user to the Coast ISP customer located within GTE's extended area service (EAS) area should be rated as a local call, regardless of how it is routed. Ameritech Michigan points out that, in the present case, the issue

relates to the appropriate compensation between carriers, not end-users, and there is neither an interconnection agreement nor a tariff to determine how these calls should be rated.

The Commission finds that the arbitration panel's decision on this issue should be affirmed. Commission precedent on the issue of the appropriate rating of a call to a customer located outside the geographic area associated with the NXX assigned to that customer has consistently found that intra NXX calls are to be considered local for rating purposes, despite their actual routing. See, the April 12, 1999 order in Case No. U-11821, Bierman v CenturyTel of Michigan, Inc., and the February 22, 2000 order in Case No. U-12090, Coast to Coast v GTE North Incorporated et al.

The arbitration panel adopted the reasoning of the ICC in its May 8, 2000 decision involving an arbitration agreement between Focal and Ameritech Illinois. In that case, Ameritech Illinois requested language that would have required Focal to establish a point of interconnection within 15 miles of the rate center for any NXX code that Focal used to provide FX service. The ICC determined that nothing in state or federal law required adoption of the proposal and it rejected Ameritech Illinois' arguments concerning the alleged "free ride" that Focal would obtain without the requirement. That free ride argument appears to be the same as one of the arguments that Ameritech Michigan poses in this case. In the ICC's view, the manner in which the parties currently handle traffic belied Ameritech Illinois' argument, because Ameritech Illinois would not be required to carry traffic any further or incur any extra expense based on the nature of the call being FX service. Rather, Ameritech Illinois delivers the call to the point of interconnection associated with the NXX, after which, Focal delivers the call to the FX customer, wherever that customer might be located.

Contrary to Ameritech Michigan's assertions, the DAP reflects the arbitration panel's adoption of the ICC's reasoning that there is really no free ride to remedy, and thus, no compelling reason to

incorporate the proposed language. Admittedly, the ICC did not address the Appendix FX proposed in this case. But both the proposed Appendix FX and the alternative of requiring a POI within a short distance of a rating center for which the CLEC obtains an NXX are intended to address the same perceived problem, which the ICC held did not exist as a practical matter.

The Commission is not persuaded that it should follow the result of the Maine PUC's decision concerning Brooks Fiber (Brooks). In its June 30, 2000 order, the Maine PUC determined that 54 NXXs that had been assigned to Brooks should be returned to the North American Numbering Plan Administrator (NANPA) because, in the Maine commission's view, those NXXs were not being used to provide local exchange service. Rather, Brooks was using those NXXs to allow customers, located in areas from which a call to Portland would be a toll call, to reach an ISP located in Portland by dialing a "local number." Brooks desired to have these calls treated as local, both for the originator of the call and for purposes of determining the appropriate compensation between Brooks and the ILEC. The Maine PUC found that Brooks was not providing a broader area for legitimate basic local exchange service, but rather was attempting to redefine the local calling area of another LEC by merely changing the designation of what would otherwise be interexchange calls through this "FX-like" service. It stated that if Brooks desired to provide a local calling area greater than that afforded by the ILEC, Brooks must compensate the ILEC for use of the network.

That decision is contrary to the position that this Commission has previously taken. See, the Commission's June 25, 1997 order in Case No. U-11340, in which the Commission found that Ameritech Michigan's historic boundaries for local calling should not dictate what may constitute a local calling area for competing providers and that calls within calling areas established as local by the CLEC should be treated as local for reciprocal compensation purposes. Ameritech

Michigan's arguments suggest that Coast is not providing local exchange service to an expanded local area, but using this service to retain ISPs as customers. However, the Commission notes that under the amended version of the Michigan Telecommunications Act, MCL 484.2101 et seq., MSA 22.1469 (101) et seq., basic local exchange licensees must, within two years, market basic local exchange service to all persons located within the geographic area for which the provider has a license, or risk losing the license or having its geographic area restricted. See, MCL 484.2303(1); MSA 22.1469(303)(1). Although MCL 484.2203(16); MSA 22.1469(203)(16) provides that the new law does not "amend, alter, or limit" any case commenced before its effective date, the interconnection agreement will take effect after the new law and Coast will be required to comply with MCL 484.2303(1); MSA 22.1469(303)(1).

The Commission finds that the arguments raised by Ameritech Michigan concerning the likely effect of the Commission's holdings on a competitive environment may deserve further study. However, it would be unwise for the Commission to reverse its position on this issue in an arbitration case, without the ability to grant other parties that might be significantly affected by such a reversal an opportunity to participate. Additionally, the Commission notes that a portion of the recent amendments to the MTA requires that calls made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call. MCL 484.2304(11); MSA 22.1469(304)(11). The appropriate implementation of this provision is currently the subject of Commission proceedings in Case No. U-12528, which was commenced by the Commission's July 17, 2000 order. The conclusions reached in that case may affect the Commission's position concerning the appropriate treatment and rating for FX and ISP calls.

Reciprocal Compensation for ISP Traffic

The parties disagreed about whether compensation between carriers should be paid on ISP traffic. Coast took the position, supported by substantial Commission precedent, that calls to ISPs within the local calling area are local calls requiring reciprocal compensation. Ameritech Michigan took the position that the FCC's decisions require finding that calls to ISPs are not local calls because they terminate on the internet, not within the local calling area. Thus, it argued, the reciprocal compensation provision in 47 USC 251(b)(5) does not apply.

The arbitration panel indicated that its review of previous Commission orders on this point led to the conclusion that calls to ISPs within the local calling area are local calls for purposes of reciprocal compensation between carriers. In the panel's view, because the Commission has continuously and repeatedly found in favor of the position taken by Coast, there was no reason to adopt Ameritech Michigan's language on this issue.

Ameritech Michigan objects and argues that the arbitration panel's decision should be reversed. It argues, as it has in prior cases, that the reciprocal compensation duty of 47 USC 251(b)(5) does not apply to ISP traffic, because the FCC has ruled that ISP traffic does not originate and terminate in the same local exchange area, but instead is predominantly interstate traffic. It also reiterates its arguments that the Commission does not have jurisdiction to determine whether these calls are local and thus subject to reciprocal compensation, because the FCC has exclusive jurisdiction over the issue. Moreover, Ameritech Michigan argues that despite whatever decision the Commission may make, the final outcome of the pending FCC Docket 99-68 , In the

matter of Inter-Carrier Compensation for ISP-Bound Traffic,[4] will control the parties' conduct. Further, Ameritech Michigan argues, no reciprocal compensation should be required on this traffic based on cost causation principles. Ameritech Michigan insists that when a call is placed to an ISP, it is the ISP that is the cost causer, not the originator of the call.

The Commission finds that the arbitration panel's conclusions with regard to this issue should be affirmed. In its January 28, 1998 order in Cases Nos. U-11178 et al., the Commission held that calls to ISPs within the local calling area are local calls. Thus, the Commission found, reciprocal compensation was required under the interconnection agreements at hand. The Commission's determination that calls to ISPs located within the local calling area are local calls for purposes of reciprocal compensation has been repeated in later orders. See, e.g., the Commission's April 12, 1999 order in Case No. U-11821, the February 22, 2000 order in Case No. U-12090, and the June 5, 2000 order in Case No. U-12284. In those orders, the Commission rejected Ameritech Michigan's arguments that the Commission lacks jurisdiction over this issue and that calls to ISPs are not local, including Ameritech Michigan's argument that the FCC's February 26, 1999 decision in CC Docket 96-98 supports the ILEC's position on this issue. Specifically, the Commission's February 22, 2000 order in Case No. U-12090, at pp. 4-6 fully addressed this argument, finding it baseless. See also, the Commission's June 5, 2000 order in Case No. U-12284, pp. 4-7. Ameritech Michigan raises no new arguments that persuade the Commission to reach a different conclusion in this case. The fact that the present case is an arbitration agreement rather than a

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[4]The FCC's February 26, 1999 decision in Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-38, in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket 96-98, vacated and remanded in Bell Atlantic Telephone Companies v FCC, 206 F 3d 1 (DC Cir, 2000).

complaint seeking interpretation of a tariff or interconnection agreement provision does not alter the basis for finding that ISP calls within the local calling area are local for purposes of rating and intercarrier compensation. The Commission acknowledges that the parties could have reached an agreement not to compensate each other for these calls. However, they did not, and the Commission finds that it should not impose such a provision on Coast.

Finally, Ameritech Michigan complains that the arbitration panel failed to address the issue of the appropriate rate for intercarrier compensation for ISP calls. It insists that any compensation for this traffic should be lower than the reciprocal compensation for terminating voice calls because it costs Coast less to deliver Internet traffic to its ISP customers than it costs either party to terminate local traffic to non-ISP customers. Ameritech Michigan states its belief that the compensation rate should be zero, or a declining rate that, over a 12-month period, would be reduced to zero.

As a separate alternative, Ameritech Michigan argues that the Commission should, either in this case or a separate docket, examine and set the appropriate rates for ISP calls, the results of which should apply retroactively to the effective date of the parties' agreement. If the Commission determines a rate in this case, Ameritech Michigan argues, it should be bifurcated into two rate elements, one for initial set-up charge and the other to recover the per minute usage costs of each call. It states that based on the cost studies approved in the Commission's November 16, 1999 order in from Case No. U-11831, the rate structure should be $.00733 for the set-up charge and $.000778 for a per minute of use charge, or a melded charge of $0.001034 per minute, which assumes an average holding time of 28.7 minutes per call. See Verified Statement of Eric L. Panfil, p. 17. Additionally, Ameritech Michigan took the position that Coast should not receive the tandem switching and transport rate associated with this traffic, because Coast generally serves

ISPs that are either located very close to its switch or collocated at the switch itself. Thus, Ameritech Michigan argued, Coast does not incur transport costs of any significance.

The arbitration panel rejected Ameritech Michigan's alternative positions. In the panel's view, arbitration procedures require the panel to choose between the two positions of the parties, not an array of alternatives. In this case, the panel chose the language proposed by Coast, and rejected the language proposed by Ameritech Michigan. It found no reason to also address the appropriate rate for these calls.

The Commission finds that the rate to be paid for reciprocal compensation for ISP calls should not be altered in this arbitration proceeding. Although Ameritech Michigan proffers numbers that it claims are "based on" its approved cost studies, the Commission notes that Ameritech Michigan did not propose a separate, lower rate for calls to its ISP customers in that case. If it sought to recognize lower per minute costs based on longer holding times for ISP calls, or to bifurcate the rate for all calls to ameliorate the difference between calls held for long periods, its latest cost study case would have been an appropriate time to examine the issue. To allow Ameritech Michigan to now alter the reciprocal compensation rate only for ISP calls would effectively sanction the company's altering only a portion of its cost studies, contrary to the directives in the Commission's November 16, 1999 order in Case No. U-11831, p. 40, in which the Commission directed that new cost studies must be proposed only for the company's entire system, except for new services. Calls to ISPs do not fall within that exception. That requirement is intended to prevent inequities associated with piecemeal changes.

Contract Services

The parties submitted several issues concerning the terms under which Coast would be allowed to assume contracts that Ameritech Michigan has with certain end-users. Among other things, Coast sought inclusion of language in the interconnection contract that would require Ameritech Michigan to produce upon request a validly executed copy of its contract with the end-user customer within 10 business days. Upon Ameritech Michigan's failure to produce a copy within the specified period, Coast argued, the contract with the end-user should be considered null and void and not binding on Coast. Coast asserted that it should not be required to assume all responsibilities under the contract without first having fair notice of what those liabilities might be.

Ameritech Michigan argued that a provision in a contract between Coast and Ameritech Michigan could not lawfully nullify a contract that Ameritech Michigan has with an end-user customer.

The arbitration panel determined that Coast should be entitled to receive a copy of any contract within 10 business days of its request. Failure to produce the contract would entitle Coast to treat the customer as a new customer, not subject to any contractual obligations or the lower assumed contract discount rate.

Ameritech Michigan objects and argues that the arbitration panel has adopted a position unsupported by law. Moreover, Ameritech Michigan argues, the issue is not even properly before the panel because it has no connection with any request for interconnection, service, or network element arising under the federal Act. In Ameritech Michigan's view, Coast should in the first instance be required to obtain a copy of the contract from the end-user customer rather than Ameritech Michigan. If the end-user customer does not have a copy, says Ameritech Michigan, the customer could contact Ameritech Michigan's retail business unit to obtain a copy. In the

alternative, Ameritech Michigan states, Coast could obtain the needed information from the customer service record at the Ameritech Michigan preordering interface.

The Commission finds that the decision of the arbitration panel should be affirmed. At the outset, the Commission finds that this is an issue properly before the arbitration panel because it deals with the terms and conditions of resale services, as provided in Section 251 of the federal Act. Moreover, the Commission finds that if, as Ameritech Michigan has argued (and the arbitration panel agreed), Coast must be willing to sign an agreement to be bound by the terms of an assumed contract between Ameritech Michigan and an end-user customer, Coast should be able to review a copy of the contract that created those obligations. Without the ability to review such a contract, Coast would be unable to determine precisely what obligations it is taking on, thus placing the CLEC in a position that might require litigating what contract rights actually exist. Further, the Commission finds that should Ameritech Michigan be unable or unwilling to produce a copy of the contract within a reasonable time (10 business days), Ameritech Michigan should not be permitted to insist on Coast's performance under that contract. Rather, under those circumstances, the Commission finds that Coast should be allowed to treat the customer as a new customer. Contrary to Ameritech Michigan's argument, this decision does nothing to alter the rights and responsibilities of the parties to the original contract for services. It merely relieves Coast of any obligation to perform under a contract that it cannot review.

Right to Purchase from Tariff or Contract

Ameritech Michigan sought inclusion of contract language that would effectively prohibit Coast from purchasing products or services that are described in Sections 251 and 252 of the federal Act, 47 USC 251 and 252, pursuant to any effective tariff. Ameritech Michigan argued that

the proposed language was necessary to prevent Coast from seeking to extend, modify, or otherwise change the terms of the contract by purchasing from a tariff products or services covered by the agreement. Further, Ameritech Michigan argued that adopting Coast's position would violate the Sierra-Mobile doctrine[5], which Ameritech Michigan argues prevents a party to a contract from choosing different terms off a tariff. Finally, Ameritech Michigan argued that prohibiting Coast from purchasing products covered by the contract off of an Ameritech Michigan tariff would make business sense and would bring stability to the parties' business relationship.

The arbitration panel rejected Ameritech Michigan's position and found Coast's proposed language to be more reasonable and more consistent with promoting competition within the state. The panel took the position that tariffed services should be available to providers, regardless of whether there is an interconnection agreement. The panel found that adopting Coast's language would not violate the Sierra-Mobile doctrine or any other state or federal law or precedent. Moreover, the panel found that its decision was consistent with the Commission's January 3, 2000 order in Case No. U-12035 and its February 9, 2000 order in Case No. U-12043. It found Ameritech Michigan's proposed language overly broad in that it might preclude Coast from purchasing a product or service available through tariff that might be included in the cited federal Act sections, but that was not mentioned in the interconnection agreement.

The arbitration panel was unpersuaded that the language proposed by Coast would permit it to impermissibly mix terms of the agreement with terms available in a tariff. Rather, the panel pointed out that Coast would be required to choose whether to purchase products or services pursuant to all of the related terms or conditions in the contract or the applicable tariff. The panel

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[5] United Gas Pipeline Co v Mobile Gas Service Corp, 350 US 332; 76 S Ct 353; 100 L Ed 373 (1956) and FPC, v Sierra Pacific Power Co, 350 US 348; 76 S Ct 368; 100 L Ed 388 (1956).

concluded that adoption of Coast's language would likely reduce delays in Coast's ability to obtain and offer new products and services.

Ameritech Michigan objects and restates the arguments that it brought before the arbitration panel.

The Commission finds that the arbitration panel's decision should be affirmed on this issue for the reasons stated by the panel in its decision. Ameritech Michigan's arguments fail to persuade the Commission that a different result is required.

Collocation Indemnification

Coast proposed language for Section 12.10.7 of the interconnection agreement that would require Ameritech Michigan to indemnify Coast and hold it harmless for any injuries to persons or property that occur due to work performed in the collocation space by Ameritech, its employees, agents, or vendors. The proposed language mirrors and would make mutual the obligation language, in which Coast has already agreed to indemnify Ameritech Michigan. Ameritech Michigan rejected this proposed mutuality of indemnification, arguing that Coast's presence in the collocated space increases risk to Ameritech Michigan, but the fact that Coast is collocated does not increase Coast's risk.

The arbitration panel determined that the language proposed by Coast should be included in the interconnection agreement.

Ameritech Michigan objects and argues that Article 24 of the interconnection agreement, to which the parties have already agreed, protects each party against the results of negligence or intentional misconduct by the other. What Ameritech Michigan sought to protect itself against in Section 12.10.7 was a perceived additional risk not covered in Article 24. It states that Coast's

presence on Ameritech Michigan's property increases the risk of loss to Ameritech Michigan but not Coast. In fact, Ameritech Michigan states, its collocation rates do not include the costs of insuring Coast for virtually any loss in the collocation context, even without proven fault on Ameritech Michigan's part.

The Commission finds that the arbitration panel's decision making the indemnification obligation mutual should be affirmed. As the panel noted, there is a risk to Coast, once it has collocated in an Ameritech Michigan space whenever Ameritech Michigan performs work in the area. Ameritech Michigan actions that might not amount to negligence may cause great loss to the CLEC. If Coast is required to indemnify Ameritech Michigan, it is only appropriate that the obligation should be mutual. Ameritech Michigan's argument that this risk was not included in its cost study for determining collocation rates is not persuasive. Ameritech Michigan presented no evidence concerning the likely magnitude of such costs. The Commission finds that they are likely to be minimal. Moreover, it is not clear whether Coast's agreement to indemnify Ameritech Michigan would not offset any costs for Ameritech Michigan to indemnify Coast.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The interconnection agreement proposed by the decision of the arbitration panel should be approved.

c. Within 10 days from the date of this order, the parties should file an executed interconnection agreement consistent with the DAP.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel is adopted.

B. Within 10 days of the date of this order, Coast to Coast Communications, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(SEAL)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of August 17, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

c. Within 10 days from the date of this order, the parties should file an executed interconnection agreement consistent with the DAP.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel is adopted.

B. Within 10 days of the date of this order, Coast to Coast Communications, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel.

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

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

_____

Commissioner

By its action of August 17, 2000.

_____

Its Executive Secretary

In the matter of the petition of **COAST TO COAST TELECOMMUNICATIONS, INC.**, for arbitration of interconnection rates, terms, conditions, and related arrangements with **MICHIGAN BELL TELEPHONE COMPANY, d/b/a AMERITECH MICHIGAN.**	)	Case No. U-12382

Suggested Minute:

"Adopt and issue order dated August 17, 2000 adopting the decision of the arbitration panel establishing interconnection arrangements between Coast to Coast Telecommunications, Inc., and Ameritech Michigan, as set forth in the order."