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April 17, 2001

VIA E-DOCKET

Donna Caton
Chief Clerk
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

Re: Verizon Wireless/Ameritech Illinois Interconnection Arbitration
ICC Docket No. 01-0007

Dear Ms. Caton:

Enclosed for filing, please find the Public copy of the Brief on Exceptions of Verizon Wireless and accompanying Exceptions in the above-captioned proceeding. Proof of Service upon the parties of record is also enclosed.

Very truly yours,

CLARK HILL P.L.C.



Haran C. Rashes

HCR/kag
Enclosures

cc: Parties of Record

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STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

In the matter of Verizon Wireless)
Petition for Arbitration pursuant to)
Section 252(b) of the Telecommunications)
Act of 1996 to establish an Interconnection)
Agreement with Illinois Bell Telephone)
Company d/b/a Ameritech Illinois)
_____)

Docket No. 01-0007

BRIEF ON EXCEPTIONS OF VERIZON WIRELESS

[PUBLIC VERSION]

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Dated: April 17, 2001

TABLE OF CONTENTS

TABLE OF CONTENTS		II
I.	INTRODUCTION AND GENERAL OBSERVATIONS	1
A.	<i>The HEPO fails to resolve issues within the context of this proceeding, as required by Section 252(b)(4)(C) of the Telecommunications Act of 1996.</i>	3
B.	<i>The HEPO selectively applies or fails apply certain remedies and is internally inconsistent.</i>	5
II.	ARGUMENT	6
ISSUE 1.A:	DIRECT TRUNKING	6
A.	<i>Contrary to the HEPO’s finding, Ameritech has not met its burden to demonstrate that tandem exhaust justifies its denial of tandem interconnection.</i>	6
B.	<i>The HEPO fails to note that Ameritech does not impose the burden to trunk to a point off of the tandem on all carriers interconnecting with Ameritech.</i>	11
C.	<i>The HEPO incorrectly assumes that Verizon Wireless does not dispute Ameritech’s requirement that Verizon Wireless should trunk direct to third-parties.</i>	13
D.	<i>The HEPO fails to resolve the issue of Ameritech’s Restriction on Interconnection at Technically Feasible Points—Direct Trunking.</i> ...	15
ISSUE 6:	NETTING	17
ISSUE 7:	MILEAGE FOR CALCULATING TANDEM TERMINATION RATE CHARGED BY AMERITECH.	19
A.	<i>The record is sufficient to determine whether or not actual mileage should be implemented.</i>	19
B.	<i>If adopted, the recommendation in the HEPO would permit Ameritech to continue an illegal, discriminatory practice.</i>	21
C.	<i>The HEPO only indicates that the Commission “may” provide for a true-up mechanism for charging actual mileage for tandem terminations.</i>	23
D.	<i>The HEPO fails to resolve the issue of Ameritech’s Imposition of Different Standards for CMRS Carriers As Those Applied to CLECS for the Same Functions.</i>	23
ISSUE 10.	TRANSITING RATE	25
A.	<i>The HEPO fails to resolve whether or not Ameritech has failed to charge forward-looking rates for transiting.</i>	25
B.	<i>The HEPO fails to provide for any true-up mechanism for Ameritech’s transit rates.</i>	26
C.	<i>The HEPO fails to address the issue of equivalent transiting reports.</i>	27
ISSUE 11.	PERFORMANCE STANDARDS	28

A.	<i>The HEPO erred in failing to consider the Commission’s decision in PrimeCo Personal Communications v. Illinois Bell Telephone Communications in consideration of what Performance standards should be required.....</i>	28
B.	<i>The performance standards in the Administrative Code are minimums. Carriers should be striving to higher performance standards.....</i>	30
C.	<i>By deferring to a separate docket, the HEPO fails to resolve the open issues.</i>	31
D.	<i>The HEPO erred in characterizing Verizon Wireless’ request for more stringent performance standards as a request for superior treatment over other carriers</i>	32
	ISSUE AIT-2. TRANSIT TRAFFIC/RECIPROCAL COMPENSATION	32
	ISSUE AIT-4. TRANSITING	36
III.	CONCLUSION	38

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BRIEF ON EXCEPTIONS OF VERIZON WIRELESS

[PUBLIC VERSION]

Now comes Verizon Wireless, by and through its counsel, and pursuant to Section 200.830 of the Rules of Practice before the Illinois Commerce Commission (“Commission”), 83 Ill. Admin. Code 200.830 and Section 761.430 of the Commission’s Arbitration Practice Rules for Telephone Utilities, 83 Ill. Admin. Code 761.430, and respectfully submits its Brief on Exceptions to the Hearing Examiners’ Proposed Order (“HEPO”) in the above-captioned matter and states as follows:

I. Introduction and General Observations

By this brief, Verizon Wireless takes exception to the Hearing Examiners’ Analysis and Conclusions on seven issues identified in the HEPO. Specifically Verizon Wireless takes exception with respect to the following issues¹:

Issue 1.A: Direct Trunking;

¹ In the HEPO, the Hearing Examiners re-captioned many of the disputed issues from Verizon Wireless’ Petition and Ameritech’s Response to the Petition. For purposes of clarity, Verizon Wireless uses the captions set forth by the Hearing Examiners in the HEPO in these exceptions.

- Issue 6: Netting;
- Issue 7: Mileage for Calculating Tandem Termination Rates Charged by Ameritech;
- Issue 10: Transiting Rate;
- Issue 11: Performance Standards;
- Issue AIT2: Transit Traffic/Reciprocal Compensation;
- Issue AIT4: Transiting;

As noted below, Verizon Wireless takes exception to the ruling of law and finding of fact with respect to many of these issues, but also with respect to the manner in which they were made. In many instances throughout the HEPO, the recommendations are inconsistent with other findings, contrary to applicable federal and state law, and simply unsupported by the record in this proceeding. Moreover, the HEPO fails to address several of the issues raised by Verizon Wireless in its Petition and or Briefs. Accordingly, Verizon Wireless² takes this opportunity to make its exceptions, point out which issues have not been resolved in the HEPO, and request that the Hearing Examiners reconsider certain proposed findings.

² Throughout the HEPO, the Hearing Examiners refer to Verizon Wireless as “Verizon.” Though Verizon Wireless is partially owned by Verizon Communications Inc., Verizon Wireless operates the domestic wireless businesses that were formerly separately owned by Bell Atlantic Corporation, GTE Corporation, and VodaFone AirTouch, PLC. In Illinois, Verizon Wireless provides cellular, personal communications service, and paging through various entities, including AirTouch Cellular, GTE Wireless Incorporated, PrimeCo Personal Communications, AirTouch Paging, Illinois RSA 6 & 7 Limited Partnership, Illinois SMSA Ltd. Partnership, Chicago SMSA Ltd. Partnership, and Cybertel Cellular Telephone Company. To avoid any future confusion between Verizon Wireless and Verizon Communications, Inc., Verizon Wireless respectfully requests that the Commission’s final Order refer to it the Petitioner in this proceeding as Verizon Wireless.

Pursuant to Section 200.830(b) of the Rules of Practice before the Commission, 83 Ill. Admin. Code 200.830(b), Verizon Wireless submits concurrently suggested substitute language for the Commission's Order entitled Exceptions of Verizon Wireless.

A. The HEPO fails to resolve issues within the context of this proceeding, as required by Section 252(b)(4)(C) of the Telecommunications Act of 1996.

Section 252(b)(4)(C) of the Telecommunications Act of 1996, 47 U.S.C. §251, *et seq.*, ("1996 Act" or "TA 96") requires this Commission to resolve each of the issues set forth in Verizon Wireless' Petition or Ameritech's Response thereto no later than May 2, 2001.³ Section 252(b)(4)(C) states:

The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

The FCC has interpreted Section 252(b)(4)(C) of the 1996 Act to require a state Commission to decide "all of the issues clearly and specifically presented to it" Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, 12 FCCR 15,594, ¶ 36, 1997 FCC LEXIS 5,365 (Sept. 26, 1997).

Verizon Wireless submits that the proposed Commission Analysis and Conclusions contained in the HEPO, most notably with regard to Issue 1 (Direct Trunking), Issue 7 (Mileage for Calculating Tandem Termination Rate Charged by Ameritech, and Issue 10 (Transiting Rate), fail to resolve the issue in dispute within the context of this arbitration proceeding. The HEPO, instead, either recommends that the

³ May 2, 2001 is nine months following the August 2, 2001 receipt by Ameritech of Verizon Wireless' request to commence negotiations.

parties continue to negotiate specific terms and conditions or defers a resolution to a separate Commission proceeding.

Such recommendations clearly violate Verizon Wireless' statutory right to have an Interconnection Agreement, established through the Section 252 Arbitration proceeding, within nine months of Ameritech's receipt of Verizon Wireless' request to negotiate an Interconnection Agreement, pursuant to Sections 251 and 252 of the 1996 Act.

For example, the HEPO defers resolution of whether or not Verizon Wireless is entitled to cost-based rates for transiting to a proceeding that was commenced on June 3, 1998 in ICC Docket No. 98-0396. Likewise, the HEPO defers resolution of whether or not Ameritech must implement a system to base tandem termination rates on actual mileage to a proposed proceeding. The term of the Interconnection Agreement that is the subject of this proceeding is two years. Under the terms of the HEPO there is no guarantee that Verizon Wireless will have resolution of these issues within the term of the Interconnection Agreement, and certainly not by May 2, 2001 as required by law.

The HEPO states that it must defer resolution of these issues to other proceedings because a decision in favor of Verizon Wireless would "have far-reaching competitive and economic effects upon the telecommunications marketplace." HEPO, p. 17. Such a rationale fails to note that it is Verizon Wireless that has brought this Petition for Arbitration, seeking resolution of issues that it was unable to resolve during months of good-faith negotiation with SBC Communications, as an agent for Ameritech. Though the industry concerns raised in the HEPO may be valid, pursuant to Section 252, this Commission must resolve the issues between Verizon Wireless and Ameritech based on

“such information as may be necessary for the State commission to reach a decision on the unresolved issues.” Where information was unavailable, the Commission, through its Hearing Examiners, had a duty to request such information from either Verizon Wireless or Ameritech during the course of this arbitration proceeding, not as part of any subsequent or concurrent proceedings. 47 U.S.C. § 252(b)(4)(B). The HEPO thus fails to satisfy the basic requirements of Section 252.

B. The HEPO selectively applies or fails apply certain remedies and is internally inconsistent.

Based on clear evidence that Ameritech takes into consideration traffic from all carriers on its network in determining whether its tandems are at capacity, the Hearing Examiners found that tandem exhaust is a “significant problem” in Illinois. Despite this evidence that tandem exhaust, if a problem at all, is caused by the cumulative traffic carried by all interconnecting carriers, the HEPO proposes a solution specific to one interconnecting carrier, Verizon Wireless. Even if the Commission imposes the same requirements on other interconnecting carriers this will not solve the problem. This will instead result in the burden of Ameritech’s failure to invest in its network being exclusively placed on carriers who seek local interconnection, rather than on IXC’s or Ameritech itself. The HEPO fails to consider the efficiency for all carriers and consumers that would result if Ameritech were to be required to make additional investments in its tandems and infrastructure.

Yet when the HEPO encounters other “far-reaching” issues, it proposes to obtain the “input of a greater portion of affected parties” by initiating an “industry-wide docket” (HEPO, pp. 15-16) or defer the issue for resolution in an already existing larger docket (HEPO, p. 18). Rather than ordering Ameritech to implement an actual mileage

measurement for tandem transport or deal with the apparent discrepancy between Ameritech's transiting and its tandem switching rates, the HEPO simply "punts." Such selective and arbitrary application of the Hearing Examiners' and Commission's legal obligation to resolve interconnection disputes under 47 U.S.C. § 252 cannot be sustained as a matter of law.

The HEPO is internally inconsistent in other ways. The HEPO recommends that the Commission Staff initiate a docket to examine whether Ameritech should be required to use actual miles rather than a 23-mile median in calculating the common transport component of Ameritech's tandem reciprocal compensation rate. The HEPO provides that if the Commission orders Ameritech to use something other than the 23-mile median, there is the possibility that the Commission would require a "true-up" or retroactive payment to account for the adjustment. HEPO, p. 16. Then, in the context of deferring the matter of the rate that will apply to transiting to the Commission's TELRIC compliance docket, the HEPO concludes that no "true-up" or retroactive payment will be allowed. HEPO, p. 19. Here again, without explanation the HEPO affords different remedies based on an indistinguishable set of facts.

II. Argument

Issue 1.A: Direct Trunking

A. Contrary to the HEPO's finding, Ameritech has not met its burden to demonstrate that tandem exhaust justifies its denial of tandem interconnection.

Verizon Wireless takes exception to the HEPO's conclusion that Ameritech's "tandem exhaust is a significant problem in Illinois" requiring Verizon Wireless to make a substantial investment and incur unnecessary expenses to remedy Ameritech's problem.

Contrary to the HEPO's conclusory proposal, Ameritech has not met its burden to demonstrate that its denial of tandem interconnection is justified under Federal law.

According to federal law, Ameritech has an affirmative "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network. . . . at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2)(B). The fundamental policy underlying this provision is the determination of Congress that the requesting carrier may specify the location for interconnection as long as the requested configuration is technically feasible. *See* 47 C.F.R. §§ 51.305, 51.307. If an incumbent LEC claims that it cannot satisfy a request for interconnection, it must demonstrate by clear and convincing evidence that "such interconnection" would result in "specific" and "significant" adverse network reliability impacts. 47 C.F.R. § 51.5. Federal law, thus, puts the burden squarely on Ameritech to demonstrate "by clear and convincing evidence" that Verizon Wireless' choice of an interconnection point is not technically feasible.

The HEPO incorrectly alleges "allowing Verizon [Wireless] to interconnect at the tandem in every instance it chooses would cause significant adverse impacts on Ameritech's network." HEPO, p 6. This ignores the evidence in this proceeding that shows that any alleged tandem exhaust is not the result of Verizon Wireless' interconnection traffic, but a result of industry trends and Ameritech's own network design and growth.

Ameritech's witness, Mr. Samuel Way, admitted that the tandems in question are not used exclusively by Verizon Wireless and Ameritech. Tr. 177-187. Yet, the HEPO established an arbitrary 864 Centum Call Seconds ("CCS") trigger point for removing

traffic from the tandem, the point at which the Hearing Examiners presumably believe that tandem traffic would be excessive.

[BEGIN PROPRIETARY SECTION]

[END PROPRIETARY SECTION]

Despite the fact that Ameritech refused to answer Discovery questions regarding subscriber growth and other questions that would have shed light on the true cause of

tandem exhaust,⁴ Ameritech noted that several factors have contributed to the alleged tandem exhaust problem, including: “the need to (1) interconnect with the new landline and wireless providers; (2) install new trunks for existing providers to meet the demand for wireline and wireless services; and, (3) install new trunks to meet the growing demand for data and Internet traffic.” Way Direct Testimony, A15.

Ameritech has provided no evidence that “such interconnection” by Verizon Wireless “would result in specific and significant adverse network reliability impacts.” Thus, Ameritech’s burden under 47 C.F.R. § 51.5 cannot be met and Verizon Wireless should be permitted to interconnect at any technically feasible points, including Ameritech’s tandems.

Even assuming that tandem exhaust were a problem in the State of Illinois, the HEPO assumes that Verizon Wireless causes this problem and refuses to require Ameritech to invest in its own network. The HEPO characterizes Ameritech’s problem as “Ameritech merely complains that its tandem cannot handle the traffic.” The Hearing Examiners seek to distinguish the recent decision in which the Michigan Commission ordered Ameritech Michigan to permit tandem interconnection despite its claims that its tandems could not handle the traffic. The Hearing Examiners seek to distinguish the Michigan decision because there was no evidence that tandem exhaust is as significant a problem in Michigan as in Illinois. But the Michigan Commission’s own statements reveal that there was evidence in this regard. The Michigan Commission stated that it:

recognizes that permitting traffic volumes to exceed 700
CCS may exhaust a tandem switch’s capacity and

⁴ Ameritech claimed in response to Verizon Wireless’ Data Requests 1 and 2 that it does not have this information.

necessitate the construction of additional switches. Nevertheless, it concludes that forcing AirTouch to use uneconomic connections and thus incur unnecessary expenses (by restricting AirTouch's choice) is a less acceptable alternative than encouraging Ameritech Michigan to make needed investment in its network (by ensuring AirTouch's access to the level of choice envisioned by the FCC).

Re: Application of AirTouch Cellular, Inc. for Arbitration of Interconnection Terms, Conditions, and Prices from Ameritech Michigan, MPSC Case No. U-11973, 1999 Mich. PSC LEXIS 216 (Aug. 17, 1999).

The evidentiary showing is not lacking but is in any event not necessary to deciding Verizon Wireless' rights under Federal law. The FCC has found that

[B]ecause . . . carriers must usually compensate incumbent LECs for the additional cost incurred by providing interconnection, [carriers] have an incentive to make economically efficient decisions about where to interconnect.

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, 11 FCCR 15,499, 15,608, ¶209 (1996), (hereinafter, "First Report and Order").

Verizon Wireless has the right to make economically efficient decisions about where to interconnect with Ameritech's network. Congress, in giving carriers this right, granted concessions to incumbent carriers, including the right to compensation for interconnection. Because the FCC has stated that "a determination of technical feasibility does not include consideration of economic . . . considerations," this Commission should first require Ameritech to take all reasonable steps to mitigate its own tandem exhaust, including any necessary and inevitable investment in additional tandems, before imposing direct trunking requirements on Verizon Wireless.

B. The HEPO fails to note that Ameritech does not impose the burden to trunk to a point off of the tandem on all carriers interconnecting with Ameritech.

The Act requires incumbent local exchange carriers, like Ameritech, to interconnect with requesting telecommunications carriers “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.” 47 U.S.C. § 251(c)(2). Unrebutted by Ameritech and ignored by the Hearing Examiners in their conclusion and analysis in the HEPO, was the assertion of Verizon Wireless’ witness, John L. Clampitt, that:

Further, [Ameritech’s] proposal is discriminatory. [Ameritech] does not impose this requirement in its switched access tariff, which means that interexchange carriers (“IXCs”) remain free to make their own choices regarding efficiencies and economies of scale as they relate to tandem or direct end office trunking. By contrast, the unilateral restriction [Ameritech] seeks to impose on Verizon Wireless would dictate how Verizon Wireless deploys its infrastructure and directly impact its costs.

VZW Exhibit 1, p 10.

Ameritech allows IXCs the ability to choose whether they trunk direct to the tandem or to another point on Ameritech’s network based upon economics and good engineering principles, a choice that the HEPO would deny Verizon Wireless. Evidence introduced at the hearing suggests that Ameritech has taken no action to make IXCs use of Ameritech’s tandems more efficient. *See* AIT Cross-Ex. 4. Ameritech’s IXC Switched Access Tariffs also do not require the same trigger points the HEPO’s recommendation would impose upon Verizon Wireless for local interconnection, VZW Exh. 1, p. 10, although it is impossible to determine from the record what portion of traffic and trunking

is associated with IXCs as compared with wireless carriers because Ameritech refused to provide a response to this data request.⁵

By seeking to restrict Verizon Wireless' choice and instead eliminate Verizon Wireless' option to trunk to the tandem, the HEPO and Ameritech would discriminate against Verizon Wireless. In fact, if Ameritech is allowed to impose the uneconomic and inefficient requirement that Verizon Wireless trunk to a point other than a point of its choosing, presumably the tandem, when traffic volumes exceed a predetermined level, Ameritech will be able to disadvantage Verizon Wireless and defer its own network infrastructure growth to the detriment of Illinois' telephone customers.

In an unsuccessful attempt to show that Ameritech holds itself to a higher standard than it proposes to require of Verizon Wireless, Ameritech contends that it chooses to "establish direct trunking between its end offices before traffic between the end offices reaches the DS1 level. . . . That is **half** the traffic Ameritech Illinois proposes that Verizon Wireless be allowed to send through the tandem to a particular location before the direct trunking would be required." (Way Direct Testimony, A12) (emphasis in original). As Verizon Wireless' witness, Mr. John Clampitt, explained, the fact that Ameritech might trunk direct between its own end offices is irrelevant for purposes of this case. Tr. 75. Ameritech does not propose to undertake an obligation to trunk directly to Verizon Wireless from its own end offices to Verizon Wireless' MTSOs when volumes of land-to-mobile traffic reach a certain level. Ameritech never uses connections from its end offices to terminate traffic on Verizon Wireless' network. AIT

⁵ Ameritech claimed in response to Verizon Wireless' Data Request 2 that it does not have this information.

Response to Staff Data Request RWM 1.1(i). All Ameritech traffic to Verizon Wireless traverses Ameritech's tandems. Even if Ameritech's trunking activity within its own network were relevant, which it is not, Ameritech itself concedes that it establishes such trunks based upon its own financial and technical feasibility, Tr. 188, not according to the dictates of other interconnecting carriers. Therefore, it is abundantly clear that the HEPO's recommendation of a trigger point for required interconnection at points other than Ameritech's tandem is not reciprocal and is discriminatory.

C. The HEPO incorrectly assumes that Verizon Wireless does not dispute Ameritech's requirement that Verizon Wireless should trunk direct to third-parties

In the HEPO, the Hearing Examiners assume that Verizon Wireless does not dispute Ameritech's requirement that Verizon Wireless should trunk direct to third-parties when traffic that would otherwise transit Ameritech's network reaches a certain trigger point. This assumption is incorrect and not supported by law.

The 1996 Act provides that telecommunication carriers may interconnect "directly or indirectly" with other carriers. 47 U.S.C. § 251(a). The 1996 Act further requires incumbent LECs like Ameritech to provide interconnection to requesting carriers for the transmission and routing of telephone exchange service, at any technically feasible point in its network, that is at least equal in quality to the interconnection it provides itself, its subsidiaries and affiliates, or any other carrier. 47 U.S.C. § 251(c)(2).

The FCC further clarified this in Section 51.305, which provides in part that:

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) At any technically feasible point within the incumbent LEC's network including, at a minimum:

* * * *

(iii) The trunk interconnection points for a tandem switch;

47 C.F.R. § 51.305

Thus, the 1996 Act and the FCC's rules do not distinguish between the points of interconnection for local telephone traffic and for the indirect interconnection with third parties. In fact the 1996 Act and FCC's rules require Ameritech to provide interconnection to requesting carriers for the indirect transmission of telecommunications between those networks. Throughout these proceedings, Verizon Wireless has relied in Ameritech's "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network, for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within the carrier's network," for its argument that it has a right to interconnect with Ameritech at any technically feasible point, including at Ameritech's tandems. 47 U.S.C. § 251(c)(2). Thus, the HEPO's conclusion that "Verizon [Wireless]'s contentions about being able to choose its POI does not apply [to third-party transiting] because its POI with Ameritech would remain the same" (HEPO, p. 6) is unsupported by the law. Verizon Wireless is entitled to interconnect at any technically feasible point on Ameritech's network, including the tandems, for "the transmission and routing of telephone exchange service and exchange access" to Ameritech and to third-parties.

D. The HEPO fails to resolve the issue of Ameritech's Restriction on Interconnection at Technically Feasible Points—Direct Trunking.

Because Ameritech seeks to place unilateral and unreasonable restrictions on the right of Verizon Wireless to continue to interconnect to Ameritech's network at technically feasible points of Verizon Wireless' choosing, and to force Verizon Wireless to reconfigure its network to interconnect where Ameritech chooses based upon an arbitrary traffic threshold when Verizon Wireless has continually expressed its desire to interconnect with Ameritech in a manner that is economical and efficient for Verizon Wireless, Verizon Wireless brought this issue to the Commission to resolve through Arbitration.

If the Commission accepts the Hearing Examiners' proposal, and Verizon Wireless contends it should not, it must add additional language to provide a concrete framework or language upon which Ameritech and Verizon Wireless can execute an Interconnection Agreement. The standards that this Commission shall use in resolving open issues through arbitration Section 252 of the Act, provide:

(c) Standards for Arbitration.--In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

47 U.S.C. § 252(c).

The Hearing Examiners' conclusion would leave the parties negotiating a resolution to the issue that Verizon Wireless brought before this Commission for resolution. Ameritech's witness admits that if Staff's proposal was adopted, as it is in the HEPO, "we have to negotiate the terms under which that particular interface would be effective for and beneficial for both parties." Tr. 215. When nine months of negotiation failed to reach a conclusion regarding this issue, there is no guarantee that the parties will be able to expeditiously reach a conclusion in the time prescribed in the Commission's order for submitting an executed Interconnection Agreement to the Commission.

Verizon Wireless proposes that, if the Commission is inclined to adopt the findings of the HEPO, the Commission allow Verizon Wireless the option of interconnecting at any technically feasible point, of Verizon Wireless' choosing, as long as that point of interconnection is not the tandem for traffic to an end-office, when traffic between Verizon Wireless and that end-office exceeds 864 CCS during the busy hour for three consecutive months. Ameritech would then be solely responsible for transporting that traffic between the point of interconnection chosen by Verizon and the Ameritech end-office for which it is destined.

This proposal is captured in the following proposed contract language and in Verizon Wireless alternative suggested substitute language for the Commission's Order, submitted concurrently herewith and entitled Exceptions of Verizon Wireless:

5.4.4 Direct Trunking of Carrier Traffic. If the traffic from a single Carrier MSC through any Telco Tandem Switch destined for another specific Telco switch or third party switch at any time during each month of a three month period requires 24 or more fully utilized Trunks consisting of 864 CCS (24 ERLANGS) or more during the Carrier busy hour, then (a) in instances where the traffic is destined for a Telco switch, the Carrier Parties shall, within one

hundred eighty (180) Days after Effective date and initial notification by Telco for initial implementation and one hundred twenty (120) Days for subsequent notifications by Telco, establish a two-way (where such is available) direct Trunk Group to an alternative point of interconnection of the Carrier's choosing for traffic destined for the specific Telco end office and Telco will be solely responsible for the transport of such traffic from the alternative point of interconnection to the specific end-office; and (b) in instances where the traffic is destined for a third party switch, Carrier shall exercise best efforts to establish direct interconnection with that third party within one hundred eighty (180) Days or as soon thereafter as possible, and thereby to cease transiting through Telco's Tandem Switch traffic destined for that third party switch.

Issue 6: Netting

The Hearing Examiners erred in their recommendation that the Interconnection Agreement should include language that affirmatively states that “dispute claims may not be netted by the Parties.” The Hearing Examiners’ discussion of “netting” notes that “Illinois law allows a party to set-off a mature debt for a sum certain, or a liquidated, undisputed, debt between the parties.” HEPO, p 12. The Hearing Examiners assume that “the set-offs contemplated here would not be for a liquidated, undisputed debt.” The record does not support this assumption, nor do the Hearing Examiners define what they mean by an undisputed debt.

The Hearing Examiners reach the conclusion that the agreed upon dispute resolution procedures contained in the Interconnection Agreement “already addresses Verizon [Wireless]’s concern that Ameritech could unnecessarily prolong billing disputes.” The record however, paints a different picture. The record notes that the parties have had numerous disputes regarding various aspects and interpretations of existing Interconnection Agreements, both in Illinois and elsewhere. Ameritech’s

witness, Ms. Rita Zacardelli, admitted on cross-examination that there is no limit to how long a dispute can go on. Indeed, Ameritech acknowledges that it has “disputes that have been going on for years with some carriers.” Tr. 235. Some of these disputes have undoubtedly been resolved by the Commission and are pending on indefinite appeal. Based upon this history, Verizon Wireless believes that a self-help mechanism is necessary to cause the parties to more quickly focus attention on disputes and on their *prompt* resolution.

Verizon Wireless does not request that netting be affirmatively provided for in the contract, but that there be no provision prohibiting the netting or set-off of amounts due. This would more quickly focus attention on disputes and lead to an expeditious resolution of the dispute pursuant to the dispute resolution procedures outlined in the proposed Interconnection Agreement that have been agreed to by both parties.

Were netting not affirmatively prohibited, as provided for in the HEPO, a party to the Interconnection Agreement would be free to challenge whether or not any common law self-help processes, such as netting, were proper on a case-by-case basis, within the context of a specific dispute and as part of any Commission or court proceeding involving such a dispute.

In Michigan Bell Telephone Co., d/b/a Ameritech Michigan v. CenturyTel Wireless, Inc., No. 00-CV-70717-DT, (E.D. Mich. Jan. 3, 2001), the court found, “that netting coincides with the FTA’s purpose of enhancing the ability of new service providers, namely the Carriers to enter the telecommunications market.” Id. slip op. 37. This Commission should do the same and find that netting is a common law remedy that should not be prohibited to help focus and bring to resolution any monetary disputes

between the parties. The Commission should recommend that the Interconnection Agreement be silent regarding whether or not netting is prohibited or permitted.

Issue 7: Mileage for Calculating Tandem Termination Rate Charged by Ameritech.

A. The record is sufficient to determine whether or not actual mileage should be implemented.

The Hearing Examiners erred in finding that “the record is not sufficient to determine whether Ameritech should implement” a system charging actual mileage for calculating tandem terminations rates charged to Verizon Wireless. The Hearing Examiners believe that “such a determination would require a balancing of the costs involved and the supposed resulting benefit.”

Ameritech acknowledged that it supplied no evidence of any costs it would have to incur to make these billing systems changes. Tr. 267. Any costs should be considered in light of the fact that in Michigan, where Ameritech Michigan was ordered to bill actual, instead of imputed, mileage, Ameritech was able to implement actual mileage within three months of being so ordered by the Michigan Commission in Re: Application of AirTouch Cellular, Inc. for Arbitration of Interconnection Terms, Conditions, and Prices from Ameritech Michigan, MPSC Case No. U-11973, 1999 Mich. PSC LEXIS 216 (Aug. 17, 1999). Clearly, any evidence of the costs to Ameritech of implementing such changes is wholly within Ameritech’s possession. On Brief, Ameritech attempted to make much of the fact that Verizon Wireless did not attempt to obtain record evidence on what it might cost Ameritech to make the proposed change. AIT Initial Br. 20-30. This is irrelevant, however, because at the hearing Ameritech conceded that such billing system changes would not be so costly as to be impractical. Tr. 265-67. Pursuant to

Section 252 of the 1996 Act, the State commission may proceed on the basis of the best information available to it from whatever source derived. 47 U.S.C. §252(b)(4)(C).

The benefit of implementation of actual mileage to Verizon Wireless would be a significant cost reduction. Ameritech did not rebut the fact that in Michigan, where Ameritech Michigan was ordered to bill actual, instead of imputed, mileage, Verizon Wireless experienced a 44% reduction in mileage charges. (Clampitt Direct Testimony, p. 29). In its initial brief, Ameritech attempted to minimize this 44% reduction by noting that only about 5.6% of reciprocal compensation is composed of the transport facility mileage. AIT Brief, p 26. Verizon Wireless submits that 5.6% is not a small amount given that the parties exchange millions of minutes of traffic per month. A view of the benefit to Verizon Wireless on a purely percentage savings does not take into account the overall dollar savings and the impact that would have on Verizon Wireless' Illinois Operations, rates, or ability to invest in infrastructure in the State of Illinois.

Ameritech's attempt to minimize the benefit that Verizon Wireless would experience if Ameritech were required to bill actual mileage is in any event legally irrelevant. The 1996 Act does not distinguish between rate elements based on whether they make up the bulk of the rate that Ameritech charges Verizon Wireless or whether they make up only a small portion of the rate. The Act simply requires rates to be based on costs and the way in which those costs are incurred as closely as possible. No matter whether large or small, as Staff adeptly observes, "the fact that there are economic benefits to society of cost-based pricing is axiomatic." Staff Initial Br. 23. The 1996 Act by its terms has determined that the use of cost-based pricing is a benefit to interconnecting carriers

The evidence exists in this record to make a determination of whether or not Ameritech should implement actual mileage for calculating the tandem termination rate charged to Verizon Wireless both through a balancing of the costs involved and the supposed resulting benefit and as required by the 1996 Act.

B. If adopted, the recommendation in the HEPO would permit Ameritech to continue an illegal, discriminatory practice.

All parties to this case agree that the use of the actual mileage of common transport facilities is the most precise method to calculate the rate that Ameritech charges for such transport. Zaccardelli Direct Testimony, A33; Staff Initial Br. 23; VZW Ex. 1.0, p. 29. Although Ameritech initially contended that it would be “infeasible” to calculate the actual mileage of facilities in connection with the transport of CMRS traffic, (Zaccardelli Direct Testimony, Q34), Ameritech eventually acknowledged that it currently bills CLECs and IXCs reciprocal compensation based on actual miles and it bills wireless carriers actual mileage in Michigan. *See* AIT Response to Staff Data Request JZ 1.3, paras. A & D, HEPO, p 15.

Based on the Local Exchange Routing Guide, and standard telecommunications engineering practices, all Ameritech central office locations have Vertical and Horizontal coordinates associated with them. These V&H Coordinates allow computer software to calculate mileage between central offices, points of interconnection, and Verizon Wireless’ MTSOs. In all likelihood, because Ameritech has already implemented such mileage calculations in other states and for CLECs and IXCs in Illinois, the capability and computer programs already exist to implement the same for wireless carriers, such as Verizon Wireless in Illinois.

Federal law requires Ameritech to apply the components of the rates for common transport consistently to all types of interconnecting carriers, and rates should reflect actual costs and the way in which those costs are incurred as closely as possible. *See*, 47 U.S.C. §§ 251(c), and 252(d). Section 51.503 of the FCC's rules prohibits Ameritech from discriminating against CMRS carriers *vis-à-vis* CLECs. The FCC stated explicitly that differing charges based not upon demonstrated differing costs, but instead on the type of carrier being charged, are "discriminatory and not permissible." First Report and Order, ¶ 861. The facts here reveal, and the HEPO notes that Ameritech is doing just that.

Despite the undisputed evidence that Ameritech is discriminating against wireless carriers, the Hearing Examiners apparently view the fact that Ameritech charges other carriers based on actual common transport mileage as mere evidence that Ameritech is capable of implementing a system of actual mileage billing. The HEPO relies on Ameritech's contention that "no other wireless carrier has complained of the current billing system."

A finding of illegal discrimination does not require all members of the class discriminated against to complain of the illegal actions. If a carrier like Ameritech can avoid meeting a statutory obligation by claiming that no one else has complained about the practice, then no issue of first impression could ever be raised by a complaining carrier. Certainly this cannot be the result the ICC is seeking. When the discrimination is *prima facie*, as it is here, the Commission must take steps to remedy the discriminatory practice, when so asked. The FCC has found that "state regulations permitting non-cost based discriminatory treatment are prohibited by the 1996 Act." First Report and Order, ¶

861. Thus, Ameritech should be prohibited from discriminating against wireless carriers and ordered to implement actual mileage immediately.

C. The HEPO only indicates that the Commission “may” provide for a true-up mechanism for charging actual mileage for tandem terminations.

The HEPO provides that if the Commission orders Ameritech to use something other than the 23-mile median, there is the possibility that the Commission would require a “true-up” or retroactive payment to account for the adjustment. HEPO, p. 16. Verizon Wireless believes that the HEPO errs by not requiring a “true-up” proceeding to apply the actual mileage to the charge for tandem termination to the effective Date of the Interconnection Agreement. This would be consistent with prior Commission actions.⁶ If, as the HEPO contends, this resolves the issue, then Verizon Wireless is entitled to such resolution by May 2, 2001, even if such resolution must be applied retroactively.

D. The HEPO fails to resolve the issue of Ameritech’s Imposition of Different Standards for CMRS Carriers As Those Applied to CLECS for the Same Functions.

Verizon Wireless takes exception to the HEPO’s recommendation “that this arbitration decision is not the proper place for the Commission to adopt a position which will have far-reaching competitive and economic effects upon the telecommunications marketplace.” Section 252(b)(4)(C) of the Telecommunications Act of 1996, 47 U.S.C. §251, *et seq.*, (“1996 Act” or “TA 96”) requires this Commission to resolve each of the issues set forth in Verizon Wireless’ Petition or Ameritech’s Response thereto no later

⁶ Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone d/b/a Ameritech Illinois, ICC Docket No. 00-0312, Arbitration Decision, (Aug. 17, 2000), 2000 Ill. PUC LEXIS 660, Arbitration Decision on Rehearing (Feb. 15, 2001), 2001 Ill. PUC LEXIS 205; (interim rates adopted in arbitrated interconnection agreement, subject to true-up, pending outcome of Illinois Commerce Commission line sharing proceeding).

than May 2, 2001.⁷ Deferral of whether or not Ameritech should be required to charge actual mileage for the tandem transport facility component of reciprocal compensation would deny Verizon Wireless its right, under the law, to have this dispute resolved through this Interconnection Arbitration Proceeding.

The term of the Interconnection Agreement that is the subject of this proceeding is two years. Given the HEPO's deferral of the issue to another proceeding, which has yet to commence, there is no guarantee that Verizon Wireless will have resolution of these issues within the term of the Interconnection Agreement, and a definite guarantee that Verizon Wireless will not have resolution by May 2, 2001 as required by law.

The HEPO uses the rationale that it must defer to other proceedings, because a decision in favor of Verizon Wireless would "have far-reaching competitive and economic effects upon the telecommunications marketplace." HEPO, p. 16. Such a rationale fails to note that it is Verizon Wireless that has brought this Petition for Arbitration, seeking resolution of issues that it was unable to resolve during months of good-faith negotiation with SBC Communications, as an agent for Ameritech.

In the case of actual mileage for the tandem transport facility component of reciprocal compensation any "far reaching" implications would not be on the entire telecommunications marketplace, when in fact, what Verizon Wireless is asking is that Wireless providers be treated the same as the rest of the entire telecommunications marketplace. In light of its admission that it currently bills CLECs and IXCs reciprocal compensation based on actual miles and it bills wireless carriers actual mileage in

⁷ Nine months following the August 2, 2001 receipt by Ameritech of Verizon Wireless' request to commence negotiations.

Michigan, (See AIT Response to Staff Data Request JZ 1.3, paras. A & D, HEPO, p 15) it is the wireless carriers, and specifically Verizon Wireless that would be the most affected by the imposition of a system of billing actual mileage for the tandem transport facility component of reciprocal compensation. Based on 47 U.S.C. §§ 251(c), and 252(d), Ameritech should be required to use the actual mileage of common transport facilities used for the termination of traffic in order to calculate the rate it will charge for such transport, regardless of the impact on any carriers not a party to the instant proceeding.

Issue 10. Transiting Rate

A. The HEPO fails to resolve whether or not Ameritech has failed to charge forward-looking rates for transiting.

The HEPO's conclusion regarding Transiting Rates that "by requiring Verizon to abide by the current tariffs and the outcome of Docket 98-0396, we are resolving the issue of what rates Verizon should pay for transiting," (HEPO, p 19) is not supportable. The HEPO does not resolve the issue that Verizon Wireless brought before this Commission as part of this Arbitration proceeding. There is a discrepancy between its tandem switching rate and its transiting rate that cause Verizon Wireless and Staff to question whether the transiting rate is truly a forward-looking cost rate as required by Section 252(d)(1)(A) of the 1996 Act. 47 U.S.C. § 252(d)(1)(A).

Ameritech has been asked but has not been able to adequately explain the difference between its tandem switching rate and its transiting rate. Staff correctly notes that the Commission has an obligation under Federal law to act on the basis of the "best information available to it from whatever source derived." 47 U.S.C. § 252(b)(4)(B). In this circumstance, the best information available suggests that there is no rationale for the

difference in the rates, and that Ameritech's tariffed, tandem switching rate should apply to transiting traffic.

Regardless of whether or not this Commission is conducting an investigation into Ameritech's TELRIC cost studies including its transiting cost study, Verizon Wireless is entitled to a resolution of this issue. Section 252 of the 1996 Act provides in part that:

The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

47 U.S.C. § 252(B)(4)(C).

Forcing Verizon Wireless to wait for the conclusion of a docket, to which Verizon Wireless is not a party⁸, and which may take many months to conclude, would violate this Commission's obligations and duties under 47 U.S.C. § 252(B)(4)(C). This Commission should, therefore, order Ameritech to provide transiting local traffic between Verizon Wireless and other telecommunications carriers' networks as a form of interconnection and at forward-looking cost-based rates. Ameritech's tariffed, tandem switching rate should apply to transiting traffic.

B. The HEPO fails to provide for any true-up mechanism for Ameritech's transit rates.

If the Commission is inclined to adopt the recommendation of the Hearing Examiners, that the Interconnection Agreement should reflect the rates established in Docket 98-0396, when such rate is established or Ameritech's current tariffed rate, then

⁸ Verizon Wireless notes that if the Commission upholds the HEPO by deferring the transiting rate issue to the TELRIC compliance docket, it should permit Verizon Wireless to intervene in that proceeding.

Verizon Wireless believes that the HEPO errs by not providing for a “true-up” proceeding to apply the presumably lower rates established in Docket 98-0396 to the period between the Effective Date of the Interconnection Agreement and the Commission’s final Order in Docket 98-0396. This would be consistent with prior Commission actions.⁹ If, as the HEPO contends, this resolves the issue, then Verizon Wireless is entitled to such resolution by May 2, 2001, even if such resolution must be applied retroactively.

C. The HEPO fails to address the issue of equivalent transiting reports.

As part of the request by the Hearing Examiners to provide a matrix of issues, Verizon Wireless moved consideration of the one remaining dispute in Issue 2, Denial of the Ability to Invoice Interexchange Carriers for Jointly Provided Switched Access, to this Issue. Ameritech proposes removing language from Section 4.4. of the Interconnection Agreement that provides:

Telco shall provide equivalent transiting reports to Carrier for land-to-mobile traffic from other carriers as they provide transiting reports of carrier’s mobile-to-land traffic to other carriers.

This issue was not addressed in the HEPO. These reports can only be generated by Ameritech, as they initially receive land-to-mobile traffic from other carriers to transit to Verizon Wireless. These reports are similar in nature to reports that Ameritech has requested from Verizon. Without these transiting reports, Verizon Wireless will

⁹ Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone d/b/a Ameritech Illinois, ICC Docket No. 00-0312, Arbitration Decision, (Aug. 17, 2000), 2000 Ill. PUC LEXIS 660, Arbitration Decision on Rehearing (Feb. 15, 2001), 2001 Ill. PUC LEXIS 205; (interim rates adopted in arbitrated interconnection agreement, subject to true-up, pending outcome of Illinois Commerce Commission line sharing proceeding).

effectively be precluded from billing other carriers (not Ameritech) for actual termination costs of calls that transit the Ameritech network. Verizon Wireless' proposed language for Section 4.4 will place no additional burdens on Ameritech and should be adopted by this Commission.

Issue 11. Performance Standards.

A. The HEPO erred in failing to consider the Commission's decision in PrimeCo Personal Communications v. Illinois Bell Telephone Communications in consideration of what Performance standards should be required.

The day before the HEPO was issued, the Commission issued its Written Decision in PrimeCo Personal Communications v. Illinois Bell Telephone Communications, ICC Docket No. 00-0670, Apr. 11, 2001. This proceeding revolved around a complaint by PrimeCo alleging that Ameritech is knowingly providing unreasonable and unreliable service in the state of Illinois. As part of that proceeding, the Commission found that Ameritech had been impairing DS1 service quality to PrimeCo. The Commission noted that "it is important to distinguish between failure to meet performance standards set forth in a contract and attempts to correct service quality problems." Despite the fact that PrimeCo had specific performance standards, presumably at or higher than those established in ILL. ADMIN CODE tit. 83, §730.500 *et seq.* the Commission found that "when Ameritech provides service which does not meet its contractual responsibilities, the aggrieved party suffers without remedies."

Verizon Wireless' proposed performance standards, reasonable mutually binding standards that exceed the minimums required by law, are industry standard levels, *e.g.*, the Bellcore standard performance criteria for DS1 HICAP, or reasonable time periods in which to correct recognized network deficiencies such as congestion or blocking. Such

performance standards and associated penalties to assure that Ameritech adheres to higher performance levels would prevent future occurrences such as those which created a “substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers,” as in the case of PrimeCo.

By not accepting the performance standards proposed by Verizon Wireless, which obligate both carriers to P.01 blocking (a standard specified as an engineering objective in the contract) and relying on Illinois law, which sets a minimum standard of P.03, the HEPO invites Ameritech to fall to an unacceptable level of blocking at the tandem. By not accepting augments to existing trunk groups, Ameritech could still meet the minimum standard by law but still unfairly force Verizon Wireless to trunk to a point off of the tandem by artificially creating the trigger point addressed in Issue 1.A, above, under the guise of relieving network congestion.

Verizon Wireless’ proposed remedies are directly related to how the trunks perform for the purposes of reciprocal compensation. In PrimeCo, the Commission noted that it “would benefit from stronger penalty options, when enforcing the law.” Verizon Wireless’s proposed language would grant the Commission stronger penalty options when enforcing a contractual obligation that exceeds the minimums set by law. Further, Verizon Wireless’ proposed higher standard for performance would result in better service and quality to both Verizon Wireless and Ameritech’s customers in both the land-to-mobile and mobile-to-land directions. As this Commission noted in PrimeCo, “if Ameritech provides poor service, everyone suffers.” The PrimeCo decision clearly runs contrary to the HEPO’s assertion that “findings in recent matters before this Commission run contrary to Verizon [Wireless]’s assertions that higher standards will bring about

better service and quality.” The higher quality service and connectivity, that will be the result of Verizon Wireless’ proposed performance standards, will result in increased call volume, reciprocal compensation and service to the benefit of Ameritech, Verizon Wireless, and Illinois consumers.

B. The performance standards in the Administrative Code are minimums. Carriers should be striving to higher performance standards.

The HEPO asserts that “[t]he standards in the Administrative Code are not merely minimums, as alleged by Verizon; they also act as the yard markers to ensure that parity remains among telecommunications carriers.” This should be contrasted with the later assertion in the HEPO that “penalties should not be so harsh as to discourage carriers from obligating themselves to higher standards.” All carriers, including Verizon Wireless and Ameritech should strive for the highest technically feasible standards for performance and quality. Thus, the standards set forth in the Administrative Code, are by nature and definition minimum standards that must be met.

Had Ameritech and Verizon Wireless reached agreement on higher standards for performance standards, Verizon Wireless rhetorically asks if this Commission would have rejected such standards as contrary to the principle of “parity among telecommunications carriers.” Verizon Wireless hopes that this Commission never seeks parity at the lowest common denominator among Illinois telecommunications providers. Because the higher standards proposed by Verizon Wireless would be reciprocal, they would raise the bar among Illinois telecommunications providers. As additional carriers sought the same higher standards from Ameritech, they would be required to adhere to them themselves, in effect increasing the quality of service to all Illinois Telecommunications consumers.

C. By deferring to a separate docket, the HEPO fails to resolve the open issues.

The HEPO notes that “Docket 01-0120 has been opened to examine and decide the appropriate penalty for breach of performance standards.” The Hearing Examiners propose that “any decision in Docket 01-0120 will resolve whether penalties are appropriate.” Once again, the HEPO fails to resolve the issue that Verizon Wireless brought before this Commission as part of this Arbitration proceeding, instead choosing to defer to a separate proceeding.

Regardless of whether or not this Commission is examining the appropriate penalty for breach of performance standards in a separate proceeding, Verizon Wireless is entitled to a resolution of this issue in this proceeding. Section 252 of the 1996 Act provides in part that:

The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

47 U.S.C. § 252(B)(4)(C).

Forcing Verizon Wireless to wait for the conclusion of a docket, to which Verizon Wireless is not a party, and which may take many months to conclude, would violate this Commission’s obligations and duties under 47 U.S.C. § 252(B)(4)(C). This Commission should, therefore, require that Verizon Wireless’s proposed Performance Standards and Penalties be included in the Interconnection Agreement reached in this proceeding.

D. The HEPO erred in characterizing Verizon Wireless' request for more stringent performance standards as a request for superior treatment over other carriers

The Hearing Examiners rejected Verizon Wireless' proposal for more stringent performance standards, in part, because they believe that “[t]his Commission will not look only to the needs of a single customer. Verizon is one of many wireless customers that use Ameritech facilities; therefore, Verizon is not entitled to superior treatment over other carriers.” HEPO, p 23. Verizon Wireless is not asking for discriminatory or superior treatment with respect to other carriers. Ameritech agreed to a P.01 blocking grade standard of service with AirTouch Paging (now Verizon Wireless Messaging Services), and this Commission, in Docket No. 99NA-024, approved the resulting Interconnection Agreement. In light of this, the suggestion that it would be discriminatory to adopt Verizon Wireless' proposed performance standards is incorrect. If adopted, Verizon Wireless' proposed performance standards would be available, on a non-discriminatory basis to any other carrier who adopts the Interconnection Agreement reached through this Arbitration Proceeding, pursuant to Section 252(i) of the 1996 Act, 47 U.S.C. §252(i). Section 252(i) would require Ameritech to “shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

Issue AIT-2. Transit Traffic/Reciprocal Compensation

Verizon Wireless takes exception to the several errors of fact contained in the HEPO's discussion of Issue AIT-2, Billing of Transit Traffic. Because of these errors, Verizon Wireless does not believe that the Hearing Examiners have adequately considered the issue in dispute.

Ameritech wants Verizon Wireless to provide it with two sets of records, one for the Ameritech traffic terminating to Verizon Wireless and one for the traffic that originates from a third party, but transits the Ameritech tandem and terminates to Verizon Wireless. Verizon Wireless does not believe that it should be forced to provide Ameritech with reports that Ameritech can generate from its own tandems. Basically Ameritech is asking that Verizon Wireless provide it with records of those calls Verizon Wireless is *not* billing to Ameritech. Such a recommendation would open the door to requiring carriers to provide other records whether or not relevant to the businesses relationship between the parties.

Ameritech concedes that it must pay reciprocal compensation on local calls originating from an Ameritech customer and terminated by Verizon Wireless. Some local calls, however, originate with a third party carrier, transit Ameritech's network, and terminated by Verizon Wireless. Ameritech claims it has no obligation to pay reciprocal compensation for these calls. Ameritech, thus, proposes to add a Section 8.2 of the Interconnection Agreement to require Verizon Wireless to separately record and provide to Ameritech two sets of records: one for Ameritech traffic terminating to Verizon Wireless, and one for the traffic that originates from a third party, but transits the Ameritech tandem and terminates to Verizon Wireless. This information would have to be included on each reciprocal compensation invoice. Zacardelli Direct Testimony, A53.

In its characterization of Verizon Wireless' position, the HEPO states that "Verizon Wireless has the capacity to determine the amount of traffic flowing in one direction, that for which it bills third-party carriers." This assumption on the part of the Hearing Examiners is not correct. Verizon Wireless does not sort the amount of mobile

originating traffic transited from Verizon Wireless to other carriers. In the case of traffic that originates on Verizon Wireless' network, Verizon Wireless is billed by the third party-carriers for termination and Verizon Wireless is billed by Ameritech for transiting.

In its Analysis and Conclusion section, the Hearing Examiners note that "Verizon [Wireless] does now have the capacity to determine the amount of traffic it bills to third-party carriers, and, in the next six months, it also will be able to determine the amount of transit traffic it receives. (Tr. 94-95)." In reality, Verizon Wireless pays Ameritech and third parties for outgoing traffic that originated on the Verizon Wireless network, therefore Verizon Wireless is never in a position to bill for traffic it sends. Verizon Wireless does however bill for termination of traffic that it receives.

The HEPO also incorrectly states that "[t]he parties agree that when one carrier delivers transit traffic to the other for termination to the other's end users, the terminating carrier will not charge the other, as a transiting carrier, reciprocal compensation." The party providing transiting charges the originating party for transiting and the terminating party charges the originating party as well, for termination.

When the facts are looked upon in light of the corrections above, it becomes evident that Ameritech is asking this Commission to require Verizon Wireless to provide documentation for what Verizon Wireless is not billing Ameritech. This is presumably to allow Ameritech to compare what Verizon Wireless is and is not billing Ameritech so that Ameritech can allegedly verify its own records. If this provision were reciprocal, which it is not, Verizon Wireless would be asking Ameritech to provide us Verizon Wireless with a record of the Minutes of Use that Ameritech bills other carriers so that Verizon Wireless can compare it to what Ameritech is billing Verizon Wireless. The

Interconnection Agreement already has dispute resolution procedures. If Ameritech disputes the amount Verizon Wireless is billing them for transiting traffic to third parties, such disputes should be dealt with through the normal channels.

If Verizon Wireless is capable of recording the amounts it bills Ameritech, it should be allowed to provide such records of what is billed to Ameritech and not be required to provide extraneous records at Verizon Wireless' sole expenses. If Verizon Wireless cannot record what it bills Ameritech, Verizon Wireless will bill based on a predetermined formula.

Verizon Wireless takes exception to the HEPO's recommendation. Two sets of records, as required by the proposed Section 8.2 are not necessary. If Verizon Wireless is billing actual recorded traffic, which is the only situation in which the issue is relevant, Verizon Wireless will bill Ameritech for the traffic that originates on Ameritech's network and not for transited traffic. VZW Ex. 6, p 6. First, there is no reason for Verizon Wireless to itemize and provide a separate record of traffic for which it is not billing Ameritech. It is not necessary, and it is burdensome. Second, Ameritech will not itself provide this information on request. VZW Ex. 6, p. 7. Third, Ameritech can record this information for itself at its tandem; there is no reason to burden Verizon Wireless with a separate itemization requirement. VZW Ex. 6, p.5. Finally, Ameritech does not bill all incumbent LECs for transiting in the state of Illinois, as a result of "bill and keep" arrangements. Consequently, by imposing this requirement, the HEPO would be condoning Ameritech's discriminatory practices against Verizon Wireless in terms of how it bills for and provides the transiting function. VZW Ex. 6, p. 7. For these reasons, the language in the HEPO should be rejected.

Issue AIT-4. Transiting

Verizon Wireless accepts the conclusions of the Hearing Examiners contained in the HEPO that “it is altogether clear that Ameritech cannot properly impose such charges [for transiting traffic to Ameritech], regardless of whether Verizon [Wireless]’s proposed language is in the Agreement.” HEPO, p. 29. However, Verizon Wireless takes exception to the following paragraph contained in the HEPO:

To understand the parties’ positions, we must consider briefly the evolution of transiting. The question posed by Verizon regarding transiting would be one of first impression in Illinois. The FCC has not yet approached this subject. Looking at the purpose of the Act and recent decisions, it is clear that the main intent of the Legislature was to create competition in the telecommunications industry. This is accomplished by compelling ILECs to make available all of their facilities, switches and networks to competitors. The concept is not to replace the ILECs, but to promote a healthy competitive atmosphere that theoretically results in lower prices and better service. Ironically, many of the earliest arbitrations after the passage of the Act involved whether ILECs were obligated to provide transit services. Now, the issue appears to have come full-circle because a CLEC is asking for authorization to transit third-party carrier traffic.

HEPO, p 29.

Then the HEPO goes on to note correctly that, “Verizon [Wireless] has not directly asked this Commission authorization to transit.” Id.

The 1996 Act provides that telecommunication carriers may interconnect “directly or indirectly” with other carriers. 47 U.S.C. § 251(a). The 1996 Act further requires incumbent LECs like Ameritech to provide interconnection to requesting carriers for the transmission and routing of telephone exchange service, at any technically feasible point in its network, that is at least equal in quality to the interconnection it provides itself, its subsidiaries and affiliates, or any other carrier. 47 U.S.C. § 251(c)(2).

The FCC further clarified this in Section 51.305, which provides in part that:

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) For the **transmission and routing of telephone exchange traffic, exchange access traffic, or both;**

* * * *

(b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

47 C.F.R. § 51.305 (emphasis added).

Thus, the 1996 Act and the FCC's rules envision, and require, all carriers to provide interconnection to any requesting carriers for the indirect transmission of telecommunications between those networks. Thus, Verizon Wireless would not need to request authorization from this Commission to transit third-party carrier traffic. Inclusion of the above referenced paragraph in the HEPO may only lead to questions regarding Verizon Wireless' authority under Federal law when and if Verizon Wireless chooses to transit third-party carrier traffic in the future. The Paragraph in question should be removed from the HEPO.

III. CONCLUSION

Verizon Wireless' respectfully requests that the Commission and the Hearing Examiners accept the HEPO with the modifications described above and shown in the Attachment to this Brief.

Respectfully Submitted,

By:  _____

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STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

In the matter of Verizon Wireless)
Petition for Arbitration pursuant to)
Section 252(b) of the Telecommunications)
Act of 1996 to establish an Interconnection)
Agreement with Illinois Bell Telephone)
Company d/b/a Ameritech Illinois)
_____)

Docket No. 01-0007

EXCEPTIONS OF VERIZON WIRELESS

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Docket No. 01-0007

EXCEPTIONS OF VERIZON WIRELESS

Pursuant to Section 200.830(b) of the Rules of Practice before the Commission, 83 Ill. Admin. Code 200.830(b), Verizon Wireless provides the following suggested substitute language for the Hearing Examiner’s Proposed Order in the above captioned proceeding.

Issue 1.A: Direct Trunking

Verizon Wireless provides two alternatives for substitute language for Issue 1.A. The first alternative reflects the position Verizon Wireless respectfully requests that the Commission adopt regarding resolution of this issue. The second alternative recognizes that the Commission may adopt the position advanced by the Hearing Examiners. In the event that the Commission does adopt the position advanced by the Hearing Examiners, Verizon Wireless respectfully requests that the Commission modify the language to reflect Verizon Wireless’ concerns and bring the issue to full resolution.

Alternative 1:

Commission Analysis and Conclusion

According to Federal law, Ameritech has an affirmative “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network. . . . at any technically feasible point within the carrier’s network.” 47 U.S.C. § 251(c)(2)(B). While the Commission acknowledges that tandem exhaust is a significant problem for Ameritech in the state of Illinois, Ameritech holds a high burden under Federal law to show by clear and convincing evidence that “tandem exhaust” makes it necessary to deny Verizon Wireless’ request for interconnection at a technically feasible point, such as Ameritech’s tandems, because specific and significant adverse network impacts, would otherwise result from Verizon Wireless’ tandem interconnection. Ameritech failed to offer such evidence.

Ameritech has defined “tandem exhaust” to occur when “a tandem switch has insufficient capacity to connect with additional trunks that are forecasted for the immediate future.” AIT Exhibit 1.0, p. 6. Ameritech asserts that Verizon Wireless should be required to establish direct connections to particular Ameritech end offices when the volume of traffic that Verizon Wireless is handing off at the tandem becomes “excessive,” *Id.* at 3, or when the amount of traffic through the tandem reaches a point when that traffic overloads the tandem. Tr. 177. Ameritech has alleged that of the eight tandems it has in the Illinois portion of the Chicago LATA, three of the eight are at 100% capacity, two of the eight are at 96%, and the others are between 70-80% capacity. AIT Ex. 1.0, p. 6.

Ameritech has not established the necessary link between the tandem interconnection that Verizon Wireless is requesting and adverse network impacts. That link is critical because the FCC’s rules require clear and convincing evidence of

“specific” and “significant” adverse consequences of a request for interconnection. 47 C.F.R. § 51.5. Generalized allegations like those that Ameritech has offered are simply insufficient. All of Ameritech’s tandems may be nearing exhaust, but without clear evidence that a request for interconnection would result in specific and significant adverse network impacts, Ameritech cannot lawfully deny Verizon Wireless’ request to continue to interconnect at Ameritech’s tandems.

Verizon Wireless and Ameritech currently interconnect via Ameritech’s tandems in Illinois. According to the FCC’s rules, this is substantial evidence that the current arrangement is technically feasible. 47 C.F.R. § 51.305(c). Ameritech has provided no evidence that the continuation of this particular arrangement will result in any adverse network impacts. This fact alone is dispositive of the issue. The Commission therefore rejects Ameritech’s request to force Verizon Wireless to trunk direct to Ameritech’s end offices.

Though Ameritech refused to allow Verizon Wireless to choose its own technically feasible points of interconnection, Ameritech does allow interexchange carriers (“IXCs”) the ability to choose between direct or tandem trunking.

IXC Switched Access Tariffs do not require trigger points, such as those Ameritech seeks to impose upon Verizon Wireless for local interconnection. VZW Exh. 1, p. 10. Verizon Wireless and other CMRS carriers should be treated in the same manner as any other carrier, such as IXCs.

Though Staff believes that there are other reasonable means of establishing trunk groups between Verizon Wireless and Ameritech, requiring Verizon Wireless to utilize any of these alternatives conflicts with Ameritech’s affirmative “duty to provide, for the

facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network. . . . at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2)(B). The FCC has defined the term "technical feasibility," as follows:

Technically feasible. Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

47 C.F.R. § 51.5.

Federal law thus puts the burden squarely on Ameritech to demonstrate "by clear and convincing evidence" that Verizon Wireless' choice of an interconnection point would cause "specific and significant adverse impacts" on network reliability. *See also* Staff Initial Br. 9. Ameritech has not made this showing. Instead, it merely asserts that "[t]he trigger point in [Cross-Exhibit 1] as it now stands is reasonable." AIT Initial Br. 6. Ameritech claims that "[t]he evidence is clear that there should be a direct trunking requirement of some sort – Staff certainly appears to agree that such a requirement is

reasonable – and there can be no meaningful direct trunking requirement without a trigger point.” AIT Initial Br. 6.

Although Staff has suggested that Ameritech’s direct trunking requirement is not “totally unreasonable,” Tr. 297, Staff has noted that the reasonableness of the requirement is not the correct legal standard. Indeed, as Staff’s made clear, “Ameritech must demonstrate that the ‘trigger point’ requirement (864 CCS/1 DS-1) is a necessary restriction in order to avoid severe adverse network impacts.” Staff Initial Br. 9 (citing

First Report and Order). Staff ultimately concluded: “Verizon [Wireless] should not be required to establish a direct trunk group to an end office where there are currently facilities from Verizon [Wireless] to the tandem and from the tandem to the end office.” *Id.* at 9-10.

At the hearing, Staff witness Russell W. Murray testified that direct trunking to an end office is possible without establishing a point of interconnection at the end office. Tr. 324. Under this proposal, it appears that Staff is suggesting that the point of interconnection could be several places, but that it would not necessarily need to be at the Ameritech end office. Tr. 300. Regardless of where the point of interconnection would be, Staff acknowledges that its proposal would require both Ameritech and Verizon Wireless to implement software translations in their switches. Tr. 297-98. These software translations would be much more onerous for Verizon Wireless than for Ameritech, because Verizon Wireless would have to replicate the routing tables that already exist in the tandem, whereas Ameritech would simply terminate the calls from a new trunk group in the same way as it would from an existing trunk group on the tandem.

It is this replication of tandem functionality is one of Verizon Wireless' primary objection to Ameritech's direct trunking proposal. Clampitt Direct Testimony, pp. 7-8.

The existence of Staff's proposal does not in any way change the legal rights and obligations of the parties. As Staff correctly notes in its initial brief, the burden is in on Ameritech to demonstrate that the requirement for Verizon Wireless to trunk direct is a necessary restriction to avoid severe adverse network impacts. Staff Initial Brief, p. 9.

The Commission notes that under 1996 Act the interconnecting carrier may choose at which technically feasible points to interconnect. Although the FCC has stated that meet-points, or other technically feasible points of interconnection may be used, it has not mandated any points of interconnection or used them as a mechanism to shift the right to choose technically feasible points of interconnection away from the interconnecting carrier. To require Verizon Wireless to trunk to Ameritech's end offices when a certain traffic threshold is met, would be a denial of Verizon Wireless' right to choose at which technically feasible points to interconnect with Ameritech. Therefore, we adopt the language proposed by Verizon Wireless.

Alternative 2:

Commission Analysis and Conclusion

Staff believes, and we agree, that we must balance, on one hand, the ability of Ameritech to protect its network from adverse impacts and, on the other hand, the need to avoid placing unreasonably inhibiting competitive requirements on Verizon Wireless.

(Staff Initial Brief, p. 7).

Although tandem switches are generally technically feasible points of interconnection, we find that tandem exhaust is a significant problem in Illinois. As the basis for this conclusion we rely on Ameritech's witness, Mr. Way. He stated:

Despite adding five tandems in the past 4 1/2 years, Ameritech Illinois' tandems are in large part at capacity. For example, there are eight tandems in the Illinois portion of the Chicago LATA. Three of the eight tandems are at 100% capacity. Two of the eight are at 96% capacity. The others are between 70-80% capacity. (Way Direct Testimony, p. 6)

We will therefore not allow Verizon Wireless to interconnect at the tandem in every instance it chooses. Additionally, Staff believes that a trigger point of 864 Centum Call Seconds ("CCS" or the equivalent of one DS-1) during the busy hour for three consecutive months is reasonable. (Staff Reply Brief, p. 5). We agree.

We must clarify, though, that we are not adopting Ameritech's position in the entirety. We agree that once Verizon Wireless' traffic reaches a certain level, it should do something to take traffic off the tandem. However, what that "something" should be will not always be direct trunking to the end office, as proposed by Ameritech. We reach this conclusion because Ameritech does not complain that its trunk to the end office cannot carry Verizon Wireless' traffic. Ameritech merely complains that its tandem cannot handle the traffic. Verizon Wireless should not have to duplicate Ameritech's trunk to the end office. We agree with Staff's assertion that "Verizon [Wireless] should not be required to establish a direct trunk group to an end office where there are currently facilities from Verizon [Wireless] to the tandem and from the tandem to the end office." (Staff Initial Brief, p. 9). The Commission also agrees with Staff's averment that direct trunking is not the appropriate solution in every situation. Verizon Wireless should have several options available, such as those suggested by Staff, including meet points and

Digital Cross Connects. Verizon Wireless should be free to choose the option it uses, provided that such option is technically feasible and not the tandem switch.

Additionally, Staff's proposal allows the costs to be split - the burden is not on Verizon Wireless completely. Verizon Wireless acknowledges this benefit and states that "Staff's proposal would be somewhat helpful in that it splits the cost of the facility between the two parties." (Verizon Reply Brief, p. 4). Ameritech will thus be required to provide transport of traffic from the alternative point of interconnection to the designated end-office. Staff's proposal also allows tandem exhaust to be addressed without requiring Verizon to establish a POI at the end office.

Verizon Wireless also disputes Ameritech's requirement that it should establish a POI with a third-party once the traffic that otherwise would transit Ameritech's network reaches the trigger point. The Commission finds this to be an acceptable solution and agrees with Ameritech that Verizon Wireless' contentions about being able to choose its POI do not apply here because its POI with Ameritech would remain the same.

We note that by adopting Staff's proposal, we may be placing a greater burden on Verizon Wireless than if it were allowed to interconnect at the tandem in every instance. Based on this observation, the Commission agrees with Staff and Verizon Wireless that the 60-day timeframe proposed by Ameritech is too short. Therefore, we conclude that at the outset of the agreement, Verizon Wireless will have 180 days to implement changes that would be immediately required. For later changes, Verizon Wireless will have 120 days to complete modifications after notification that the trigger point has been reached.

Section 5.4.4 of the Interconnection Agreement should be adopted as follows:

5.4.4 Direct Trunking of Carrier Traffic. If the traffic from a single Carrier MSC through any Telco Tandem Switch

destined for another specific Telco switch or third party switch at any time during each month of a three month period requires 24 or more fully utilized Trunks consisting of 864 CCS (24 ERLANGS) or more during the Carrier busy hour, then (a) in instances where the traffic is destined for a Telco switch, the Carrier Parties shall, within one hundred eighty (180) Days after Effective date and initial notification by Telco for initial implementation and one hundred twenty (120) Days for subsequent notifications by Telco, establish a two-way (where such is available) direct Trunk Group to an alternative point of interconnection of the Carrier's choosing for traffic destined for the specific Telco end office and Telco will be solely responsible for the transport of such traffic from the alternative point of interconnection to the specific end-office; and (b) in instances where the traffic is destined for a third party switch, Carrier shall exercise best efforts to establish direct interconnection with that third party within one hundred eighty (180) Days or as soon thereafter as possible, and thereby to cease transiting through Telco's Tandem Switch traffic destined for that third party switch.

Issue 6: Netting

Commission Analysis and Conclusion

The undisputed language in the Interconnection Agreement provides that each party is required to send written notice to the other, advising of the existence of a controversy arising from the Agreement. Within ten days of receipt of such notice, each party is required to appoint a knowledgeable, responsible representative, whose duty is to negotiate the controversy in good faith. (Interconnection Agreement, 21.4). If a dispute has not been resolved after 40 days, either party may seek relief under the applicable laws, such as filing suit in court, or, with this Commission. The Agreement already provides for the set-off of a claim that is undisputed. The Agreement also contains financial incentives for swift and final resolution of billing disputes; if the billing dispute is resolved in favor of the billing party, a late payment charge is to be paid. If the billing dispute is resolved in favor of the billed party, interest is to be paid on any amounts paid

in excess. (Interconnection Agreement, 10, 21.5, and 21.6). While Paragraph 21 of the Agreement does not specify the amount of the late charge, or, the amount of interest to be paid, Paragraph 10, of the Agreement, which concerns Billing and Payment, sets forth the interest to be paid and the late payment charges to be assessed.

The Agreement provides a mechanism by which the parties can seek resolution of disputed bills. The Agreement also penalizes a party for dilatory conduct regarding a bill, as that party could be assessed a penalty or interest. The Commission concludes that the agreed-upon language in the Agreement already addresses Verizon Wireless' concern that Ameritech could unnecessarily prolong billing disputes.

The dispute here concerns the parties' rights under Illinois common law. Illinois law allows a party to set-off a mature debt for a sum certain, or a liquidated, undisputed debt, when there are mutual debts between the parties. *Symansky v. First National Bank of Danville*, 242 Ill. App. 3d 391, 396, 609 N.E.2d 989 (4th Dist. 1993). A mature debt is one that has ripened, that is, a loan matures after the promissory note evincing that loan comes due. *Selby v. Duquoin State Bank*, 223 Ill. App. 3d 104, 106, 584 N.E.2d 1055 (5th Dist. 1991). However, there is no common-law right to set-off an unmatured indebtedness. *Bonhiver v. State Bank of Clearing*, 20 Ill. App. 3d 795, 804, 331 N.E.2d 390 (1st Dist. 1975).

The Commission notes that, if one of the parties chose to set-off a debt that was subject to a lawsuit or a Commission claim, a court, or the Commission, could address on a case-by-case basis whether or not netting was proper in the context of that lawsuit or Commission claim. The Agreement should therefore be silent as to when a party may appropriately net.

Issue 7: Mileage for Calculating Tandem Termination Rate Charged by Ameritech.

Commission Analysis and Conclusion

All parties to this case, and the Commission, agree that the use of the actual mileage of common transport facilities is the most precise method to calculate the rate that Ameritech charges for such transport. Zacardelli Direct Testimony, A33; Staff Initial Br. 23; Clampitt Direct Testimony, p. 29. Although Ameritech initially contended that it would be “infeasible” to calculate the actual mileage of facilities in connection with the transport of CMRS traffic, Zacardelli Direct Testimony, Q34, at the hearing Ameritech eventually acknowledged that such changes are not only possible but would not be so costly as to be impractical. Tr. 265-67. Ameritech currently bills Illinois CLECs based on actual miles and it bills wireless carriers actual mileage in Michigan. See AIT Response to Staff Data Request JZ 1.3, paras. A & D.

Ameritech concedes that even though Ameritech charges CLECs the common transport rate element based on the actual mileage of facilities from the Ameritech tandem to the terminating Ameritech end office, Ameritech charges CMRS providers a tandem rate that includes a flat per minute rate that equals 23 miles of mileage for each call regardless of the actual mileage of the call. AIT Initial Br. 27. Ameritech justifies the use of the 23-mile median by suggesting that it amounts to only a small portion of the total tandem rate. *Id.* at 26. Ameritech questions whether the benefit of the increased precision would outweigh the costs of the billing system changes that would be necessary for Ameritech to bill for actual mileage, *Id.* at 28-29, and asks the Commission in this arbitration to permit Ameritech to use of the 23-mile figure “at least for now.” *Id.* at 30.

Federal law requires Ameritech to apply the components of the rates for common transport consistently to all types of interconnecting carriers, and rates should reflect actual costs and the way in which those costs are incurred as closely as possible. See, 47 U.S.C. §§ 251(c), and 252(d). Section 51.503 of the FCC's rules prohibits Ameritech from discriminating against CMRS carriers vis-à-vis CLECs. The FCC stated explicitly that differing charges based not upon demonstrated differing costs, but instead on the type of carrier being charged, are "discriminatory and not permissible." First Report and Order, 861.

The record establishes that that there are significant defects in Ameritech's use of a median to establish a rate for common transport mileage. Staff has cast significant doubt on the appropriateness of Ameritech's use of a median as opposed to an average, or more preferably actual mileage. Tr. 339. The fact that the 23-mile figure is purported to be based on a study that Ameritech conducted in 1996, Zacardelli Direct Testimony, A35, suggests that is extremely outdated.

Based on 47 U.S.C. §§ 251(c), and 252(d), the Commission orders Ameritech to use the actual mileage of common transport facilities used for the termination of traffic in order to calculate the rate it will charge for such transport. If Ameritech cannot immediately implement such actual mileage, the phased-in remedy recommended by Staff, with a requirement that Ameritech and Verizon Wireless true-up of rates after Ameritech conducts a study and upgrades its billing systems to bill for actual mileage, should be implemented.

Issue 10. Transiting Rate.

Commission Analysis and Conclusion

The 1996 Act provides that telecommunication carriers may interconnect “directly or indirectly” with other carriers. 47 U.S.C. § 251(a). The 1996 Act further requires incumbent LECs like Ameritech to provide interconnection to requesting carriers for the transmission and routing of telephone exchange service, at any technically feasible point in its network, that is at least equal in quality to the interconnection it provides itself, its subsidiaries and affiliates, or any other carrier. 47 U.S.C. § 251(c)(2).

The FCC further clarified this in Section 51.305, which provides in part that:

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC’s network:

(1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) At any technically feasible point within the incumbent LEC’s network including, at a minimum:

* * * *

(iii) The trunk interconnection points for a tandem switch;

* * * *

(5) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission’s rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

(b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC’s network and not for the purpose of providing to others telephone exchange service,

exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

47 C.F.R. § 51.305 (emphasis added)

Thus, the 1996 Act and the FCC's rules envision, and require, Ameritech to provide interconnection to requesting carriers for the indirect transmission of telecommunications between those networks. Ameritech's obligation is not limited to the provision of interconnection only for telecommunications that originate or terminate on Ameritech's network. 47 C.F.R. § 51.305(b) specifically excludes from interconnection the practice of only transiting traffic; that is, in the absence of providing telephone exchange or exchange access service, transiting of interexchange service would not be interconnection. Conversely, where a carrier is providing telephone exchange or exchange access service, as Verizon Wireless is providing, transiting interexchange traffic would be considered interconnection. As an interconnection arrangement, the rates for these transmitting services must be forward looking, cost-based and non-discriminatory. 47 U.S.C. §§ 251(c), 252(d).

Given that forward-looking cost principles must apply to the tandem switching, and therefore transiting, rate, Ameritech must justify the difference between its \$0.001072 reciprocal compensation rate for tandem switching, its tandem switching UNE rate without trunks or transport, which is \$0.000569, and its \$0.004839 transiting rate. Although Ameritech chose not to produce a witness who was a "costing person" and who was therefore qualified to provide the Commission a definitive answer on the subject, Tr. 270, Ameritech's witness Ms. Rita Zaccardelli attempted to provide an answer based on how it had been explained to her. Tr. 271. Ms. Zaccardelli testified that there was an administrative and billing component of cost that is normally contained in Ameritech's

end office switching rate that was “tacked on” to the transiting rate to account for the fact that transiting traffic does not terminate at an Ameritech end office. Tr. 271-72. What Ms. Zaccardelli did not explain, is why this same administrative and billing fee is not also “tacked on” to the tandem switching UNE rate. Tandem switching is a UNE that can be purchased without also purchasing end office switching, and if Ameritech’s rationale were correct, presumably the same analysis would apply in the context of tandem switching UNEs that were purchased without the corresponding end office switching UNE. Under the Act, Ameritech is prohibited from charging anything other than forward-looking, cost-based tandem switching rates for transiting traffic.

Whether or not this Commission is conducting a separate investigation into Ameritech’s TELRIC cost studies including its transiting cost study, is irrelevant to this proceeding. Section 252 of the 1996 Act provides that the Commission shall resolve each issue in this case not later than 9 months after the date on which Ameritech received Verizon Wireless’ request. 47 U.S.C. § 252(B)(4)(C). Verizon Wireless is entitled to a resolution of this issue no later than the issuance of this Arbitration Decision. Forcing Verizon Wireless to wait for the conclusion of a docket to which Verizon Wireless is not a party, and which may take many months to conclude, would violate this Commission’s obligations and duties under 47 U.S.C. § 252(B)(4)(C).

Ameritech has been asked but has not been able to adequately explain the difference between its tandem switching rate and its transiting rate. Staff correctly notes that the Commission has an obligation under Federal law to act on the basis of the “best information available to it from whatever source derived.” 47 U.S.C. § 252(b)(4)(B). In this circumstance, the best information available suggests that there is no rationale for the

difference in the rates, and that Ameritech's tariffed, tandem switching rate should apply to transiting traffic.

Issue 11. Performance Standards.

Commission Analysis and Conclusion

Verizon Wireless has proposed incorporating reasonable mutually binding performance standards into the Agreement, with each party held to clearly definable performance measurements, and reasonable penalties associated with failure to meet such standards. Though performance standards were established by this Commission in ILL. ADMIN CODE tit. 83, §730.500 *et seq.*, those performance standards are minimum standards to which Ameritech must adhere. Verizon Wireless's proposed standards, *e.g.*, the Bellcore standard performance criteria for DS1 HICAP, exceed the minimums established by this Commission and would establish reasonable time periods in which to correct recognized network deficiencies such as congestion or blocking.

The Commission rejects Ameritech claims that because there is no relationship between the penalty Verizon Wireless proposes and the injury that Verizon Wireless might suffer as a result of Ameritech's failure to satisfy the proposed trunk blocking criteria, the proposed performance standards and penalties are unlawful. There is a direct correlation between reciprocal compensation associated with the defaulting network facilities and the trunk blocking criteria. If Ameritech does not comply with performance standards which obligate both carriers to P.01 blocking (a standard specified as an engineering objective in the contract), Ameritech could fall to an unacceptable level of blocking at the tandem. By not accepting augments to existing trunk groups, Ameritech would meet the minimum standard by law and be able to force Verizon Wireless to trunk direct to end offices in order to relieve congestion. Such a result would be contrary to our

determination regarding Verizon Wireless' right to interconnect at any technically feasible point. Because the amount of reciprocal compensation is directly related to whether termination is at the end-office or the tandem, there is a relationship between the trunk blocking criteria and the compensation. Verizon Wireless' proposed higher standard for performance will additionally result in better service and quality to both Verizon Wireless and Ameritech's customers in both the land-to-mobile and mobile-to-land directions. If higher quality service and connectivity results in increased call volume, which it likely will, reciprocal compensation will also increase for both parties.

Ameritech has a poor record of meeting performance standards in Illinois. In Re: SBC Communications, Inc. and Ameritech Corporation, Joint Application for Approval of the Reorganization of Illinois Bell Telephone Company d/b/a Ameritech Illinois, and the Reorganization of Ameritech Illinois Metro, Inc, in Accordance with Section 7-204 of the Public Utilities Act and or All Other Appropriate Relief, Docket No. 98-0555, 1999 Ill. PUC LEXIS 738 (Sept. 23, 1999), this Commission noted several times that even Ameritech acknowledges that poor performance is “‘a long recognized’ problem persisting for many years.” Id. Ameritech's network deficiencies and poor service affects all telecommunications users in this state. Given that the standards that are currently in place have not prevented Ameritech's poor performance in the past, this Commission adopts Verizon Wireless' more stringent standards.

This conclusion is consistent with our Decision in PrimeCo Personal Communications v. Illinois Bell Telephone Communications, ICC Docket No. 00-0670, Apr. 11, 2001. In PrimeCo, the complainant alleged that Ameritech is knowingly providing unreasonable and unreliable service in the state of Illinois. Despite the fact that

PrimeCo's contract had specific performance standards the Commission found that "when Ameritech provides service which does not meet its contractual responsibilities, the aggrieved party suffers without remedies." The higher quality service and connectivity, that will be the result of Verizon Wireless' proposed performance standards, will result in increased call volume, reciprocal compensation and service to the benefit of Ameritech, Verizon Wireless, and Illinois consumers.

Issue AIT-2. Transit Traffic/Reciprocal Compensation

Verizon Wireless Position

Ameritech wants Verizon Wireless to provide it with two sets of records, one for the Ameritech traffic terminating to Verizon Wireless and one for the traffic that originates from a third party, but transits the Ameritech tandem and terminates to Verizon Wireless. Verizon Wireless does not believe that it should be forced to provide Ameritech with reports that Ameritech can generate from its own tandems.

Commission Analysis and Conclusion

Ameritech concedes that it must pay reciprocal compensation on local calls originating from an Ameritech customer and terminated by Verizon Wireless. Some local calls, however, originate with a third party carrier, transit Ameritech's network, and are terminated by Verizon Wireless. Ameritech claims it has no obligation to pay reciprocal compensation for these calls. Ameritech, thus, proposes to add a Section 8.2 of the Interconnection Agreement to require Verizon Wireless to separately record and provide to Ameritech two sets of records: one for Ameritech traffic terminating to Verizon Wireless, and one for the traffic that originates from a third party, but transits the Ameritech tandem and terminates to Verizon Wireless. This information would have to be included on each reciprocal compensation invoice. AIT Ex. 2, A53.

Ameritech's proposal is unnecessary and duplicative of information Ameritech should be able to obtain from its own tandem reports. If Verizon Wireless is billing actual recorded traffic, which is the only situation in which the issue is relevant, Verizon Wireless has committed to bill Ameritech for the traffic that originates on Ameritech's network and not for transited traffic. VZW Ex. 6, p 6. There is no reason for Verizon Wireless to itemize and provide a separate record of traffic for which it is not billing Ameritech. Ameritech's proposed language would be unduly burdensome to Verizon Wireless and is rejected.

Issue AIT-4. Transiting

Commission Analysis and Conclusion

The Commission rejects Verizon Wireless' proposal to insert the previously-mentioned language in Section 8.6 in the Agreement. As a result, the alternate language proposed by Ameritech need not be considered. We find that the proposed language requested by Verizon Wireless is merely a restatement of the current practice, agreed to by both parties, that terminating carriers not seek compensation from carriers that simply deliver transit traffic. Therefore, Verizon Wireless' proposed language does not add any value to the Agreement.

The Commission must consider the true nature of the AIT-4 issue. The parties have framed this issue in terms of whether Verizon Wireless is entitled to provide transit services. However, it is clear to us that there is no need to decide the transiting issue in order to determine whether Verizon Wireless' proposed Section 8.6 should be included in the Agreement. The parties concur that when one carrier transits traffic to another, the transiting carrier, by law, has no reciprocal compensation obligation (and no other payment obligation) to the termination carrier. Verizon Wireless proposed language

provides that Ameritech will not charge Verizon for transiting traffic to Ameritech, and it is altogether clear that Ameritech cannot properly impose such charges on Verizon Wireless, regardless of whether Verizon Wireless' proposed language is included in the Agreement. Therefore, there is no legal reason for the inclusion of this sentence in the Agreement.

Verizon Wireless concedes that it is not yet ready to transit and may not be ready during the lifetime of this Agreement. Further, when and if Verizon Wireless is ready for the transiting of third-party carriers, it remains to be determined under what terms or conditions transiting might take place.

Considering the reasons set forth, we conclude that there are no just grounds to include Verizon Wireless' proposed language in this Agreement. Verizon Wireless has not directly asked this Commission for authorization to transit; therefore, we need not consider whether Verizon Wireless should be sanctioned to transit. With the rejection of the language and based upon the above, we find our decision to be dispositive of the entire issue and need not consider the additional arguments of the parties regarding whether Verizon has a right to transit.

CONCLUSION

Verizon Wireless’ respectfully requests that the Commission and the Hearing Examiners accept the HEPO with the modifications described in the Brief on Exceptions of Verizon Wireless and shown above.

Respectfully Submitted,



By: _____

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STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

In the Matter of Verizon Wireless)
Petition for Arbitration pursuant to)
Section 252 (b) of the Telecommunications)
Act of 1996 to establish an Interconnection)
Agreement with Illinois Bell Telephone)
Company d/b/a Ameritech Illinois)

Docket No. 01-0007

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF INGHAM)

Kristi A. Grieve, being duly sworn, deposes and says that she is an member of Clark Hill P.L.C., and that on April 17, 2001, a Proprietary copy of the Brief on Exceptions of Verizon Wireless and accompanying Exceptions was served upon:

See attached service list

Service was accomplished by depositing same in a regular mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly and via electronic mail.

Kristi A. Grieve
Kristi A. Grieve

Subscribed and sworn to before me
this 17th day of April, 2001.

Donna Gutoskey, Notary Public
Ingham County, Michigan
Commission Expires: September 29, 2001

SERVICE LIST

DOCKET NO. 01-0007

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