

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In the matter of XO Illinois, Inc.)
Petition for Arbitration pursuant to)
Section 252 (b) of the Telecommunications) Docket No. 01-_____
Act of 1996 to establish an Interconnection)
Agreement with Illinois Bell Telephone)
Company d/b/a Ameritech Illinois)
)

PETITION FOR ARBITRATION

XO requested negotiations January 15, 2001

Arbitration window opens: May 30, 2001

Arbitration window closes: June 25, 2001

Date by which final order must be issued: October 15, 2001

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Dated: June 25, 2001

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PETITION FOR ARBITRATION

XO Illinois, Inc. (“XO”), by and through its attorneys, hereby petitions the Illinois Commerce Commission (“Commission”) for arbitration of certain terms, conditions, and prices for interconnection and related arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois (“Ameritech”), a subsidiary of SBC Communications, Inc. (“SBC”). This Petition is filed pursuant to Section 252 (b) of the Federal Telecommunications Act of 1996 (“Federal Act”), 47 U.S.C. § 252 (b), and pursuant to Title 83, Part 761 of the Illinois Administrative Code, Arbitration Procedures, 83 Ill. Admin. Code 761. XO respectfully requests that the Commission conduct the arbitration and direct Ameritech to allow XO to exercise its rights under Section 252(i) of the Federal Act (43 U.S.C. 252(i)) to opt into the Interconnection Agreement between Ameritech Illinois and Focal-Illinois, in its entirety. In support of this request, XO states as follows:

I. THE PARTIES

1. XO Illinois, Inc., a wholly owned subsidiary of XO Communications, Inc., is principally located at 810 Jorie Blvd, Suite 200, Oakbrook, Illinois 60523. XO Illinois, Inc. is a telecommunications carrier that has licenses from this

Commission to provide facilities based and resold local exchange service and interexchange service.

2. Ameritech Illinois, a subsidiary of SBC Communications, Inc., is authorized by the Commission to provide facilities based and resold local exchange service and interexchange telecommunications services in Illinois. Ameritech is an Incumbent Local Exchange Carrier (“ILEC”) and a Bell Operating Company as those terms are defined by the Federal Act. See, 47 U.S.C. 251(h) and 47 U.S.C. 153(4).
3. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals:

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II. FACTUAL OVERVIEW

4. On September 10, 1997, XO, (under its former name, “NEXTLINK Illinois, Inc.”), entered into an interconnection agreement with Ameritech under Sections 251 and 252 of the Federal Act. Pursuant to its authority under the Federal Act, this Commission approved that interconnection agreement in an order entered on February 19, 1998 (Ill.C.C. Docket No. 97 NA-039). Although the Initial Agreement has expired, during the pendency of negotiations, the Parties have continued to operate pursuant to the expired Initial Agreement.
5. Attached to this Petition as Exhibit A is a letter executed by both parties that confirms the date for initiation of the negotiations and the dates within which XO may file a petition for arbitration of the agreement. Those dates are as follows:
 - XO requested negotiations January 15, 2001
 - Arbitration window opens: May 30, 2001
 - Arbitration window closes: June 25, 2001
 - Date by which final order must be issued: October 15, 2001
6. XO negotiated in good faith in accordance with Section 251(c)(1) of the Federal Act. XO has attempted to establish terms and conditions for a binding interconnection agreement with Ameritech to obtain the facilities, services, interconnections, arrangements, and network elements available under Section 251 of the Federal Act. The verified statement of Douglas Kinkoph, which is attached hereto as Exhibit B, demonstrates XO’s good faith efforts at negotiation

of the resolved and outstanding issues and verifies the statements made in this Petition.

7. Since XO initiated negotiations, XO and Ameritech have held a number of telephone conference calls and exchanged drafts of the Interconnection Agreement. The parties were unable to reach agreement on all contract language and policy issues.
8. On May 30, 2001, in an effort to avoid additional expenses related to negotiating and/or arbitrating an interconnection agreement, XO decided to exercise its rights under Section 252(i) of the Federal Act.
9. By letter dated May 30, 2001, XO Illinois informed Ameritech of its intention to opt into the Focal-Ameritech Illinois agreement (“Focal-Illinois Agreement”). The May 30, 2001, letter to Ameritech is attached as Appendix C.
10. In its letter, XO stated that it was entitled to opt into the entire Focal-Illinois Agreement. XO stated the interconnection agreement should also include the following amendments:
 - (i) XO’s existing and approved xDSL amendment; (ii) XO’s existing and approved SBC/Ameritech UNE amendment; (iii) XO’s existing and approved SBC/Ameritech FCC Merger Conditions amendment; (iv) the SBC/Ameritech 13 State Directory Assistance Appendix; (v) SBC/Ameritech Physical and Virtual Collocation Appendices compliant with the FCC’s existing and effective collocation rules and orders (vi) current Illinois pricing appendices; (vii) an amendment incorporating performance measures adopted by the Illinois Commerce Commission (“ICC”); and (viii) language effectuating the ICC’s decisions governing facilities modification and special construction.
11. Ameritech responded to XO’s request in a letter dated June 18, 2001, which is attached as Appendix D. In that letter, Ameritech stated that it had no objection to XO Illinois opting into the Focal-Illinois Agreement, but that XO:

. . . may not opt into the terms and provisions for ISP compensation in the Focal Agreement because the recent FCC order ruled that such ISP compensation provisions are outside the permissible scope of Section 252(i) as of April 18, 2001.

12. Ameritech added that it was refusing to allow XO to opt into not only the Internet Service Provider (“ISP”) compensation portion of the agreement, but also the entire portion of the agreement dealing with rates, terms and conditions for all intercarrier compensation, including the physical routing, recording of minutes of use, billing and payment terms. Ameritech Illinois promised that it would forward proposed terms and conditions to XO “shortly.” As of the date of this filing, Ameritech has failed to forward to XO those proposed terms and conditions. Ameritech and XO have agreed, however, on the amendments proposed by XO in the May 30, 2001 letter. Therefore, those proposed amendments are not the subject of this arbitration proceeding. The only issue between the parties is the right of XO to adopt in their entirety the intercarrier compensation provisions of the Focal-Illinois Agreement. The Focal-Illinois Agreement is attached to this Petition as Exhibit E.

III. JURISDICTION

13. Under the Federal Act, parties negotiating for interconnection, access to unbundled network elements, or resale of services within a particular state, may petition the state commission for arbitration of any unresolved issue during the 135th to the 160th day of such negotiations. 47 USC § 252(b). The statutory period for arbitration expires on June 25, 2001. Accordingly, XO files this Petition with the Commission on this date to preserve its rights under Section

252(b) of the Act, and to seek relief from the Commission in resolving the outstanding disputes between the Parties.

IV. APPLICABLE LEGAL STANDARDS

14. This arbitration must be resolved under the standards established in Sections 251 and 252 of the Act, 47 USC §§ 251, 252, the rules adopted and orders issued by the Federal Communications Commission (“FCC”) in implementing the Act, and the applicable rules and orders of this Commission, including but not limited to Title 83, Part 761 of the Illinois Administrative Code, Arbitration Procedures, 83 III. Admin. Code 761.
15. Section 252(c) of the Act requires a state commission resolving open issues through arbitration to:
 - (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251;
 - (2) establish any rates for interconnection, services, or network elements according to subsection (d) [of Section 252]
16. The Commission may also, under its own state law authority, impose additional requirements pursuant to Section 252(e)(3) of the Act, as long as such requirements are consistent with the Act and the FCC’s regulations. 47 USC 252(e)(3).
17. The Commission should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the Requirements of Sections 251(b) and (c) and 252(d) of the Act, 47 USC §§ 251(b),(c) and 47 USC § 252(d).

18. Because XO has exercised its right under Section 252(i) of the Federal Act, this arbitration proceeding must resolve the scope of the rights set forth in that section of the Act, which provides:

A local exchange carrier 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.

V. ISSUE IN DISPUTE

19. Is XO entitled to opt into the Focal-Illinois Agreement, including the entirety of the intercarrier compensation provisions of that agreement?

XO's Position:

XO recognizes that the payment of reciprocal compensation for calls terminated with ISPs must be consistent with the FCC's *ISP Order*, FCC Order 01-131 (April 27, 2001) (the "FCC Order"). Regarding rates for calls terminated with ISPs, the footnoted sentence of Section 4.7 of the Focal-Illinois Agreement permits compensation for ISP traffic at the Reciprocal Compensations rate set forth in the Agreement for all traffic. Pursuant to the FCC Order, Ameritech must either accept that rate or the rate caps set forth in the FCC Order for all traffic, including traffic that does not terminate with ISPs. As of this date, Ameritech has not indicated its agreement to cap all rates at the level set forth in the FCC Order. Until it does so, the Focal rates apply for all traffic. Regarding Ameritech's insistence on renegotiating the entire intercarrier compensation portion of the agreement, XO believes that Ameritech may not bootstrap all negotiations related

to “all intercarrier compensation” including “physical routing, recording of minutes of use, billing and payment terms” provisions of the Agreement under the pretext of complying with the FCC’s Order. Ameritech’s overarching request to renegotiate the entire intercarrier compensation is illegal. Under the terms of the Federal Act, Ameritech must make the Focal-Illinois Agreement available to XO “upon the same terms and conditions as those provided in the agreement.”

Ameritech Illinois’ Position:

Ameritech argues that the FCC Order not only prevents XO from opting into the ISP provision of the Focal-Illinois Agreement, but it gives Ameritech “carte blanche” to renegotiate all intercarrier compensation provisions.

VI. CONCLUSION

WHEREFORE, XO Illinois, Inc. requests this Commission to find that:

- 1) XO is entitled to opt into the entirety of the Focal-Illinois Agreement, including those portions of that agreement that address intercarrier compensation.
- 2) XO is entitled to other relief the Commission deems to be just and reasonable.

Dated: June 25, 2001

Respectfully submitted,
XO ILLINOIS, INC.

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APPENDIXES

- Appendix A April 24, 2001 letter setting forth agreed arbitration dates
- Appendix B Verified Statement of Douglas Kinkoph
- Appendix C May 30, 2001 letter of XO opting into the Focal Illinois Agreement
- Appendix D June 18, 2001 letter of Ameritech responding to XO's request
- Appendix E Focal Illinois Agreement