

**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. 01-0466**  
**Act of 1996 to Establish an Interconnection** )  
**Agreement with Illinois Bell Telephone** )  
**Company d/b/a Ameritech Illinois** )

**REPLY TESTIMONY**

**OF**

**ERIC L. PANFIL**

**On Behalf of  
AMERITECH ILLINOIS**

**August 06, 2001**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Eric L. Panfil. My business address is 225 W. Randolph St, Chicago, Illinois  
3 60606.

4 **Q. ARE YOU THE SAME ERIC L. PANFIL WHO TESTIFIED PREVIOUSLY IN THIS**  
5 **DOCKET?**

6 A. Yes, I am.

7 **Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?**

8 A. The purpose of my reply testimony is to address Ameritech Illinois's position in response  
9 to XO's positions as expressed in the reply testimony of Mr. Douglas Kinkoph.

10 **Q. WHAT ASPECT OF MR. KINKOPH'S TESTIMONY WILL YOU ADDRESS FIRST?**

11 A. The most striking aspect of Mr. Kinkoph's testimony from my point of view is what it  
12 does not say. Mr. Kinkoph does not at any point dispute that the bifurcated rate structure  
13 that Ameritech Illinois is proposing is superior to the current Illinois rate structure (i.e.,  
14 better aligned with the cost-based reciprocal compensation requirements of the 1996 Act)  
15 for 251(b)(5) traffic and ISP-bound traffic. Instead, Mr. Kinkoph's testimony is devoted  
16 exclusively to attempts to persuade the Commission not to think about the bifurcated rate  
17 proposal (or any of the other substantive issues raised by Ameritech Illinois). Given that  
18 that proposal was at the core of my Direct Testimony, to which Mr. Kinkoph was  
19 responding, I can only infer that XO was not able to find any flaws in the bifurcated rate  
20 proposal itself.

21 **Q. MR KINKOPH STATES (AT PAGE 1) THAT THE FCC'S *ISP COMPENSATION***  
22 ***REMAND ORDER* "POTENTIALLY" LIMITS XO'S OPT-IN RIGHTS REGARDING**  
23 **THE FOCAL AGREEMENT. DO YOU AGREE?**

24 A. No. While, like Mr. Kinkoph, I am not an attorney, it is my understanding and belief that  
25 the *ISP Compensation Remand Order* absolutely affects the ability of any provider to opt  
26 in to the reciprocal compensation provisions of an agreement that was in effect prior to

1 April 18, 2001, regarding compensation for ISP-bound traffic. XO effectively admits as  
2 much by proposing changes to the provisions of the Focal Agreement. However, the  
3 changes proposed by XO are wholly inadequate. In order for XO and Ameritech Illinois  
4 to compensate each other for ISP-bound traffic as required by the *ISP Compensation*  
5 *Remand Order*, the agreement must include provisions that explicitly describe and  
6 require the compensation, whether it is at rates equal to those applied to 251(b)(5) traffic  
7 or at the capped rates that the FCC specifies as an alternative. The provisions proposed  
8 by XO simply do not specify the compensation arrangements for ISP-bound traffic at all,  
9 nor do they include critical details as to how ISP-bound traffic will be identified and  
10 measured under the various interconnection and traffic scenarios (e.g. intraLATA toll and  
11 transit traffic) that Ameritech Illinois believes are necessary to operate after the FCC's  
12 Order.

13 **Q. HOW DO YOU RESPOND TO MR. KINKOPH'S POINT (AT PAGES 1-2) THAT THE**  
14 **LANGUAGE THE FCC USED IN PARAGRAPH 82 AND FOOTNOTE 149 OF THE *ISP***  
15 ***COMPENSATION REMAND ORDER* INDICATES THAT THE ONLY THING IN THE**  
16 **FOCAL AGREEMENT THAT XO CANNOT OPT INTO IS THE RATE FOR ISP-BOUND**  
17 **TRAFFIC?**

18 A. I believe Mr. Kinkoph's reading of the FCC's Order is forced and overly narrow. To  
19 confirm this, consider the reciprocal compensation provisions of the Focal Agreement  
20 that XO says it wants to adopt. Mr. Kinkoph is apparently thinking that the local traffic  
21 language in those provisions applies to ISP-bound traffic. Assuming for the sake of  
22 discussion that that is correct *for purposes of the Focal Agreement itself*, it cannot also be  
23 correct *for purposes of an agreement made after the ISP Compensation Remand Order*,  
24 because the FCC made clear in that order that ISP-bound traffic is not local. Thus, the  
25 *ISP Compensation Remand Order* clearly prohibits XO from adopting anything in the

1 Focal Agreement that might be read to say or imply that ISP-bound traffic is local, or that  
2 ISP-bound traffic is encompassed by the local traffic provisions of the agreement.

3 **Q. IS THERE ANYTHING IN THE *ISP COMPENSATION REMAND ORDER* THAT**  
4 **SUPPORTS YOUR VIEW THAT IT IS MORE THAN JUST RATES FOR ISP-**  
5 **BOUND TRAFFIC THAT CAN NO LONGER BE ADOPTED UNDER SECTION**  
6 **252(i)?**

7 A. Yes. One justification that the FCC gave for cutting off CLECs' 252(i) rights with  
8 respect to intercarrier compensation provisions for ISP-bound traffic was that contract  
9 provisions must be made available under section 252(i) only "for a reasonable period of  
10 time." (*ISP Compensation Remand Order*, footnote 155.) This "reasonable period of  
11 time," the FCC concluded, had ended with the FCC's "adoption of an intercarrier  
12 compensation mechanism for ISP-bound traffic" in its Order. In my opinion, common  
13 sense dictates that the "reasonable period of time" also ended at the same time for  
14 contract provisions that are legitimately related to compensation provisions for ISP-  
15 bound traffic. So, even if one were to accept Mr. Kinkoph's very narrow reading of what  
16 the FCC *explicitly ruled* could no longer be adopted, I believe the FCC's reasoning leads  
17 to the conclusion that there is a more inclusive set of provisions – namely, all the  
18 legitimately related provisions – that also cannot be adopted.

19 **Q. HAS AMERITECH ILLINOIS ELECTED TO AVAIL ITSELF OF THE RATE CAPS**  
20 **SPECIFIED IN THE FCC ORDER?**

21 A. Not at this time, though of course Ameritech Illinois may do so in the future.

22 **Q. DOES THAT FACT MERIT THE IMPORTANCE THAT MR. KINKOPH SEEMS TO**  
23 **ASSIGN TO IT?**

24 A. No. Mr. Kinkoph is in error in assuming that application of the rate caps represents the  
25 entire substance of the FCC's Order. The Order establishes the FCC's jurisdiction over  
26 ISP-bound traffic, and specifies the compensation to be applied to that traffic under the  
27 terms of the Order, regardless of whether the ILEC chooses the option of imposing the

1 rate caps. So, regardless of whether the rate caps are imposed, the compensation for ISP-  
2 bound traffic must take place under the auspices of the FCC Order, not pursuant to  
3 section 251(b)(5) of the Act, and must be specified as such in the agreement for the  
4 compensation to occur. XO and Mr. Kinkoph seem to assume that the compensation for  
5 ISP-bound traffic will happen due to some nebulous but undocumented meeting of the  
6 minds between XO and Ameritech Illinois regarding compensation to be paid pursuant to  
7 the FCC order. Ameritech Illinois believes that the terms of compensation must be  
8 explicitly and completely spelled out in the interconnection agreement.

9 **Q. ON PAGES 5-6 OF HIS TESTIMONY, MR. KINKOPH IDENTIFIES FOUR CLECS**  
10 **THAT HAVE ADOPTED THE FOCAL AGREEMENT, AND STATES THAT**  
11 **AMERITECH ILLINOIS'S REFUSAL TO ALLOW XO TO DO THE SAME VIOLATES**  
12 **THE REQUIREMENT THAT THE AGREEMENT SHOULD BE MADE AVAILABLE TO**  
13 **ALL SIMILARLY SITUATED CARRIERS. DO YOU AGREE?**

14 **A.** No. There is a tremendous difference between XO's attempt to adopt the Focal  
15 Agreement and the other carriers' adoption of the Focal Agreement. Unlike XO, each of  
16 the four CLECs to which Mr. Kinkoph refers made its request to opt in to the Focal  
17 Agreement before the FCC cut off carriers' rights to opt into intercarrier compensation  
18 regarding ISP-bound traffic. Specifically, I am informed that the 252(i) requests were  
19 made by GlobalEyes on March 5, 2001; by Cbeyond on March 13, 2001; by Globalcom  
20 on January 25, 2001; and by RCN on November 30, 2000. Given the dates on which  
21 those requests were made, Ameritech Illinois had to honor them. XO, on the other hand,  
22 did not make its request to opt into the Focal Agreement until May 30, 2001,  
23 approximately 42 days after the date as of which the FCC prohibited such opt-ins for  
24 intercarrier compensation provisions. Thus, to use Mr. Kinkoph's terminology, XO is not  
25 at all "similarly situated" to the carriers Mr. Kinkoph mentions.

26 **Q. BUT MR. KINKOPH ALSO SAYS THAT IN THE PROCEEDINGS TO APPROVE**  
27 **AMERITECH ILLINOIS'S AGREEMENTS WITH GLOBALEYES AND THE OTHER**

1 CARRIERS THAT ADOPTED THE FOCAL AGREEMENT, AMERITECH ILLINOIS  
2 REPRESENTED THAT IT WOULD MAKE THOSE AGREEMENTS AVAILABLE TO  
3 ANY OTHER TELECOMMUNICATIONS CARRIER. HOW DO YOU RESPOND TO  
4 THAT?

5 A. In the first place, I find Mr. Kinkoph's testimony on this point somewhat confused. As I  
6 understand it, XO wants to adopt the Focal Agreement, not Ameritech Illinois's  
7 agreement with GlobalEyes or with any of the other carriers Mr. Kinkoph mentions. I  
8 therefore do not understand how Ameritech Illinois's supposed obligation to make  
9 available the GlobalEyes (or any other) agreement comes into play – all that matters is  
10 the extent to which Ameritech Illinois must make the Focal Agreement available to XO.

11 In addition, I strongly believe that Ameritech Illinois's undertaking to make the  
12 GlobalEyes (and other) agreements available to other carriers was intended to mean, and  
13 would be understood by the Commission to mean, that Ameritech Illinois would make  
14 those agreements available *to the extent it is required to do so by section 252(i)*. Under  
15 FCC Rule 51.809, an incumbent carrier's duty to make an approved interconnection  
16 agreement available to other carriers is limited in several ways. For example, the  
17 agreement need only be made available "for a reasonable period of time," and need not  
18 be made available to another carrier to the extent that doing so would cost more than it  
19 costs to provide the services to the original party to the agreement. I was not personally  
20 involved in the preparation of the Verified Statements to which Mr. Kinkoph refers on  
21 page 5 of his reply testimony, but I very much doubt that Ameritech Illinois intended,  
22 when it submitted Verified Statements containing the boilerplate representation that Mr.  
23 Kinkoph quotes, to be waiving all the rights the FCC has given it to object to improper or  
24 impermissible section 252(i) requests.

25 Q. MR. KINKOPH ALSO CLAIMS, ON PAGE 10 OF HIS REPLY TESTIMONY, THAT XO  
26 IS ENTITLED TO "OPT INTO" THE RATE STRUCTURE OF AN OUT-OF-REGION  
27 INTERCONNECTION BETWEEN AN SBC CLEC AFFILIATE AND CINCINNATI BELL

1           **TELEPHONE. IS HE CORRECT?**

2    A.    No. The SBC-Ameritech merger conditions that require Ameritech Illinois to allow "opt-  
3           ins" to such agreements specifically exclude rates from the provisions that a CLEC may  
4           obtain. The federal merger condition to which Mr. Kinkoph refers is paragraph 42 of the  
5           so-called FCC Merger Conditions. Paragraph 42 expressly provides that the duty of  
6           SBC/Ameritech ILECs to make available interconnection arrangements and UNEs that an  
7           SBC/Ameritech CLEC obtains out-of-region is "exclusive of price." I also note that  
8           paragraph 42 applies only to service arrangements that the SBC/Ameritech CLEC obtains  
9           from an incumbent LEC that developed the arrangements specifically for the  
10          SBC/Ameritech CLEC, and that that incumbent "had not previously . . . made available  
11          to any other telecommunications carrier." I do not know for certain, but I have no reason  
12          to believe Cincinnati Bell had made available to no other telecommunications carrier the  
13          intercarrier compensation arrangement that it made available to SBC Telecom, Inc. and  
14          that XO claims it can adopt.

15                 Similarly, the terms of the merger conditions approved by the Commission in  
16          Docket 98-0555 do not include the adoption of the prices for such agreements. Condition  
17          27, Interconnection Condition D, states:

18                         The price(s) for such UNEs or interconnection arrangements shall be  
19                         negotiated on a state-specific basis and, if such negotiations do not result  
20                         in agreement, Ameritech Illinois shall submit the pricing dispute(s),  
21                         exclusive of the related terms and conditions required to be provided  
22                         under this Section, to this Commission for resolution under 47 U.S.C.  
23                         § 252.

24          Finally, XO has not notified Ameritech Illinois of its intent to adopt the agreement in  
25          question, either in whole or in part.

26    **Q.    AT PAGE 9 OF HIS REPLY TESTIMONY, MR. KINKOPH SUGGESTS THE**  
27    **POSSIBILITY OF AN INDUSTRY-WIDE INVESTIGATION INTO AMERITECH**

1           **ILLINOIS’S BIFURCATED RATE PROPOSAL. HOW DO YOU RESPOND?**

2    A.    I think the suggestion of an industry-wide investigation sidesteps the key point, which is  
3           that what Ameritech Illinois is proposing is undeniably superior to what we have in place  
4           now. There really can be no question about that, because what the proposal does is to  
5           make the intercarrier compensation charge for each call a function of the duration (and  
6           therefore the cost) of the call in a way that the current rate structure does not. As I noted  
7           at the beginning of this reply testimony, Mr. Kinkoph does not contend anywhere in his  
8           testimony that the bifurcated rate proposal is not an improvement. I do not believe  
9           anyone could plausibly make such a contention.

10                 This is not to say that what Ameritech Illinois is proposing here cannot be  
11           improved on – just that it is indisputably an improvement. Ameritech Illinois would not  
12           object to the opening of an industry-wide docket if the Commission thinks that would be  
13           appropriate, but that is no reason not to take now, in this arbitration, the clearly desirable  
14           step that Ameritech Illinois is proposing. If the Commission is inclined to favor a more  
15           generic docket on Ameritech Illinois's reciprocal compensation costs and rates, it should  
16           nonetheless require the parties to this arbitration to adopt the rate structure and the prices  
17           Ameritech Illinois is proposing, subject to a possible true up, as I suggested in my direct  
18           testimony.

19    **Q.    WHAT ABOUT MR. KINKOPH’S OBSERVATION CONCERNING WHAT HE CALLS**  
20           **(AT P. 9) “THE PROPRIETY OF MERGING A FIVE YEAR OLD COST STUDY WITH**  
21           **OUT OF DATE TRAFFIC STUDIES”?**

22    A.    Again, Mr. Kinkoph is missing the point, for the reasons I explained in my last answer.  
23           If the Commission believes the time has come for Ameritech Illinois to revise its  
24           transport and termination cost studies, Ameritech Illinois can certainly do that. But that  
25           is no reason to hold off on making the change in reciprocal compensation rates that is on

1 the table in this arbitration. The fact of the matter is that one way or another, the parties  
2 are going to be paying each other reciprocal compensation based on what are now the  
3 most recent cost studies Ameritech Illinois has had accepted by the Commission. The  
4 only question is whether the parties will or will not apply a new, and better, rate structure.  
5 I would also point out that there is nothing new or unique about the identification of setup  
6 and duration costs for switching and transport functions in incremental-type cost (e.g.  
7 LRSIC, TELRIC) studies. It is simply in the nature of the costs that a properly performed  
8 study would identify the costs separately for setup and duration functions, and cost  
9 studies that I have seen both before and after those at issue in this proceeding have done  
10 so.

11 As to Mr. Kinkoph's reference to "out of date traffic studies," it is not at all clear  
12 to what he is referring. The rates proposed by Ameritech Illinois are not dependent on  
13 any particular set of traffic studies -- on the contrary, they result from *removing* an  
14 unnecessary cost-averaging calculation that was based on traffic data that has *never*  
15 represented the traffic characteristics of the majority of carriers that are charging rates  
16 based on Ameritech Illinois's costs. Ameritech Illinois is simply proposing to use rates  
17 that directly reflect the cost characteristics that were specifically identified in the cost  
18 studies and that eliminate inappropriate rate and cost averaging.

19 **Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

20 **A.** Yes it does.