STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Petition of	)	
	)	
Global NAPs, Inc.	)	
	)	
For Arbitration Pursuant to Section 252(b) of	)	No. 01-0786
The Telecommunications Act of 1996 to	)	
Establish an Interconnection Agreement with	)	
Illinois Bell Telephone Company d/b/a	)	
Ameritech Illinois	)	

REBUTTAL TESTIMONY OF CRAIG MINDELL

ON BEHALF OF

AMERITECH ILLINOIS

February 1 , 2002

Q. ARE YOU THE SAME CRAIG MINDELL WHO PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I respond to the testimony of Illinois Commerce Commission Staff member Qin Liu on Issues 1-4. As in the testimony I filed previously, I group these issues as follows:

Points of Interconnection: Issues 1 & 2 (Appendices NIM and ITR)

Call Jurisdiction – FX, Calling Scope and Reciprocal Compensation: Issues 3 & 4 (Appendices FX, Numbering, NIM and Reciprocal Compensation)

Q. DO YOU AGREE WITH THE OPINIONS EXPRESSED BY MS. LIU CONCERNING ISSUES 1 & 2?

A. I agree with practically all of the premises Ms. Liu develops in her analysis. I disagree only with her conclusion.

Q. WHAT POINTS DEVELOPED BY MS. LIU DO YOU AGREE WITH?

A. I agree with Ms. Liu on all the following points:

1. Ms. Liu accurately represents Ameritech Illinois' positions on Issues 1 and 2. She accurately states that Ameritech Illinois agrees that GNAPs may, if it chooses, interconnect its network with Ameritech Illinois' network at a single POI per LATA, and she accurately describes Ameritech Illinois' position that if GNAPs chooses the single POI option, GNAPs should be required to bear the resulting incremental costs for calls that are carried a great distance on Ameritech's side of the POI to the POI in a tandem sector area that is different from where such calls would otherwise be traded.

2. Ameritech's position on the physical aspect of interconnection is consistent with federal and state law, as Ms. Liu states.

3. There is no fundamental disagreement between Ameritech Illinois and GNAPs on Issue 1 — that GNAPs may receive interconnection through a single POI in each LATA.

4. On Issue 2, I agree with Ms. Liu that the traffic that increases Ameritech Illinois' costs in the single POI scenario is traffic in both directions (originated by Ameritech Illinois customers and terminated to Ameritech Illinois customers), as Ms. Liu explains at pages 5-6 of her testimony.

5. GNAPs' election to use a single POI does impose costs on Ameritech Illinois, as Ms. Liu recognizes at page 8 of her testimony, and Ameritech Illinois requests that GNAPs bear only the "extra" costs incurred to transport traffic outside a local calling distance, as Ms. Liu states.

6. Reciprocal Compensation does not cover the additional transport costs created by a single POI — it fails to cover transport costs either for traffic that is not routed through a tandem and for traffic that is originated by Ameritech Illinois customers, as Ms. Liu explains at pages 6-8 of her testimony.

7. While the FCC and the State of Illinois require that Ameritech Illinois make the single POI option available to GNAPs, as Ms. Liu states at pages 2-4 of her testimony, neither the FCC nor the State of Illinois has decided how the additional costs caused by GNAPs' election of that option should be allocated, as Ms. Liu states at pages 9-10 of her testimony. The FCC thus recognizes a distinction between an ILEC offering a single POI and an ILEC doing so for free.

Q. WITH ALL THIS AGREEMENT BETWEEN STAFF AND AMERITECH ILLINOIS, HOW HAVE STAFF AND AMERITECH REACHED DIFFERENT CONCLUSIONS ABOUT THE APPROPRIATENESS OF GNAPS PAYING THE ADDITIONAL COSTS OF INTERCONNECTION AT A SINGLE POI?

A. Staff's logic diverges from Ameritech's in two respects, leading to differing conclusions. The first difference arises out of Ms. Liu's contention (at page 11) that GNAPs is not really the causer of incremental costs when it chooses to use a single POI. Ms. Liu reasons (at pages 11-12) that while a single POI is more expensive for Ameritech, multiple POIs are more expensive for GNAPs; that one cannot properly take the multiple POI arrangement as a "benchmark"; and that Ameritech's view that GNAPs is causing additional costs is therefore wrong. The second difference lies in Ms. Liu's contention (at pages 14-15) that Ameritech Illinois' position would in effect entail the creation of what Ms. Liu calls multiple "virtual POIs," and would thus undermine GNAPs' legal entitlement to a single POI architecture.

Q. IS MS. LIU'S REASONING SOUND IN THESE TWO RESPECTS?

A. I believe it is not.

Q. TAKING THE FIRST POINT FIRST, WHAT IS WRONG WITH MS. LIU'S VIEW THAT GNAPS' CHOICE TO USE A SINGLE POI ARCHITECTURE DOES NOT REALLY MAKE GNAPS THE CAUSER OF ADDITIONAL COSTS THAT GNAPS SHOULD BEAR?

A. Again, Ms. Liu's logic seems to be that the costs of a single POI arrangement vs. a multiple POI arrangement are purely relativistic, so that one cannot properly use the multiple POI architecture as a benchmark and say that GNAPs is causing additional costs by choosing to use a single POI architecture. To show why that logic fails, I will start with an analogy – a lemonade stand I once set up as a kid. In order to sell cups of lemonade, I needed paper cups, sugar, and a packet of powdered lemonade mix. I could buy them from the store, or I could take them from the kitchen. Naturally, I took them

from the kitchen. And I was counting the profits of lemonade sales, my Mom suggested that I should consider reimbursing her for the materials taken.

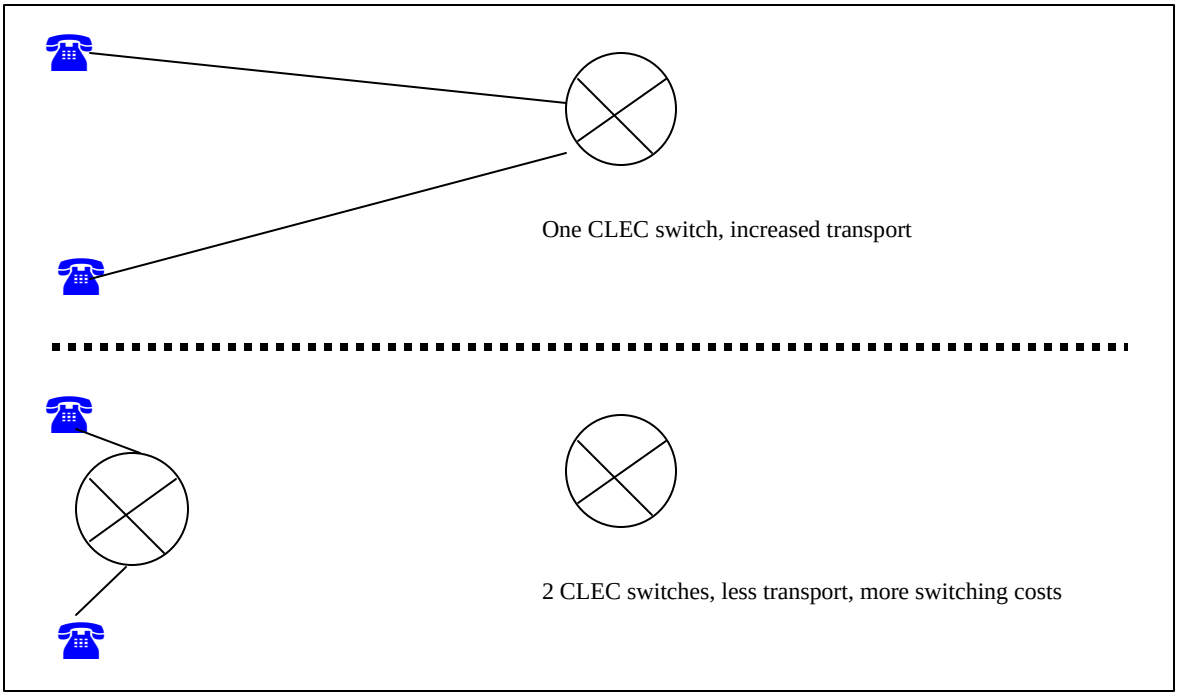
Applying Staff's logic, I could have said to her that while my appropriating the supplies for the lemonade was more expensive for her, buying them from the store (or from her) would be more expensive for me. And since extra costs were therefore relative, I'd rather just take the supplies.

The simple fact of the matter is that the law allows GNAPs a choice – single point of interconnection or multiple points of interconnection – and, as Ms. Liu correctly states, the law does not tell us how to allocate the costs that result from the choice GNAPS makes. But when GNAPs chooses single point of interconnection, GNAPs causes additional costs, and basic fairness dictates that GNAPs should bear those costs. In the world of local telecommunications, end users need not tie up great lengths of facilities to communicate with each other. If GNAPs' desire to be part of that world and to link with that world in a certain way means that additional large lengths of facilities are required, or alternatively that GNAPs would have to place a switch near the subscribers, then GNAPs' profit is based on the sale of that facility usage, as my lemonade profit was based on the sale of the materials in the kitchen. There is nothing relative in the assertion that a long loop is more expensive than a short one.

Q. CAN YOU PUT YOUR POINT IN TERMS OF THE ECONOMICS THAT DRIVE THE CHOICE GNAPS MAKES WHEN IT DECIDES WHETHER TO USE A SINGLE POI OR MULTIPLE POIS?

A. Yes. Everyone agrees, I believe, that GNAPs' decision to deploy a single switch per LATA necessarily means that additional transport is required. There is a trade-off, in other words, between switching costs and transport costs. Let's look first at how GNAPs would look at this trade-off if it were thinking only about calls from one GNAPs end user

to another GNAPs end user in the same LATA – in other words, calls that stay on GNAPs' local network. For many such calls, GNAPs would necessarily incur greater transport costs if it deploys only one switch in the LATA than if it deploys two switches, each placed near concentrations of GNAPs end users who are far apart. The following diagram shows these two scenarios:

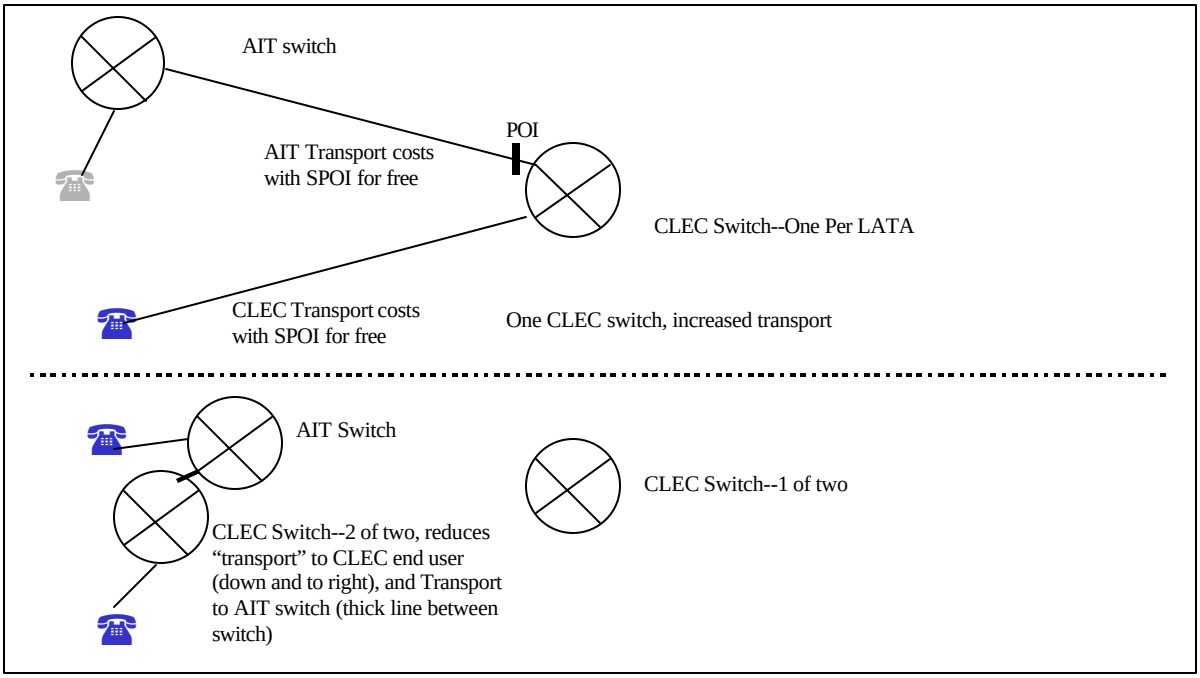


In the scenario shown on the top of the diagram, GNAPs has chosen to deploy just one switch in the LATA; in the scenario shown on the bottom of the diagram, GNAPs has chosen to deploy two switches in the LATA. Obviously, GNAPs incurs greater transport costs in the top scenario and greater switching costs in the bottom scenario. In deciding which architecture to use – and this becomes the important point – GNAPs would balance the difference in total switching costs vs. the difference in total transport costs, and would use whichever architecture minimized total costs. I am not an

economist, but I believe an economist would say this is socially desirable decision-making.

Now consider what happens when GNAPs makes the same choice – single POI vs. multiple POI – but with Ameritech Illinois' network in the picture, and with Issue 2 in this arbitration part of the equation. Most calls to which a GNAPs end user is a party will, of course, have an Ameritech Illinois end user at the other end of the call (so long as one assumes, as one reasonably can, that during the life of this agreement, most end users will remain Ameritech Illinois customers). Imagine how GNAPs' decision-making would be affected if the Commission were to resolve Issue 2 in GNAPs favor, so that Ameritech Illinois has to bear the transport costs on Ameritech Illinois' side of the POI. GNAPs now would no longer balance the difference in total switching costs vs. the difference in total transport costs, ***because while GNAPs is now bearing the total switching costs, GNAPs is bearing only half the total transport costs***. Accordingly, GNAPs will now balance the difference in total switching costs vs. ***half*** the difference in total transport costs.

The following diagram shows how this choice works:



I believe an economist would say this is *not* socially desirable decision-making, because GNAPs – as the sole decision-maker (which the law allows it to be) – has now been given an incentive not to look at the total costs of the system, but only to the costs that it is going to have to bear. To give GNAPs the proper incentive – that is, an incentive to consider total system costs, the Commission should resolve Issue 2 in Ameritech's favor, so that GNAPs has to take fully into account both the switching costs and the transport costs associated with the decision it is making about network architecture. (Another way of saying this is that the Commission should incent GNAPs to make the same decision that GNAPs and Ameritech Illinois would make together if they were both committed to making a decision that would yield the lowest total cost for both parties.)

Q. YOU SAY THAT IF GNAPS PREVAILS ON ISSUE 2, IT WILL HAVE SOCIALLY UNDESIRABLE INCENTIVES BECAUSE IT WILL CONSIDER ONLY HALF THE TRANSPORT COSTS ASSOCIATED WITH ITS DECISION. ISN'T THAT AN OVER-SIMPLIFICATION?

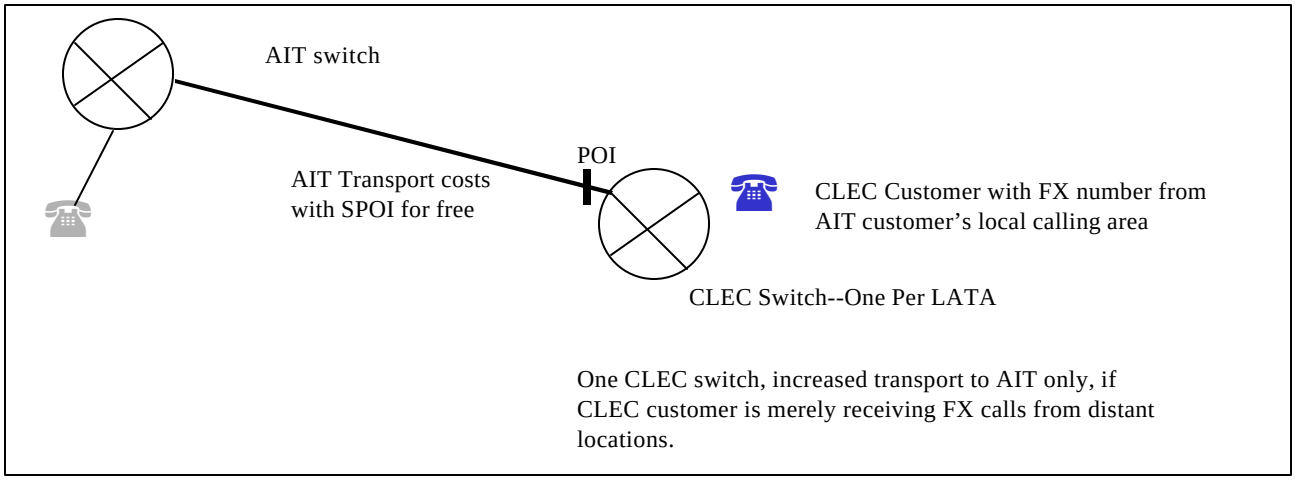
A. It is a bit of an over-simplification, but not in a way that affects my analysis. GNAPs would consider only half the transport costs if ALL calls to which a GNAPs customer is a party had a non-GNAPs customer on the other end of the line. Presumably, there will be some calls from one GNAPs end user to another, and when I say "half," I am disregarding those calls. But even if we make a very generous assumption about how many GNAPs-to-GNAPs calls there will be and say that GNAPs will be considering only 60% of the transport costs, instead of the half I postulated, the conclusion remains the same.

Q. YOUR VIEW, THEN, IS THAT IF THE COMMISSION RESOLVES ISSUE 2 IN GNAPS' FAVOR, THE COMMISSION WOULD THEREBY INCENT GNAPS TO MAKE ECONOMICALLY UNDESIRABLE DECISIONS, FROM THE POINT OF VIEW OF THE ENTIRE SYSTEM, BY CONSIDERING ONLY ABOUT 50%-60% OF THE INCREMENTAL TRANSPORT COSTS WHEN A SOCIALLY DESIRABLE ANALYSES WOULD CONSIDER 100%?

A. That's what I have said on this point so far. Actually, though, the incentives would be even more skewed, for a reason I have not mentioned yet.

Q. WHAT IS THAT?

A. Up to this point, I have been assuming that all the calls that are the subject of Issue 2 are local calls, with the calling party and the called party in the same local exchange. In reality, however, there is reason to believe that most of the long haul calls GNAPs foresees running to or from Ameritech Illinois end users are FX calls – where GNAPs opens, for example, an Aurora NXX not to assign to end users in Aurora, but to assign to FX customers, in Chicago, for example, who want to receive calls from Aurora as if the calls were local. Following is a diagram of such calls:



If GNAPs prevails on Issue 2 and Ameritech is made responsible for all transport on its side of a single POI, then for FX calls, GNAPs faces *zero* increased transport costs for choosing a single POI architecture, and Ameritech Illinois bears 100% of the increased transport costs. Thus, to the extent that the long haul calls from Ameritech Illinois customers to GNAPs customers are FX calls, what GNAPs will be weighing against its savings in switching costs will not be the socially desirable 100% of increased transport costs OR the socially undesirable 50%-60% of increased transport costs I discussed above, but 0% of the increased transport costs. This is grotesquely undesirable decision-making from the point of view of the public interest, because, in this scenario, GNAPs would choose single POI in all instances *even if the savings in switching costs is modest and the increase in transport costs is enormous.*

Q. YOU BEGAN YOUR LAST ANSWER BY SAYING THERE IS REASON TO BELIEVE THAT MOST OF THE LOCALLY DIALED CALLS GNAPS FORESEES TO OR FROM AMERITECH ILLINOIS CUSTOMERS FAR FROM THE POIS WILL BE FX CALLS. WHAT IS YOUR BASIS FOR THAT STATEMENT?

A. I have two reasons for believing that GNAPs is not planning to supply dial tone to customers far from GNAPs's Point of Interconnection, for local calling throughout the LATAs in Illinois:

1. GNAPs has expressed no interest in the Collocation appendix. They do not intend to collocate in any Ameritech end offices, which is a prerequisite to accessing the embedded wire cable connecting Ameritech offices to Ameritech customers on a UNE basis.

2. In the parallel arbitration between GNAPs and Ameritech Illinois' sister company in Connecticut, SNET, GNAPs described itself as an internet provider, a data provider, and not a local dial tone provider. Among other things, GNAPs advised that over 70% of its traffic is ISP traffic. Less than 30% of GNAPs' total traffic is originated by GNAPs. Less than 10% of GNAPs traffic is in fact voice traffic at all. In developing SNET as a new market, GNAPs said it expected less than 10% of the traffic to flow in the direction of GNAPs customers to SNET customers. I have no reason to think that GNAPs' plans for Illinois are any different.

Q. IF AMERITECH ILLINOIS PREVAILS ON ISSUE 2, WOULD THE RESULT BE THAT GNAPS WOULD HAVE TO MIRROR AMERITECH ILLINOIS' NETWORK?

A. No. GNAPs has options available to it under Ameritech's proposals that allow it not to recreate the Ameritech network. GNAPs may use Ameritech dial tone and loop combinations (UNE-P) to serve subscribers who are far from its switch. GNAPs may use SONET rings and other types of technology, rather than additional switches and tandems,

to reach their distant subscribers. GNAPs may lease spare capacity from any number of networks, including Ameritech's, that have already been built. And in Ameritech's proposal GNAPs may pay for usage on a per minute basis.

Q. YOU'VE DISCUSSED AT SOME LENGTH ONE OF THE TWO POINTS OF DIFFERENCE BETWEEN STAFF'S THINKING AND AMERITECH ILLINOIS' THINKING THAT YOU IDENTIFIED BACK ON PAGE 4. WHAT WAS THE SECOND OF THE TWO?

A. Ms. Liu contends that the requirement that GNAPs pay for the transport between the single POI it selects and a distant location would create, in effect, a new POI at that additional location. Ms. Liu labels this a "virtual POI," and claims that by giving rise to such virtual POIs, the requirement that GNAPs pay for the additional transport resulting from its single POI decision would be tantamount to requiring multiple POIs, which is impermissible.

Q. HOW DO YOU RESPOND TO THAT?

A. I believe Ms. Liu's analysis is defective in three different respects. First and foremost, it is contrary to the FCC's analysis in the Pennsylvania 271 Order discussed at pages 9-10 of Ms. Liu's testimony. Recall that in the Pennsylvania 271 case, the incumbent LEC, Verizon, was imposing charges on competing LECs who elected a single point of interconnection, exactly as Ameritech Illinois proposes to do here. CLECs that opposed Verizon's 271 application argued, as Ms. Liu argues here, that by imposing those charges, Verizon was impairing the CLECs' FCC-recognized right to elect a single point of interconnection. The FCC, in the passage that Ms. Liu quotes, specifically rejected that argument, stating,

> [W]e conclude that Verizon's policies do not represent a violation of our existing rules. Verizon states [exactly as Ameritech Illinois does here] that it does not restrict the ability of competitors to choose a single point of interconnection per LATA because it

> permits carriers to physically interconnect at a single point of interconnection (POI). Verizon acknowledges [exactly as Ameritech Ililnois does here] that its policies distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities. . . . We find . . . that Verizon complies with the clear requirement of our rules [and] *we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligation under the Act*. (Emphasis added.)

Thus, it is not as if the FCC has not spoken to the issue that is now before this Commission. It *has* spoken to the issue, and it has specifically ruled that for an incumbent LEC to impose reasonable charges on a competing LEC that chooses a single point of interconnection is *not* inconsistent with the FCC rule that allows the CLEC to choose a single POI. Staff is now asking this Commission to hold exactly the opposite. With the FCC having found that its own rule is not infringed by a carrier that imposes charges of exactly the sort that Ameritech Illinois is proposing here, I do not see how this Commission could possibly accept Staff's recommendation that it find the opposite.

Q. IN WHAT OTHER WAYS IS MS. LIU'S ANALYSIS DEFECTIVE?

A. As a factual matter, the costs that Ameritech's proposal would have GNAPs bear are not at all equivalent to the costs GNAPs would bear if it were required to establish multiple POIs. Thus, it is not correct to say that Ameritech's proposal is tantamount to a multiple POI requirement. I say that GNAPs would not be bearing multiple POI costs under Ameritech proposal for two reasons: (1) If Ameritech's proposed NIM section 2.2.2 is adopted, GNAPs would be paying only for facilities as used, either on a minute of use basis, or on a dedicated transport basis; and (2) Ameritech's proposal splits the costs of interconnection, by not charging for the first 15 miles worth of transport for any of the calls or trunks, nor charging beyond 15 miles worth for local (non-FX) calls when the CLEC meets Ameritech at the tandem serving the Ameritech subscriber on that call.

Finally, in addition being factually inaccurate and totally inconsistent with the FCC's Pennsylvania 271 Order, Staff's position also, I believe, is weak from the point of view of policy. I believe we all agree that the reason GNAPs is allowed to opt for a single POI architecture is because that may be the most efficient choice, and economic efficiency is good policy. But to make the single POI option the best choice for GNAPs by shifting to Ameritech the costs caused by GNAPs making of that choice is not good policy. As I explained in detail above starting no page 5, the Commission should resolve Issue 2 in a way that will incent GNAPs to choose the network architecture that is most efficient taking into consideration the system as a whole, not to choose the network architecture that is cheapest for GNAPs because Ameritech is required to subsidize GNAPs' choice.

Q. DO YOU AGREE WITH STAFF ON ISSUES 3 AND 4?

A. Mostly. I agree that GNAPs is permitted to offer FX service (offering a telephone number to a customer outside the rate area to which the code nominally belongs.) I agree that LATA wide local NXXs would need to be designed in a more industry wide setting than an arbitration between two parties.

I disagree, however, that Ameritech should not be allowed recovery of its costs for FX traffic, even in advance of an industry wide hearing. The support for billing for FX transport is similar to the support of billing for local calling transport, outside a local calling distance, covered by my original testimony, and supported (mostly) by Staff. In FX calling, the case is made stronger by the points Staff brings up: FX is not local. Rather it is a "reverse pay" scheme by which Ameritech is unable to collect the costs of toll transport from its subscribers making the calls. Collecting from GNAPs, the cost

1 causer, for that portion of the transport outside the bounds of the longest of local calls in

2 Illinois would seem to be a logical, and conservative, ruling.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 A. Yes.