

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 )

AMERITECH ILLINOIS' BRIEF ON EXCEPTIONS

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Illinois Bell Telephone Company (“Ameritech Illinois”) respectfully submits its brief on exceptions to the Proposed Arbitration Decision (“PAD”).

Ameritech Illinois first suggests several changes in Section II of the PAD, the recitation of background and procedural history, and then takes exception to the PAD’s proposed resolution of Issues 2, 4 and 11. In compliance with 83 Ill. Adm. code 200.830(b), Ameritech Illinois sets forth in the Attachment to this brief substitute language for the proposed Commission Analysis and Conclusion in the PAD on Issues 2 and 4. On Issue 11 (which the PAD resolved in favor of Ameritech Illinois), Ameritech Illinois confirms that the parties settled the issue, and so offers no substitute language.

**Background and Procedural History**

Ameritech Illinois suggests that the following changes be made to Section II of the PAD for the sake of accuracy and completeness:

1. Add that on January 11, 2002, Ameritech filed two verified statements and its Submission of Redlined Interconnection Agreement, and that on January 15, 2002, Ameritech filed an additional verified statement.
2. Change the reference to Staff’s verified statements to the singular.
3. Add that on February 1, 2002, Ameritech filed a verified rebuttal statement.

Exceptions on Proposed Resolutions of Arbitration Issues

**Issue 2: Should Each Party Be Responsible For The Costs Associated With Transporting Telecommunications Traffic To The Single POI?**

STATEMENT OF EXCEPTION

The PAD offers two reasons for its conclusion that Ameritech Illinois should bear the incremental transport costs caused by GNAPs' decision to establish a single POI: (1) that the incremental costs will be *de minimis*, and (2) that to require GNAPs to bear the costs caused by its decision would undermine GNAPs' right to establish a single POI. Neither reason justifies the recommended resolution of Issue 2. The Commission should follow the overwhelming weight of authority and hold, along with other State commissions, that while a CLEC is free to choose a single POI architecture, the CLEC must bear the increased costs that result from that choice – just as CLECs are generally required to bear the other costs they cause when they exercise their rights under the 1996 Act.

DISCUSSION

The evidence and arguments that demonstrate that GNAPs should bear the incremental transport costs caused by GNAPs' election to use a single POI architecture are set forth at pages 1-19 of Ameritech Illinois' Initial Post-Hearing Brief ("AIT Init. Br.") and pages 2-18 of Ameritech Illinois' Post-Hearing Reply Brief ("AIT Reply"). We summarize that presentation in Section I below. In Section II, we discuss a recent arbitration decision that resolved the same issue in the incumbent LEC's favor based on an analysis so thorough and judicious that it cannot reasonably be ignored. Finally, in Section III, we show why the reasons that the PAD offers in support of its proposed resolution of the issue fail.

**I. IF GNAPS ELECTS TO ESTABLISH A SINGLE POI PER LATA, GNAPS SHOULD BEAR THE COSTS CAUSED BY ITS ELECTION.**

It is undisputed that if GNAPs elects a single POI architecture, GNAPs will thereby increase the cost of transporting certain calls on the network. (AIT Init. Br. at 3-5.) The only question is whether GNAPs or Ameritech Illinois will bear those costs.

Every existing precedent supports the view that GNAPs should bear the costs. These precedents include:

- the FCC’s ruling in its *Verizon 271 Order*<sup>1</sup> that an incumbent LEC may require a competing LEC to bear those costs, and that such a requirement is not inconsistent with the competing LEC’s right to elect a single POI architecture (AIT Init. Br. at 7-8);
- the FCC’s decision in *Mountain Communications*<sup>2</sup> that the incumbent LEC can recover the cost of dedicated toll facilities that it uses to transport calls made to a carrier’s POI from outside the incumbent’s local calling area where the carrier’s POI is located (AIT Reply at 10-12);
- the FCC’s pronouncement in its 1996 *Local Competition Order* that a CLEC that wishes an expensive interconnection must bear the cost of that interconnection (AIT Init. Br. at 5-7);
- the conclusion of the United States Court of Appeals for the Third Circuit in the *MCI v. Bell-Atlantic Pennsylvania* case<sup>3</sup> that if the CLEC was going to opt for a single POI architecture, the State commission should consider requiring the CLEC to bear the incremental costs caused by that decision (AIT Init. Br. at 8-9);
- the arbitration decision of the South Carolina Public Service Commission that “while [the CLEC] can have a single POI in a LATA if it chooses, [the CLEC] shall remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI” (*In re Petition of AT&T Comms. of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252, 2001 S.C. PUC LEXIS 7* (S. Car. Pub. Serv. Comm. 2001); and

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<sup>1</sup> Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-0138 (rel. Sept. 19, 2001) (“*Verizon 271 Order*”).

<sup>2</sup> Memorandum Opinion and Order, *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Docket No. EB-00-MD-017, FCC No. DA 02-250 (rel. Feb. 4, 2002).

<sup>3</sup> *MCI Telecomm. Corp. v. Bell-Atlantic Pennsylvania*, 271 F.3d 491 (3d Cir. 2001).

- the arbitration decision of the North Carolina Utilities Commission discussed in Section II below.

As these authorities confirm, it is only fair that when a CLEC chooses an interconnection architecture that causes costs, as GNAPs is doing when it chooses to have a single POI per LATA, the CLEC, rather than the ILEC, should bear those costs. Furthermore, this Commission consistently adheres to the rule that the cost-causer pays, and it should adhere to that rule here, too. The principle that the cost-causer pays is grounded in sound public policy that goes far beyond considerations of fairness: requiring the cost-causer to pay helps ensure lower costs (by encouraging the party that causes to costs to keep them low) and therefore lower prices for the consumer. That proposition indisputably applies here: As Ameritech Illinois demonstrated – and as no one refuted – a requirement that GNAPs bear the costs that result from a single POI architecture will incent behaviors that promote efficiency, and a requirement that Ameritech Illinois bear those costs would incent behaviors that would promote inefficiency. (AIT Init. Br. at 9-14.)

Thus, the pertinent authorities, fundamental fairness, and bedrock economic principles based on the public interest all lead to the same conclusion: If GNAPs chooses a single POI, GNAPs, and not Ameritech Illinois, should bear the costs caused by GNAPs' decision.

**II. THE COMMISSION SHOULD TAKE INTO ACCOUNT THE RECENT DECISION OF THE NORTH CAROLINA UTILITIES COMMISSION ON THE SINGLE POI ISSUE.**

Some precedents do not deserve much weight. Others so thoroughly and astutely analyze an issue that they practically must be attended to. One such precedent is the North Carolina Utilities Commission decision on the question that appears here as Issue 2, in *In the Matter of Arbitration of Interconnection Agreement Between AT&T Comms. of the Southern States, Inc. and TCG of the Carolinas, Inc., and BellSouth Telecomm., Inc., Pursuant to the Telecomm. Act of 1996*, 2001

N.C. PUC LEXIS 229 (N. Car. Utils. Comm. 2001) (the “North Carolina Decision”). There, the North Carolina Commission devoted a full seven-and-half single-spaced pages (pages 9-17<sup>4</sup>) to a painstaking analysis of all the pertinent policy considerations, precedents and arguments – including all or virtually all of the points made by the parties and Staff here – and ruled that while AT&T had the right to select a single POI, AT&T had to bear the incremental transport costs that resulted from its exercise of that right.

As in this case, all parties to the North Carolina arbitration agreed that AT&T was entitled to interconnect at a single point within the LATA. As in this case, the question was whether AT&T should be required to pay for the additional transport costs caused by its selection of a single POI. The North Carolina Commission found (at p. 11) that “AT&T’s proposal to establish only one POI per LATA would force BellSouth to incur additional transport costs to deliver local traffic from every exchange in the LATA to AT&T.” The North Carolina Commission reasoned that in choosing its network architecture, AT&T “must consider the total of each alternative, not merely the direct cost, but also those of BellSouth that should properly be assigned to AT&T.” And the North Carolina Commission ruled (at pp. 16-17) that

If AT&T interconnects at points within the LATA but outside BellSouth’s local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for transport beyond the local calling area. The Commission further concludes that this holding does not violate any FCC rule or case law and that [it] is more equitable than not and in the greater public interest.

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<sup>4</sup> Ameritech Illinois filed a copy of the North Carolina Decision as an additional authority in this docket on March 15, 2001. The page numbers cited in this brief match the page numbers that appear on the version of the decision as filed.

The North Carolina Decision was extraordinarily thorough. Indeed, the North Carolina Commission even noted (at p. 12) that because of the “importance and complexities of this issue,” the Commission requested the parties to provide additional briefing on the issue. Ameritech Illinois respectfully submits that under these circumstances, a reasoned decision on Issue 2 must forthrightly account for the North Carolina Decision – and Ameritech Illinois believes that such an accounting can lead to only one conclusion, namely, the one Ameritech advocates here.

**III. THE PAD’S RATIONALE FOR THE PROPOSED DECISION ON ISSUE 2 IS ILL-FOUNDED AND DOES NOT JUSTIFY THE PAD’S PROPOSED CONCLUSION.**

The PAD recommends that Ameritech Illinois and GNAPs each be responsible for transport on its side of the single POI – in other words, that Ameritech Illinois bear the costs of transporting calls that have to be hauled from one local calling area to another because of GNAPs’ choice to interconnect at only one point in each LATA. The PAD offers two grounds for this recommendation: (1) that the transport of calls to a single POI in each LATA would not significantly increase transport costs, but rather that the incremental costs that Ameritech would incur would be *de minimis*; and (2) that “Ameritech’s position would have the effect of undermining the single POI requirement.” (PAD at 8.) Neither ground withstands scrutiny.<sup>5</sup>

**A. It Would Be Error To Require Ameritech Illinois To Pay GNAPs’ Expenses On The Theory That The Amounts Are Small.**

An issue as complex and important as Issue 2 cannot plausibly be decided on the basis that not much money is at stake. If the transport costs that the PAD would require Ameritech to bear really

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<sup>5</sup> The PAD also makes the conclusory assertion that Ameritech Illinois’ arguments are not persuasive enough to require the adoption of Ameritech’s proposal. That *ipse dixit* cannot pass muster as a basis for decision.

were *de minimis*, one has to wonder why GNAPs bothered to arbitrate them. If anything, GNAPs' claim that the costs are *de minimis* is a reason to let GNAPs bear them.

Moreover, the PAD's statement that the transport costs would be *de minimis* amounts to an improper recommendation that the Commission find that Ameritech's tariffed, Commission-approved access rates are too high. This is because under Ameritech's proposed contract language (specifically, NIM section 2.2.2), the way GNAPs would compensate Ameritech for the additional transport resulting from its choice of a single POI architecture would be by choosing *either* to pay half the cost of the additional facilities the affected traffic would use *or* to pay Ameritech Illinois' switched access rates for that transport.<sup>6</sup> By definition (at least for purposes of this proceeding), Ameritech's switched access transport rates are the proper rates for transporting access traffic from one calling area to another, because they are tariffed, and have been approved by this Commission. Thus, Issue 2 cannot properly be resolved on the basis that the amounts at stake are *de minimis*, because that proposition amounts to a finding that Ameritech's tariffed switched access rates are too high. Not only is there no basis for such a finding, but even if there were, the Commission has held that it is inappropriate to consider such matters in a two-party arbitration. Any such inquiry is appropriately conducted only in a generic proceeding in which all affected carriers can participate, and in which the basis for Ameritech Illinois' current rates could be presented. *See Order, In the Matter of Verizon Wireless Petition for Arbitration Pursuant to Section 252(b) of the Telecomm. Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois* (Ill. Comm.Comm'n

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<sup>6</sup> Actually, GNAPs would pay only the transport component of the switched access rates.

May 1, 2001), at 23-24 (rejecting CLEC request to re-evaluate Ameritech Illinois' tariffed transiting rate, which "applies to carriers in Illinois generally," finds it "inappropriate to reach a decision in this [arbitration] docket on the appropriateness of Ameritech's transiting rate," and concludes such a decision is appropriately reached in an ongoing generic proceeding).

**B. Ameritech Illinois' Position Cannot Properly Be Rejected On The Theory That It Would Undermine GNAPs' Right To Choose A Single POI Architecture.**

GNAPs' right to use a single POI architecture is one thing. GNAPs' right to have Ameritech bear the increased costs caused by GNAPs when it does so is quite another. As the North Carolina Commission correctly concluded, "It is not appropriate to conflate these issues." (North Carolina Decision at 12.)

Consider this analogy: Section 251(c)(3) of the 1996 Act gives GNAPs the right to access Ameritech Illinois' unbundled network elements, and section 251(c)(6) gives GNAPs the right to collocate its equipment on Ameritech's premises. But when GNAPs exercises these rights, GNAPs compensates Ameritech for the resulting costs. No one would dream of saying that GNAPs should not be required to compensate Ameritech because such a requirement would undermine GNAPs' right to access Ameritech's UNEs or to collocate at Ameritech's premises. The PAD, however, says that GNAPs should not be required to compensate Ameritech for the costs it incurs as a result of GNAPs' exercise of its right to establish a single POI because such a requirement would undermine that right. The PAD is mistaken. The 1996 Act gives GNAPs all sorts of rights that it must pay to exercise. There is no reasoned basis for treating GNAPs' right to a single POI differently; certainly, the PAD does not offer one.

Furthermore, the FCC's *Verizon 271 Order* forecloses the PAD's conclusion that a requirement that GNAPs pay for the transport costs it causes would undermine GNAPs' right to a single POI. The FCC specifically held in that Order that for an incumbent LEC to impose reasonable charges on a competing LEC that chooses a single POI is *not* inconsistent with the FCC rule that allows the CLEC to choose a single POI. (*See* AIT Init. Br. at 7-8; AIT Reply at 3-4.) With the FCC having held that its own rule is not undermined by a carrier that imposes charges of exactly the sort that Ameritech Illinois is proposing here, the PAD's recommendation that this Commission hold the opposite must be rejected.

In sum, Issue 2 should not be resolved as the PAD recommends. The rationale offered by the PAD is inadequate, and necessarily so, because the costs caused by GNAPs' decision to establish a single POI should be borne by GNAPs, not Ameritech. That conclusion is in line with all the pertinent authorities, with fundamental fairness, and with the basic policy-driven principle that the cost-causer pays.

**Issue 4: Can GNAPs assign to its customers NXX codes that are “homed” in a central office switch outside of the local calling area in which the customer resides?**

**STATEMENT OF EXCEPTION**

Issue 4 comprises two sub-issues: (i) whether FX calls are subject to reciprocal compensation, and (ii) whether GNAPs should be required to bear its fair share of transport costs when GNAPs assigns its customers virtual NXX codes and provides FX or FX-like services to them. The PAD correctly resolves the first sub-issue in Ameritech’s favor. It is unclear, however, whether or how the PAD resolves the second sub-issue. Accordingly, Ameritech Illinois takes exception, because the Commission’s Arbitration Decision should make clear that GNAPs must bear its fair share of transport costs, as provided in proposed Appendix FX, when GNAPs provides FX or FX-like services to its customers.

**DISCUSSION**

The parties agree that GNAPs can assign its customers NXX codes that are “homed” (as GNAPs puts it) in a central office switch outside the local calling area in which the customer resides. Or, as Ameritech Illinois would put it, GNAPs can provide its customers FX (foreign exchange) service by assigning them telephone numbers the first three digits of which (the NXX) do not match the geographic area where the customer resides. The real issue is what consequences follow, as between GNAPs and Ameritech Illinois, when an Ameritech Illinois customer calls a GNAPs customer to whom GNAPs is providing such FX service. Ameritech Illinois has demonstrated that there are two consequences:

*First*, FX calls are not subject to reciprocal compensation. That is, carriers must continue to associate each NXX with a particular local calling area for purposes of intercarrier compensation.

*Second*, when GNAPs assigns its customers virtual NXX codes and provides FX or FX-like services

to them, GNAPs must bear its fair share of the transport cost, as required by Appendix FX of the proposed interconnection agreement.<sup>7</sup>

The Commission Analysis and Conclusion in the PAD reads as follows (at p. 15):

The Commission adopts Staff's recommendation and directs Global to continue to associate each NXX with a particular local calling area for purposes of intercarrier compensation. Regarding FX or FX-like traffic, the Commission has previously reached a decision in the Level 3 arbitration and finds there is no compelling reason to change that decision at this time. It does not appear that Global's ability to provide FX service or to use its NXXs will [] be impeded in any way.

Thus, the PAD unambiguously agrees with Ameritech on the first of the two propositions set forth above, as Staff recommended and as the Commission did in the Ameritech Illinois/Level 3 arbitration. It is not clear, however, whether or how the PAD addresses the second proposition, concerning transport costs. The last sentence of the proposed Commission Analysis and Conclusion arguably implies that the matter is to be resolved in favor of Ameritech Illinois; the sentence before that, however, arguably implies that the matter is to be resolved in favor of GNAPs. In any event, the PAD should be modified to make clear that when GNAPs assigns its customers virtual NXX codes and provides FX or FX-like services to them, GNAPs must bear its fair share of the transport cost.

We need not repeat here the arguments in support of Ameritech's position, because the summary of Ameritech Illinois' position on the transport aspect of Issue 2 on pages 13-14 of the PAD is accurate, and a fuller explication of Ameritech Illinois' position appears in Ameritech Illinois' Initial Post-Hearing Brief, at pages 27-30. Instead, we demonstrate that strong authority from other states

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<sup>7</sup> The briefing in this arbitration has not focused on what a "fair share" of transport costs is. That does not mean, however, that what Ameritech is proposing is not fully defined; section 3 of Appendix FX spells out the division of responsibility, based on the portion of each party's facilities that is used to provide the FX Service.

supports Ameritech Illinois' position, and – in light of the PAD's reference to the Commission's Level 3 Arbitration Decision – that Ameritech's position is consistent with that decision as well.

**I. AMERITECH ILLINOIS' POSITION IS CONSISTENT WITH AUTHORITY FROM OTHER STATES.**

At least three state commissions have agreed with the position Ameritech advocates here. These decisions support Ameritech Illinois' arguments that GNAPs must pay for its use of Ameritech Illinois' network to provide FX service:

**A. Maine**

On June 30, 2000, the Maine Public Service Commission agreed with Bell Atlantic that Brooks Fiber (a CLEC) could not provide FX service without fairly compensating Bell Atlantic for Bell Atlantic's role in transporting and switching an FX call for a Brooks customer:

*Brooks is free to offer calling areas of its own design so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local). . . .*

With its own customers in any area, Brooks would be free to delineate whatever "calling area" it wants for those customers, *subject to the condition that if such a call is carried over the facilities of another carrier, it must compensate that carrier for the use of its facilities.*

*Maine Public Utilities Commission Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber, Docket No. 98-578; New England Fiber Communications d/b/a Brooks Fiber Proposed Tariff Revisions to Introduce Regional Exchange (RX) Service, Docket No. 99-593 (2000 Me PUC LEXIS 487, \*30-31) (emphasis added.)*

**B. California**

The California Public Utility Commission reached a similar conclusion, again finding that inter-carrier compensation is required whenever a CLEC uses another carrier's network to provide the CLEC's FX service:

While we recognize carriers' discretion to make such use of NXX prefix assignments from a foreign exchange where economic efficiencies warrant it, *we expect carriers to negotiate reasonable intercarrier compensation arrangements for the routing, switching, and for the use of facilities to deliver such calls. . . .*

We conclude that, whatever method is used to provide a local presence in a foreign exchange, *a carrier may not avoid responsibility for negotiating reasonable interexchange intercarrier compensation for the routing of calls from the foreign exchange by redefining the rating designation from toll to local. . . .*

The provision of a local presence using an NXX prefix rated from a foreign exchange . . . does not eliminate the obligations of other carriers to physically route the call so that it reaches its proper designation. . . . A carrier remains responsible to negotiate reasonable compensation with other carriers with whom it interconnects for the routing of calls from a foreign exchange. . . .

*Incumbents are entitled to fair compensation for the use of their facilities in the transport and termination of foreign exchange traffic.*

*Order Instituting Rulemaking on the Commission's Own Motion Into Competition For Foreign Exchange Service*, Rulemaking 95-04-043; *Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Investigation 95-04-044, Decision No. 99-09-029, 1999 Cal. PUC LEXIS 649, \*25, 49, 50 (Cal P.U.C. Sept. 2, 1999) (emphasis added).

**C. Ohio**

In the parallel arbitration between GNAPs and Ameritech Ohio, the Public Utilities Commission of Ohio Arbitration Panel resolved Issue 4 in favor of Ameritech Ohio, stating, "To the extent that [a] call to a customer utilizing virtual NXX service originates or terminates outside of Ameritech's . . . local calling area . . . , the call is considered toll or interexchange and compensation is based on the

originating or terminating party's access charges." Arbitration Panel Report, *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Case No. 01-3096-TP-ARB (Pub. Utils. Comm. Ohio March 28, 2002) (filed as supplemental authority in this proceeding on March 29, 2002). The access charges that the Ohio Arbitration Panel concluded Ameritech Ohio could charge are, a fair measure of the transport that Ameritech Illinois seeks here.

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These commissions have recognized that CLECs providing FX service cannot simply demand that incumbents provide interexchange transport for the CLEC's FX service without any compensation for their use of the incumbent's network. Rather, CLECs must pay for that use of the incumbent's network. This Commission should do the same by making clear that when GNAPs assigns its customers virtual NXX codes and provides FX or FX-like services to them, GNAPs must bear its fair share of the transport cost, as required by Appendix FX of the proposed interconnection agreement.

**II. AMERITECH ILLINOIS' POSITION IS CONSISTENT WITH THE COMMISSION'S LEVEL 3 ARBITRATION DECISION.**

As stated above, the Commission Analysis and Conclusion in the PAD – particularly the last sentence quoted above – arguably suggests that Issue 4 should be resolved in Ameritech's favor in all respects. GNAPs might argue, however, that the PAD's reference to the Commission's decision in the Level 3 arbitration implies that GNAPs should prevail on the transport aspect of Issue 4, because the Commission's decision in the Level 3/Ameritech Illinois arbitration held that Level 3 would not be required to compensate Ameritech for interexchange transport associated with Level 3's FX/virtual

NXX service. Any such argument fails, however, in light of the rationale of the Commission's Level 3 decision.<sup>8</sup>

In the Level 3 arbitration, Ameritech gave essentially the same reasons it has given here for its proposal that the CLEC pay its fair share of the cost of transporting FX traffic. Those reasons are summarized at page 7 of the Level 3 Decision, and the Commission, at page 9 of that decision, concluded that the reasons offered by Ameritech were "of some merit." The Commission then stated, however, that some of those reasons "will fall away given our findings in Issue 27 below." Issue 27, in turn, concerned Level 3's obligation to establish multiple POIs in a LATA and the Commission said, with reference to Issue 27, "The installation of POIs affects other issues in this and future arbitrations. With a POI installed in a tandem the issue of the cost of regular and virtual NXX number transport all but disappears." Level 3 Decision, at 30. The Commission then went on to decide the volume of traffic at which Level 3 would be required to establish multiple POIs in a LATA. *Id.* at 31.

The Commission recognized, in other words, that there were sound reasons for requiring a CLEC to pay its fair share of the transport costs associated with FX traffic, but held that those reasons "fell away" in the case of Level 3, because Level 3 was going to be installing more than one POI in a LATA. Here, on the other hand, GNAPs is *not* going to be installing more than one POI in a LATA, as the parties (and Staff and the PAD) have agreed with respect to Issue 1. Thus, the reasons that the Commission found of merit in Level 3 do not fall away here, as they did there, and the Commission should, based on those reasons, resolve the transport aspect of Issue 4 in Ameritech's favor, as the

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<sup>8</sup> Arbitration Decision, *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone*

Commission evidently would have done in Level 3 if the CLEC had not agreed to establish multiple POIs.

**Issue 11: Should the Interconnection Agreement Require GNAPs to Obtain Commercial Liability Insurance Coverage of \$10,000,000 and Require GNAPs to Adopt Specified Policy Forms?**

**STATEMENT OF EXCEPTION**

The parties settled Issue 11. (*See Ameritech Illinois' Post-Hearing Reply Brief at 22 n.10.*) Accordingly, Issue 11 should be added to the list of settled issues that appears on page 3 of the PAD, and the discussion of Issue 11 at pages 15-16 should be deleted.

**CONCLUSION**

For the reasons set forth above and in Ameritech Illinois' post-hearing briefs, Ameritech Illinois urges the Commission to resolve Issue 2 in its favor; to clarify that Issue 4 is resolved in Ameritech's favor in all respects; and to treat Issue 11 as a settled issue.

Dated: April 12, 2001

Respectfully submitted,

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*Company d/b/a Ameritech Illinois, Docket No. 00-0332 (Ill. Comm. Comm'n Aug. 30, 2000) ("Level 3 Decision").*

## ATTACHMENT

This Attachment sets forth Ameritech Illinois' proposed substitute language for the Commission Conclusion and Analysis on Issues 2 and 4 in the Proposed Arbitration Decision ("PAD") in 01-0786. The proposed substitute language conforms with the exceptions set forth in Ameritech Illinois' Brief on Exceptions.

### Issue 2

Delete the second paragraph (only) of the Commission Analysis on page 8 of the PAD and substitute the following in its place:

While the FCC has made clear, and the parties agree, that Global may choose to interconnect at a single POI per LATA, that does not imply that Global should be excused from bearing such incremental costs as may flow from its exercise of that choice. Global contends that a requirement that it bear the costs would undermine its right to elect a single POI architecture, but we find that contention unpersuasive. The Telecommunications Act entitles CLECs to many things – access to UNEs and collocation, for example – but when CLECs exercise their rights to obtain those things, they compensate ILECs for the costs they incur to provide them. We see no reason to accord different treatment to Global's right to elect a single POI. In addition, the FCC specifically ruled, in the Verizon 271 Order discussed by Ameritech, that an incumbent LEC is not acting inconsistently with the 1996 Act or with any FCC regulation when it imposes on an interconnecting CLEC charges of the sort that Ameritech proposes here. With the FCC having found that a requirement that a CLEC that elects a single POI pay the resulting costs does not run afoul of the FCC's own rules, we are not inclined to find otherwise.

There appears to be no dispute but that if Global opts for a single POI, there will be some increase in the cost of transporting Global's traffic on the network. Global contends that that increase will be *de minimis*, but that is not a reason to impose on Ameritech costs that are properly Global's. We find that these incremental transport costs are properly Global's, because they are caused by Global's election of a single POI interconnection. Since Global causes the costs, it is Global that should pay them. That conclusion is only fair and, in addition, conforms with the general rule that the cost-causer pays, a rule that promotes the public good by encouraging the cost-causer to minimize costs and thereby to minimize prices paid by the consuming public.

Our decision is in accord not only with the FCC's rules and Orders, but also with the arbitration decisions of other State commissions that have considered the issue. We have reviewed with care the arguments on both sides of the issue, not only as the parties and Staff have presented them but also as they were discussed in detail by the North Carolina Utilities Commission in a recent arbitration decision that Ameritech submitted as supplemental authority. We agree with the well-reasoned decision of that Commission that when a CLEC chooses an interconnection architecture, it must consider the total costs that would result from each of the available alternatives – not only the costs that it will bear in the first instance, but also costs that are incurred in the first instance by the incumbent carrier. The only appropriate way to ensure that the CLEC does consider the total costs is to require the CLEC to bear the costs it is causing. Thus, we also agree with the North Carolina Commission that if a CLEC elects a single POI interconnection, it should be required to compensate the incumbent for transport beyond local calling areas.

The parties' interconnection agreement shall include the language proposed by Ameritech for Appendix NIM, Section 2.

#### Issue 4

Modify the Commission Analysis and Conclusion that appears on page 15 of the PAD as follows (with strikethrough indicating proposed deletions and italics indicating proposed additions):

The Commission adopts Staff's recommendation and directs Global to continue to associate each NXX with a particular local calling area for purposes of intercarrier compensation. Regarding FX or FX-like traffic, the Commission has previously reached a *this* decision in the Level 3 arbitration and finds there is no compelling reason to change ~~that its decision~~ *that such traffic is not subject to reciprocal compensation* at this time. It does not appear that Global's ability to provide FX service or to use its NXXs will not be impeded in any way.

In addition, add the following to the Commission Analysis and Conclusion, after the paragraph just quoted:

Our ruling in the Level 3 arbitration, which we reaffirm here, that reciprocal compensation does not apply to FX traffic was based on our conclusion that FX service is essentially a form of toll service. As such, it is appropriate that when a CLEC, such as Global, offers such a service using Ameritech's facilities, the CLEC should bear its fair share of the cost of transport on those facilities – just as it would pay Ameritech access charges

for carrying more traditional toll traffic. In our Level 3 decision, we did not require the CLEC to bear those costs, but we specifically noted that our decision in that regard was driven in part by the fact that Level 3 was going to establish multiple POIs, a fact that Level 3 pointed out would significantly mitigate Ameritech's concerns about transport costs. Global, in contrast to Level 3, is going to establish a single POI architecture. Accordingly, our decision that Issue 4 should be resolved in Ameritech's favor in all respects is consistent with our previous decision in Level 3.

**CERTIFICATE OF SERVICE**

I certify that I caused copies of the foregoing Ameritech Illinois' Brief on Exceptions to be served on this 12th day of April, 2002, on the following persons by e-mail and overnight delivery at the following addresses:

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