STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Global NAPs, Inc.	**:**	
	:	
Petition for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Company d/b/a Ameritech.	**:**	**01-0786**

ARBITRATION DECISION

I. JURISDICTION

Section 252(b) of the Telecommunications Act of 1996 ("1996 Act") addresses the procedures for arbitration between incumbent local exchange carriers and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides an opportunity to respond to the non-petitioning party, and sets out time limits. Section 252(b)(4) provides that the State Commission shall limit its consideration to the issues set forth in the petition and in the response; and shall resolve each such issues by imposing appropriate conditions on the parties as required to implement Subsection (c) (Standards for Arbitration). Subsection (d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic, and wholesale prices.

Under §252(c), a State Commission shall apply the following standards for arbitration:

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the 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.

II. BACKGROUND AND PROCEDURAL HISTORY

On August 24, 2000, Global NAPs, Inc. (“Petitioner” or “Global”) opened negotiations with Southern New England Telephone Company regarding the terms of

an interconnection agreement. On August 21, 2001, the negotiations were expanded to include SBC affiliates, notably Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech"). Those negotiations were ultimately unsuccessful.

On November 30, 2001, Global filed its petition for arbitration citing the following unresolved issues:

Issue 1: ***Should either party be required to install more than one point of interconnection per LATA?***

Issue 2: ***Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?***

Issue 3: ***Should Ameritech-IL's local calling area boundaries be imposed on Global, or may Global broadly define its own local calling areas?***

Issue 4: ***Can Global 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?***

Issue 5: ***Is it reasonable for the parties to include language in the agreement that expressly requires the parties to renegotiate reciprocal compensation obligations if current law is overturned or otherwise revised?***

Issue 6: ***Should limitations be imposed upon Global' ability to obtain available Ameritech-IL dark fiber?***

Issue 7: ***Whether two-way trunking is available to Global at Global' request.***

Issue 8: ***Is it appropriate to incorporate by reference other documents, including tariffs into the agreement instead of fully setting out those provisions in the agreement?***

Issue 9: ***Whether the interconnection agreement is a joint work product.***

Issue 10: ***Should Ameritech-IL's performance incentives incorporate a provision requiring that the performance incentives are Global' sole and exclusive remedy?***

Issue 11: ***Should the interconnection agreement require Global to obtain commercial liability insurance coverage of $10,000,000 and require Global to adopt specified policy forms?***

Issue 12: ***Should the parties be bound by an alternative dispute resolution process, or may the parties agree to resolve disputes through existing federal and state forums of law and equity?***

Issue 13: Should the interconnection agreement include language that allows Ameritech-IL to audit Global' "books, records, data and other documents"?

Pursuant to proper notice, a prehearing conference was held on December 19, 2001 before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois.

On December 26, 2001, Ameritech filed its response to the arbitration petition. On December 28, 2001, Global filed its verified statements. On January 25, 2002 Staff filed the verified statements of its witnesses. A hearing was held on February 6, 2002 and all parties waived cross and testimony was entered into the record by agreement. A briefing schedule was established and the record marked "Heard and Taken." Post-Hearing briefs were filed by Ameritech, Global, and Staff on March 1, 2001 and Reply Briefs were filed on March 11, 2002. A proposed arbitration decision was served on the parties. Briefs on exceptions and replies to exceptions were filed and duly considered.

III. LEGAL AND REGULATORY BACKGROUND OF THE PROCEEDING

The purpose of this proceeding is to establish terms and conditions under which ILECs must offer point of interconnections ("POI").

IV. ISSUES IDENTIFIED FOR ARBITRATION

During the pendency of this proceeding, Global and Ameritech settled issues 5, 6, 7, 8, 9, 10, 12, and13

Issue No. 1: Should Either Party Be Required To Install More Than One Point Of Interconnection Per LATA?

Issue No. 2: Should Each Party Be Responsible For The Costs Associated With Transporting Telecommunications Traffic To The Single POI?

A. Ameritech Position

Ameritech notes that the parties' actual disagreement concerns Issue 2: Ameritech maintains that if Global elects to establish a single POI per LATA (which Global has said it will do), Global should be responsible for the incremental costs that flow from its election. Global, on the other hand, maintains that if it elects to establish a single POI per LATA, each party should bear financial responsibility for all expenses relating to facilities on its side of the POI and, thus, that Ameritech should bear the incremental costs on Ameritech' side of the POI that flow from Global' election.

Ameritech maintains that a Global decision to establish a single POI will increase the cost of transporting certain calls; all pertinent legal precedents support the proposition that Global should bear the incremental costs caused by its decision to interconnect at a single POI; fundamental principles of fairness and economic efficiency dictate that Global bear the incremental costs caused by its decision to interconnect at a single POI; and the contract language that Ameritech has proposed is appropriately tailored to implement the correct allocation of incremental costs in a manner that is just and reasonable.

Ameritech argues that the FCC has ruled that a requirement that the CLEC bear the costs is permissible, but notes that the FCC has not definitively ruled that the CLEC must bear the costs. Ameritech asserts that the principles of interconnection that the FCC set forth in its 1996 *Local Competition Order*, however, strongly support the view that the CLEC should bear the costs.

Ameritech further argues that a single point of interconnection is "expensive interconnection" as used by the FCC. Ameritech asserts that if Global elects a single POI, it causes calls that otherwise would be transported within a single local calling area to be transported an additional distance across several local calling areas. Thus, the form of interconnection elected by Global is "expensive" as the FCC used that word in paragraph 199 of the *Local Competition Order* and, as the FCC there stated, Global "would . . . be required to bear the cost of that interconnection, including a reasonable profit."

Ameritech notes that Section 251(c)(2)(D) requires that the Ameritech Illinois/Global interconnection be "on rates, terms and conditions that are just, reasonable and nondiscriminatory." Ameritech argues that it is plainly just and reasonable for Global to bear the costs caused by Global' election of a single point of interconnection. And it would just as plainly be unjust and unreasonable, and thus in violation of the 1996 Act, to require Ameritech to bear those costs.

Ameritech believes that it is only fair that when a CLEC chooses an interconnection architecture that causes additional costs, as Global is doing when it chooses to have a single POI per LATA, the CLEC, rather than the ILEC, should bear those additional costs. Ameritech claims that the basic rule of fairness is reflected in a familiar economic principle to which this Commission consistently adheres: The cost-causer pays. Ameritech argues that the basis for the economic principle goes beyond notions of fairness. It is efficient, and therefore in the public interest, for a firm to bear the costs it causes, in order to encourage decisions that reduce costs and, ultimately, the prices paid by the consuming public and it is demonstrable that a requirement that Global bear the additional costs resulting from a single POI architecture will promote efficiency, and that a requirement that Ameritech bear those costs would promote inefficiency.

Ameritech urges that the "just and reasonable" terms and conditions for the Ameritech/Global interconnection require Global to bear the additional costs caused by Global' decision to establish a single POI per LATA. A ruling that Ameritech must bear those costs would be unjust and unreasonable, and would thus violate section 251(c)(2)(D) of the 1996 Act.

Ameritech argues that even if transport rates costs are *de minimis* that would be no reason to impose them on Ameritech. Ameritech further argues that if the costs are *de minimus* is a rationale for letting Global bear them.

Ameritech asserts that the Commission must assume, for purposes of this proceeding, that Ameritech's Commission-approved transport rates are proper. The rates that Ameritech proposes to charge Global are tariffed, and Global is, in effect, collaterally challenging those Commission-approved rates without either proposing rates of its own or addressing the basis on which the Commission approved the existing rates in the first place.

Ameritech argues that Global will not have to mirror Ameritech's network architecture. Under Ameritech's proposal, it will not have to. For the single POI model, Global may designate the office with which Ameritech Illinois' facilities connect. For the multiple POI model, which seeks to equalize investment as the companies' networks grow, the use of the tandems as aggregation points is one suggestion. Other aggregation points may be used as well. Negotiations between the companies will establish the architecture, based on the tenet that traffic is of value to each company, and transport costs should be equitably divided.

Ameritech believes that Global has options available to it under Ameritech's proposals that allow it not to recreate the Ameritech network. According to Ameritech, Global may use Ameritech dial tone and loop combinations (UNE-P) to serve subscribers who are far from its switch; Global may use SONET rings and other types of technology, rather than additional switches and tandems, to reach their distant subscribers; Global may lease spare capacity from any number of networks, including Ameritech's, that have already been built.

Additionally, Ameritech takes issue with Staff's contention that Global' decision to use a single POI does not really cause incremental costs. Ameritech argues that when Global chooses a single point of interconnection, Global causes additional costs.

Finally, Ameritech asserts that the contract language that it has submitted for the Appendix NIM appropriately implements Ameritech proposal that Global bear the costs it causes by choosing a single point of interconnection.

B. Global Position

On the first issue, there now appears to be general concurrence. "There is no fundamental disagreement between Ameritech and Global on Issue 1 — that Global may receive interconnection through a single POI in each LATA." This issue has been determined both by federal law and Illinois state law. Section 13-801(b) states that the ILECs must allow for interconnection ". . . at any technically feasible point within the incumbent local exchange carrier's network; however, the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA."

Global argues that Ameritech seeks to impose punitive transport costs when Global delivers traffic to any point in the LATA other than the boundary of Ameritech's-defined local calling area. Global asserts that it is seeking the fair, reasonable and simple solution of having each party bear transport costs on its side of the POI.

Global believes that Ameritech's attempt to shift transport costs is in contradiction to the FCC's discussion of inter-network transport costs in ¶ 1062 of the *Local Competition Order.* "In that discussion the FCC is addressing how carrier should split the cost of facilities used to link their two networks, and the FCC makes quite clear that the originating carrier is responsible for the cost of getting its outbound traffic to the interconnection carrier."

Global argues that it is effectively being denied the benefits of electing for a single point of interconnection by Ameritech's assertion that if Global interconnects at a single point within a LATA, Ameritech can require Global to either interconnect at each of Ameritech's local calling area tandems, or alternatively, pay Ameritech to transport traffic at excessive rates from this single point of interconnection to the various additional locations Ameritech designates.

Global agrees with Staff's assertion that, "[w]hile the FCC makes a distinction between the financial and physical aspects of interconnection, it has not make a final ruling on whether or how to allocate the financial responsibilities associated with interconnection." Indeed, according to Global, the FCC states "[t]he issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM."

Global argues that to remove the CLEC's ability to designate a single point of interconnection eliminates efficiencies gained by Global's unique network architecture and imposes on it requirements to duplicate Ameritech's network architecture, either by installation of redundant facilities or by subsidizing Ameritech's transport costs. Ameritech's proposal imposes, rather than removes, economic burdens and is thus wholly contrary to the intent of the Act.

Global argues that Ameritech's proposal it is in direct contradiction of 47 CFR 51.703 (b): "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."

Global argues that each side should bear their own costs in order to provide proper incentives. Global asserts that if it Ameritech's costs, Ameritech has no incentive to control its transport costs. According to Global, the reverse is true: Ameritech has an incentive to inflate costs that are imposed on its competitors. But of more importance, Ameritech wants Global to pay Ameritech's rates.

Global further argues that each side should bear its own costs because each side will have its own transport costs. Global believes that the transport costs on its side of the POI may well exceed those of Ameritech on its side of the POI. Global notes that it must often transport traffic not only across Ameritech's tandems and LCAs, but LATAs and in certain cases entire states. Thus, not only is there transport costs for each carrier on their side of the POI, but due to its network topology, Global's costs are likely to be greater than Ameritech's. Nonetheless, Ameritech makes no allowance for these transport costs.

Global states that now both Global and Ameritech bear transport costs on their respective sides of the POI. Global notes that Ameritech insists on payment for transport on its side of the POI, yet makes no allowance to pay Global for its transport costs. The level of costs is dependent to a large degree on network design. CLECs, and Global in particular, often employ less switching and greater transport until such time as they build the prerequisite customer mass to efficiently invest in additional switches. Rather than impose greater transport costs on Ameritech, Global is content to agree to the reasonable compromise that each carrier bear their own transport costs on their respective sides of the POI. According to Global, this is reasonable and from a purely administrative view, a rational and "easy" solution.

Global argues that imposing Ameritech's transport charges on it would be discriminatory. Global further argues that Ameritech cannot impose transport costs on ISP-bound traffic and that intercarrier compensation for ISP bound traffic is controlled wholly by the *ISP Order*, the Commission has no jurisdiction over it and it is not subject of interconnection agreement. Ameritech wants to make the physical location of the ISP relevant in order to impose transport charges. This position is entirely at odds with the reasoning of the *ISP Order*. If the location were relevant, then in the simplest case, where the ISP is located in the same local calling area as the party who originates the call reciprocal compensation should be due. Global argues that the Commission should be clear that its rulings with regard to the Interconnection Agreement do not pertain to ISP bound traffic.

C. Staff Position

On this issue, there now appears to be general concurrence. "There is no fundamental disagreement between Ameritech and Global on Issue 1 — that Global may receive interconnection though a single POI in each LATA." This issue has been determined both by federal law and Illinois state law. Section 13-801(b) states that the

ILECs must allow for interconnection " . . . at any technically feasible point within the incumbent local exchange carrier's network; however, the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA."

The issue is thus no longer whether such interconnection is allowed. The issue has morphed from whether or not Global can physically interconnect at a single point in each LATA, to whether or not Ameritech will penalize Global for exercising this option.

With respect to Issue 2, Staff recommends that each party should be responsible both financially and physically for its side of the single POI. Issue No. 2 should be revised to also include traffic *from* the POI because the costs for transporting traffic to and from the POI are equally affected by interconnection arrangements. Staff notes that the financial obligations of each party on its side of the single POI are independent of reciprocal compensation. Staff states that reciprocal compensation rules do not govern the recovery of interconnection facilities or the extra costs of transporting calls between the POI and the calling/called party that result from certain interconnection arrangements.

Staff asserts that the FCC has not made a final ruling on whether or how to allocate the financial responsibilities associated with interconnection and the financial responsibilities of a single POI are open issues in the FCC's Intercarrier Compensation NPRM.

Staff argues that Ameritech's proposal while physically allowing a carrier to elect a single POI, Ameritech's terms and condition would penalize carriers for electing architectures that do not mirror Ameritech's network architecture. Staff asserts that this would have the effect of discouraging carriers form following their own best practices, even if those practices result in innovative and efficiency enhancing networks.

D. Commission Analysis and Conclusion

Issue 1 appears to be resolved and the Commission concludes that Global should be permitted to establish one POI per LATA at any technically feasible location in Ameritech's network. The language for Appendix NIM, Section 1.11 of the Interconnection Agreement should reflect this agreement.

As to Issue 2, the Commission is of the opinion that Ameritech and Global should be responsible both financially and physically on its side of the single POI. Ameritech's arguments, while lengthy are not persuasive to require the adoption of the Ameritech proposal. The Commission concurs that the transportation of calls to a single POI in each LATA would not significantly increase transport costs, but rather the incremental costs that Ameritech would incur would be de minimus. Ameritech's position could have the effect of undermining the single POI requirement.

Issue No. 3: Should Ameritech-IL's local calling area boundaries be imposed on Global, or may Global broadly define its own local calling areas?

A. Ameritech Position

Ameritech argues that for purposes of intercarrier compensation between Global and Ameritech under the parties' interconnection agreement, however, the reciprocal compensation/access charge regime reflected in the 1996 Act and in Ameritech' local calling areas must control. Ameritech states that a call that originates in one Ameritech local calling area and that terminates outside that local calling is, for purposes of intercarrier compensation, a toll call. Ameritech believes that if Global defines its local calling area (for purposes of its dealings with its customers) on a LATA-wide or even state-wide basis and a Global customer in one Ameritech local calling area calls an Ameritech customer located outside that local calling area, Global must pay Ameritech terminating access charges. According to Ameritech, Global may not obliterate the distinction between "local" and "toll" calls – and the related compensation schemes for each type of call – by drawing LATA-wide local calling areas. Ameritech notes that Staff is in full agreement with Ameritech on this issue. As Staff puts it, "Staff recommends that the carriers use the existing Commission-approved Local Calling Areas ("LCA") for purposes of intercarrier compensation."

Ameritech asserts that the determination of the applicable intercarrier compensation regime is a function of the local exchange areas of the incumbent carrier almost everywhere in the country, if not everywhere. Ameritech further states that there is Commission precedent supporting Ameritech' position. In the "Customers First" proceeding, Docket Nos. 94-0096 *et al*., the Commission ordered Ameritech to file "tariffs incorporating Staff's compensation proposal in total (as it is explained in ICC Staff Ex. 2.01 at 38-43), including new rates for reciprocal compensation . . ." Ameritech's position in this arbitration that its local exchange areas must be the determinants of intercarrier compensation is thus consistent with the Commission's Order in the Customers First proceeding.

Ameritech notes that the crux of Global' position on Issue 3 is its assertion that the distinction between local calls and toll calls' – especially on an intra-LATA basis – has become artificial. Ameritech parenthetically argues that If that is what Global believes, Global is free to lobby Congress and the FCC to eliminate the distinction between local calls and toll calls. For purposes of this arbitration, however, the law says that the distinction counts, according to Ameritech. (*See* section 251(b)(5) of the 1996 Act, subjecting "telecommunications" to reciprocal compensation, and section 251(g) of the 1996 Act, excluding toll calls from section 251(b)(5) reciprocal compensation; *see also* Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic;* CC Docket Nos. 96-98

and 99-68, FCC Order No. 01-131 (rel. April 27, 2001), at ¶¶ 34-41 (explaining section 251(g) carve-out of toll traffic from section 251(b)(5) reciprocal compensation).

B. Global Position

Global states that it intends to offer LATA-wide local calling by defining its local calling area as the entire LATA. Global argues that the template agreement should be modified to eliminate pricing practices and policies that economically prohibit Global from offering LATA-wide local calling area services. Global further asserts that all intraLATA traffic exchanged between Global and Ameritech should be treated as cost-based "local" compensation under § 251(b)(5), and should not be subject to intrastate access charges.

Global believes that one of the key benefits of establishing a single POI per LATA, (with each party responsible for facilities and routing on its side of the POI), is that it places the fewest constraints on either party's ongoing competitive choices in providing retail services. Specifically, Global is interested in providing Illinois with LATA-wide local calling areas. Global argues that Ameritech's contract proposal prevents this. Such an offering will allow Global to compete with both local providers as well as IXCs. Most importantly, it exerts downward pressure on current monopoly-priced intraLATA access services by offering an innovative competitive telecommunications product.

Global further argues that in both technical and economic terms, there is no particular reason for Ameritech to maintain small local calling areas, and certainly no reason whatsoever for a new competitor to do so. According to Global, saddling it with Ameritech's legacy network architecture and other archaic design decisions such as LCA definitions is unreasonably burdensome and out-of-step with the introduction of net technologies which vastly reduce the cost of transport. Global notes that it has already begun investment in facilities in Illinois using more innovative network designs through the purchase of another carrier. Global continues, stating that, it will expand its investment in facilities, assuming continued investment is profitable.

Global asserts that its designation of a LATA-wide local calling area is clearly permitted by law. The FCC has permitted the states to determine what geographic areas should be considered "local areas" for purposes of applying reciprocal compensation obligations under § 251(b)(5) "consistent with the state commissions' historical practice of defining local service areas for wireline LECs."

Global argues that its evidence showed that there is no economic or technical reason for local calling areas to be any smaller than a LATA, but there are certainly good reasons for LCAs to be at least as large as a LATA as Florida has recognized. Global has no interest in dictating how Ameritech should divide its telecommunications services into "local" and "toll" and Ameritech should not influence Global pricing determinations. However, this is exactly what Ameritech does by asserting that access

charges must be applied to Global based on the artificial distinction of calling areas defined by Ameritech. In fact, Ameritech asserts that adopting LATA-wide calling areas "would lead to chaos." This assumes that Ameritech does not bow to competitive pressures to widen its local calling areas but instead preserves its monopoly profits by retaining its current small LCAs. Global argues that if the Commission adopts LATA wide LCAs as Florida has, then any "chaos" will be solely caused by Ameritech stoically clinging to its monopoly revenue streams.

Global continues, stating that since the Commission last reviewed and approved the LCA standard, however, technological changes have altered the telecommunications landscape. In addition, network interconnection has created a host of complex issues. Global asserts that these changes and circumstances implicate broad policy issues with important consequences for all telecommunications carriers and consumers. As a result, according to Global, the Commission may wish to reevaluate the existing LCA standard and consider issues surrounding network interconnection.

Global notes that Ameritech may argue that such local calling areas are the Commission's own and thus intercarrier compensation should be determined by them, but the reality is that the Commission approved calling areas based on Ameritech's request. Ameritech's LCAs are legacies of an ancient telephone network topology. Ameritech's own transport system is fully automated and provides redundant capabilities to maintain uninterrupted service. Thus, call routing can vary significantly in a fraction of a second and is not dependent on manual intercession and judgment in the operator-based relay systems of the past. The advent of fiber has made call quality distance insensitive. Deployment of fiber has also rendered the application of distance-based charges virtually meaningless. As a result, the carriage of traffic—both technically and economically—within Ameritech's territory is no longer distance sensitive. Regulation should reflect the technology used (or which should be used) by allowing for expanded local calling areas without applying distance-based retail rates to wholesale customers.

Additionally Global argues that the Commission should reject Ameritech's efforts to penalize Global for expanding local calling areas to the consumer. Simply stated, allowing Ameritech to assess access charges on Global' defined LCAs removes Global's ability to define the calling area size. It is clear that intrastate access charges are well in excess of cost. As such, they should not be applicable to calls placed within the LATA. Ameritech's local calling areas should not define Global because *there is no cost basis for these calling areas*. These calling areas are legacies of Ameritech's costs at a time when there were operator-mandatory relay systems. The automated switch routing and *de minimis* transport costs applicable to fiber feeder routes render the currently defined calling areas into question. Indeed, there is no longer any reasonable basis for asserting cost differences between carrying calls between local areas in the same LATA versus carrying calls within calling areas. Thus, the only ruling the Commission can arrive at is that these monopoly pricing artifices be eliminated and

all intra-LATA traffic exchanged between Global and Ameritech within a LATA should be treated as subject to cost-based "local" compensation under § 251(b)(5)—never to be subject to intrastate access charges.

Global concludes that the Commission should support its attempt to economically and technically enable LATA-wide local calling capabilities. This is the only way that Illinois can foster competition to benefit its consumers. Global believes that in order to effect this, Ameritech's Template Agreement should be modified to eliminate pricing practices and policies that economically prohibit Global from offering LATA-wide local calling area service. Because there is no cost rationale supporting the mutual compensation arrangement regime insisted on by Ameritech, intra-LATA traffic exchanged between Global and Ameritech should be treated as cost-based "local" compensation under § 251(b)(5), rather than being subject to intrastate access charges.

C. Staff Position

Staff recommends that a uniform local calling area govern intercarrier compensation. Ameritech has a Commission-approved local calling area. Staff urges the carriers to use the existing local calling areas in Ameritech's service territory for purposes of intercarrier compensation.

Staff further recommends that for purposes of intercarrier compensation, the Commission should use the existing Commission-approved local calling area. Staff asserts that it would be chaotic to apply different local calling area standards on inter-network calls. Staff does note that its recommendation does not necessarily mean that Ameritech's LCA is appropriate for all internet work traffic in Illinois. Staff states that its recommendation is based on the fact that Ameritech LCA is an existing Commission-approved LCA.

D. Commission Analysis and Conclusion

The Commission rejects Global's request that it be allowed to define its own local calling area. At the present time, the Commission has approved one LCA in Illinois that is currently used by Ameritech. While there may be technological changes since the Commission last visited the LCA issue, it would be inappropriate to reconsider the issue in this docket. The Commission agrees with Ameritech and Staff that to recognize any other arrangement would be inappropriate in light of these factors, but would also cause confusion in the area of intercarrier compensation.

Issue No. 4: Can Global 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?

A. Ameritech Position

Ameritech asserts that Issue 4 is misstated, because the parties agree that Global can assign its customers NXX codes that are "homed" (as Global puts it) in a central office switch outside the local calling area in which the customer resides. Or, as Ameritech would put it, Global 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 Global and Ameritech, when an Ameritech customer calls a Global customer to whom Global is providing such FX service. There are two consequences:

Ameritech asserts that FX calls are not subject to reciprocal compensation. Ameritech further explains that when an Ameritech customer makes a call to a GLOBAL customer with FX service – so that the two parties' NXXs make the call look like it stays within a single local exchange area even though it actually travels from one local exchange area to another – the call is not subject to reciprocal compensation. The Commission has already decided precisely that, in a previous arbitration. Here, Ameritech urges that the Commission need only reaffirm its previous decision, as Staff recommends.

Ameritech argues that when Global assigns its customers virtual NXX codes and provides FX or FX-like services to them, Global must bear its fair share of the transport cost, as required by Appendix FX of the proposed interconnection agreement.

Ameritech notes that Foreign Exchange (FX) service is the offering of a telephone number to an end user (specifically, an NXX – the first three digits of the number) that does not match the geographic area where the customer physically resides. Customers that purchase FX service can receive calls from a different geographic area – calls that would otherwise be subject to toll charges – but with toll charges not applying.

Ameritech urges the Commission to adhere to its *Level 3 Decision*. Ameritech argues that if the Commission does so, Global' ability to provide FX service or to use its NXXs as it chooses will not be impeded in any way, and the rate paid by end users calling an FX number will not be affected in any way. Moreover, according to Ameritech this Commission's decision that FX calls are not subject to reciprocal compensation is in line with the well-considered decisions of numerous other State commissions, and Global has offered no cogent reason for the Commission to change its mind.

Ameritech believes that the reason that GLOBAL should have to pay its share of transport for such calls is that FX service, as configured by Global (and other CLECs), is a way to offer toll service, using primarily ILEC facilities. It connects two end users, in two different local calling areas, across facilities supplied mostly by Ameritech. It

represents one or the other of the following problems for Ameritech: Increased usage on the network (given away for free by CLEC to Ameritech end user) or decreased toll revenue. In offering FX, the CLEC controls what an Ameritech end user pays when she dials this type of long distance call. The CLEC should therefore pay for the long distance part of the call, regardless of how conveniently the call happened to fit into Ameritech's network.

Ameritech argues that this result is obviously unfair to Ameritech and its customers, as well as to other CLECs that have deployed their own network facilities and their customers. The costs of transporting a call to an FX customer outside the local calling area of the originating NXX should be borne by the CLEC and its customer. If the CLEC and its customer are not required to bear those costs, Ameritech is effectively forced to subsidize the CLEC's FX service by providing free transport and, if the call traverses a tandem switch, free switching. This subsidy problem is particularly acute for FX-type services, since the main purpose of the arrangement is to allow Ameritech' end user customers to call the FX customer on a local untimed basis, so that the end user may stay connected for long periods of time without incurring per-minute charges. Thus, FX services are particularly attractive to, and heavily used by, providers of services such as Internet access, chat lines, and work-at-home access to corporate networks, all of which generate calls with hold times substantially longer than typical local calls. These are precisely the types of calls for which local per-call rates are already inadequate, and the additional unfair burden of interexchange transport costs makes a bad situation even worse. In summary, this potential free ride is bad public policy.

B. Global Position

Global argues that the interconnection agreement should provide that, consistent with historic practice, a call's status as "local" will be determined by referring to the NPA-NXXs of the calling and called numbers. This principle should apply in the context of foreign exchange (to "FX") service, which is a service pursuant to which a carrier effectively extends the local calling area of subscribers by assigning an NPA/NXX in the desired exchange to a customer that may be physically located outside the rate center to which the NPA/NXX is homed. According to Global, a party terminating such FX traffic should receive reciprocal compensation from the originating carrier if the NPA/NXX Codes indicate that the call is local. Global argues that the Commission should reject Ameritech's proposal that the traditional method of determining the jurisdiction of calls by comparing the NPA-NXXs of the calling and called parties be replaced with an unspecified method involving the comparison of the physical locations of the calling and called party. Global asserts that treatment of FX traffic as "local" is consistent with industry precedent and practice, and the failure to treat CLEC-provided FX as local, paired with the local treatment of Ameritech's FX service, will eliminate competition for FX service.

C. Staff Position

Staff notes that in general, FX service is the offering of a telephone number (specifically, a prefix or NXX-the second three digits of a ten-digit number) to an end user outside the rate center (or geographic area) in which that end user physically resides. Staff further notes that FX service allows a calling party to reach an FX customer for the price of a local call though the call is physically an interexchange call and would otherwise be subject to toll charges. Staff observes that from a customer's perspective, FX and FX-like service are functionally the same services.

Staff opposes Global's proposal as it relates to intercarrier compensation. Staff recommends that the Commission require carriers to continue to associate each NXX with a particular local calling area for purposes of intercarrier compensation.

D. Commission Analysis and Conclusion

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 this decision in the Level3 arbitration and finds there is no compelling reason to change its decision that such traffic is not subject to reciprocal compensation at this time. Regarding FX or FX-like traffic, the Commission adopts Staff's recommendation that each party should bear its own costs on its side of the POI for FX and FX-like traffic. It does not appear that Global's ability to provide FX service or to use its NXXs will be impeded in any way.

Issue No. 11: Should the Interconnection Agreement Require Global to Obtain Commercial Liability Insurance Coverage of $10,000,000 and Require Global to Adopt Specified Policy Forms?

A. Ameritech Position

Issue 11 concerns section 4.7 of the General Terms and Conditions portion of the interconnection agreement. Section 4.7 begins with language on which the parties have agreed: "At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable law." That agreed language is followed by several subsections, on some of which the parties have agreed. The disagreement concerns subsections 4.7.2 and 4.7.3, which read as follows in redline form (with Ameritech' language underlined and Global' language in italics):

> 4.7.2 Commercial General Liability insurance with minimum limits of: $10,000,000 *$1,000,000* General Aggregate limit; $5,000,000 *$1,000,000*

each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; $1,000,000 each occurrence sub-limit for Personal Injury and Advertising; $10,000,000 *$1,000,000* Products/Completed Operations Aggregate limit, with a $5,000,000 *$1,000,000* each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of $2,000,000 *$1,000,000* are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy. An umbrella excess liability policy may be used to substitute for insurance minimum limits listed in this section, providing the umbrella policy together with its primary policies provides the coverages required by this section 4.7.2.

4.7.3 If use of an automobile is required, Automobile Liability insurance with minimum limits of $1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.

Ameritech argues that the parties' principal difference, is that Ameritech's proposal requires each party to maintain $10 million in general liability insurance and various lower sublimits, while Global would require the parties to maintain only $1 million for commercial general liability and $1 million sublimits for bodily injury or property damage, and would require no coverage for personal injury or advertising.

Ameritech argues that the amounts proposed by it are the absolute minimum commercially reasonable under the circumstances. Ameritech notes that Global is interconnecting with a public switched network worth many tens of millions of dollars. Indeed, a single tandem switch costs on the order of $10 million dollars. Ameritech believes that given Global's recognition that its operations pose a risk to the network, it is hardly too much to ask to provide coverage in the amount of at least that amount.

Ameritech further argues that Global's proposed $1 million figure, on the other hand, is inadequate to cover the risks to the parties operating under the interconnection agreement. In fact, it is not uncommon for an individual person to have over $1 million in liability coverage for personal protection. It follows that a business – with many employees and business risks – would require commensurately more insurance.

Lastly, Ameritech argues that its proposed language would not give it an unfair competitive advantage because it does not impose the same insurance obligations on Ameritech as on Global. Ameritech notes that the insurance requirements apply equally to both parties. The agreed language in section 4.7 of the General Terms and Conditions plainly states, "At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law."

B. Global Position

Global has indicated that it believes this issue to have been settled by the parties.

C. Staff Position

Staff did not take a position on this issue.

D. Commission Analysis and Conclusion

The Commission is concerned whether or not the parties have settled this issue. Ameritech spends several pages of its initial brief on this issue. The parties reply briefs did not clarify the issue further, therefore the Commission concludes that the insurance limits proposed by Ameritech are appropriate and directs the parties to adopt the language as proposed by Ameritech for Section 4.7 of the General Terms and Conditions portion of the Interconnection Agreement.

V. COMPLIANCE WITH ARBITRATION STANDARDS

Under § 252(c) of the 1996 Act, a State Commission must apply three standards in resolving open issues and imposing conditions upon parties to an agreement subject to arbitration. The first standard requires the state commission to assure compliance with Section 251 and any rules promulgated under Section 251. The Commission has reviewed each of the conclusions reached above and finds that they are in compliance with the relevant statutes and rules. The second standard requires the state commission to establish rates for interconnection, services, or network elements according to subsection (d). The prices adopted above comply with the criteria in Section 252(d). The final standard requires the state commission to provide a schedule for implementation of the terms and conditions by the parties to the agreement.

As a final implementation matter, the parties shall file, no later than 15 calendar days from the date of service of this Arbitration Decision, the complete amendment to their Interconnection Agreement conforming with this decision for Commission approval pursuant to § 252(e) of the Act.

By order of the Commission this 14th day of May, 2002.

(SIGNED) RICHARD L. MATHIAS

Chairman