Arbitration: The End Game

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The Telecommunications Act of 1996 ("Act") opens the local telecommunications marketplace to competition and requires all incumbent local exchange carriers to interconnect with their competitors. Historically, interconnection has been achieved, if at all, through the clumsy and time consuming regulatory process, which in the best of situations has taken more than four years and is still far from complete. The Act introduces a new method for achieving interconnection, through private negotiations. The Act's requirement that ILECs negotiate specific aspects of interconnection with competitors sets the new paradigm for competitive carrier relationships: While monopolies can be encouraged or constrained only by regulation, peer carriers in a competitive market will rely upon contractual arrangements to govern one another's behavior. Since presently there is only the prospect of competition, and its reality is still far away, the Act recognizes that negotiations will take place between parties of vastly different bargaining power, and provides for a strong regulatory role in the event that voluntary negotiations do not produce agreements. The new paradigm includes the option of state mediation in negotiations between carriers, and the ultimate option of arbitration.

Either party to an interconnection negotiation may ask the state public utility commission to provide for arbitration of unresolved issues. This may be done whether or not the negotiation has previously been subject to mediation. The arbitration is intended to be binding on both parties. If within nine months of the date of the original request for negotiation arbitration has not been concluded, the Federal Communications Commission (FCC) must assume the responsibility to arbitrate. Thus, the arbitration provisions of the Act assure that there will be

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1 The competitive local telecommunications providers together have less than one-half of one percent of local telecommunications revenues.

2 47 U.S.C. §252(b)(1). A party requesting that an arbitrator intervene must do so within the period beginning 135 days and ending 160 days after negotiations were commenced by the CLEC. Arbitration by a state must be concluded within 9 months of the date of the original request for negotiation.

3 47 U.S.C. §252(e)(5) ("If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission’s jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.")
an agreement for every CLEC that requests interconnection. The arbitration requirement is the ultimate, essential tool to achieve competition, and arbitration processes require careful management to ensure they do so.

**Arbitration Creates Gaming Opportunity**

The existence of the binding arbitration requirement sets up a gaming opportunity, and both ILECs and CLECs perceive it as such. Certain perceptions of the game are common to both sets of LECs.⁴ One is: Do not conclude an agreement that is “good” for the other party unless the prospect is that arbitration will grant at least as good an outcome. Another is: Any arbitrated agreement is likely to be perceived by other parties as a “default” available in the event that they themselves fail to reach a more satisfactory agreement⁵. A third is: If an arbitration favors either the ILEC or the CLEC, the favored party (or its counterparts in other jurisdictions) is more likely to obtain favorable arbitrations in other negotiations.

ILECs have incentives to establish bare bones interconnection agreements and CLECs have incentives to established well-detailed agreements -- but CLECs have nothing to offer that ILECs want, and ILECs have everything that CLECs need.⁶ At the start of negotiations, the desired goals of the parties are antagonistic, and the bargaining power of ILECs is far superior to that of CLECs. Each ILEC has personnel that can negotiate with every CLEC and share information about all negotiations. But each CLEC must negotiate with every ILEC in a nearly-new environment. ILECs recognize their strength in this situation and have even attempted to

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⁴ These observations are general and do not apply necessarily to any particular party to any particular negotiation.

⁵ See 47 U.S.C. §252(i).

⁶ The FCC has recognized that the ILECs have “vastly superior bargaining power in negotiations for mutual termination,” which is the most critical aspect of any negotiation. In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-98, at fn. 19.
eliminate the CLEC's ability to obtain or share essential information about their own negotiations with their owners, peer carriers or regulators. Thus CLECs are the weaker negotiators at the start, and for competitive telecommunication carriers operating in several states, the negotiation game is particularly difficult to play.

An expectation of reasonable similarity among arbitration processes would greatly enhance the negotiating position of CLECs and speed their market entry. On the other hand, diverse conditions for arbitration would create higher costs and could create an entry barrier. Varying state arbitration rules can hinder the ability of CLECs to reach regional agreements with the BOCs, even though regional agreements would save resources for all private parties and government entities alike. Moreover, state commissions have limited resources to develop arbitration guidelines and often will risk legal challenges that can further delay the arbitration process.

To ensure that the arbitration process is efficient and results in fair and useful interconnection agreements, the FCC must establish general guidelines -- rules of the game, so to speak -- to be followed in the states. Arbitration guidelines developed by the FCC would help the state commissions make the final decisions to approve specific arbitrated agreements, as they are required to do under the Act.

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7 "Non-disclosure" agreements were requested by Ameritech, Bell Atlantic, BellSouth, and Southwestern Bell.

8 An arbitrated agreement must comply with both the requirements of section 251 of the Act and the regulations prescribed by the Commission pursuant to section 251 of the Act. State commissions must establish rates for interconnection, services, or network elements and provide for a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).
Commercial Arbitrators

The FCC should adopt rules that permit any party to elect arbitration by commercial arbitrators, notwithstanding any state commission rules that would otherwise limit the use of commercial arbitration. Commercial arbitrators are appropriately trained and experienced in impartial evaluation of parties' positions with regard to contract negotiations. State commissioners or commission staff generally have little or no experience in the arbitration process, and even if they have some training, they lack the in-depth experience of seasoned arbitrators. More importantly, staff or commissioners may have taken positions on the issues to be arbitrated, which is likely because in most states most of the issues to be arbitrated have previously been considered in state regulatory proceedings. To prevent the appearance of bias, issues to be arbitrated should be presented to arbitrators who are considering them for the first time. And finally, if, as is likely, several arbitrations are requested in a state at the same time, state commissions would be unable to deal effectively with the workload. Since arbitrations will likely be initiated over pricing terms rather than technical arrangements, commercial arbitrators acting under generally accepted commercial guidelines, such as those of the American Arbitration Association, will be fully competent to resolve issues expeditiously.

Many state commission rules and utility regulation statutes neither incorporate processes for arbitration nor contemplate the use of commercial arbitration in matters related to telecommunications regulation. To avoid state statutory or administrative impediments to commercial arbitration, a national rule on the use of commercial arbitration is needed. State commissions could then allow commercial arbitration without concern that they would be violating state rules or statutes. And, by allowing for the use of commercial arbitrators, the FCC will give parties a better opportunity to obtain individually negotiated arrangements since they will not be constrained to the use of limited state commission staff.
Only the Parties to a Negotiation Should Participate in Arbitration

By definition, arbitration affects only the two parties negotiating an agreement. Because each competitive telecommunications provider has unique interconnection requirements, each arbitration is unique. Resellers have a particular set of interconnection priorities. Facilities-based CLECs have an entirely different set of requirements and priorities. Long-distance carriers have still another goal set. The FCC must adopt arbitration rules that respect, permit, and encourage the development of differing interconnection arrangements. Thus, while carriers’ technical requirements for interconnection may be similar, the financial agreements necessary for their businesses will differ. Hence, input from carriers with different business objectives will not provide useful information, and could jeopardize the business plans of other carriers whose plans differ. It is no more in the public interest for other carriers to participate in one carrier’s interconnection arbitration than for other baseball teams to participate in one team’s player salary arbitration.

Nor is intervention necessary to acquire relevant information for state commissions. When the agreement is submitted to the commission for approval, carrier third parties do have a means for providing state commissions with information relevant to the arbitration of others. A commission may reject an arbitrated agreement if it discriminates against a telecommunications carrier not a party to the agreement, if it is inconsistent with the public interest, or if it does not comply with Section 251.\textsuperscript{9} To obtain facts relevant to these issues, the commission would have to allow for comments or a hearing. Public interest groups and consumer advocates, too, may comment on the proposed interconnection agreement. But it is contrary to the intent of arbitration for such

\textsuperscript{9} 47 U.S.C. § 252(e)(2).
parties to participate in the give and take between entities who intend to enter into contractual obligations. The Act also provides that each final interconnection agreement be made publicly available so that any interested communications provider can opt for the same agreement if it so chooses; thus no third party is disadvantaged by not intervening in another carrier’s arbitration proceeding. Allowing unfettered intervention in arbitration proceedings would unnecessarily impede the arbitration process. It would also inundate state commissions with irrelevant information, serving the LECs that prefer to delay implementation of interconnection.

Arbitrators Should Choose One of the Proposals Submitted by the Parties

Arbitration rules should specify that arbitrators must choose one of the two alternative proposals offered by the parties to the arbitration. Such a mandate will encourage each party to offer the arbitrator a more reasonable “best and final” position on all the items subject to arbitration, taken as a package. If a party insists on maintaining an extreme position on any issue, that party runs the risk that the arbitrator will choose the opposing party’s set of recommendations. An “either or” structure places pressure on the parties to assume final positions that may be satisfactory to both sides. On the other hand, if an arbitrator is expected to design an arrangement that incorporates aspects of each proposal, the parties’ recommendations to the arbitrator are more likely to be more extreme in anticipation that the arbitrator will “split the difference.” A compromise imposed by the arbitrator may be unsatisfactory to both parties or even unworkable.

Discovery in the Arbitration Process

For arbitration to be effective and efficient, arbitrators must have a factual basis for judging between the fixed positions of the two negotiating parties. Arbitration resembles an adjudication

more than a regulatory "paper" process. Discovery between the parties will provide arbitrators with information that will allow fair and timely decision making. Rather than discovery being a tool for the parties to advance their cases, as in litigation, discovery in arbitration enables the fulfillment of the Act's arbitration requirement by those assigned to carry it out. Discovery in arbitration must be focused on material relevant only to the unresolved issues of interconnection agreements between the negotiating parties -- which would include all existing and prior interconnection agreements or arrangements entered into by the parties.

CLECs May Adopt Existing Interconnection Agreements as Long as the Agreement is Adopted in Full

Interconnection arrangements between the ILECs were established in an environment in which the two entities did not expect to compete with each other. Presumably these arrangements are competitively neutral, and would not be characterized by efforts to impede the operations of the interconnecting parties. An ILEC's insistence on a different arrangement for CLECs would suggest that the ILEC is attempting to secure a competitive advantage through the interconnection arrangement. Making ILEC-ILEC agreements available to all parties will reduce the burden of the arbitration process on all parties, including the state commissions.

The Arkansas Public Service Commission has already ordered SBC and GTE to submit all interconnection agreements in effect on the date of enactment of the Act.\textsuperscript{11} The Wisconsin Public Service Commission has also acted to make existing interconnection agreements available to

\textsuperscript{11} \textit{In re Interconnection Agreements of Telecommunications Carriers}, Docket No. 96-098-U (April 1, 1996).
CLECs. The Act explicitly requires ILECs to submit their existing interconnection contracts to the state commission for approval. But ILECs have apparently anticipated this requirement, and have, in some instances, renegotiated ILEC-ILEC interconnection agreements in order to conceal preexisting interconnection arrangements from CLECs and state commissions. ILECs must not be allowed to subvert the clear intent of Congress and negate existing contracts for the sole purpose of denying entrants access to the same interconnection terms and conditions available between ILECs. Therefore, ILECs must be required to file agreements that were in effect within the 24 months preceding the enactment of Telecommunications Act of 1996.

The issue of whether interconnection agreements should be subject to “unbundling” strikes to the heart of the new carrier relations established in the Act. Allowing carriers to pick and choose individual rates or terms from multiple agreements could tend to inhibit the fine tuning that is inevitable given that different carriers have different needs and priorities. CLECs should be permitted to take service pursuant to interconnection agreements negotiated or arbitrated by other parties only where they are willing to take service pursuant to the full scope of the contract and the reasonable terms and conditions thereof.

At the same time, ILECs should not be allowed to “fence off” interconnection agreements or portions of them in order to prevent their use by other carriers. This could be done by means of restrictive terms: For example, an agreement that limited interconnection terms to non-overlapping

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13 47 U.S.C. §252(e)(1) states, “any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section” (emphasis added). Section 252(e)(1) further demands, “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State Commission” (emphasis added). Therefore, all interconnection agreements, whether entered into prior to or after enactment of the 1996 Act, must be submitted by the ILEC.

14 47 U.S.C. §252(i) provides, “A local exchange carrier shall make available any interconnection, service, or network element provided under agreement...to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

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traffic. ILECs should not be allowed to negotiate agreements that restrict the availability of whole agreements to any carrier, since there is no foundation in the 1996 Act for such a requirement. State commissions should not approve any agreement containing such restrictions.

"Preferred Outcomes" for Arbitrated Agreements

Every negotiation is unique, because each and every CLEC and each and every ILEC will probably seek a somewhat specific set of outcomes for itself (even though several "off-the-shelf" agreements may emerge at the end of the arbitration process). For each CLEC to exploit its uniqueness and have a reasonable opportunity of obtaining an interconnection agreement that will be financially and technically satisfactory to itself, it must be able to negotiate away from outcomes that the powerful ILECs do not prefer. To permit this, the FCC and the states must establish "preferred outcomes" to equalize the bargaining position of ILECs and CLECs.

Experience at the state level demonstrates that a CLEC can obtain some negotiating leverage to partly counterbalance the ILEC’s overwhelming advantages if regulators establish, in advance, a set of basic interconnection entitlements for the CLEC. Those basic entitlements then give the CLEC something with which to bargain. If a particular CLEC wants to obtain greater concessions from an ILEC on one item, it can offer the ILEC concessions on another item. But only the existence of a strong "default" agreement will give the ILEC an incentive to bargain -- without a default, the ILEC, which has everything the CLEC needs, will concede little of use to the CLEC, which has nothing the ILEC needs. In arbitration, the preferred outcomes should be adopted by arbitrators unless the CLEC proposes an alternative. The existence of such default agreements will reduce the likelihood that negotiating parties will seek arbitration and make arbitration itself more efficient if they do. It will also assure a common minimum standard for pro-competitive
arrangements in each state, thus meeting the Act's objective of a national telecommunications policy.

The best example of preferred outcomes that stimulated meaningful negotiations between ILECs and CLECs took place in California.\(^{15}\) The CPUC defined limited, explicit interconnection results that the Commission indicated would be mandated in the event that negotiations failed. For example, interim bill and keep for reciprocal compensation was one preferred outcome. Under this approach, multiple parties were able to reach individualized agreements with Pacific Bell. And in fact the agreements that were reached did not all follow the literal terms of the preferred outcomes; some CLECs gave up certain preferred outcomes in exchange for better terms on other issues that were uniquely important to them. For example, to obtain lower rates for unbundled loops, one CLEC gave up bill and keep, opting instead to pay for access minutes of use.\(^{16}\) The experience in California showed that providing preferred outcomes does not establish actual or eventual interconnection terms nor does it prevent free negotiation between carriers.

The New York Public Service Commission similarly established a default interconnection standard to be implemented in the event individual negotiations between New York Telephone and its competitors fail.\(^{17}\) While the New York default was not as powerful in inducing the ILEC to negotiate cost-based arrangements as the California preferred outcomes, it does exemplify the


\(^{16}\) MFS and Pacific Telesis interconnection Agreement, November 17, 1995.

\(^{17}\) New York Public Service Commission, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation, (Sept. 27, 1995), Case No. 94-C-0095. While TCG does not believe that the NYSPSC's proposed rates for interconnection satisfy §252(d)(2) of the 1996 Act, the process used in the Order represents a useful reference for the Commission to consider.
regulatory stance most conducive to pro-competitive outcomes of the negotiations. Such an approach ensures that all local exchange carriers are entitled to a certain minimum set of interconnection arrangements, while maintaining the freedom for carriers to negotiate different arrangements if so desired.

Present lack of uniformity among the states suggests a compelling need for a single, national set of preferred outcomes. Many of the states that have addressed CLEC-ILEC interconnection issues have adopted only vague recommendations that fall far short of the need for balancing bargaining power between CLECs and ILECs. Weak approaches by regulators will definitely perpetuate the ILEC’s dominance. As has been shown in many states, even with preferred outcomes, an ILEC may approach the negotiations with a “take it or leave it” attitude. For example, although the Act requires that ILECs provide CLECs with physical collocation, US West refused a May 7, 1996, request by a CLEC for physical collocation.\(^\text{18}\) In addition, various ILECs have attempted to impose additional burdens on CLECs before complying with their obligations under the 1996 Act. GTE and Pacific Telesis, for instance, recommend that ILECs should be allowed to demand and review information regarding a competitor’s business plan before providing unbundled elements as required under the 1996 Act.\(^\text{19}\) And Bell Atlantic asserts that it should be allowed to recover the cost of processing each request from CLECs requesting interconnection,\(^\text{20}\) thus forcing the competitor to pay for the ILEC’s cost of complying with its statutory obligations. In perhaps the greatest act of opposition to interconnection with CLECs, U S West has petitioned the Oregon Public Utility Commission to stay its grant of local exchange authority to certain CLECs on the


grounds that the grant of local exchange authority was *inconsistent* with the 1996 Act.\(^{21}\) Despite the ridiculous basis of the claim, certificated local exchange competitors those CLECs were forced to file "Motions to Compel" against U S West in Oregon and Utah, demanding that the ILEC provide interconnection for the provision of local exchange services. These experiences strongly suggest the need for common preferred outcomes articulated by the FCC. Preferred outcomes will reduce the inequality in bargaining power between ILECs and CLECs. While the ILECs' monopoly status will afford them bargaining leverage even with the use of preferred outcomes, more equitable agreements are likely.

The subjects to be covered in a default agreement in the event that arbitration is sought will not cover all of the possible subjects that CLECs and ILECs will discuss in negotiations. The agreement will cover the fundamentals required under Section 251 of the Act -- transportation and termination, unbundling, physical interconnection, interim number portability, resale, and access to data bases. Through preferred outcomes, the FCC can interpret general concepts of the Act such as "technical feasibility" when applied to physical interconnection, or "reasonableness" and "competitively neutral." The default agreement also must interpret the Act's price standard for transport and termination, the Act's price standard for unbundled network elements, and the Act's price standard for wholesale prices.\(^{22}\)

For each state to address the definition of these terms and concepts would be extremely wasteful and *impossible to achieve in the short time allowed by the Act*. If, as is likely, the states, and even various arbitrators in a single state, came to different and conflicting findings as to what


such terms mean, appeals would be more likely, delaying the very competition that the Act was
designed to foster. FCC determination of these issues will promote consistency as well as
efficiency.

The default agreement should also include performance standards. It is widely understood by
competitors, the Department of Justice, academics, and others that the single incentive for
cooperative implementation of interconnection agreements is the prospect of interLATA entry for
the Bell Operating Companies (BOCs) and that other ILECs have virtually no incentive to
cooperate. Once the BOCs have achieved their objectives, they will be far less likely to assure
timely turn up of circuits, provide acceptable repair services, and otherwise treat competitors as
well as they treat themselves or any other carrier or customer. Thus for each default condition
in the default agreement, the minimum standard that the ILEC and the CLEC must meet should
be specified, and the penalty for failing to meet it should also be spelled out.23 The attachment
to this paper is TCG's proposed default interconnection agreement to be adopted in the event of
arbitration.

Jurisdiction Over Arbitrated Agreements

To ensure effective and efficient arbitration of interconnection agreements, the Act empowers state
commissions to intervene and appoint an arbitrator upon a proper request by a CLEC. State
commissions are the logical choice, because the responsibility is spread among fifty state bodies
that are already familiar with the local market participants and can quickly implement arbitration
procedures. However, where a state commission has failed to meet its responsibility, the 1996

23 See Performance Standards Key to Interconnection, Teleport Communications Group, April 1996.
Act provides an alternative procedure to ensure that interconnection between carriers is not unduly delayed. Where a state commission fails to conclude an arbitration process within nine months of a CLEC request for interconnection negotiations with the ILEC, the FCC is mandated to act in place of the state.\(^{24}\)

In a case where the FCC has had to intervene and arbitrate an interconnection agreement due to state inaction, the FCC should retain jurisdiction over the matter rather than refer it back to the state commission. The FCC could not have initially preempted the state’s authority had the state acted within the Act’s guidelines. There is no basis to presume that the state will ensure that the terms and conditions of the agreement are met, and returning jurisdiction over an agreement back to a state that has failed to meet its statutory obligations would appear to invite yet further delays in the implementation of arbitrated interconnection agreements.

**Alternative Arbitration Procedures**

Notwithstanding any arbitration rule ultimately adopted by the FCC, parties should be allowed to mutually propose, and the state commission should be allowed to approve, alternative arbitration procedures. The purpose of the arbitration guidelines is to provide protections for the CLEC in negotiating with the ILEC who has far greater market power, thus increasing the probability of a negotiated agreement. However, when the CLEC believes that an alternative procedure will better fit its needs, then such a procedure shall be allowed. The state commissions should only deny such a request when the process is likely to act as a deterrent to competition or otherwise be inconsistent with public interest.

\(^{24}\) 47 U.S.C. §252(e)(5).
Conclusion

The Telecommunications Act of 1996 defines the transition from regulated local monopoly to local exchange competition, and specifies that the transition is to be realized through interconnection arrangements between competitive local exchange carriers and incumbent local exchange carriers. These agreements, preferably, will be established by negotiation. This is entirely appropriate since competitive markets normally rely on contractual arrangements to effect inter-firm relationships. But, in the local telecommunications market, one party to every negotiation is an existing monopoly with far greater power than the party bargaining with it, so the Act provides for regulatory intervention, if needed. Mediation by state commissions and binding arbitration, if needed, can help equalize the parties' bargaining power. Ultimately, then, successful transition depends on the rules of arbitration, the end game in the negotiation process. The arbitration process must be uniform across all states, so as to support the Act's objective of creating a national telecommunications policy. Arbitration rules should promote commercial arbitration, the results of which will be subject, in accordance with the Act, to the final approval of state regulators. The FCC and the states, either of which may be called upon to approve an arbitrated agreement, should establish preferred outcomes of arbitrations, which will enhance the probability that specific, tailored, pro-competitive arrangements will be reached that satisfy both the ILECs and the CLECs.

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STANDARDS FOR ARBITRATION OF SEC 252. INTERCONNECTION AGREEMENT

Where parties have failed to reach agreement through bilateral negotiation and seek arbitration pursuant to Sec. 252 (b), the Arbitrators shall require the following:

1. Physical Interconnection of Networks

   A. Fundamental Principles [Sec. 251(a)(1), (c)(2),(c)(6); Sec. 271(c)(2)(B)(i)]

   (1) For every network interconnection not established by mutual agreement, the ILEC must offer and the Interconnector may select from any of the following optional arrangements:

   a. Physical collocation of the Interconnector's transmission equipment at the ILEC's wire center;

   b. Virtual collocation, where Interconnector prefers such an arrangement or where the State Commission has determined that physical collocation at a particular wire center is technically impractical or because adequate space is unavailable; or,

   c. Mid-span meet, provided that mid-span meet point shall be no more than three miles from the ILEC's wire center.

   B. Pricing Standards [Sec. 251(b)(5); Sec. 252(d)(1)]

   (1) ILEC's prices charged for physical collocation or virtual collocation will consist of a non-recurring charge that recovers the reasonable cost of one-time expenses, such as site preparation and the purchase of any necessary equipment, plus monthly reimbursements for any maintenance and for electrical power, ventilation and other environmental factors.

   a. If Interconnector is not satisfied with the non-recurring costs or recurring maintenance charges proposed by ILEC, Interconnector may itself or through contractors approved by ILEC (such approval not to be unreasonably withheld) do the site preparation, equipment installation or maintenance subject to reasonable practices and procedures established by ILEC to maintain the safety and security of the wire center.
b. If Interconnector is not satisfied with the transmission equipment selected by ILEC or the recurring charges for transmission equipment proposed by ILEC, ILEC shall lease from Interconnector for a nominal fee or purchase from Interconnector for a nominal fee subject to Interconnector’s right to repurchase for a nominal fee, the transmission equipment specified by Interconnector.

(2) Each carrier will bear its own costs to establish and maintain a mid-span meet arrangement.

(3) ILEC will not impose reconfiguration, rearrangement or similar charges on Interconnector or Interconnector’s customers when active services or facilities are reterminated to the Interconnector within 90 days of the inauguration of the particular interconnection arrangement.

C. Performance Standards and Penalties
(To be determined)

2. Access to Unbundled Network Elements

A. Fundamental Principles [Sec. 251 (c)(3); Sec. 271(c)(2)(B)(iv),(v),(vi);]

(1) ILEC will provide Interconnector with access to the following unbundled Network Elements through physical interconnection arrangements:

- Local loop transmission from the central office to the customer’s premises;
- Local transport from the trunk side of a wireline LEC switch; and,
- Local switching.

(2) ILEC will provide Interconnector with efficient unbundled access to databases and associated signaling necessary for call routing, completion and billing and will establish electronic interfaces between ILEC’s and Interconnector’s ancillary systems such as ordering, installation, reconfiguration, trouble reporting and maintenance.

B. Pricing Standards [Sec. 252(d)(1)]
ILEC's prices will be no greater than the incremental cost of providing the Network Element, plus a reasonable profit, and will be no less favorable than prices charged to any other entity, regardless of quantity, term or other conditions.

C. Performance Standards and Penalties
(To be determined)

3. Transport and Termination of Traffic

A. Fundamental Principles [Sec. 251(b)(5); Sec.271(c)(2)(B)(xiii)]

(1) Under the initial reciprocal compensation arrangement in effect from the date of this arbitration until the inauguration of a reciprocal compensation arrangement based on additional costs, each LEC will reciprocally transport and terminate traffic originated on the network facilities of the other LEC that is delivered to the terminating carrier at a network interconnection point without explicit charges (i.e., "bill and keep").

(2) A reciprocal compensation arrangement based on additional costs shall be inaugurated no earlier than 24 months from the effective date of the interconnection agreement.

   a. ILEC's terms and conditions for Transport and Termination of CLEC's traffic under an arrangement based on additional cost will be no less favorable than the terms, and conditions provided to any other carrier.

(3) For services such as Local and IntraLATA "toll free" calling where the receiving consumer pays for the call, the carrier originating the call shall charge the terminating carrier the costs associated with data base dips and record charges.

B. Pricing Standards [Sec. 251(b)(5); Sec. 252(d)(2)]

(1) During the term of the initial reciprocal compensation arrangement, it is expected that neither ILEC nor CLEC will incur any additional costs to transport and terminate the other carrier’s traffic. Therefore, the reciprocal termination of traffic at no explicit charge under the initial
arrangement will constitute a reasonable approximation of the cost of any net additional capacity required by each carrier to Transport and Terminate traffic the other carrier's traffic.

(2) While the initial compensation arrangement is in effect, each LEC may determine whether the Termination and Transport of traffic originated on the other LEC's network is or is likely to be the sole cause of a net increase in the capacity of the terminating LEC's tandem switches, transport system or terminating switches and, if so, the approximate additional cost of such increased capacity.

(a) If one LEC determines that it will incur additional net costs as a result of transporting and terminating the other carrier's traffic (taking account the equal costs it will save as the result of the other LEC terminating traffic that it would otherwise have terminated), on [12] months' notice (such notice not to be given earlier than [24] months after the effective date of the arbitration decision) and in the absence of an agreement between the LECs concerning charges, it may propose monthly capacity (not usage) charges intended to recover such net additional costs.

(b) The LEC proposing to assess capacity charges must include with its proposal sufficient data and information (subject to normal confidentiality restrictions) so that the other LEC can determine whether the proposed charges are reasonably likely to recover no more than the net additional cost caused by the Transport and Termination of its traffic.

(c) If, after good faith negotiations, one LEC objects to the charges proposed by the other LEC within [6] months of receiving the proposal, the determination of whether the proposed charges are a reasonable approximation of the net additional costs incurred by the proposing LEC to Transport and Terminate the other LEC's traffic shall be submitted to binding commercial arbitration.

(d) Rates determined by binding commercial arbitration will go into effect six months after the arbitration decision is rendered or any later date established by the arbitration.
C. **Performance Standards and Penalties**  
(To be determined)

4. **Wholesale Access to Retail Services**

A. **Fundamental Principles [Sec. 251(c)(4)]**

   (1) The ILEC will offer to Reseller at a wholesale price each service it provides to retail customers, on terms and conditions that are no less favorable than those offered to any other Reseller after giving effect to any term and volume discounts.

B. **Pricing Standards [Sec. 252(d)(3)]**

   (1) ILEC’s price charged to Reseller for each service will be the lower of:

   a. the lowest retail price actually charged and collected by the ILEC, including retail prices offered under contract or pursuant to term or volume discounts, less any credits or rebates actually provided to such customers.

   b. the wholesale rates determined by the State Commission on the basis of ILEC’s avoided costs;

   c. wholesale rates negotiated with Reseller or any other entity, including ILEC’s agents and resellers.

C. **Performance Standards and Penalties**  
(To be determined)

5. **Emergency Services (911, E911, 0-) [Sec. 271(c)(2)(B)(vii)]**

A. **Fundamental Principles**

   (1) Each carrier will cooperate to ensure the seamless operation of emergency call networks, including 911, E-911 and 0- calls.
(2) ILEC will permit CLEC to interconnect to the ILEC 911/E-911 tandems which serve the areas in which CLEC provides exchange services so that CLEC’s customers may place calls to Public Safety Answering Points (PSAPs) by dialing 911.

(3) CLEC and ILEC will work cooperatively, including meeting with PSAP operators and county and municipal government officials, to explain CLEC’s interconnection with the Public Safety emergency network.

(4) ILEC will provide CLEC with an electronic interface through which CLEC will update the 911/E-911 database with information for TCG customers.

(5) ILEC will not use information obtained from CLEC in connection with establishing and maintaining the 911/E-911 databases for any purpose not directly associated with the operation of the Public Safety network.

(6) ILEC will provide CLEC with the ten-digit subscriber number for each PSAP which sub-tends each ILEC 911 tandem to which CLEC is interconnected so that CLEC or its Operator Services contractor may transfer 0- calls to the PSAP.

(7) Every six months ILEC will provide to CLEC at no cost a copy of the current Master Street Address Guide for each area served by CLEC.

B. Pricing Standards

(1) ILEC will charge CLEC rates that recover only the reasonable approximation of any additional cost incurred by ILEC to provide Transport and Termination of CLEC’s 911/E-911 traffic that terminates at ILEC’s 911 tandem.

(2) Except for such Transport and Termination charges, neither LEC shall charge the other for any other service, activity or facility associated with its provision of 911/E-911 services.

(3) The ILEC shall provide CLEC with CAMA trunks at no cost where the ILEC recovers its costs from a public fund to which CLEC’s customers contribute.
C. Performance Standards and Penalties
(To be determined)

6. Interim Number Portability

A. Fundamental Principles

(1) Until the implementation of permanent Service Provider Number Portability (SPNP) in accordance with rules set forth by the FCC or State commission, CLEC and ILEC shall provide Remote Call Forwarding or other Interim Number Portability capabilities to each other.

B. Pricing Standards

(1) Such interim arrangements shall be provided at no cost to the LEC receiving the calls to the forwarded number or to the consumers who retained their numbers, in order to mitigate the significant impairment of functioning, quality, reliability, and convenience these interim arrangements entail.

(2) In the event that either LEC elects to use an interim number portability service, the LEC forwarding the call shall transfer to the LEC receiving the forwarded call the full amount of any access charges collected from an interexchange carrier for traffic ultimately terminated on the receiving LEC's network.

C. Performance Standards and Penalties
(To be determined)

7. Fresh Look

A. When the first physical interconnection occurs at an ILEC wire center, the ILEC will offer each customer located within the area served by such wire center the option of terminating without termination liability or penalty any contracts with remaining terms longer than six months from the date of the inauguration of the first interconnection arrangement at the wire center or six months from the date of this arbitration decision, whichever is earlier.
8. Most Favorable Terms and Treatment

A. If LEC enters into any other interconnection agreement or arrangement or if the FCC or a State regulatory commission requires or approves an Interconnection Agreement which contains provisions which are, in CLEC's opinion, more favorable than the provisions of any Interconnection Agreement to which it is a party, CLEC may substitute the other Agreement in its entirety.

B. ILEC will treat CLEC in all respects no less favorably than any other carrier or customer with which it interconnects.

9. Binding Arbitration

A. Any controversy or claims arising out of or relating to Agreement or any breach hereof, shall be settled by arbitration in accord with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Unless the parties shall otherwise agree, such arbitration shall be held in New York City, New York. Written notice of intent to arbitrate shall be served on the opposing party at least twenty (20) business days prior to the filing of such notice at the appropriate AAA regional office.

B. The parties agree to request an expedited hearing before the AAA and, if the AAA can arrange such, the hearing shall commence within sixty (60) days of the filing of the arbitration claim. If the AAA is not able to arrange for the hearing to be held within sixty (60) days of such filing, then the hearing shall commence on the AAA's first available date thereafter, but within ninety (90) days of the original filing of the arbitration claim.

C. The AAA panel shall award costs, including reasonable attorney's fees to the successful party at the conclusion of the hearing. Should any party refuse to arbitrate controversies or claims as required by this Agreement, or delays the course of arbitration proceedings beyond the times set, or permitted by the AAA panel, then such party shall pay all costs, including reasonable attorney fees, of the other party, incurred with respect to the entire arbitration and/or litigation process, even though such refusing or delaying party may ultimately be the successful party in the arbitration and/or litigation.

D. The judgment upon the award rendered may be entered in the highest Court of the forum capable of rendering such judgment, either State or Federal, having jurisdiction and shall be deemed final and binding on both of the parties.
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