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**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of )  
Time Warner AxS of Ohio, L.P. and )  
Time Warner Communications of )  
Ohio, L.P., )  
Complainants, ) Case No. 96-66-TP-CSS  
v. )  
Ameritech Ohio, )  
Respondent. )  
Relative to Alleged Unjust and )  
Unreasonable Rates and Charges. )

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**EXCEPTIONS OF**  
**TIME WARNER AXS OF OHIO, L.P. AND**  
**TIME WARNER COMMUNICATIONS OF OHIO, L.P.**  
**TO ALTERNATIVE DISPUTE RESOLUTION TEAM**  
**REPORT**

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**I. INTRODUCTION AND SUMMARY OF EXCEPTIONS**

On May 7, 1996, the Alternative Dispute Resolution Team ("ADR Team") issued its ADR Team Report ("Report") addressing issues referred to it by the Public Utilities Commission of Ohio ("Commission") in the Commission's March 21, 1996 Opinion and Order. The issues referred by the Commission to the ADR Team are E-9-1-1, transit traffic, and directory database and directory listings. The ADR Team submitted written and oral data requests to both Time Warner AxS of Ohio, L.P. and Time Warner Communications of Ohio, L.P. ("Time Warner") and Ameritech Ohio ("Ameritech"), reviewed those responses and the parties' positions (found in positions submitted to the Commission on April 17, 1996), and issued its Report discussing the issues and offering recommendations for their resolution. It is apparent the ADR Team devoted

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considerable effort to preparation of the Report. Nevertheless, Time Warner excepts to the following matters found in the ADR Team Report:

1. The recommendation that the calculated E-9-1-1 recurring charge be set at \$0.05 per access line per month, since the rate calculated in the Report is \$0.485 per access line per month, which was improperly rounded upward (Report at 4);
2. The recommendation that Ameritech should allow Time Warner to review the Master Street Address Guide ("MSAG") on a quarterly basis, rather than that Ameritech provide Time Warner with a copy of the MSAG, since merely permitting Time Warner the opportunity to "review" the document will impose unnecessary administrative burdens and costs on Time Warner which are not imposed on other carriers for which Ameritech will provide the same service (Report at 4);
3. The finding that some of the activities identified by Ameritech as necessary to implement E-9-1-1 service for Time Warner, and the charges for those activities, are appropriate, since Ameritech failed to provide adequate support for either the necessity of the activities themselves or the proposed charges for those activities (Report at 5);
4. The recommendation that the recurring charge for E-9-1-1, if Time Warner chooses not to self-provision ANI and trunks, be set at \$0.12 per access line per month, since that rate is based upon a cost study found to be inappropriate and because the charge is not based on a cost as required by the Telecommunications Act of 1996 (Report at 4);
5. The failure of the Report in Directory Listing and Directory Database recommendations 1 and 3 to find that the services<sup>1</sup> associated with those recommendations should be offered to Time Warner at no charge, when it is clear in the discussion of the parties' positions that the services associated with these recommendations would be provided at no charge to Time Warner (Report at 9);
6. The finding that NECs collocated in the same Ameritech location should not be permitted to directly cross-connect, because this finding will result in barriers to entry, economic and technological inefficiency, and will defeat the purpose of sections 251(c)(6) and 256(a) of the Telecommunications Act of 1996 (Report at 12-13); and

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<sup>1</sup> Recommendation 1 addressed inclusion of Time Warner's local telephone customers in the white and yellow pages directories, and advertising. Recommendation 3 addressed directory delivery.

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7. The finding that Time Warner pay tandem switching charges, local tandem termination and local tandem transport charges pursuant to Ameritech's intrastate switched access tariffs for transit traffic, since those charges are not based on incremental cost, provide for a more-than-reasonable profit to Ameritech, and the costs associated with the establishment of the systems to identify and bill for transit traffic will outweigh any possible revenues derived from billing for transit traffic (Report at 13).

A more detailed discussion of these exceptions is found in the following pages.

## II. EXCEPTIONS

Time Warner excepts to the ADR Team Report in the following particulars:

### A. E-9-1-1

#### Exception No. 1

The recommendation that the calculated E-9-1-1 recurring charge be set at \$0.05 per access line per month, since the rate calculated in the Report is \$0.485 per access line per month, which was improperly rounded upward (Report at 4).

In its Report, the ADR Team recommended that the E-9-1-1 recurring charge be set at \$0.05 per access line per month. Report at 4. This rate was derived by subtracting the tariff rate for automatic number identification ("ANI") from Ameritech's combined tariff rates for ANI, automatic location identification ("ALI") and selective routing ("SR") functions. The rate resulting from this calculation is \$48.45 per 1000 access lines per month, which Staff rounded upward and restated as \$0.05 per access line per month. The bases for the ADR Team's recommendation were that such upward rounding was done "In order to avoid potential billing disputes and to simplify..." *Id.* Time Warner excepts to the Staff's upward rounding.

The bases for the upward rounding simply do not support rewarding Ameritech with the additional revenues which will accrue from the upward rounding. First, the upward rounding imposes an additional cost on Time Warner, which raises, rather than lowers, the barrier to entry and will increase costs to telecommunications consumers. Second, Ameritech already expresses many tariffed rates<sup>2</sup> in fractions of dollars, and this practice has not appeared to generate billing disputes sufficient to cause the Staff to recommend that Ameritech's tariffs be restated through rounding. Even the ADR Team in its Report has recommended rates for different aspects of interconnection which are not rounded. *See*, Report at 5, 6, 13. Third, the ADR Team's recommendation that the E-9-1-1 recurring charge be rounded upward is inconsistent with other recommendations in its Report, and in violation of the duty imposed on incumbent LECs by the Telecommunications Act of 1996 to provide unbundled access to network elements at rates that are nondiscriminatory and based on cost (determined without reference to a rate-of-return or other rate-based proceeding). *See*, 47 U.S.C. Section 252(d)(1)(A) and (B). Ameritech's rates for ANI, ALI and SR are based on a traditional rate of return and thus by definition include at a minimum a reasonable profit component.<sup>3</sup> Adding to that profit component by rounding the rate upward as Staff has done by itself renders the rate unreasonable.

#### Exception No. 2

The recommendation that Ameritech should allow Time Warner to review the Master Street Address Guide ("MSAG") on a quarterly basis, rather than that Ameritech provide Time Warner with a copy of the MSAG, since

<sup>2</sup> For example, Ameritech's tariff access rates are \$0.000943 for tandem switching, \$0.000306 for local tandem termination, and \$0.00080 for local tandem transport. *See*, Report at 11.

<sup>3</sup> The FCC noted in its February 14, 1996 release in response to the Ameritech Operating Companies' request for waivers to establish a new regulatory model for the Ameritech region that Ameritech itself requested restructuring of certain of its access charges to remove non-cost-based elements, in order to avoid an incentive for customers to shift to competitors' switches for access. FCC Release No. 96-58, 1996 FCC LEXIS 775, para. 25-26. *See also* para. 61, in which the FCC acknowledged that the existing access charge rate structure was developed in a monopoly environment.

merely permitting Time Warner the opportunity to “review” the document will impose unnecessary administrative burdens and costs on Time Warner which are not imposed on other carriers with which Ameritech will provide the same service (Report at 4);

Time Warner excepts to the ADR Team finding that “Ameritech should allow Time Warner to review the Master Street Address Guide on a quarterly basis to ensure that the proper updates have been provided.” Report at 4. Rather than merely permitting Time Warner to review the MSAG, the ADR Team should have recommended that Ameritech provide Time Warner with a copy of the MSAG, for Time Warner’s use and review at Time Warner’s offices. Merely providing Time Warner the opportunity to “review” the MSAG will leave in Ameritech’s hands the ability to limit Time Warner’s access to the document during Ameritech working hours, or to limit the number of Time Warner personnel given access to the document at Ameritech’s offices, and thereby impose additional administrative burdens and costs upon Time Warner. This can effectively be yet another market entry barrier, not only to Time Warner, but to all other NECs upon whom this constraint is imposed. Moreover, Ameritech has, through its sister companies, agreed to provide certain records to NECs with which it has negotiated agreements. *See*, Ameritech confidential discovery response dated April 19, 1996. If the non-discrimination provisions in the Telecommunications Act of 1996 are to be given any vitality, Ameritech Ohio must provide the records to Time Warner, rather than simply permit their review.

In addition, the Report is not clear when it states that Time Warner can review the MSAG “to ensure that the proper updates have been provided.” Time Warner is not certain whether the ADR Team intended this to mean the review was for the purpose of ensuring that Ameritech had

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correctly updated the MSAG to incorporate the daily Time Warner updates to the E-9-1-1 database, or simply to ensure that Ameritech had provided Time Warner with the proper updates.

A clarification by the ADR Team on this point would be useful.

Exception No. 3

The finding that some of the activities identified by Ameritech as necessary to implement E-9-1-1 service for Time Warner, and the charges for those activities, are appropriate, since Ameritech failed to provide adequate support for either the necessity of the activities themselves or the proposed charges for those activities (Report at 5);

In its April 17, 1996 submission, Ameritech proposed a nonrecurring charge of \$2,000 per 1,000 access lines to cover “the E-9-1-1 address and selective routing record and to perform any necessary edits to the records to ensure that the record conforms to industry standards.” Report at 4. The ADR Team’s first data request sought support for the recurring and nonrecurring E-9-1-1 charges proposed by Ameritech in its April 17, 1996 listing of unresolved issues. Ameritech’s April 19, 1996 response stated that the charges were supported by the most recent E-9-1-1 cost study, and that the rates were set “virtually equal” or “equal to” the long run service incremental costs (“LRSICs”) for the nonrecurring and recurring charges, respectively. *See*, Ameritech Response dated April 19, 1996 to Data Requests 1 and 2. However, the ADR Team found the E-9-1-1 cost study to be inappropriate. In addition, Ameritech twice identified several additional activities which it believed would be necessary to serve Time Warner, and stated that it had no LRSICs for those additional activities.<sup>4</sup> Since it did not have LRSICs for these additional activities, Ameritech proposed to develop and submit to the ADR Team the long

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<sup>4</sup> *See*, Ameritech Response dated April 19, 1996 to E-9-1-1 Data Request 3, and response dated April 26, 1996 to data request 2, number 3(A) and (B).

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range service incremental costs of those tasks. The Company's response was provided on May 3, 1996.<sup>5</sup>

Notwithstanding the fact that it received the LRSICs for these additional activities on May 3, 1996, the ADR Team on May 7, 1996, found some of the additional E-9-1-1 activities and their proposed charges to be "appropriate." Time Warner excepts to this finding. It is unwise, where neither the supporting data nor the assumptions underlying the data were provided, and where the data response itself cautioned that "Sufficient time was not available to perform a comprehensive cost study for provisioning E911 service with the addition of alternative carriers as service providers,"<sup>6</sup> to find any such proposed charges "appropriate." Ameritech has known since the time it filed its alternative regulation case that local exchange competition was coming, and it could and should have developed the studies necessary to support any and all activities necessary to permit the development of such competition. Since it failed to do so, the Commission should impose no such charges until Ameritech has fully justified the proposed charges. This would be consistent with the Commission's finding in the Opinion and Order issued March 21, 1996 that because Ameritech failed to "sufficiently justify its higher rates" for nonrecurring remote call forwarding charges, the Commission would not impose nonrecurring charges on Time Warner. *See, Time Warner v. Ameritech*, Case No. 96-66-TP-CSS, Opinion and Order at 7 (March 21, 1996).

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<sup>5</sup> See, Ameritech Supplemental Response dated May 3, 1996.

<sup>6</sup> See Ameritech May 3, 1996 "Additional E911 Costs for Alternative Carriers," second paragraph.

Exception No. 4

The recommendation that the recurring charge for E-9-1-1, if Time Warner chooses not to self-provision ANI and trunks, be set at \$0.12 per access line per month, since that rate is based upon a cost study found to be inappropriate and because the charge is not based on a cost as required by the Telecommunications Act of 1996 (Report at 4)

Time Warner excepts to the recommendation in the Report that if Time Warner chooses not to self-provision trunks and ANI, the recurring charge for E-9-1-1 be set at Ameritech's tariffed rate of \$0.12 per access line per month. Report at 4. This rate is based on what Ameritech described as its most recent E-9-1-1 cost study, a study the ADR Team found inappropriate. It is reasonable to expect that the incremental cost of providing E-9-1-1 service has declined significantly during the intervening years since the study was performed. Thus, use of the Ameritech access rate is inappropriate, and its application in this case would be yet another barrier to entry. Moreover, section 252(d)(1)(A) of the Telecommunications Act of 1996 requires that a determination by a state commission of a just and reasonable rate for interconnection and network elements<sup>7</sup> must be based on cost without reference to rate base, rate of return regulation. Thus, approval of the use of tariffed access charges would also violate the "cost" standard required for network elements like E-9-1-1 service offered by incumbent LECs. Since Ameritech failed to provide a current cost study adequate to identify the incremental cost of providing E-9-1-1 access to Time Warner, the Commission should not impose any charge upon Time Warner for such access until the Company provides, and the parties have a reasonable opportunity to evaluate, such a cost study. Again, this approach is entirely consistent with this

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<sup>7</sup> As defined by the Telecommunications Act of 1996, the term "network element" includes not only facilities or equipment used in the provision of telecommunications services, but also "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." See, section 3(a)(2)(45) of the Act.



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Commission's holding in the March 21, 1996 Opinion and Order on remote call forwarding nonrecurring charges.

Time Warner also excepts to the finding of the ADR Team that the various activities are "appropriate." For example, the data requests fail to define what a "service addition" is, or whether "development and management of call-through test plans, including coordination with test PSAPs and live PSAPs in AEC service areas" is even necessary.<sup>8</sup> Neither the data responses nor the ADR Team Report answer these questions.

These exceptions are made for two reasons. First, by creating the additional "activities" and proposing charges for them Ameritech has the ability to impose additional unnecessary costs on Time Warner, and thus create yet another barrier to entry and economic hurdle which Time Warner must overcome. Second, the Commission's approval of both the charges and activities the ADR Team found "appropriate" has implications not only for Time Warner but other potential interconnecting carriers as well. By stating that the activities and costs were appropriate, the ADR Team created the real danger of precedent which Ameritech would gladly have the Commission apply to all other NECs. Given the little time available for a reasonable evaluation of the activities and so-called LRSICs associated with those activities, the proper response by the ADR Team should have been to simply state what the proposed activities and charges were, without commenting as to their appropriateness, and recommend that no access charge be imposed until Ameritech sufficiently supports such a charge.

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<sup>8</sup> Since Ameritech has already had to develop such call-through test plans and had to coordinate such testing with other LECs in Ohio, Time Warner does not believe that additional plans or additional coordination will be necessary.

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**B. Directory Listings and Database Services**

Exception No. 5

The failure of the Report in Directory Listing and Directory Database recommendations 1 and 3 to find that the services<sup>9</sup> associated with those recommendations should be offered to Time Warner at no charge, when it is clear in the discussion of the parties' positions that the services associated with these recommendations would be provided at no charge to Time Warner (Report at 9).

On page 9 of the Report, the ADR Team provided four recommendations regarding the provision of directory assistance and database services to Time Warner. In recommendations 2 and 4, the ADR Team specifically noted that the services proposed to be offered to Time Warner by Ameritech should be provided at no charge to Time Warner. On recommendations 1 and 3, however, the Report did not make such a recommendation. However, in reviewing the Report it is clear that the services identified in recommendations 1<sup>10</sup> and 3<sup>11</sup> were also intended to be provided at no charge. Thus, Time Warner excepts to the failure of the Report to include in recommendations 1 and 3 that the services be provided at no charge to Time Warner.

Next, at page 10 of the Report, the ADR Team refers to "licensing arrangements" in discussing the provision of directory assistance. Time Warner excepts to the discussion of directory assistance provisioning for the purpose of seeking clarification from the Commission as to the ADR Team's intentions and understanding of what it means by "licensing arrangements."

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<sup>9</sup> Recommendation 1 addressed inclusion of Time Warner's local telephone customers in the white and yellow pages directories, and advertising. Recommendation 3 addressed directory delivery.

<sup>10</sup> See, Report at 6-7.

<sup>11</sup> *Id.* at 7.

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**C. Transit Traffic**

Exception No. 6

The finding that NECs collocated in the same Ameritech location should not be permitted to directly cross-connect, because this finding will result in barriers to entry, economic and technological inefficiency, and will defeat the purpose of sections 251(c)(6) and 256(a) of the Telecommunications Act of 1996 (Report at 12-13).

Time Warner has proposed direct connection with other LECs collocated at various Ameritech locations, such as tandem offices, central offices, or other wire centers. Such direct connection, through the use of non-switched cross connection, offers several positive benefits. First, direct connection will delay switch exhaustion at the Ameritech location. Clearly, if each call had to transit the Ameritech switch, the switch's capacity would be exhausted sooner than would otherwise be the case. Second, direct connection would also avoid additional unnecessary expenditure and concomitant cost incurrence caused by the need to increase switch capacity to handle the increased traffic, and would enhance network efficiency. Third, direct connection will result in lower cost to Time Warner and would, as the ADR Team itself recognized, "be an efficient means for Time Warner to interconnect with other carriers." Report at 12. Nevertheless, the Report (at 12-13) apparently recommends that such direct interconnection not occur. To this, and the other matters noted below, Time Warner excepts.

First, in the Report at 12, the ADR Team stated that "These provisions of the 1996 Act were not intended to require Ameritech to provide the necessary equipment to allow Time Warner to interconnect with other carriers' networks."<sup>12</sup> However, Time Warner has not suggested that the Act requires Ameritech to provide the *equipment* necessary to accommodate

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<sup>12</sup> Time Warner disagrees with this interpretation. See the discussion at pages x-x, *infra*.

such interconnection. All that Time Warner seeks is the ability to cross-connect with collocated carriers, with whom Time Warner would negotiate terms and conditions associated with such interconnection. Those negotiations would of necessity address at some level the actual physical interconnection equipment and technologies, and would be resolved on terms mutually agreeable to the two interconnecting parties. Thus, the ADR Team may be operating under a misapprehension that Time Warner seeks, under the auspices of the Telecommunications Act of 1996, to require Ameritech to provide the equipment necessary to effect such cross-connect interconnection. This is not Time Warner's position.

Second, the ADR Team noted in the Report that "it is clear to the ADR team from the information submitted that the direct interconnection between these collocated carriers in the same Ameritech office may add one more level of unknown complexity to the interconnection process." Report at 12. The Report fails to identify which information it relied upon in making this finding. Time Warner excepts to this finding.

During the process of seeking information from Time Warner about this issue, the ADR Team asked Time Warner to "explain in great detail how does Time Warner view the physical configuration of the direct interconnection between Time Warner's facilities and other non-AO carrier's facilities in AO's tandem."<sup>13</sup> For what should have been obvious reasons, Time Warner noted in its response that:

To the extent that Time Warner is collocated with another non-Ameritech Ohio carrier at the same location (for example, in a central office, tandem, or other wire center) Time Warner has requested the use of a non-switched cross connect path, without going through the Ameritech switch, for direct connection to the other

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<sup>13</sup> See, ADR Team Data Request No. 4, dated May 1, 1996, Question No. 1.

carrier. The precise physical details of the configuration proposed by Time Warner is dependent on the types of equipment which Time Warner and the third party carrier install at the location where the cross connection will occur.

*See*, Time Warner Response to ADR Team Data Request No. 4, Question No. 1. Clearly, there is nothing in this response that supports the conclusion in the Report with respect to additional complexity arising from direct interconnection between collocated carriers

Ameritech also provided a response to a data request which sought information about the modifications to the Ameritech network that would have to be undertaken to accommodate direct interconnection. Without providing any explanation, Ameritech offered the conclusion that "interconnection of all carriers at one location presents serious risks from a network reliability perspective."<sup>14</sup> Ameritech also concluded, again without explanation of *why*, that "it would be necessary to re-evaluate the existing virtual and physical requirements for collocation."<sup>15</sup> Thus, the ADR Team received little information upon which it could have based its assertion that such direct interconnection would result in an additional level of unknown complexity to the interconnection process.

Moreover, whether the process is more complex is not the key issue. The more important consideration is whether the type of direct interconnection proposed by Time Warner is potentially beneficial to Time Warner and its customers, Ameritech and its customers, and the

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<sup>14</sup> Note that Time Warner has not suggested "interconnection of all carriers at one location." Time Warner is merely seeking the ability to directly interconnect with another carrier which is collocated at the Ameritech location. Moreover, transmitting calls without going through the Ameritech switch would remove the possibility of switch deficiencies affecting the calls being passed between the directly interconnected and collocated NECs, thus *improving* network efficiency.

<sup>15</sup> Ameritech's response should be accorded little weight. If physical collocation is impossible at a location due to space restraints, the only other means of interconnection is virtual. Virtual collocation would not permit, of course, direct interconnection between Time Warner and a third LEC in such a situation. Thus, Ameritech's response appears intended to create yet another barrier to efficient network development and use.

third party carrier and its customers. The Florida Public Service Commission believed this to be the case when it adopted MFS' proposal for such direct interconnection at BellSouth locations, and for United/Centel.<sup>16</sup> In addition, New York Telephone has offered to make such direct interconnection available.<sup>17</sup>

Clearly, Ameritech has an economic interest at stake in refusing to permit such direct interconnection - if the calls must go through the Ameritech switch first, Ameritech will collect revenues from the switching of those calls.<sup>18</sup> If direct interconnection is ordered, those revenues would be lost to Ameritech. Thus, the Commission should be extremely cautious in according significant weight to Ameritech's responses to the ADR Team's data requests.<sup>19</sup>

Even if the Commission concurs with the ADR Team finding that when section 251(c)(6) is read in conjunction with section 251(c)(2) "the 1996 Act intends to make collocation available to interconnection carriers (i.e., Time Warner) in order to be able to interconnect with the incumbent LEC's network (Ameritech), and to have access to Ameritech's unbundled network elements," such a finding does not *ipso facto* exclude the ability of collocated NECs to directly interconnect and thus bypass the host LEC switch. To the contrary, the type of direct

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<sup>16</sup> Copies of the PSC order pertaining to BellSouth and United/Centel ordering such direct connection were provided to the ADR Team during the investigation. See, Time Warner response to ADR Team Data Request No. 1, Question No. 7, and Data Request No. 4, Question No. 1, Footnote 2.

<sup>17</sup> *Id.*

<sup>18</sup> In its response to ADR Team Data Request No. 4, Question No. 2, Ameritech noted that "If a transiting product is only achieved through the use of collocation, Ameritech would be forcing other carriers to collocate in its offices. It would also require carriers to collocate in all offices chose by one carrier." The Commission should be clear that Time Warner is not proposing that all transit functions must be provided through ordered collocation of carriers in Ameritech locations. What Time Warner seeks is the ability, where there are two carriers collocated in an Ameritech office, to cross-connect without going through the Ameritech switch. Thus, the Ameritech concerns are either the result of misunderstanding of the issue, or are an effort to confuse the issue.

<sup>19</sup> This especially true, because Ameritech provided no explanation for the bases for its objections to direct interconnection. *Id.* Moreover, the ADR Team did not follow up its initial question to ask why direct interconnection posed any risk to anyone's network, and Time Warner did not have any opportunity to address this Ameritech response.

interconnection proposed by Time Warner and either proposed or adopted in other states is consistent with section 256(a), Coordination for Interconnectivity, of the Telecommunications Act of 1996. The purpose of section 256 is to “promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through (1) ... public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and (2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information *between and across telecommunications networks*.” See, section 256(a)(1) and (2) (emphasis added).

However, the Commission should not adopt the ADR Team interpretation of the intent of the collocation language in the Act. As the Commission is doubtless aware, Section 251(c)(6) imposes on incumbent LECs:

The duty to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

Note that Congress did not limit “interconnection or access to unbundled elements at the premises of the local exchange carrier *for interconnection to the local exchange carrier’s telephone network*.” Yet this is precisely the interpretation the ADR Team has read into the law. Had Congress desired to make collocation available only for the purpose of permitting interconnection with and access to the local exchange carrier’s network, it could have done so. Instead, Congress merely said without this limitation that incumbent local exchange carriers had

to make physical collocation for equipment available for interconnection with or access to unbundled network elements. Establishing direct cross-connection between collocated carriers fits precisely within the definition of "network element" because it is both "equipment used in the provision of a telecommunications service" and "a feature, function and capability ... provided by means of such equipment." Thus, adopting Time Warner's proposal for direct connection with collocated NECs through cross connection is both consistent with and in the spirit of the intent of the Act "to promote competition and reduce regulation to secure lower prices ... and encourage the rapid deployment of new telecommunications technologies."

As noted above, Time Warner's proposed direct interconnection is consistent with Section 256 the Telecommunications Act of 1996, will increase network efficiency and result in economic efficiency as well. Thus, the Commission should approve direct interconnection of collocated carriers.

#### Exception No. 7

The finding that Time Warner pay tandem switching charges, local tandem termination and local tandem transport charges pursuant to Ameritech's intrastate switched access tariffs for transit traffic, since those charges are not based on incremental cost, provide for a more-than-reasonable profit to Ameritech, and the costs associated with the establishment of the systems to identify and bill for transit traffic will outweigh any possible revenues derived from billing for transit traffic (Report at 13).

In its Report, the ADR Team recommended that Time Warner "utilize Ameritech's tandem switch and shall pay tandem switching charges, local tandem termination and local tandem transport charges ... pursuant to Ameritech's existing or subsequently modified intrastate



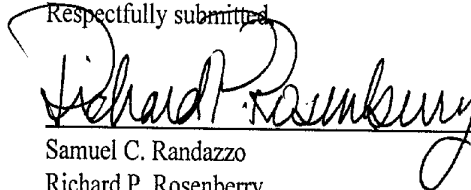
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switched access tariffs for the term of this agreement...” Report at 13. Time Warner excepts to this recommendation.

Like other charges which the ADR Team proposes that Time Warner pay to Ameritech, the recommendation that Time Warner pay these charges for transit traffic are not based on cost without reference to traditional rate base, rate of return regulatory concepts, and are thus contrary to the requirement of Section 252(d)(2) of the Telecommunications Act of 1996. Moreover, as the Report itself acknowledged, no incumbent LEC is currently collocated at an Ameritech tandem. Report at 13. Since any transit traffic is likely to be *de minimis* for some period of time, imposing upon Time Warner the duty to create billing a system to identify and pay for this traffic imposes an administrative and economic burden which will constitute yet another market barrier to Time Warner or any other NEC to which this requirement is applied. In addition, the total cost of development of systems to identify and pay for transit traffic will far exceed any revenues derived from such traffic. Thus, the Commission should not pursue the non-economic course of action recommended by the Report. The ADR Team acknowledged that the transit traffic function would itself, over time, be a reciprocal function which would apply to carriage of Ameritech transit traffic by Time Warner. Report at 13. Application of mutual exchange of traffic, or bill and keep, as proposed by Time Warner, would be consistent with its use during the

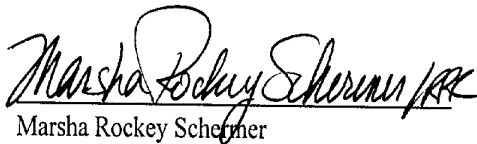
term of the interim agreement, and would permit the parties to evaluate both the cost and likely benefit of charges for transit traffic.

Respectfully submitted



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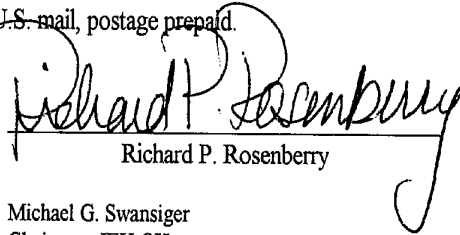
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CERTIFICATE OF SERVICE

I, Richard P. Rosenberry, hereby certify that a copy of the foregoing Exceptions of Time Warner AxS of Ohio, L.P. and Time Warner Communications of Ohio, L.P. to Alternative Dispute Resolution Team Report was served upon the following parties of record this 14th day of May, 1996, via electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.

  
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