SUMMARY OF

THE OHIO BELL TELEPHONE COMPANY
CASE NO. 93-487-TP-ALT and CASE NO. 93-576-TP-CSS

The Ohio Bell Telephone Company (also known as Ameritech Ohio) has nearly 3,535,000 access lines throughout 192 exchanges in Ohio. This opinion and order involves an application for an alternative form of regulation filed by Ameritech Ohio and a complaint filed by the Office of the Consumers' Counsel (OCC) against Ameritech Ohio.

In this opinion and order, the Commission accepts the stipulation, as modified and clarified in the order, submitted by Ameritech Ohio; the staff of the Public Utilities Commission of Ohio; the Office of the Consumers' Counsel; American Association of Retired Persons; Greater Cleveland Welfare Rights Organization, Consumers League of Ohio, Western Reserve Alliance, and Committee for Fair Utility Rates; The Edgemont Neighborhood Coalition; City of Cleveland; City of Columbus; City of Toledo; Ohio Department of Education; Ohio Department of Administrative Services; Ohio Library Council; and Bell Communications Research, Inc.

The stipulation provides that the company's total jurisdictional revenues, based on the October 1, 1992 through September 30, 1993 base period data, shall be reduced by $92,300,000. The stipulating parties recognize that the company's intrastate rates already have been reduced by $7,900,000 by reason of its toll service repricing in Case No. 93-353-TP-ATA and agree that such reductions shall be considered as a part of the total amount of the stipulated reductions. The remaining $84,400,000 will be phased in over the term of the plan and allocated between the residence (65.5 percent), nonresidence (25 percent), and carrier access (9.5 percent) customer classes. Basic residential service will be reduced through decreases in flat-rate local usage and elimination of the charge for residential touch-tone service. Other basic residential services will not increase for six years.

In addition, the stipulation provides for the replacement of rate-of-return regulation with a price cap regulation plan, which will be in effect for at least six years. A price cap will be applied to limit overall service price levels across service classification cells. The price cap will be adjusted on an annual basis to reflect the percentage change in the Gross Domestic Product-Price Index, a productivity factor/consumer dividend offset, a service quality adjustment, and exogenous impacts reflecting significant tax and accounting changes.

Further, the stipulation provides for numerous commitments to infrastructure deployment or customer service in addition to the minimum telephone service standards. Ameritech will, among other things, contribute over six years an amount of $18 million to fund grants to primary and secondary schools for use in applying communications technology to education; offer two-way fully interactive distance learning capabilities to all state-chartered public and private high schools (including vocational and technical schools), colleges, and universities in Ameritech's service areas within five years; offer high capacity communication links to all hospitals, libraries, county jails, and state, county, and federal court buildings in Ameritech's service areas within five years; offer a 10-percent discount on all Ameritech telecommunications services to state-chartered primary and secondary schools in Ameritech Ohio's service areas; and invest $2.2 million to establish community computer centers in low-income neighborhoods within its service areas.

Finally, the stipulation addresses numerous competitive safeguards such as long-run service incremental cost-based pricing floors and imputation requirements. The stipulation also calls for the establishment of a generic docket to address other competitive issues.

This summary was prepared to provide a brief statement of the Commission's action. It is not a part of the Commission's decision and does not supersede the full text of the Commission's opinion and order.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.	)	Case No. 93-487-TP-ALT
In the Matter of the Complaint of the Office of the Consumers' Counsel, Complainant, v. The Ohio Bell Telephone Company, Respondent.	)	Case No. 93-576-TP-CSS

OPINION AND ORDER

The Commission, coming now to consider the above-entitled matters, the application filed by The Ohio Bell Telephone Company (also known as Ameritech Ohio), pursuant to Sections 4927.03 and 4927.04(A), Revised Code; the complaint filed by the Office of the Consumers' Counsel, pursuant to Section 4905.26, Revised Code; the Staff Report of Investigation; having appointed attorney examiners Christine M. T. Pirik and Mary K. Fenlon to conduct the public hearings and to certify the record directly to the Commission; having reviewed the testimony and exhibits introduced into evidence at the public hearings and the stipulation and recommendation filed by Ameritech Ohio; the staff of the Public Utilities Commission of Ohio; the Office of the Consumers' Counsel; American Association of Retired Persons; Greater Cleveland Welfare Rights Organization, Consumers League of Ohio, Western Reserve Alliance, and Committee for Fair Utility Rates; The Edgemont Neighborhood Coalition; City of Cleveland; City of Columbus; City of Toledo; Ohio Department of Education; Ohio Department of Administrative Services; Ohio Library Council; and Bell Communications Research, Inc.; having reviewed the record and being fully advised of the facts and issues in these cases, hereby issues its opinion and order.

APPEARANCES:

Michael T. Mulcahy, William H. Hunt, Charles S. Rawlings, and Michael J. Karson, 45 Erieview Plaza, Cleveland, Ohio 44114, and

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Jon F. Kelly, 150 East Gay Street, Columbus, Ohio 43215, on behalf of Ameritech Ohio.

Lee Fisher, Attorney General of Ohio, by James B. Gainer, Section Chief, and Ann E. Henkener, Thomas McNamee, Steven Nourse, and Anne Hammerstein, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the staff of the Public Utilities Commission of Ohio.

Robert S. Tongren, Consumers' Counsel, by Barry Cohen, David C. Bergmann, Andrea M. Kelsey, and Richard Pace, Associate Consumers' Counsel, 77 South High Street, 15th Floor, Columbus, Ohio 43266-0550, on behalf of the residential consumers of Ameritech Ohio.

Ron O'Brien, City Attorney, and John C. Klein, Assistant City Attorney, 109 North Front Street, Suite 405, Columbus, Ohio 43215, Crabbe, Brown, Jones, Potts & Schmidt, by Greg J. Dunn, 500 South Front Street, Suite 1200, Columbus, Ohio 43215, and Chester, Willcox & Saxbe, by John W. Bentine, 17 South High Street, Suite 900, Columbus, Ohio 43215, on behalf of city of Columbus.

Kerry Bruce, Utility Rate Coordinator, Public Utilities Department, Suite 1520, City of Toledo, 1 Government Center, Toledo, Ohio 43604, on behalf of the city of Toledo.

William M. Ondrey Gruber, Chief Assistant Director of Law, 601 Lakeside Avenue, N. W., Cleveland, Ohio 44114, on behalf of the city of Cleveland.

Bell, Royer & Sanders, by Barth E. Royer and Judith B. Sanders, 33 South Grant Avenue, Columbus, Ohio 43215-3927, on behalf of Allnet Communications Services, Inc.;[1] Litel Telecommunications Corporation, dba LCI International; Mid-American Communications, dba LDDS Communications; Sprint Communications Company; AT&T Communications of Ohio, Inc.; and MCI Telecommunications Corporation.

Robin P. Charleston, Robert Quinn, and Larry Salustro, AT&T Law Department, 227 West Monroe Street, Chicago, Illinois 60606, on behalf of AT&T Communications of Ohio, Inc.

Douglas Trabaris and Marcia Franklin, MCI Telecommunications Corporation, 205 North Michigan Avenue, Suite 3200, Chicago, Illinois, 60601, on behalf of MCI Telecommunications Corporation.

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1. By letter dated November 15, 1994, Allnet Communications Services, Inc. withdrew as a party to these cases.

Emens, Kegler, Brown, Hill & Ritter, by Samuel C. Randazzo, Richard P. Rosenberry, and Denise C. Clayton, 65 East State Street, Suite 180, Columbus, Ohio 43215, on behalf of Time Warner AxS.

Hahn, Loeser & Parks, by Randy J. Hart, 3300 BP American Building, 200 Public Square, Cleveland, Ohio 44114-2391, and Janine Migden, and Maureen R. Grady, 431 East Broad Street, Columbus, Ohio 43215, on behalf of Ohio Domestic Violence Network and Ohio Public Communications Association.

Lee Fisher, Attorney General of Ohio, by John Ware, Assistant Attorney General, Education Section, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-0410, on behalf of Ohio Department of Education.

Lee Fisher, Attorney General of Ohio, by Daniel A. Malkoff and Jerry Kasai, Assistant Attorneys General, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428, on behalf of Ohio Department of Administrative Services.

Robert Ganton and Cecil O. Simpson, Jr., General Attorneys, Office of the Judge Advocate General, United States Department of the Navy, 901 North Stuart Street, Arlington, Virginia 22203-1837, on behalf of the Department of Defense and All Other Federal Executive Agencies.

Legal Aid Society of Cleveland, by Joseph Meissner, 1223 West Sixth Street, Cleveland, Ohio 44113, on behalf of Greater Cleveland Welfare Rights Organization, Inc.; Committee for Fair Utility Rates; Consumers League of Ohio; and Western Reserve Alliance.

Legal Aid Society of Dayton, by Ellis Jacobs and William A. Thurman, 333 West First Street, Suite 500, Dayton, Ohio 45402, on behalf of The Edgemont Coalition.

Bruce J. Weston, 169 West Hubbard Avenue, Columbus, Ohio 43215-1439, on behalf of American Association of Retired Persons.

Meyer, Capel, Hirschfeld, Muncy, Jahn & Aldeen, by Dennis K. Muncy, Athenaeum Building, 306 West Church Street, Champaign, Illinois 61826-6750, on behalf of Mid-East Telephone Answering Service Association-Ohio.

Arter & Hadden, by William A. Adams and Dane Stinson, One Columbus, 10 West Broad Street, Columbus, Ohio 43215-3422, on behalf of Bell Communications Research, Inc.

Bricker & Eckler, 100 South Third Street, Columbus, Ohio 43215, by Sally W. Bloomfield and Mary W. Christensen, on behalf of New Par Companies.

Mary Hull, Sprint Communications Company, L.P., 8140 Ward Parkway, 5E, Kansas City, Missouri 64114, on behalf of Sprint Communications Company.

Clyde Kurlander, Teleport Communications Group, Three First National Plaza, Suite 4000, Chicago, Illinois 60602, on behalf of TCG America, Inc.

Vorys, Sater, Seymour & Pease, by William S. Newcomb, Jr. and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Ohio Cable Television Association.

Vorys, Sater, Seymour & Pease, by Sheldon A. Taft and Ted Boggs, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Ohio Library Council and Ohio Newspaper Association.

HISTORY OF THE PROCEEDINGS:

Ameritech Ohio (Ameritech, company) is an Ohio corporation engaged in the business of providing telecommunications service in Ohio and is, therefore, a public utility and telephone company within the definitions as set forth in Sections 4905.02 and 4905.03(A)(2), Revised Code. The company is subject to the jurisdiction of this Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. Ameritech is a local exchange telephone company with approximately 3,535,000 access lines throughout 192 exchanges in Ohio. The company's present rates for telephone service were established by order of this Commission in Ohio Bell Telephone Company, Case No. 84-1435-TP-AIR (December 10, 1985).

On March 23, 1993, Ameritech filed notice of intent to file an application for an alternative form of regulation in accordance with Sections 4927.03 and 4927.04(A), Revised Code. Section 4927.03, Revised Code, enables the Commission to exempt from Chapter 4905 or 4909, Revised Code, or establish alternative regulatory requirements for any telephone service (except basic local exchange service) provided the Commission finds such measure is in the public interest, and that the telephone company is subject to competition with respect to the public telecommunications service, or the customers of the service have reasonably available alternatives. Section 4927.04(A), Revised Code, grants the Commission authority to consider alternatives to the traditional form of ratemaking contained in Section 4909.15, Revised Code. In accordance with these sections, the Commission instituted an investigation of alternative regulation and, as a result of its investigation, adopted rules for the establishment of alternative regulation for large local exchange telephone companies (alternative regulation rules). Alternative Regulation for Large Local Exchange Telephone Companies, Case No. 92-1149-TP-COI (January 7, 1993) and Entry on Rehearing (March 10, 1993).

Ameritech filed its application for approval of an alternative form of regulation, Case No. 93-487-TP-ALT, on June 30, 1993. The application is governed by the alternative regulation rules for large local exchange telephone companies set forth above. By entry dated September 2, 1993, the Commission accepted the application for filing as of June 30, 1993. The company's newspaper notice was approved by entry dated December 23, 1993.

On April 6, 1993, the Office of the Consumers' Counsel (OCC) filed a complaint against Ameritech, pursuant to Section 4905.26, Revised Code, alleging that the company's rates and charges are excessive under the ratemaking formula set forth in Section 4909.15, Revised Code. OCC requested that the Commission find that Ameritech's base rates should be reduced. On April 27, 1993, Ameritech filed a motion to dismiss OCC's complaint.

By entry dated September 2, 1993, in Case No. 93-576-TP-CSS, the Commission found that the complaint filed by OCC set forth reasonable grounds for complaint within the meaning of that term as used in Section 4905.26, Revised Code. The Commission established a test period of the 12 months ended September 30, 1993, with a date certain of December 31, 1992, for the purpose of reviewing Ameritech's existing rates in the complaint case. In addition, the Commission consolidated for hearing the complaint case and the alternative regulation case.

In accordance with the provisions of the alternative regulation rules, the staff of the Commission conducted an investigation of the matters set forth in the company's alternative regulation proceeding. A written report of the results of the staff investigation was filed on March 25, 1994. On that same date, The National Regulatory Research Institute filed an analysis of several aspects of Ameritech's plan as an addendum to the staff report. Objections to the staff report were timely filed on April 25, 1994, by Ameritech; Greater Cleveland Welfare Rights Organization, Inc. et al. (GCWRO); American Association of Retired Persons (AARP); AT&T Communications of Ohio, Inc. (AT&T); Litel Telecommunications Corporation and Mid-American Communications, dba LDDS Communications (IXC Coalition); Ohio Newspaper Association (ONA); Ohio Library Council (OLC); Ohio Department of Education (ODOE); Ohio Public Communications Association (OPCA); Sprint Communications Company, L.P. (Sprint); Teleport Communications Group (TCG); Mid-East Telephone Answering Service Association-Ohio (METAS-Ohio); MCI Telecommunications Corporation (MCI); city of Cleveland (Cleveland); The Edgemont Neighborhood Coalition, Inc. (Edgemont); New Par Companies (New Par); Office of the Consumers' Counsel (OCC); The Ohio Cable Television Association (OCTVA); city of

Columbus (Columbus); Ohio Department of Administrative Services (ODAS); Time Warner AxS (Time Warner); United States Department of Defense and All Other Federal Executive Agencies (Executive Agencies); and Ohio Domestic Violence Network (ODVN).

At the evidentiary hearing in these cases, 81 witnesses testified over a period of 45 days between June 22 and September 13, 1994. On September 20, 1994, a stipulation resolving the issues in both proceedings was filed by Ameritech, the staff of the Public Utilities Commission of Ohio, OCC, AARP, Edgemont, Columbus, Cleveland, Toledo, GCWRO, ODAS, ODOE, OLC, and Bell Communications Research, Inc. (Jt. Ex. 1). The hearing reconvened on October 17, 1994, to consider the reasonableness of the stipulation. The stipulation is opposed by IXC Coalition, Time Warner, OCTVA, ONA, New Par, MCI, Sprint, AT&T, Executive Agencies, OPCA, TCG, METAS-Ohio, and ODVN. Initial briefs were filed by the parties on October 28, 1994, and replies were filed on November 4, 1994. On November 4, 1994, OCC filed a motion to strike Sprint's posthearing brief from the record in Case No. 93-576-TP-CSS. Sprint is not a party to Case No. 93-576-TP-CSS. The motion will be granted as to both the initial and reply brief filed by Sprint. Sprint's posthearing briefs will remain a part of the record in Case No. 93-487-TP-ALT.

Local sessions of the hearing were conducted by the Commissioners or the attorney examiners on September 20, 1994, in Upper Arlington and Marietta, Ohio; on September 21, 1994, in Columbus, Ohio; on September 23, 1994, in Youngstown, Ohio; on September 27, 1994, in Cleveland and Euclid, Ohio; on October 4, 1994, in Ironton, Ohio; on October 6, 1994, in Akron, Ohio; on October 11, 1994, in Tiffin and Perrysburg, Ohio; and on October 12, 1994, in Toledo, Dayton, and Gallipolis, Ohio. Notice of the complaint, the application, and the local public hearings was published in accordance with Sections 4905.26, 4909.19, and 4903.083, Revised Code. The examiners have certified the recorded transcript of the proceedings and the exhibits admitted into evidence to the Commission for its consideration.

COMMISSION REVIEW AND DISCUSSION:

Case No. 93-487-TP-ALT is before the Commission upon the application of Ameritech for approval of an alternative form of regulation. Under Ameritech's plan as initially proposed, the company would be regulated under a price cap framework as opposed to the current rate-of-return framework. In addition, the company proposed a number of commitments, contingent upon approval of the plan, including, among other things, investment of $1.6 billion to upgrade the telecommunications infrastructure; continuance of flat-rate service as a local service option for residence customers; capping rates for the first year, except for carrier services; deployment of a fiber optic based distance learning network; proposing a discounted tariff for elementary and secondary schools; deployment of fiber optic facilities to all hospitals, libraries, county jails, and all court buildings; and upgrading of existing plant.

Case No. 93-576-TP-CSS is before the Commission upon the complaint of OCC, pursuant to Section 4905.26, Revised Code. OCC alleges that, as a result of various decreases in expenses and increases in revenues since the company's last rate case, Ameritech's rates are producing excess earnings over the authorized rate of return. OCC alleges that Ameritech's rates for telephone service are excessive under the ratemaking formula set forth in Section 4909.15, Revised Code, and requests that the company's base rates should be reduced.

As indicated previously, a stipulation resolving the issues in these cases has been presented for the Commission's consideration. Rule 4901-1-30, Ohio Administrative Code (O.A.C), and the Commission's alternative regulation rules provide for stipulations such as that presented in these cases. Although not binding upon the Commission, stipulations, even though they are not signed by all the parties in a case, are entitled to careful consideration, particularly when sponsored by parties representing a wide range of interests and when endorsed by the staff. Cincinnati Gas & Electric Company, Case No. 82-485-EL-AIR (March 30, 1983). See also, Cleveland Electric Illuminating Company, Case No. 88-170-EL-AIR (January 31, 1989). The Ohio Supreme Court has also held that stipulations entered into between some, but not all, of the parties present in a proceeding can be afforded substantial weight by the Commission. Akron v. Pub. Util. Comm., 55 Ohio St. 2d 155 (1978); Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123 (1992). Nevertheless, in considering the stipulation, the Commission has the independent obligation, after reviewing the objections, to determine if the provisions of the stipulation are in the public interest. The Commission has the ability and, in fact, the responsibility to modify or reject those provisions which may violate an important regulatory principle or are otherwise not in the public interest. In considering the reasonableness of the stipulation filed on September 20, 1994, the Commission will rely upon the record made in these cases, the final positions of the parties with respect to their signing the stipulation, and any pending objections to the stipulation.

SUMMARY OF THE STIPULATION

Concerning Case No. 93-487-TP-ALT, the stipulating parties presented an agreed-upon alternative regulation plan for Ameritech Ohio (Jt. Ex. 1, Attach. 1). In addition, the stipulation provides for a resolution of OCC's complaint case and the accounting and rate-of-return issues associated with that case in Case No. 93-576-TP-CSS.[2]

Specifically, as to rates, the stipulation provides that the company's total jurisdictional revenues, based on the October 1, 1992 through September 30, 1993 base period data, shall be reduced by $92,300,000 (Jt. Ex. 1, at 8). The stipulating parties recognize that the company's intrastate rates already have been reduced by $7,900,000 by reason of its toll service repricing in Case No. 93-353-TP-ATA and agree that such reductions shall be considered as a part of the total amount of the stipulated reductions. The remaining $84,400,000 will be phased in over the term of the plan and allocated between the residence (65.5 percent), nonresidence (25 percent), and carrier access (9.5 percent) customer classes (Id. at 8-9). Basic residential service will be reduced through decreases in flat-rate local usage and elimination of the charge for residential touch-tone service (Id. at 10-11). Basic residential services including local access and usage charges, basic and enhanced 9-1-1 service, unlisted and non-published numbers, call trace service, per-line calling party number blocking and 900/976 call blocking services, and associated nonrecurring (service order) charges will not increase for six years (Id. at 18-19). Charges for touch-tone service for business customers will be eliminated, but offset in part by an increase in charges for network access lines, the cost of which will be determined by the cost of providing service in different geographic areas (Id. at 14).

In addition, the stipulated plan provides for the replacement of rate-of-return regulation with limited price cap regulation of certain noncore services. A price cap will be applied to limit overall service price levels across service classification cells. The price cap will be adjusted on an annual basis to reflect the percentage change in the Gross Domestic Product Price Index (GDP-PI), a productivity factor/consumer dividend offset, a service quality adjustment, and exogenous impacts reflecting significant tax and accounting changes (Id. at 37).

Further, the stipulated plan provides for numerous commitments to infrastructure deployment or customer service in addition to the minimum telephone service standards. Ameritech will contribute over six years an amount of $18 million to fund grants to primary and secondary schools for use in applying communications

2. The parties are to be commended for reaching a stipulation of the extremely difficult and complex issues raised in these proceedings. We would be remiss if we failed to note the obvious hard work of Ameritech, our staff, OCC, and the other signatory parties in crafting a full settlement of the two cases before us.

technology to education. The company will make available two-way fully interactive distance learning capabilities to all state-chartered public and private high schools (including vocational and technical schools), colleges, and universities in Ameritech's service areas within five years. Ameritech will make available high capacity communication links to all hospitals, libraries, county jails, and state, county and federal court buildings in Ameritech's service areas within five years (Id. at 50-52). A 10-percent discount on all Ameritech telecommunications services to state-chartered primary and secondary schools will be made available in Ameritech service areas (Id. at 16). Ameritech will invest $2.2 million to establish community computer centers in low-income neighborhoods within its service areas (Id. at 59).

Finally, the stipulation addresses numerous competitive safeguards such as long-run service incremental cost-based pricing floors and imputation requirements. The stipulation also calls for the establishment of a generic docket which is to address other competitive issues (Id. at 66-68).

REVIEW OF THE STIPULATION

A. Commission Criteria:

The ultimate question to be answered is whether the terms of the stipulation are reasonable and in the public interest. In considering the reasonableness of a settlement, the Commission has previously recognized a need to analyze the following criteria:

1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

2) Does the settlement, as a package, benefit ratepayers and the public interest?

3) Does the settlement package violate any important regulatory principle or practice?

The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company, Case No. 84-1187-EL-UNC (November 26, 1985); Cleveland Electric Illuminating Company, Case No. 88-170-EL-AIR (January 31, 1989). Further, the Ohio Supreme Court has endorsed the Commission's effort using these criteria to resolve cases in a method economical to ratepayers and public utilities. Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St. 3d 123, 126 (1992). Moreover, the court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. Id.

The first criterion is that the settlement should be a product of serious bargaining among capable, knowledgeable parties. With the exception of the Executive Agencies, the nonsignatory parties represent competitive interests. It is argued by various nonsignatory parties that they were excluded from the entire process which led to the development of the stipulation and, therefore, the competitive interests were not adequately protected in these proceedings. The record indicates that negotiations took place between various combinations of parties throughout the course of these proceedings (Staff Reply Brief at 3-4). While we prefer a negotiation process which is inclusive all the way up to the point that a stipulation is signed, we recognize that at some point, despite the best efforts and good faith of all parties, negotiations between certain parties may become unsuccessful and negotiations may break off. The fact that this happened in this proceeding is not reason for the Commission to conclude that there was not serious bargaining among capable, knowledgeable parties.[3] There is no dispute that the signatory parties are capable and knowledgeable of the issues presented in these cases. In addition, they represent a wide range of interests. In fact, the staff indicates that it continued to communicate with several of the nonsignatory parties in an effort to keep them informed of the negotiations and the specific proposals being considered and to solicit their input concerning same. Further, each of these parties had the opportunity during the hearing to present views for the Commission's consideration including the opportunity to present witnesses after the stipulation was filed. Nevertheless, because they were not signatory parties and because of the controversy this issue has caused, we will even more closely scrutinize their objections in the opinion and order and, where meritorious, the Commission will make appropriate adjustments to the stipulation. This balancing is necessary given the lack of complete agreement and the very specific objections raised, and more than satisfies the due process claims raised by the nonsignatory parties. We will closely review the objections presented by the nonsignatory parties to ensure that their views are fully considered by the Commission. The first criterion is met.

The second criterion is that the settlement, as a package, should benefit ratepayers and the public interest. Clearly, the resolution of the OCC complaint case embodied in the stipulation results in some benefit to Ameritech's ratepayers, including access customers, through a revenue reduction of approximately $92

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3. In fact, our order in Ohio Edison Company, Case No. 87-689-EL-AIR (January 26, 1988) at 7, which the nonsignatory parties rely upon, expressly anticipated such an occurence.

million.[4] Other benefits of the stipulation include the continuation of flat-rate basic local exchange service, and a price cap mechanism which provides for significant pricing protections for residential and nonresidential services, while at the same time affords Ameritech flexibility so that it may compete in what is developing as a more competitive environment. In addition, the stipulation provides for a number of commitments relating to technology deployment, the establishment of community computer centers, the universal service assistance plan, and the funding of grants to primary and secondary schools for use in applying communications technology to education. Finally, the stipulation recognizes the need to resolve the outstanding competitive issues through a generic docket. These issues are not ignored in the stipulation as the nonsignatory parties claim. A generic docket, conditioned upon Ameritech's cooperation, can ensure that competition in the telecommunications industry continues to develop in Ohio. We find that the stipulation, as a package, benefits ratepayers and the public interest.

The third criterion is that the settlement package should not violate any important regulatory principle or practice. Section 4927.02(A), Revised Code, sets forth the policy of this state as follows:

1) Ensure the availability of adequate basic local exchange service to citizens throughout the state;

2) Maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service;

3) Encourage innovation in the telecommunications industry;

4) Promote diversity and options in the supply of public telecommunications services and equipment throughout the state;

5) Recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate.

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4. We have some concern with the phased reduction of rates as a remedy to the OCC complaint case, but find it reasonable as part of a settlement package.

Further, Rule X(B)(2) of the Commission's alternative regulation rules provides that, in determining whether an alternative regulation plan should be adopted, the Commission shall consider the following:

a) Whether the commitments are of sufficient value to the public to warrant the provision of regulatory opportunities for superior company performance outcomes linked to those commitments;

b) The probable impact of the plan on the financial status of the company;

c) The probable impact of the plan on customer bills;

d) The probable impact of the plan on telecommunications competition;

e) The probable impact of the plan on the goal of universal service;

f) Whether the commitments conform to the guidelines of Section IV(B) of these rules;

g) Whether the commitments promote efficient development of the public switched network;

h) The quality of the evidence of public support for the appropriateness of the commitments;

i) Whether the reporting and oversight provisions are sufficient to reasonably monitor the plan and assure its objectives are properly pursued;

j) Whether the plan satisfies each of the public policy goals set forth in Section 4927.02, Revised Code; and

k) Any other factor which the Commission may deem relevant in determining whether the plan is in the public interest.

We find that the stipulation, as modified and clarified herein, does not violate any important regulatory principles or practices. The Commission will now turn to its analysis of the statutory criteria which the Commission must consider for telecommunication services.

B. Adequate Basic Local Exchange Service:

Pursuant to Section 4927.02(A)(1), Revised Code, it is the policy of this state to ensure the availability of adequate basic local exchange service to citizens throughout the state. The stipulation in these proceedings contains a number of provisions which enhance the availability of adequate service to the citizens of Ohio within Ameritech's service territory.

The stipulation provides that flat-rate residence service will be retained during the term of the plan (Jt. Ex. 1, at 18, 20-21). In addition, the reductions in rates ensure that basic local exchange service is available and affordable to Ameritech's customers (Id. at 8-17). Basic residence services including local access and usage charges, basic and enhanced 9-1-1 service, unlisted and nonpublished numbers, call trace service[5], per-line calling party number blocking, and 900/976 call blocking services will not be increased for six years (Id. at 18-19). The stipulation also maintains the $.25 coin pay phone rate (Id., Ex. D). The availability of low-cost pay telephone service assists low-income consumers in obtaining needed services.

The stipulation further ensures the availability of adequate basic local exchange service by offering the universal service assistance (USA) plan which expands the eligibility for telephone service assistance beyond what we have today. Under the USA plan, more customers can obtain a larger reduction in rates, including flat-rate service, than is currently available under the existing telephone service assistance plan. Eligible customers will be offered an $8.00 discount off of the tariffed rates for all of Ameritech's basic telephone service plan offerings. The discount will apply to the reduced rates provided for in the stipulation. In addition, touch-tone service will be offered without charge from the beginning of the USA plan. The plan will significantly

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5. With regard to call trace service, the Commission notes that the staff determined that the company is not promoting its call trace service (Staff Ex. 6, Attach.). In fact, the company's training manual states that the service is not being actively sold (Id.). The Commission is disturbed about this finding, and we expect the company to reverse this policy and to promote this service. The company's training manual should be revised accordingly.

help low-income or disabled citizens afford basic local exchange service (Id., Ex. G).[6]

The stipulation requires the company to maintain the Commission's minimum telephone service standards, including any changes made to these standards during the term of the plan (Id. at 39).[7] Further, the price cap formula adopted by the parties contains a service quality factor which is designed to ensure that the company maintains excellent customer service by means of a negative adjustment to the price cap index if service levels reflect substandard results or a decline from previous years' performance (Id., Ex. C).

No party to these proceedings argues that the stipulation does not enhance the availability of adequate basic local exchange service. Given the provisions in the stipulation discussed above, the Commission concludes that the stipulation helps to ensure the availability of adequate basic local exchange service to customers in Ameritech's service territory during its term.

C. Just and Reasonable Rates:

Under Section 4927.02(A)(2), Revised Code, it is the policy of this state to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service. The IXC Coalition and MCI, OCTVA, Sprint, AT&T, and Time Warner contend that the rates provided for in the stipulation are not just and reasonable and are contrary to this policy objective.

1. Rate Reductions:

Under the terms of the stipulation, the company's jurisdic-

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6. As the parties are all aware, the Telephone Service Assistance and Service Connection Assistance programs are scheduled to sunset on January 1, 1996. We commend Ameritech for working with the low-income community to establish a more expanded program which is not tax-supported. We urge other local exchange companies, along with new entrants seeking certification to provide switched service, to work with their customers and potential customers prior to the legislation's sunset to devise similar universal service programs not dependent on state tax revenues. The programs need not be identical to the Ameritech program but instead should be tailored to individual service territory needs.

7. Paragraph 43 of the stipulation does not prevent the Commission from taking appropriate action to enforce the minimum telephone standards.

tional base period revenues will be reduced by $92,300,000. The company's intrastate rates already have been reduced by $7,900,000 due to its toll service repricing in Case No. 93-353-TP-ATA, and these reductions are considered as part of the overall stipulated revenue reductions. The remaining $84,400,000 will be phased in over the term of the plan as follows (Jt. Ex. 1, at 8-9):

Date	Annual Incremental Rate Reduction	Cumulative Annual Rate Reduction
Effective Date of Plan	$37,800,000	$37,800,000
1st Anniversary Date	11,900,000	49,700,000
2nd Anniversary Date	11,200,000	60,900,000
3rd Anniversary Date	8,600,000	69,500,000
4th Anniversary Date	7,500,000	77,000,000
5th Anniversary Date	7,400,000	84,400,000

The IXC Coalition and MCI, OCTVA, Sprint, AT&T, and Time Warner complain that the rate reductions provided in the stipulation will be phased in over a six-year period. They contend that Ameritech's customers are entitled to all the reductions upon the effective date of the Commission's order. On this point, the Commission need only note that the representatives of the customers whose rates are phased in agreed to this provision. Although we have noted some of our concerns had the case not been settled, the affected customers are not complaining about the phase-in of rate reductions. Those who are complaining are not affected by this provision. The access customers have already received $7,900,000 of rate reductions in Case No. 93-353-TP-ATA. The additional $8,000,000 reduction in carrier access charges will be applied on the effective date of the company's plan (Id. at 17). The phase-in of rate reductions does not affect the IXC Coalition and MCI, OCTVA, Sprint, AT&T, or Time Warner, and they should not be heard to complain. As to complaints that the Commission has no authority under Section 4909.15, Revised Code, to phase in a rate reduction, the Commission notes that this case has proceeded under Section 4927.04, Revised Code, which authorizes the Commission to establish rates and charges by a method other than that specified in Section 4909.15, Revised Code. Therefore, these objections also are not well made.

Next, the IXC Coalition and MCI, OCTVA, Sprint, AT&T, and Time Warner argue that the rate reductions are insufficient and not supported by the record. During the hearings, OCC supported a revenue reduction of $197,386,000 (OCC Ex. 10A). In the staff report, the staff recommended a revenue reduction between $125,884,000 and $144,667,000 (Staff Report, Sched. A-1). These nonsignatory parties object that the stipulated rate reduction turned out to be significantly reduced from the recommendations of OCC and the staff.

The overall rate reduction agreed to in the stipulation is indeed smaller than the reduction supported by OCC or the staff in their original litigation positions. At the outset, it should be acknowledged that it was OCC who brought the complaint case contending that Ameritech was earning excess profits. The stipulated revenue reductions evidently satisfy OCC's complaint. If OCC is satisfied, it is difficult to comprehend the complaints of the other intervenors who relied on the positions presented by OCC and the staff but failed to present their own revenue requirement-specific testimony on this issue, or bring their own earnings complaint. In addition, the parties' positions were separated by a variety of issues such as the accounting treatment of postretirement benefits and postemployment benefits, the inclusion of unregulated directory revenues, the inclusion of advertising expenses, the appropriate rate of return, the amortization period for depreciation reserve deficiency, and accumulated deferred taxes. These accounting issues alone reflect over $150,000,000 in adjustments which would affect revenues over which the parties differed. As the staff pointed out on brief, if the Commission were to decide against the staff on the major issues, the company would be entitled to a rate increase (Staff Brief at 12-13). Therefore, the parties took into consideration these differences and reached a compromise on the amount of the revenue reductions which falls within the range of positions that were presented on the record. The Commission wishes to make clear, however, that it is reviewing the rate reductions as part of a stipulated package. If any of the signatory parties were to withdraw their support for the stipulation after review of this opinion and order, OCC's complaint case would immediately be reinstated and the Commission would proceed, both as part of the alternative regulation case and the OCC complaint case, to render a decision, based on the record, as to the appropriate level of Ameritech's revenues.

AT&T and OCTVA contend that the Commission cannot possibly determine if the rate reductions result in reasonable rates because no one presented a revenue calculation as required by Section 4909.15, Revised Code. The original staff earnings analysis as presented in the staff report was based upon the traditional approach as set forth in Section 4909.15, Revised Code. The staff report indicates that a revenue reduction between $125,884,000 and $144,667,000 was warranted (Staff Report, Sched. A-1). Subsequently, through the development of the case, the availability of new information, and the correction of errors, the staff recognized that its original recommendation should be modified. Staff witnesses Chaney, Kirk, Kotting, I. Soliman, Hess, and Montgomery testified concerning 16 areas in which the staff position is updated or revised. According to the staff, the summary effect of these changes is to change the staff report range to a recommended revenue decrease of between $82,886,000 and $103,920,000 (Staff Brief at 9-11). This represents a best-case outcome from the staff's viewpoint and would be the result if the staff were successful on all issues in this case. Accordingly, the stipulated rate reductions fall within the range of rate reductions recommended by the staff. As the staff's recommended rate reductions were based upon traditional ratemaking analysis, the argument raised by OCTVA and AT&T are not sufficient to cause us to modify or reject that portion of the stipulation.

The revenue reductions are the product of bargaining among the only parties presenting evidence on the company's revenue requirements, and they remedy OCC's complaint to OCC's satisfaction. The objections to the amount of the reductions have been found to be unwarranted. The Commission concludes that the revenue reductions are within a range of reasonableness for purposes of a stipulation and are based upon the record. They should be adopted as they are not inconsistent with the state policy to ensure just and reasonable rates.

2. Distribution of Revenue Reductions:

As indicated previously, the stipulation provides for a base period reduction in the company's revenues of $92,300,000 of which a reduction of $7,900,000 has already occurred. The remaining $84,400,000 in reductions was allocated as follows: $55,300,000, or 65.5 percent, to the residence customer class; $21,100,000, or 25 percent, to the nonresidence customer class; and $8,000,000, or 9.5 percent, to the carrier access customer class (Jt. Ex. 1, at 9).

The IXC Coalition and MCI, Sprint, Time Warner, OCTVA, and AT&T take issue with this distribution of revenue reductions. They contend that, not only is there no record support for the rate design, it is directly contrary to the record evidence. They further argue that the rate design moves Cell 1 residential revenues in the opposite direction from costs and is inconsistent with sound regulatory practice. The Executive Agencies also support the objective of aligning rates with costs. These parties believe that carrier access charges should be further reduced and that Cell 1 residential services should not have received the substantial reductions that they did.

These objectors cite to the testimony of staff witness Montgomery (Staff Ex. 30, at 5, 9-10) that the common carrier line charge be eliminated which would have produced an additional decrease in carrier access revenues of approximately $12,000,000 (Staff Ex. 30A, at 2). This adjustment still left carrier access revenues in excess of carrier access costs. Mr. Montgomery also advocated that no large reductions to Cell 1 residential services should be made because these revenues are less than their fully distributed costs (FDC). OCC, believing that the cost data relied upon by the staff was flawed, recommended an "across-the-board" revenue reduction. The meaning of "across-the-board" is in dispute. Despite this testimony, however, the stipulation gives 65.5 percent of the rate reductions to the residence class and only 9.9 percent to the carrier access customer class. The objectors find this result particularly egregious because of their claim that they were excluded from the negotiating process. Finally, Sprint witness Sievers testified that the adjustment to the access charges contained in the stipulation will not yield the $8,000,000 in access charge reductions purported by the stipulation (Sprint Ex. 3A, at 1-5).

In assessing these objections, the Commission will first evaluate the specific rate reductions provided by the stipulation. The largest reduction to residence services results from the elimination of the touch-tone charge. This result is reasonable because touch-tone service does not cost more to provide than rotary service, for which there is no charge (Tr. XXIX, 171). The reductions in flat, message, and measured usage rates assure that all residence customers will receive lower bills. Clearly, this provision will promote the state policies of ensuring the availability of adequate basic local service and maintaining just and reasonable rates. The lower rates also promote the enhancement of universal service. For the nonresidence basic exchange rate reductions, the stipulation also provides for the elimination of touch-tone charges. Rate schedule reductions for nonresidence measured-rate service customers will mirror those for residential subscribers. Schools will benefit from the 10-percent discount that they will receive, and customer-owned coin-operated telephone (COCOT) providers will benefit from the elimination of charges for selective call screening, per line calling party number blocking, and directory assistance. These nonresidence benefits also promote the state policies of ensuring the availability of adequate basic local service, and maintaining just and reasonable rates. Finally, carrier access charge revenues have been reduced by an additional $8,000,000 from base period revenues. Both the company and the staff dispute Sprint's allegations that $8,000,000 in reductions will actually be achieved. On brief, staff explained how the $8,000,000 in rate reductions from the base period will be achieved (Staff Brief at 31-33).

Based upon a review of the stipulated revenue reductions, the Commission concludes that, as part of the stipulated package as a whole, the revenue reductions are reasonable and comport with the policy of this state that just and reasonable rates be maintained for telecommunication services. The Commission does not believe that the objections to the revenue distribution are sufficient to overturn the entire stipulation. We must remember that we have a stipulation before us which has been agreed upon by a variety of interested parties and recommended by the staff. As we stated in

Western Reserve Telephone Company, Case Nos. 92-1525-TP-CSS and 93-230-TP-ALT (March 30, 1994), if we find the overall stipulation reasonable as a package, and particularly given the fact that no Cell 1 core residence or nonresidence service increases are proposed, we need not determine the exact level of cost of various services as we might have had to do had no stipulation been reached. While we would have liked to have seen more access reductions than are provided by the stipulation, we note that, since the company's last rate case, carrier access charges have steadily declined due to competition and are now the lowest in this state. Thus, while residential local exchange rates have remained fixed since 1985, the access charge rates paid by the IXCs operating in Ameritech's service territory have declined by 40 percent (Tr. XXXVI, 104-105). Additionally, we believe that competitive forces will continue to result in further reductions in access charges which will inure to the benefit of access customers. We fully expect Ameritech to be responsive to these competitive forces and to work with its access customers. Thus, market pressures will, over time, remedy many of the concerns raised by the access customers.

3. Cell 1 Core Services:

Under the terms of the stipulation, Ameritech agrees that, during the term of the plan, the rates for Cell 1 core residence and nonresidence services will be capped at current or adjusted levels and shall not be increased (Jt. Ex. 1, at 18). These services will not be included in the price cap formula. The Cell 1 core services covered under this provision, which account for 60 percent of the company's revenues and 89.44 percent of the company's Cell 1 service revenues, are as follows: network access line services; central office termination services; local calling services, including flat-rate service; 9-1-1 and enhanced 9-1-1 service; nonpublished number service; unlisted number service; call trace service; 900/976 blocking service; per line calling party number blocking service; dormitory stations; and all nonrecurring charges associated with the above (Id.). The stipulation ensures that rates for these core services will not be increased and will remain stable during the six-year plan and goes far in implementing the policy of this state that just and reasonable rates be maintained.

D. Innovation:

Under Section 4927.02(A)(3), Revised Code, it is the policy of this state to encourage innovation in the telecommunications industry. In addition, Rule IV(A) of the alternative regulation rules requires that a proposed plan must include commitments. The rules define a commitment as "an obligation to provide services or enhance their value to customers pursuant to a company's approved alternative regulation plan." The stipulation presented in these cases contains a number of innovative commitments which further the state policy and comport with the alternative regulation rules.

1. Infrastructure Commitments:

Under the stipulated plan, the company commits to deploy in its service area within five years of the effective date of the plan broadband two-way fully interactive high quality distance learning capabilities to all state-chartered high schools including vocational schools, technical schools, colleges, and universities. The company will also deploy broadband facilities to all hospitals, libraries, county jails, and state, county, and federal court buildings. The company will convert all analog central office switching systems to digital switching systems, equip all switches that serve customer lines with Signaling System 7, and transport 97 percent of the company's interoffice circuits over fiber optic facilities. In addition, the company commits to extending the availability of integrated services digital network (ISDN) technology to all network access lines within four years of the effective date of the plan. The company also commits to deploy diverse routing between all remote and host central offices in the company's service territory (Jt. Ex. 1, Attach 1, at 68).

Time Warner argues that the stipulated infrastructure commitments are no improvement over the infrastructure commitments contained in the company's original plan which the staff found to be inadequate. OCTVA contends that these infrastructure commitments are no more than "business as usual" and are not a sufficient trade-off to warrant alternative regulation. Further, OCTVA argues that the infrastructure commitments will place Ameritech in a superior competitive position relative to its competitors or potential competitors. Once the infrastructure has been placed in service, according to OCTVA, Ameritech can use it to offer competitive and noncompetitive services. Thus, approval of the commitment might inhibit other potential competitors who could provide similar services even more efficiently from competing.

Time Warner's and OCTVA's complaints about the adequacy of the infrastructure commitments are not sufficient to warrant rejection of the stipulation. Additional infrastructure commitments have been provided in the stipulation which were not contemplated by the original plan. The company has agreed to an infrastructure commitment concerning the deployment of remote switches. The commitment to deploy remote switches was made because of a staff concern that Ameritech had not designed sufficient redundancy into its network to minimize outages and service problems and to maximize availability of lifeline services (Staff Ex. 5, at 3-5). The stipulation responds to this concern. In addition, it is necessary that the adequacy of the commitments in their entirety be considered. Accordingly, in addition to the infrastructure commitments, all other Ameritech commitments must be taken into account. Finally, that the company had already contemplated or was already implementing certain technology at the time of the filing of the stipulated plan is not a sufficient reason for the proposed commitments to be disregarded. The Commission has previously stated that a commitment may encompass the efficiency, productivity, and value of existing services, so long as such commitment is in addition to what is provided in the minimum telephone service standards. These infrastructure commitments meet this standard. In addition, the inclusion of these commitments obligates the company to achieve the infrastructure commitments set forth in the stipulated plan. Absent such a commitment, the deployment of advanced technology would be discretionary on the part of the company. OCTVA has not distinguished between a commitment and a business plan that can be changed at any time.

We would be remiss, however, if we did not note our considerable concern with Ameritech's touting of its commitments with the public. The company clearly worked to create an impression that it would provide $1.6 billion of new investment only to admit in these cases that only $476.2 million related to advanced technologies (Staff Report Addendum at 180). We concur with staff that the reasonableness of the commitments must be judged relative to the plan as a whole. Had the company insisted on increasing basic rates as in its original plan, we would have found the proposed commitments inadequate. In light of the stipulation, however, we do not find that the level of commitments is so objectionable as to require rejection or modification of the stipulation.

OCTVA's concerns that the infrastructure commitments are anticompetitive are also unwarranted. On the one hand, OCTVA argues that the commitments are insufficient and inadequate and that the Commission should require more. On the other hand, OCTVA contends that, if the infrastructure commitments are implemented, they will impede competition. OCTVA argues that there has been no economic showing that the infrastructure improvements are needed. The Commission confesses that it does not know how to respond to these contradictory arguments. What is it about the infrastructure commitment that is anticompetitive? It simply places Ameritech in a position to compete with other players. Yes, the new technologies will allow Ameritech to introduce new services which may be competitive. However, other provisions of the plan, such as long-run service incremental cost (LRSIC) price floors, imputation, and pricing limitations inhibit anticompetitive behavior. Thus, anticompetitive issues are addressed in these safeguards, not by a delay in the construction of a communications infrastructure. Further, there is absolutely nothing in the stipulation which prevents OCTVA's members from marketing and providing distance learning to the schools, or providing new services to hospitals, libraries, county jails, and court buildings. If OCTVA's members wish to provide services to these entities, it is up to them to go out and do so. In that way, competition for communication services will flourish.[8]

The Commission believes that the commitments to infrastructure deployment are in accord with state policy which would encourage innovation in the telecommunications industry. Schools will have the ability to share resources and expertise and enhance the education and training of students. Health care providers will also be able to exchange information or video signals between locations through applications such as medical resource sharing. The use of new technologies will help to improve health care in rural areas by making information more readily available. Courthouses and jails will also be the beneficiaries of the new technologies, such as video arraignment. These innovative applications will be available because of the infrastructure commitments provided in the stipulation. The Commission finds that the infrastructure commitments should be implemented as provided in the stipulation.

2. Other Commitments:

a. Flat-Rate Service:

Residence flat-rate service, as that service is defined in the company's existing tariffs, shall be maintained for the duration of the plan (Jt. Ex. 1, Attach. 1, at 70).

b. Blocking:

By the end of 1994, the company will implement free blocking of billing detail as to the last four numbers of the telephone number on local usage service bills where the number called back by way of the company's automatic callback service was blocked on the originating call. The company will implement seven digit blocking as soon as practicable, but no later than six months after the effective date of the plan (Id. at 70-71).

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8. We note that there was virtually no testimony presented in the public hearings indicating that the cable television companies had provided adequate lower cost services in Ohio rendering Ameritech's commitment unnecessary. Rather, the evidence indicated that most of the experimental projects in operation had been provided by Ameritech. The Ohio cable television industry needs to do a much better job of both deployment and communication in this area.

c. Lifeline Service/Universal Service Assistance:

As discussed earlier, the company will implement the universal service assistance program within 90 days of the effective date of the plan (Id. at 71).

d. Discounts for Schools:

State-chartered education institutions will receive a 10-percent discount off the rates for intrastate regulated services provided by the company (Id.).

e. Funding For Distance Learning Equipment:

The company will provide $18,000,000 to a fund that shall be used to assist schools in deploying distance learning technology. The fund will be administered by the Ohio Superintendent of Public Instruction who shall award the grants. The funds granted to the schools shall be used for (1) the purchase of distance learning equipment related to network usage, but not necessarily related to the usage of the company's network, or (2) may be used to pay for charges associated with Ameritech's advanced video service or other distance learning services provided by the company. In administering the fund, the administrator shall give priority to low-wealth schools or to school districts where 30 percent or more of the population receives Aid to Families with Dependent Children. The company will file a tariff for educational institutions to purchase Ameritech advanced video services within 15 days of the effective date of the plan (Id. at 71-79).[9]

OCTVA and Time Warner assert that the funding of distance learning to the schools is anticompetitive because the grant money is limited to (1) the purchase of distance learning equipment related to network usage, but not necessarily related to the usage of the company's network or (2) the payment of charges associated with Ameritech's advanced video service or other distance learning services provided by the company. They complain that the grant money is, therefore, not supplier neutral when it comes to services. According to OCTVA, this distance learning commitment will give an undue economic, competitive, and market advantage to Ameritech. OCTVA and Time Warner recommend that any grant money should be used so that schools, after being informed by an integrated panel of experts of the different technologies and appli-

9. The Commission puts the company on notice that it will carefully review both the rates and terms and conditions of that tariff to ensure that the intended benefit can be realized by Ohio schools, particularly those in low-wealth districts in the company's service area.

cations and their costs, can apply for any type of equipment and service, not just service provided by Ameritech.

It should be recognized that the educational grants are supplier neutral to the extent that they can be used to purchase equipment that may be used on networks other than that of Ameritech. However, OCC points out that the parties to the stipulation, after hard bargaining, agreed that it would be unfair to the company to have its moneys spent on purchasing certain services from competitors of the company (OCC Brief at 39). In addition, the grants will be paid into a fund which is controlled by the Ohio Superintendent of Public Instruction. This fund will place grants for telecommunications directly into the hands of the schools themselves. Placing the money in the hands of a third party ensures that ~~this~~ grant will substantially benefit the schools and also decreases the prospect that the funds will be used to secure a competitive advantage for Ameritech. Finally, there is nothing in the stipulation which prohibits competitors from committing their own funds to similar projects in the schools. In fact, the best response to move Ohio forward would be for the company's competitors to work with the Superintendent of Public Instruction to set up a similar fund for the use of cable television equipment and services. Such action would complement Governor Voinovich's School-Net initiative which is intended to be supplier neutral. The Commission cannot say that this school funding commitment is anticompetitive.

f. Funding For Community Computer Centers:

The company commits to provide funding of $2,200,000 for 14 community computer centers located in seven Ohio cities. The community computer centers will bring together hardware, software, network access, and training. To be eligible for funding, the center shall be housed in a location that is readily accessible to the community it serves, shall be open after school hours, shall be located in a low-income neighborhood, and shall contain an appropriate number of computer workstations (Jt. Ex. 1, Attach. 1, at 79, Ex. F).

g. Educational Team:

The company commits to underwrite a team of company experts for six years who will be available to assist educators in developing and using distance learning applications. The team will also help educators develop teaching methods, and assist them with logistics and training. The team will work with the Ohio Department of Education and the educational institutions to determine how the facilities and network will be deployed. Further, the team will work to establish partnerships with other businesses and government agencies to seek grants to help finance basic video equipment for distance learning applications (Jt. Ex. 1, Attach. 1, at 79-80).

h. ISDN Promotion:

The company will promote ISDN services to its residence customers for at least 60 days in each calendar year by waiving all nonrecurring charges and providing notice to customers (Id. at 80).

i. Economic Development:

In order to foster economic development through incentives to companies to expand or to locate in the state of Ohio and to promote the use of communications services, the company will provide grants to designated businesses up to a total of $500,000 annually for six years. The grants shall be used by the businesses as payments towards their bills for services rendered by the company. The Ohio Department of Development and the company will cooperate to choose the businesses and the amount of the grant to each business. At least 14 days before the effective date of any grant, the company will file the proposed grant with the Commission for its consideration (Id. at 83).

Time Warner asserts that the economic development commitment is also anticompetitive. Time Warner indicates that the funds are only used to help the businesses pay their Ameritech telephone bills. Time Warner witness Selwyn testified that this provision provides short-term relief to a few select businesses at the expense of long-term development of a competitive telecommunications market environment. By this mechanism, according to Dr. Selwyn, the state of Ohio aids Ameritech in locking in certain business customers and removing them from contention by competitors (Time Warner Ex. 3A, at 24).

The Commission shares the concerns raised by Time Warner. While we fully support economic development programs within this state and have supported utilities' efforts in this regard, we are concerned about the potential anticompetitive aspects of this grant program. With this in mind, although we will not reject the stipulation because of this grant program, we fully intend to work with the Department of Development in implementing this program to ensure that it is not administered in a way which has an anticompetitive effect. The Commission's staff and the Department of Development, should work together to establish criteria and standards to be used in awarding grants which will ensure that they are not used to impede competition. Ameritech will be expected, as a condition of approval of this stipulation, to work closely with the staff on the guidelines and implementation of the program to head off potential problems before they arise. The Commission is further reassured that, to the extent one could argue that there is any anticompetitive effect, the small amount of dollars which have been committed to the program would render any such impact de minimis.

j. Conclusion on Commitments:

Upon a review of all these commitments which Ameritech has undertaken, it is clear that the commitments, when considered as part of the overall stipulation, including the capping of basic rates, further the policy of this state to ensure innovation in the telecommunications industry. Further, the commitments provide benefits for customers and are in the public interest.

The stipulation commits Ameritech to assist schools in the purchase of distance learning services and equipment. Schools also benefit from the 10-percent discount on the tariffed rate for services to educational institutions. In addition, the company will underwrite a team of experts who will assist educators in developing and using distance learning applications. These distance learning commitments provide for savings and funding for education. They encourage innovation in the telecommunications industry and provide options for the schools in the supply of public telecommunication services and equipment throughout Ameritech's service territory. The stipulation also requires the company to provide start-up funding for no fewer than 14 community computer centers which will provide access to the information highway for those who cannot afford to purchase their own equipment. The stipulation commits Ameritech to a universal service assistance program which will help low-income persons obtain and maintain telephone service. Clearly, Ameritech's customers will benefit from the innovations contained in the commitments agreed to by Ameritech. And, although Time Warner argues that the value of the commitments is not sufficient to warrant alternative regulation, the value of the commitments are not insignificant, especially when viewed in the context of the entire stipulation. Ameritech and the signatory parties should be complimented on arriving at a resolution of the commitment issues. Finally, in response to OCTVA's concerns that the stipulation contains no sanctions if Ameritech does not progress toward or complete its commitments, the Commission states that it fully intends to closely monitor the company's implementation and application of the commitments agreed to in the stipulated plan. Our staff is in a position to obtain any information it deems necessary in order to monitor the implementation of the plan. In the event the Commission determines that Ameritech is not meeting its commitments, we will take appropriate action at that time, which includes implementation of Rule XI(E) of the alternative regulation rules.

E. Diversity and Options:

As provided by Section 4927.02(A)(4), Revised Code, the telecommunications policy of the state of Ohio should promote diversity and options in the supply of public telecommunications services and equipment throughout the state. Upon review of the stipulation, the Commission finds that, contrary to the assertions of the nonsignatory parties, the stipulation is not contrary to this policy. Pursuant to the stipulation, Ameritech has agreed to not challenge the entry of competitive providers into the market based upon an exclusive local franchise argument. In addition, the stipulating parties support the initiation of an expedited generic docket which will address numerous complex competitive issues. Furthermore, the stipulation adopts a LRSIC pricing floor with an appropriate allocation of joint and common costs, as well as an imputation adjustment. The Commission believes that these provisions of the stipulation, as well as those further discussed below are in keeping with the statutory intent to promote diversity and options in the state of Ohio, as well as other policies of the state.

1. Long-Run Service Incremental Costs, Fully Distributed Costs, and Joint and Common Costs:

Pursuant to the stipulation, Ameritech's pricing flexibility is limited based upon the cell classification of the service. Generally, the minimum rate or price floor for a Cell 1 service is the LRSIC. However, for a Cell 1 service which has an existing rate or adjusted rate below LRSIC, the minimum rate for that service shall be the lower of the existing rate or the adjusted rate. During the term of the stipulated plan, the LRSIC methodology shall be used for Cell 1 services for the limited purpose of establishing a price floor for rate decreases. For services in Cells 2 through 4, once the LRSIC study has been approved, the minimum rate or price floor is the LRSIC plus a common overhead allocation of 10 percent, unless the Commission waives the requirement to apply the common overhead allocation in which case the rate floor shall be LRSIC plus the common overhead allocation the Commission prescribes. If Ameritech seeks a waiver of the common overhead allocation, the company must show that it is handicapped from competing on the basis of prices within a defined geographic area or for other good cause shown (Jt. Ex. 1, at 27-31).

The stipulation provides that the allocation for common overhead costs of 10 percent to LRSIC in establishing price floors may be reduced to 1 percent under certain circumstances. Such a reduction may occur, only subsequent to an order of the Commission, if Ameritech has, to the Commission's satisfaction, fully implemented tariffs that provide unbundled access to the company's network access lines to certificated providers of local exchange service, or if there exists tariffs and/or contractual arrangements providing for mutual compensation between Ameritech and a certified provider of local exchange service. The allocator may also be reduced to 1 percent for services affected by changes in dialing arrangements, if Ameritech implements, to the Commission's satisfaction, intraLATA 1+ dialing which will permit such traffic to be routed to other toll providers (Id. at 33).

Pursuant to the stipulation, where joint costs exist for a service or family of services, whenever Ameritech provides a LRSIC study for any service in the family, it must show that the total revenues from the family of services exceed the costs for the family, including any joint costs. However, no common overhead allocation shall be assigned to the joint costs (Id. at 32). Furthermore, on the third and fifth anniversary of the plan, Ameritech shall file an FDC study with the Commission (Id. at 83).

OPCA asserts that the total service, long-run incremental cost (TS-LRSIC) is the appropriate methodology to be employed in determining the price floor. In OPCA's view, the TS-LRSIC should include volume sensitive costs, product-specific costs, and shared costs (OPCA Brief at 4). Furthermore, OPCA argues that the TS-LRSIC studies should be performed on a standard basis, as opposed to the ad hoc basis proposed by Ameritech. Absent such periodic studies, OPCA believes that Ameritech will have no incentive to conduct cost studies for services that do not face effective competition (Id. at 14).

OPCA witness Wood maintains that the TS-LRSIC approach defines the increment as the service as a whole, includes service specific fixed costs, and includes shared costs that can be attributed to a service. Conversely, Mr. Wood avers that Ameritech's LRSIC approach focuses on too small an increment by defining the increment as the next unit of service, and Ameritech's approach does not include service-specific fixed costs or shared costs (OPCA Ex. 1, at 38-39). OPCA argues that the flaw in Ameritech's LRSIC approach is that it may fail to capture significant costs relevant to the decision to offer a service and, thus, the captive customer may be paying higher rates to recover costs caused by Ameritech's competitive services that were not included in the cost study. Furthermore, OPCA maintains that Ameritech's LRSIC approach would allow Ameritech to engage in predatory pricing (OPCA Brief at 10-11).

OCTVA is concerned about the lack of safeguards related to pricing flexibility. Namely, OCTVA is concerned about the anticompetitive nature of the stipulated plan regarding its failure to allocate joint costs to individual services in setting the price floor, the failure to use FDC as the ceiling for Cells 1 through

3, and the failure to require a cost separations process for separating the costs for unregulated, video, and Cell 4 services from Ameritech's other regulated services (OCTVA Brief at 10). OCTVA also recommends that, for new services and for price changes to existing services in Cells 2 and 3, Ameritech should be required to submit a cost study to establish a cost-based floor for the service (Id. at 49).

OCTVA believes that the application of a LRSIC without the allocation of joint costs encourages Ameritech to engage in anticompetitive pricing (Id. at 12). According to OCTVA, LRSIC is not a valid test for cross-subsidization when it excludes a big portion of the actual costs that are incurred by Ameritech in providing the service (Id. at 41). OCTVA recognizes that one of the cost elements it believes must be included in the LRSIC, common overhead costs, is included in the stipulation via the 10-percent addition to the LRSIC. However, the residual cost element identified by OCTVA, which comprises the remaining 40 to 50 percent of the cost to produce and sell a service is ignored in the stipulation (OCTVA Reply Brief at 10; OCTVA Ex. 1, at 42). Furthermore, OCTVA points to Dr. Currie's statement that certain economies of scale and scope which generally exist for Ameritech are not accounted for in the LRSIC study (Tr. XVII, 268-270). OCTVA advocates that, to be in the public interest, the plan must provide for a price floor of LRSIC plus 10 percent, plus an allocation of joint or family costs to individual services, plus an appropriate imputation adjustment (OCTVA Brief at 45).

OCTVA recommends that a cost separations study which is based upon FDC be performed in order to separate the Cell 4 services from Ameritech's other services. Without such a study, OCTVA posits that there is no way to ensure that the company's costs of providing Cell 4 services are not being recovered by rates for services in Cells 1 through 3. Even though the rates for Cell 1 core services are capped during the term of the stipulated plan, an FDC ceiling is still necessary in OCTVA's view, because no rate-of-return analysis was performed to ensure that the capped rates would not be subsidizing the rates for services in Cells 2 through 4 (OCTVA Brief at 47). In response to OCTVA's argument in this area, Ameritech indicates that the law governing fair competition is more than adequate to safeguard against the potential abuses in Ameritech's pricing and costing of unregulated services (Company Brief at 49). Furthermore, with regard to OCTVA's argument that Cell 1 is subsidizing the more competitive services, the Commission notes that the FDC study submitted by Ameritech indicates that this is not occurring in the aggregate on an FDC-basis (Company Ex. 30AS).

In response to the criticism of the LRSIC methodology set forth in the stipulation, Ameritech points out that the LRSIC plus the common overhead adjustment, along with the inclusion of joint costs and family costs where appropriate, is reasonable and fully supported by the record in these cases (Company Reply Brief at 47). As for the FDC studies which OCTVA urges be performed for Cells 1 though 3 services in order to afford those services a ceiling based on FDC standards, the company points out that FDC studies are irrelevant for pricing decisions. That being the case, Ameritech submits that OCTVA's argument that the failure to adopt OCTVA's costing and pricing approach violates Section 4905.33, Revised Code, is unfounded (Id. at 48).

OCC points out that a number of parties in these proceedings were concerned about the strict use of the LRSIC price floor permitted by the Commission's alternative regulation rules. However, OCC submits that the stipulation goes a long way to correct this concern by requiring some contribution to overheads from all of Ameritech's services in the form of LRSIC plus (OCC Brief at 34). The Commission agrees with OCC in this regard. We believe that it is clearly within the context of the state policy to require those large local exchange companies requesting alternative regulatory treatment to include in their LRSIC methodologies a minimum percentage contribution to common overhead. To that end, the Commission is considering revising the alternative regulation rules to include a LRSIC plus provision within the context of filed plans.

Upon review of the objections, there appears to be a general misunderstanding of the application of joint and common costs. The joint costs, which are also called the family costs, are direct costs assigned to the group of services within a family. These joint costs have no relationship to common overheads. In directly assigning all of the joint costs to the group of services within a family, there is no additional common costs to be assigned. Therefore, we agree with staff that the 10-percent common overhead allocation is appropriately applied to the LRSIC, exclusive of the joint costs of an individual service (Staff Ex. 30, at 19). In our view, this is appropriate because, just as the 10-percent common overhead allocation is added to the LRSIC, so have we assigned all of the joint costs.

By applying the LRSIC plus methodology to account for common overheads, we believe that there will be an opportunity for a more level playing field in the competitive telecommunications market. It is expected that the company's common costs will be covered via the 10-percent allocation for common overhead costs. However, should this not be the case, we expect Ameritech to either recover the additional common overhead costs from its competitive services or reduce its overhead costs.

Accordingly, the Commission has reviewed and considered the concerns raised by OCTVA and OPCA on these issues, and we find that the LRSIC methodology set forth in the stipulation accompanied by the required cost studies plus any applicable allocation of common overhead costs, the direct assignment of joint costs, submission of imputation tests, and cell pricing rules are reasonable. Furthermore, we believe that these provisions of the stipulation coupled with the pricing rules are in accord with the policy of the state to promote diversity and customer options.

2. Imputation:

a. The Policy and Methodology:

Pursuant to the stipulation, imputation applies to competitive services which are provided pursuant to either contract or tariff and are contained in Cells 2 or 4 when the comparable services offered by other providers rely upon noncompetitive services or components of such services provided by Ameritech. Noncompetitive services are those which are offered by Ameritech "for which an equivalent or substitute service or component is not available within relevant markets or geographic areas in which that service is offered at reasonably comparable rates, terms, and conditions from any other provider, including self-provision. Noncompetitive services could be classified in either Cell 1, Cell 2, or Cell 3." (Jt. Ex. 1, Ex. D, at 1-2).

The imputation policy in the stipulation sets forth three criteria to determine if the competitive service provided by Ameritech is subject to the imputation methodology. Generally, those three criteria are: if the service competes with the offering of one or more other provider; if the offerings of the other providers that compete for a particular service utilize a noncompetitive service or noncompetitive service component provided by Ameritech; and if Ameritech's own offering uses the same noncompetitive service or noncompetitive service component, or its functional equivalent (Id.).

The stipulated plan sets forth two imputation methodologies. The first methodology is the standard methodology which will be applied to the revenue for each service or customer contract offered by Ameritech which is subject to the imputation policy. The requirements of the standard methodology include the tariffed rates for the noncompetitive service or noncompetitive service component used by Ameritech in its offering and the LRSIC of all other components of Ameritech's offering. The second methodology is an exception to the standard methodology. This exception methodology applies to those situations where Ameritech can demonstrate either cost differences or alternative supply options, in which case the company is permitted to make adjustments to the standard methodology (Id. at 2-3).

According to the IXC Coalition and MCI, the imputation policy contained in the stipulation is too complex and, in their view, it will not serve the purpose for which an imputation adjustment is intended (IXC Brief at 25). The IXCs rely on the testimony of Mr. Gillan and Mr. Laub for their position that, if imputation is appropriately developed and implemented it can "neutralize" Ameritech's ability to discriminate between itself and competitors (IXC Coalition Ex. 2, at 15; MCI Ex. 2, at 14; AT&T Brief at 27). According to the IXC Coalition and MCI, in order for an imputation adjustment to accomplish its purpose, it must be calculated and applied uniformly, and properly, and it must be subject to verification by the staff and other interested parties. Furthermore, they maintain that, if Ameritech is required to "price its competitive services to cover the costs of its 'wholesale' service inputs, it is less likely to be able to cross-subsidize its competitive services with monopoly service revenues in order to engage in predatory pricing" (IXC Brief at 26-27).

The IXC Coalition and MCI recommend that the Commission reject the stipulated imputation policy and make substantive changes to the policy which would prohibit Ameritech from escaping the application of an imputation adjustment (Id. at 27). These IXCs are concerned about the imputation policy set forth in the stipulation because they believe that Ameritech could argue that an essential input, which is relied upon by a competitor, would not be subject to being utilized in the imputation adjustment because "equivalent or substitute services are available in the relevant market or geographic area" (Id. at 34). In support of their contention, the IXCs point to Dr. Currie's statement regarding his imputation policy submitted with the original plan, as later revised, in which he stated that any service classified in Cell 2 would not be used as an input for purposes of an imputation adjustment (Tr. XXXXIV, 225-226). The IXC Coalition and MCI do not believe that the addition of the language stating that noncompetitive services "could" be classified in either Cell 1, 2, or 3 solves the problem with regard to the availability of substitute services. In their view, the imputation policy set forth in the stipulation still permits Ameritech to avoid imputation in a manner that would be very difficult to verify (IXC Brief at 34). These IXCs argue that the stipulated imputation policy could work to establish Ameritech as the most efficient provider in a market of allegedly competitive services. The IXCs submit that, pursuant to the stipulation, Ameritech would be permitted to price a competitive service below the tariffed rate of the input competitors must pay Ameritech (Id. at 35).

In addition, AT&T witness Baumol objects to the exception to the standard imputation methodology set forth in the stipulated plan which would permit Ameritech to depart from the tariffed rates that determine the profit component of the imputation methodology on the basis that there is competition in the pertinent area. Dr. Baumol believes that this criteria is simply too weak and too insignificant to serve in any substantial degree as an effective constraint on Ameritech's pricing of services (AT&T Ex. 11, at 10). However, while Dr. Baumol expressed concern for the effectiveness of the safeguards set forth in the stipulated plan pertaining to the Commission's review of the application of the exception methodology, upon examination at the hearing he clarified that what he would like to see as part of the plan would be "the obligation for Ameritech to provide evidence with which the Commission could adequately judge whether the competition in the arena in question were powerful enough to restrain monopolistic behavior, or whether it was not" (Tr. XXXXVI, 54). Dr. Baumol agrees that, should the Ohio statutes provide the Commission with the opportunity to ask the company for whatever information it needs in determining the adequacy of Ameritech's imputation methodology, he would have a greater level of comfort with this portion of the stipulated plan (Tr. XXXXIV, 55).

OPCA advocates that the imputation methodology to be adopted in this case should be based upon Ameritech's tariffed rates plus any additional costs; however, no adjustments should be permitted for economies of vertical integration (OPCA Brief at 9). OPCA witness Wood believes that where economies of scale exist they are caused by a collection of Ameritech's services and not by a single service or an aggregate of Ameritech's competitive services. He maintains that, to the extent economies of scale exist, they are fully reflected in a properly conducted incremental cost study and, therefore, no additional adjustment to the imputation methodology is required. Mr. Wood argues that, if Ameritech is permitted to reflect an adjustment to its standard imputation methodology reflecting vertical economies, then it would be taking a portion of the cost savings created by its monopoly ratepayers and using such savings to benefit the purchasers of its competitive services (OPCA Ex. 1, at 48-49).

In addition, the IXC Coalition and MCI advocate that the imputation policy follow the precedent for such policies as set forth in Ohio and other Ameritech states (IXC Brief at 39). They believe that the methodology approved by the Commission in the Cincinnati Bell Telephone Company alternative regulation case is a simple and easily verifiable methodology (Id. at 40). AT&T agrees that the imputation standard agreed to in the Cincinnati Bell alternative regulation case would provide the safeguards required in the Ameritech plan (AT&T Brief at 28). See Cincinnati Bell Telephone Company, Case Nos. 93-432-TP-ALT and 93-551-TP-CSS (May 5, 1994).

If the Commission does not turn to the Cincinnati Bell case for guidance in developing an appropriate imputation policy in these cases, the IXC Coalition and MCI advocate that the Commission adopt pro-competitive imputation standards similar to those contained in statutes in Wisconsin and Illinois (IXC Brief at 42; Company Ex. 125; Wis. Stat. Section 196.204[6][1993]; Ill. Rev. Stat. ch. 111 2/3, Section 13-505.1[a]). Specifically, the Wisconsin statute contains the exact same standard imputation methodology and criteria contained in the stipulation; however, in Wisconsin, the commission is only permitted to make adjustments for network efficiencies to the standard methodology after a complaint by the company and the opportunity for notice and hearing. In addition, the Wisconsin statute does not permit such an adjustment for any company having more than 500,000 access lines prior to January 1, 1998 (IXC Brief at 41). We note that the Illinois commission appears to have rejected the exception at issue in its entirety based on its very strict statute.

Ameritech believes that the imputation policy set forth in the stipulation "should help achieve equal opportunity to compete in the market place for all communication providers". However, Ameritech goes on to maintain that the imputation policy should not "be used to handicap one provider or to give some carriers an advantage over others" (Company Brief at 62). In Ameritech's view, the imputation policy set forth in the stipulation is reasonable, economically based, and promotes competition (Id. at 61, 64). Ameritech points out that the major difference between the methodology set forth in the stipulation and the one advocated by the IXCs is that the IXCs would like to see Ameritech have to go through more administrative hurdles before it would be permitted to make an imputation adjustment that would depart from the tariffed rate. Ameritech points out that the position of the IXCs would require the company to impute higher switched access costs even in those cases where Ameritech's competitors are utilizing the lower cost special access service. In Ameritech's view, this result would not be a realistic approach reflecting how its competitors serve their customers and, therefore, it would be anti-competitive against Ameritech (Id. at 63). Furthermore, Ameritech points out that, if it fails to make the required showing pursuant to the stipulation's imputation policy which would permit Ameritech to depart from the tariff prices of the standard methodology, it will not be permitted to utilize the exception methodology (Company Reply Brief at 51).

Staff agrees that Ameritech should be permitted to utilize economies of scope when pricing its services because of the advantage to both the end users and the company (Staff Brief at 36). In response to the concern expressed that Ameritech may be permitted to depart from the standard methodology for imputation which utilizes the tariffed rate simply on the showing of the presence of competition, staff points out that the showing of competition in this context must be sufficient to satisfy the

Commission. Staff emphasizes that all new prices of services must be approved by the Commission either by entry or by permitting the application to be automatically approved (Id. at 35).

The Commission has thoroughly reviewed and considered all of the arguments set forth by the parties both for and against the imputation policy and methodology contained in the stipulation. Upon reflection, we believe that, conditioned upon the clarifications and modifications set forth in this opinion and order and based on information known at this time, this policy is in keeping with the policy of the state of Ohio to promote diversity and options in the provision of telecommunication services. In this regard, we find that the concerns raised by the nonsignatory parties do not outweigh the benefits which would be achieved by implementation of the stipulation as a package.

One concern expressed by AT&T was the application of the imputation methodology to contracts. As pointed out by staff, all new prices of services, both contractual and tariffed, including the applicable imputation adjustment, must be approved by the Commission either by entry or by permitting the application to be automatically approved prior to being offered (Staff Brief at 36). Thus, all contracts, regardless of the cell classification of the service they offer, are subject to imputation. Therefore, AT&T's concern on this issue has been covered in the stipulation.

Furthermore, based upon the concern brought out by the IXCs and the inconsistent statement made by Dr. Currie regarding the utilization of Cell 2 services in the imputation adjustment, the Commission wishes to clarify this issue. In keeping with the stipulation, and contrary to Dr. Currie's statement, a Cell 2 service would be used as an input to an imputation adjustment. This is made clear in Exhibit D to the stipulation where noncompetitive services are defined as being classified in either Cells 1, 2, or 3.

The Commission notes that the imputation policy in Section IV of Exhibit D is based on revenues rather than prices. We remain concerned about the potential for its application to be unduly controversial as it may involve analyzing past or projected revenue patterns for various services. The company should, as a general matter, ensure that its individual prices for services reflect the proper imputation amounts and must justify, in its filing, if use of a revenues standard results in a different price for services, along with the justification for use of revenues rather than prices, on a case-by-case basis. The Commission will carefully scrutinize the application of the policy to ensure that there are no anticompetitive consequences resulting from the use of the revenues as opposed to individual price standard.

The Commission is concerned about any anticompetitive effect which may result by the company's invoking the exception imputation methodology. However, unlike the nonsignatory parties, we believe that there are sufficient safeguards contained within the imputation policy, as well as the Ohio Revised Code, which will enable the Commission to review and approve the implementation of the policy and methodology so as to ensure that the interests of both Ameritech and its competitors will be fairly and reasonably protected. In this vein, we will not hesitate to invoke our statutory authority to obtain any information which we feel is necessary in reviewing and evaluating any proposal presented by Ameritech to utilize the exception methodology, for calculating the appropriate imputation adjustment prior to our approval of any application submitted by the company.

Furthermore, Ameritech will be held to a very strict burden of proof when it attempts to invoke the exception methodology and the Commission will do everything necessary to ensure that no undue anticompetitive effect would accrue as a result of implementation of that provision. While we are not per se adopting the Wisconsin approach advocated by the IXCs, by holding Ameritech to such a heavy burden of proof, we are, in effect, achieving the same substantive result without the potential burden of a litigation process forestalling an Ameritech proposal which may be meritorious. Thus, we feel that the implementation of this exception, as clarified by this opinion and order, will achieve the same substantive protections available in Wisconsin without the detriments of lengthy litigation.

In keeping with our decision to hold Ameritech to a strict burden of proof, we would expect certain requirements to be contained with the guidelines which the company must follow in order to utilize the exception methodology. Namely, even once the guidelines are in place, the Commission would expect Ameritech to continue to provide the staff with the imputation test provided for in the standard methodology, in addition to the test in place for the exception methodology. We would like to continue to receive both the standard methodology information and the exception methodology information in those instances where Ameritech is invoking the latter provision until such time as we determine provision of both tests is no longer necessary. We would also expect that the exception methodology guidelines would take into consideration that the Commission will be reviewing each application on a case-by-case basis and that additional information may be needed in some circumstances. Finally, we note that, pursuant to the stipulation, we may revoke the right of Ameritech to enter into contracts if we find that Ameritech is abusing this procedure.

In short, although the staff and the company are encouraged to work out guidelines for the filing of these applications, the guidelines are not to bind the Commission or its staff on the substance of the exception. Rather, we wish to gain more experience with the provision before methodologies are agreed to. Moreover, as noted below, we are reserving the right to revisit the imputation policy to ensure that application of this exception, and the imputation policy itself, is not harming competition in the state or otherwise frustrating the policies outlined in Chapter 4927 of the Revised Code and the Commission's policies. Our acceptance of the stipulation is conditioned upon these clarifications and modifications.

b. Pay Telephones:

The imputation policy contained in the stipulated plan does "not apply to local public/semi-public coin messages to the extent that an imputation test would cause an increase to the coin message rate of $.25 or a decrease in the rates charged to customer-owned coin-operated telephone providers" (Jt. Ex. 1, Ex. D, at 1).

OPCA witness Wood submits that Ameritech's revenues, net of commissions, on a contract basis, should exceed the sum of the cost to an alternative provider to buy the monopoly service functions (Tr. XXXXIII, 82). OPCA contends that Ameritech utilizes its rates and subsidies to control the pay telephone market, and its ability to pay high commissions to premises owners plays a big part in this control. Therefore, OPCA believes that, if imputation was applied to the commission transaction, then this anticompetitive behavior would be lessened (OPCA Brief at 15).

OPCA believes that the provision in the imputation policy which renders imputation inapplicable to COCOTs is discriminatory. Notwithstanding the specific exclusion of the application of the policy to COCOTs, the services purchased by the COCOTs qualify under the three-prong criteria set forth in the stipulation. OPCA recognizes that the exclusion language in the imputation policy applies to only one component of the COCOT service, namely local public/semi-public coin messages. However, even with this understanding, OPCA maintains that the effect of the exclusion is such that, while an imputation adjustment could be made to other elements, it could not be used to lower the rates to COCOT providers (Id. at 21-22).

OPCA points out that, while Mr. McKenzie on cross-examination avers that the exclusion of COCOTs from the imputation policy was reasonable because the stipulation caps the coin rate at $.25 and that an imputation test may create a problem if it showed that the $.25 rate was below LRSIC and yet the company could not raise the rate, no party to the case has done an imputation test on the price of a coin call to verify Mr. McKenzie's concern (Tr. XXXXVI, 213-214; OPCA Brief at 22). In response to Mr. McKenzie's concerns, OPCA believes that, if Ameritech were required to reduce the amount of the commissions it pays to location owners, Ameritech may be in a position to offer pay telephone service at the $.25 rate and have its revenues exceed the costs in the middle and high revenue areas (Id. at 31).

With regard to OPCA's argument that commissions should be imputed, staff points out that, because commissions are not telephone services, but are more of a form of rental payments, it could be argued that such commissions should not be included in an imputation calculation (Staff Brief at 39; Tr. XXXX, 79). Contrary to the arguments made by OPCA, staff states that the imputation adjustment does apply to pay telephones, unless it would cause an increase to the coin message rate or a decrease in the rates charged to the COCOT providers. Staff believes that the imputation policy set forth in the stipulation presents an appropriate balance between public policy which requires that pay telephones be accessible to the public and affordable, and the encouragement of competition in the pay telephone market (Staff Brief at 38). Staff recognizes that no study has yet been conducted to determine if the pay telephone services of Ameritech would pass the imputation test (Tr. XXXX, 40). Therefore, staff contends that, for Ameritech to fulfill its obligation to provide pay telephone service at $.25 during the term of the stipulated plan, pay telephone service must be partially excluded from the imputation policy (Staff Brief at 39).

In addition, OCC states that the "maintenance of the $.25 coin pay phone rate is a cornerstone of the state policies of furthering the availability of adequate basic local exchange service, just and reasonable rates, rate stability and universal service." Therefore, OCC believes that the exclusion of the pay telephone services from the imputation policy, to the extent that it would cause the coin message rate of $.25 to increase, is reasonable (OCC Brief at 25). Likewise, Ameritech states that the public interest in the existing message coin rate, along with the fact that commissions are rental payments rather than regulated services, explains why no changes in the present policies attributed to pay telephone services were made by the stipulating parties (Company Reply Brief at 54).

The Commission believes that, as pointed out by OCC, there are some important public policy considerations which must be taken into account in reviewing the applicability of the imputation policy to local public/semi-public coin messages. Part of our determination as to whether the stipulation meets the policy of the state to promote diversity and options includes the consideration of the availability of telecommunications service to all segments of society, not just by competitors which are not local exchange companies, but by the local exchange companies as well. This interest is balanced by the fact that, as staff points out, the stipulation does apply the imputation policy. Thus, this policy should work to prevent the company from deploying its payphones below cost for the purpose of destroying competition. Nothing in the stipulation, as adopted herein, precludes OPCA from filing a complaint pursuant to Section 4905.33, Revised Code. By applying the imputation policy to the coin message rate, insofar as it maintains the $.25 coin rate, the Commission believes that the stipulation satisfies the necessary public policy objectives.

With regard to the reductions of the commissions paid by Ameritech to location owners, the Commission notes that Ameritech's testimony on this issue acknowledges the need to impute commissions, while its brief took an opposite position. Because of these ambiguities, we determine that the issue was not adequately addressed by the stipulation and the record. In fact, we believe that this issue is better resolved within the context of a proceeding wherein all stakeholders, including location owners, would have an opportunity to comment. We are approving the stipulation conditioned upon our ability to revisit this issue in a complaint case or other vehicle.

c. The 18-Month Exclusion of Access Charges:

Included in the imputation methodology contained in the stipulation, is an exception which permits Ameritech to exclude the revenues and costs associated with message toll traffic which originates outside of Ameritech's service territory for a period not to exceed 18 months from the effective date of the stipulated plan (Jt. Ex. 1, Ex. D, at 3).

The IXC Coalition and MCI maintain that the problem which triggered this provision occurred because, in December 1993, Ameritech chose to deaverage its message toll service rates into Schedule A and Schedule B rates in order to cover the higher access charges levied on Ameritech by its secondary carriers (IXC Brief at 35). However, because Ameritech has not charged the higher Schedule A rates to most of the secondary carriers and most of those secondary carriers have not lowered the access charges they levy on Ameritech, the message toll service deaveraging had the effect of lowering all of Ameritech's toll rates without an actual decrease in the cost of access paid by Ameritech to the secondaries (Tr. XXXX, 168).

The IXC Coalition and MCI point out that the IXCs also have to pay the higher access charges to the secondary carriers. However, the IXCs contend that their higher toll rate schedules could not possibly compete with Ameritech's underpriced Schedule B rates. The IXCs advocate that the imputation policy approved by this Commission should not permit Ameritech to continue this "anticompetitive" practice of underpricing its toll service for another 18 months, thus forcing the IXCs to absorb costs in order to compete. Rather, this problem should be addressed by requiring the secondary carriers to lower their access charges (IXC Brief at 36).

Staff witness Montgomery states that, while he has neither performed nor seen an imputation test for Ameritech's Schedule B message toll service rates, those Schedule B rates which are currently being charged to secondary carriers would, in all likelihood, not pass the imputation test. The result of this possible deficiency would be that Ameritech would either have to charge its secondary carriers the higher Schedule A message toll service rates or the secondary carriers would have to lower the access charges levied on Ameritech (Tr. XXXX, 130). Mr. Montgomery points out that this 18-month time period is provided for the benefit of the secondary carriers to Ameritech and their customers (Id. at 134). This time would permit the necessary adjustments in rates to be made so that the prices for toll service would be able to pass the imputation test (Staff Brief at 36).

Upon consideration of this limited 18-month exclusion of the revenues and costs associated with message toll service traffic originating outside of Ameritech's territory, we find that both the record and sound public policy support this provision. We believe that permitting the company to deaverage its message toll service rates was a significant event in adherence to the policy of promoting diversity and options in the market. The next event we are striving for is to ensure that, in accord with the state policy, those customers of the secondary carriers receive service at fair and reasonable rates. In order to permit enough time for these two policies to balance out, we believe that the 18-month exclusion in the stipulation is justified and reasonable. During this time period, the Commission expects both Ameritech and its secondary carriers to work with the staff to resolve this issue.

d. Imputation Policy Process:

The stipulation provides that, if Ameritech proposes to apply the exception methodology, it must notify the staff and other interested parties at the time it provides its cost support documentation to the staff.[10] The stipulation further provides that, until Ameritech and the staff agree upon the guidelines for the application of the exception methodology, the company is to pro-

10. The Commission notes that we interpret this notice provision contained in Exhibit D, IV(B)(2) to mean that notice will be provided whenever IV(B) is invoked.

vide the specific information required for the standard imputation methodology as set forth in the stipulation. With regard to the imputation policy review process, interested parties are permitted to file written comments with the staff requesting a review of Ameritech's use of the exception methodology. Furthermore, within 30 days following either Ameritech's reduction in rates for a competitive service subject to this policy, or increase in the price of a noncompetitive service which is used in the imputation test, other providers may file objections to the price change on the basis that such change is in violation of the imputation policy (Jt. Ex. 1, Ex. D, at 2-3).

The IXC Coalition and MCI advocate that the Commission adopt an imputation policy that would balance the interests of all affected parties and be subject to verification by the affected parties (IXC Brief at 39). The IXC Coalition states that the process contained in the stipulation for application of the imputation methodologies does not provide adequate safeguards to ensure that the adjustment is properly applied (Id. at 37).

Furthermore, the IXC Coalition and MCI aver that the process for reviewing the imputation methodology used by Ameritech places an insurmountable burden on the parties who would be affected by anticompetitive pricing to successfully challenge an invalid adjustment. These IXCs are concerned that, although interested parties may be given notice if the company decides to invoke the exception methodology for use in pricing its product, the price change will have already gone into effect before the staff has had a chance to actually review the adjustment to the standard methodology and the basis provided by Ameritech for utilizing the exception. The IXCs point out that it is left solely to the staff to review and verify the company's LRSIC and imputation adjustment during the brief time, 0 to 30 days, that the staff is given to review the documentation before the effective date of a service or contract. Interested parties on the other hand will receive no advance notice that a LRSIC study is being provided to the staff and are left with a 30-day window after the effective date of certain price changes to file objections with the Commission (Id.).

In view of their concerns, the IXCs advocate that the imputation methodology be simplified, that a procedure for advance notice of tariff filings be developed, and that an adequate review period be provided before a price becomes effective (Id. at 38). Furthermore, the IXCs point out that the process approved in the Cincinnati Bell case includes interested parties in the verification process and provides for a notification procedure pursuant to which parties are given advance notice that LRSIC studies are to be submitted to staff (Id. at 40).

As for the concern that the 30-day time period afforded the staff for review of the company's LRSIC and imputation studies is too brief, Ameritech points out that the LRSIC methodology to be employed pursuant to the stipulation is well known and has been reviewed by the staff for years (Tr. XXXXI, 28; Company Reply Brief at 50). In the company's view, the imputation policy set forth in the stipulation is workable from the staff's perspective as evidenced by the staff's agreement in the stipulation (Id. at 50-51).

Upon consideration of the concerns raised by the IXCs regarding the process of reviewing the imputation methodology, the Commission concludes that their concerns have been adequately addressed with the modifications and clarifications outlined in this order. As stated previously, we will be strictly scrutinizing the methodology applied by Ameritech and, in those situations where Ameritech requests application of the exception methodology, it will be subjected to a heavy burden of proof. It is clear that, when carrying out its regulatory responsibilities, the staff can require the company to provide imputation studies, for good cause, and the Commission will be the enforcer of the imputation policy. The Commission is confident that the staff is more than capable of rising to the challenge of reviewing the submitted documentation in the time frame provided in the stipulation. Furthermore, we believe that, by permitting this review process, we are furthering the policy mandate conferred upon us by the statute.

As a final matter, we would note that there has been some mention of the provision in the stipulation which states that issues such as the imputation methodology shall not be relitigated within the context of the upcoming generic proceeding dealing with competitive issues. We note, however, that Ameritech is free to seek amendments to the stipulated plan as a result of the outcome of the generic proceeding. These two provisions are not symmetric. We concur with Ameritech that automatic relitigation of these issues 18 months from now is not fair to the company. However, because of the rapidly changing nature of the telecommunications industry, no review of the imputation policy and its implementation over the term of the plan is not in the public interest. Thus, we reserve the right to review and modify the policy, if necessary, during the term of the plan to ensure that it continues to meet the policy objective of promoting diversity and options in the telecommunication market. We will not reopen this issue lightly. We will do so only when we conclude it is required to serve the public interest.

3. Depreciation:

Pursuant to the stipulation, during the term of the stipulated plan, the Commission will not prescribe or oversee the depreciation rates utilized by Ameritech for its financial books and records. However, the stipulation provides that Ameritech is not, for financial books and records, to depreciate its plant and equipment at a rate less than the rate at which such plant and equipment is currently depreciated. In addition, the Commission retains the authority to reject or modify the depreciation rates used by Ameritech in its LRSIC studies (Jt. Ex. 1, at 64).

Time Warner takes exception to this part of the stipulation stating that the depreciation for regulatory accounting purposes should not be considered at the discretion of Ameritech's management (Time Warner Brief at 87). Time Warner points to the staff report in support of its argument that some Commission oversight of the depreciation expense is necessary in the future in light of the fact that the pricing of services will be based on cost studies which will include depreciation expense. Furthermore, if the plan is approved, Time Warner agrees with the staff in its report that some method would need to be established in order to hold captive customers harmless should the company return to traditional rate regulation in the future (Id.; Staff Report at 9-10). Time Warner argues that, in keeping with Dr. Selwyn's recommendation, at the commencement of the plan, the composite depreciation rate should be fixed at current levels. While investments made subsequent to the adoption of the plan would typically be made pursuant to the new depreciation rules, the lives of the investments could not be modified, unless the company decides to do so in response to unanticipated changes in the market of a technological condition, at which time it could do a post-adoption capital budget analyses. However, any such write-off or write-down of plant would be carved against the shareholders earnings (Time Warner Ex. 3, at 60). In Dr. Selwyn's view, his depreciation recommendation would prevent Ameritech from using depreciation as a device to either transfer recovery costs to its captive customers in order to support new plant acquisitions which are motivated by competitive services or effectively eliminate excess earning by raising depreciation rates and flowing the excess earnings into more rapid capital acquisition. Due to these potential abuses, Dr. Selwyn advocates that depreciation rates remain subject to the Commission's regulatory review (Tr. XXVII, 20, 33).

The Commission finds Time Warner's concern on this issue to be without merit. The stipulated plan does provide for the review of the depreciation rates within the context of Ameritech's LRSIC studies. We note that excessively accelerated depreciation practices adopted by the company may well work to the company's disadvantage either at the time the plan is reviewed for renewal purposes or in the event the company chooses to return to traditional rate base, rate-of-return regulation of prices, because the Commission, at that time, may choose to determine net plant in service on a book basis yet determine depreciation expense on a service lives basis, due to the fact the company elected to break the traditional linkage between depreciation expense and service lives. Accordingly, we believe that this provision is not unreasonable or contrary to the policy of the state.

4. Cross-Subsidization and Separate Subsidiaries:

Ameritech agrees in the stipulation that, at the time it decides to offer electronic publishing service in any manner other than a fully separate subsidiary, it will provide the staff and other interested entities with certain information in order to demonstrate that such unregulated service is not cross-subsidized by Ameritech's regulated services. In accordance with the stipulation, that information includes Ameritech's procedures for: complying with the FCC's Part 64 cost allocation rules to ensure that the costs are appropriately allocated to the unregulated services; ensuring that all tariffed Cells 1 through 3 services utilized in the provision of the unregulated services are charged at the same rate as would apply to other similarly situated customers; complying with all FCC restrictions and safeguards on the company's use of Customer Proprietary Network Information (CPNI) for marketing the unregulated services; and ensuring compliance with the FCC's requirements to provide other service providers access to Ameritech's network services on a nondiscriminatory basis. In addition, the stipulation provides that neither the Commission's authority to initiate an investigation if electronic publishing is provided, nor an entity's right to raise allegations on cross-subsidization in a complaint case before the Commission are limited by this provision (Jt. Ex. 1, at 80-81).

ONA argues that the stipulated plan offers no effective safeguard to the cross-subsidization of Ameritech's unregulated businesses by its regulated business. Thus, ONA is concerned that the stipulated plan would permit Ameritech to divert its regulated financial resources to benefit its unregulated business, such as electronic publishing. In addition, ONA believes that Ameritech could, in a discriminatory manner, limit competitor electronic publishers from selecting the most effective network service elements for their information services (ONA Brief at 1). ONA fears the risks of possible predatory or strategic pricing which may occur if Ameritech is permitted to bundle its regulated telephone conduit service with its unregulated information content service within a single company (Id. at 13).

For various reasons, as set forth in its brief and the testimony of Mr. Hatfield, ONA believes that the FCC Part 64 cost allocation rules are largely ineffective and would be of no consequence under the stipulated plan (Id. at 2; ONA Ex. 1). First, ONA states that, in accordance with the stipulation, Ameritech would provide only its FCC Part 64 separation procedures for the company as a whole and that there would be no service-specific procedures provided. Second, the FCC's joint cost rules address FCC costs and service and not the allocation of costs among intrastate services. Third, the FCC Part 64 procedures, according to ONA, are obsolete and incapable of protecting against misallocation of new technology. Fourth, the company will not be providing the cost or pricing numbers for separating electronic publishing, thus, there will be no demonstration that the price covers the cost of the service. Fifth, ONA maintains that, without earnings regulation, mere separation procedures are meaningless. Finally, ONA avers that an after the fact complaint procedure on the issue of cross-subsidization, in which either the Commission or the complainant, and not Ameritech, would bear the burden of proof, is inadequate (ONA Brief at 8-10; ONA Ex. 1, at 10-11).

In ONA's view, the only effective way to safeguard against the threat of cross-subsidization in this context is to impose structural separation criteria upon Ameritech. By requiring Ameritech to provide unregulated electronic publishing through a fully separate affiliate, ONA avers that "the Commission could more easily and effectively address the issues of cross-subsidization and discriminatory access" (ONA Brief at 3). ONA argues that there are few, if any, economies of scope by providing both regulated monopoly telephone conduit service and unregulated electronic information content (Id. at 19). ONA views the separate subsidiary requirement as diminishing both the possibility for predatory or strategic pricing and discrimination (Id. at 18). In its brief, ONA sets forth separate affiliate language which it recommends that the Commission employ in this case regarding Ameritech's provisioning of electronic publishing services (ONA Brief, Attach. 1).

OCTVA is concerned that a new unregulated service which is introduced by Ameritech during the term of the plan may be subsidized by Ameritech's regulated service. To resolve this concern, OCTVA witness Hunt, recommends that Ameritech periodically perform a Federal Communications Commission (FCC) Part 64 separations study and then adjust the price caps or other regulated service rates to reflect the results of the study (OCTVA Ex. 4, at 5). While the stipulating parties have agreed to provide this type of information with regard to electronic publishing, OCTVA points out that this provision of the stipulation does not apply to Ameritech's other unregulated services, such as video service (OCTVA Brief at 46; Jt. Ex. 1, at 80).

Similarly, OPCA witness Meister states that the only appropriate remedy to ensure full competition in the pay telephone market is to require Ameritech to maintain a separate subsidiary along with full imputation of costs. Mr. Meister states that, as an interim measure prior to the creation of a separate subsidiary, imputation, and unbundling, the Commission should require Ameritech to provide a flat-rate pay telephone plan which would be available to all COCOT providers, and that Ameritech should file a standard commission schedule with the staff and eliminate commissions from locations where the average annual revenues are less than their operating cost (OPCA Ex. 4, at 10). However, if the Commission focuses on nonstructural safeguards to competition, then OPCA agrees that the staff's recommendation which advocates the establishment of a new public pay station service and a pay phone plan for a pay station line rate would be a good starting point to ensure that competition in the COCOT industry ensues (Staff Report at 81-82; OPCA Brief at 6). In response to the argument in favor of a separate subsidiary for pay telephone services, staff maintains that no such separation is necessary because sufficient safeguards are currently in place (Staff Brief at 39).

In response to ONA's concern in this area, Ameritech points out that the stipulation provides that, at the time Ameritech proposes to provide electronic publishing, the Commission will have the opportunity to decide whether the ONA-type separate subsidiary should be required. Since Ameritech has no current plans to provide electronic publishing and, in fact, it may never provide that service, the company does not believe that the Commission needs to make a decision in the context of these cases regarding ONA's separate subsidiary issue (Company Brief at 81). Ameritech also points out that ONA witness Hatfield essentially agreed that there are certain services which he would classify as electronic publishing services which would not require a separate subsidiary. In fact, Mr. Hatfield states that he would need more information about the service before he could determine whether it would be economically efficient to provide the service through a separate subsidiary (Company Reply Brief at 71; Tr. XXXXVI, 288, 290-291). Ameritech believes that the notice requirements pertaining to its provision of electronic publishing, as set forth in the stipulation, affords interested persons sufficient time in which to raise their issues and have them resolved (Company Brief at 81).

The Commission believes that its staff has attempted to deal with this difficult issue as best it could in the stipulation. The stipulation sets forth a process in which certain information is provided prior to the implementation of the electronic publishing service. Nevertheless, the stipulation would allow the company to enter into the electronic publishing business without awaiting a Commission order and leaves open the possibility for the company to even challenge the Commission's jurisdiction over this issue. We find merit in the argument raised by ONA that, if the Commission were to ultimately determine that a separate subsidiary was appropriate for the intrastate portion of this service, then this could only be ordered after the company would have already arranged its business otherwise. The burden of proof would have shifted to ONA or the Commission staff at that point, which is antithetical to the burden of proof requirements embodied in Chapter 4927 of the Revised Code. Moreover, this after the fact approach would lead to unnecessary litigation and the potential for many wasted dollars by the company which could be avoided if a more clear resolution of this issue were made up front. We note that Section 4927.03(C) of the Revised Code, precludes the Commission from conveying any undue benefit or advantage upon a company by stating that we may "prescribe different classifications, procedures, terms, or conditions for different telephone companies and for the public telecommunications services they provide, provided they are reasonable and do not confer any undue economic, competitive, or market advantage or preference upon any telephone company." To shift the burden of proof in this way would create just such an undue benefit or advantage to Ameritech.

In resolving this difficult issue, the Commission also takes administrative notice of certain statutes in other states, as well as a recent decision of the Ninth Circuit Court of Appeals, which is relevant to our decision on this issue. See California v. FCC, 1994 U.S. App. LEXIS 29001 (9th Cir. 1994) (California III). We note that, in two other states served by Ameritech, Illinois and Wisconsin, the legislatures mandated (with Ameritech's apparent agreement) the creation of separate subsidiaries for electronic publishing service (Company Ex. 125; Wis. Stat. Section 196.204(7)(a) (1993); and Ill. Rev. Stat. ch. 111 2/3, Sec. 13-508.1). Ameritech has provided no rational reason why these protections provided to the newspaper industry and ratepayers in Wisconsin and Illinois should not be equally afforded to the Ohio newspaper industry and Ohio ratepayers. Moreover, we note that the Ninth Circuit Court of Appeals in California III vacated the FCC's order in Computer III, FCC Docket No. 85-229. In California III, the court reversed the FCC's Computer III position in favor of accounting protections only. Thus, the FCC order requiring separate subsidiaries, although not binding on this Commission, is presently in effect as to interstate services of this kind.

Because of Ameritech's failure to distinguish the protections provided in Illinois and Wisconsin, along with the compelling arguments raised by ONA in this record and the recent California III decision, we feel that some additions to the stipulation provisions on this point need to be made to reconcile and harmonize these competing issues. Accordingly, we will require, as an interim measure, that Ameritech may not provide electronically published news, feature, or entertainment material of the type generally published in newspapers or offered in a broadcast service, or electronic advertising service, except through an electronic publishing subsidiary or affiliate; however, Ameritech may resell, without editing, the content, news feature, or entertainment material of the type generally published in newspapers that it purchases from an unaffiliated entity or from a separate subsidiary to the extent that the separate subsidiary makes that material available to all other persons under the same rates, terms, and conditions.

The above caveat does not void the stipulation procedure. Rather, the above requirement is in effect pending the review by the Commission in the separate proceeding contemplated by paragraph 44 of the stipulation addressing this subject. In that proceeding, the Commission may alter these requirements by not requiring a separate subsidiary, or may add additional protections requested by ONA or others based on the record before it at that time. Thus, the company may enter the electronic publishing business today subject to the above requirements, but may seek relief from these requirements <u>before</u> going into this business by seeking an order of this Commission after the filing of the information contained in paragraph 44 of the stipulation. By the same token, ONA can address additional issues or seek additional protections at that time.

The limited requirements set forth herein are consistent with the court's decision in <u>California III</u> and are not preempted by FCC decisions in this area. We also note that our requirement is modeled after those issued in Wisconsin and Illinois with the company's approval. The Commission intends to review the necessity of this separate subsidiary requirement upon issuance of a final FCC order on the subject, which is sustained on appeal, or as a result of Congressional action. The company should keep ONA and the Commission informed on developments in this area and may petition this Commission for relief from this requirement based on such action. The Commission will, at that time and after hearing from all affected parties, decide whether this requirement should remain. The Commission directs Ameritech to meet with the staff sufficiently prior to initiation of the electronic publishing service so that the details of this separate subsidiary can be further determined. The Commission notes that nothing in the stipulation or order should be construed as limiting the staff's or the Commission's authority to conduct audits or investigations of the company's regulated/nonregulated allocation methodology under FCC Part 64 or the resulting computations, and to make appropriate remedial accounting orders. We also note that Rule XVII of the alternative regulation rules is incorporated into this stipulation by reference. The Commission considers this interim measure necessary to ensure that, prior to the proceeding contemplated by the stipulation, Ameritech does not engage in an unregulated information service business that is subsidized by the company's regulated operations.

As a final matter, the Commission notes that both OCTVA and OPCA have also called for the creation of separate subsidiaries for various competitive services. Nothing in this order precludes Commission review of this subject in the context of the generic proceeding. Nevertheless, as ONA notes, electronic publishing is one of the few services where both content and conduit would be combined under one entity. The mixing of content and conduit does not carry with it the natural efficiencies of operation that have been traditionally the basis for regulatory bodies not requiring separate subsidiaries. Thus, although we are not precluding this requirement in other areas, we do not feel the record in these other areas is sufficiently developed to mandate, at this time, the requirement of separate subsidiaries for other services. Rather, this issue can be explored further in our generic docket.

5. Generic Docket on Competition and Local Franchise Issues:

Pursuant to the stipulation, issues pertaining to intraLATA usage subscription and local competition will be investigated in a generic proceeding to be initiated by the Commission within 30 days of the effective date of the stipulated plan. The stipulating parties targeted the completion date of the generic investigation to be 18 months from the date that stakeholders are served notice of the generic proceeding and the scope of the issues contained therein. As set forth in the stipulation, the issues to be addressed in this proceeding include, but are not limited to: usage subscription; local exchange service certification; consumer protection; universal service and recovery of any subsidies; network unbundling and resale of components; end office integration, interconnection, and standards; number assignment; number portability; compensation between providers; linkage with interLATA relief; and financial impact and risk to the local exchange companies. Furthermore, the parties to the stipulation agree that only such issues specifically and expressly resolved in the context of these proceedings, such as minimum price floors, carrier access price levels, imputation, and cell classifications, will not be relitigated in the generic proceeding. In addition, Ameritech agrees, pursuant to the stipulation, not to oppose the certification of alternative basic local service providers, either in Commission proceedings or in appeals of the Commission's decisions, on the basis that Ameritech has an exclusive franchise to provide basic local exchange service in its service territory (Jt. Ex. 1, at 68-70).

The stipulating parties agree that the Commission will support the elimination of the federal restrictions currently imposed upon Ameritech's provision of interLATA service under certain conditions. Those conditions include the requirements that: Ameritech's network is made available for purposes of dedicated and switched services on an unbundled, nondiscriminatory, and just and reasonable basis to local exchange service competitors; and that Ameritech provides for the appropriate structural and nonstructural safeguards (Id. at 71).

The IXC Coalition, MCI, and AT&T state that the stipulation fails to address the elimination of the barriers to competition as identified by the staff and other intervenors on the record in these cases. Rather, these intervenors complain that the stipulation defers the intraLATA 1+ dialing presubscription and local competition issues to a Commission-initiated, industry-wide generic proceeding (AT&T Brief at 29; IXC Brief at 6-7).

While the IXC Coalition and MCI accept the possibility that some additional company-specific proceedings might be necessary in regard to resolving some of the local competition issues, they point out that no witness testified on the record in these cases that further hearings were required in order to determine if these barriers should be eliminated (Id. at 7). In addition, Time Warner states that the stipulation neither promotes competition nor recognizes the continuing emergence of competition pursuant to the Ohio Revised Code because it does not find competition to be in the public interest, find that barriers to competition should be eliminated, or establish dates by which such barriers should be eliminated (Time Warner Reply Brief at 34). Dr. Selwyn points out that there is absolutely no assurance that the competitive barriers will actually be removed (Time Warner Ex. 3A, at 20).

In addition, the IXC Coalition and MCI point out that, while Ameritech promises that it will fully cooperate in the expeditious resolution of the generic docket, the company did not promise to not oppose the elimination of the barriers to competition. The IXC Coalition, MCI, OCTVA, and Sprint agree that the elimination of the barriers to competition should be a condition precedent to the Commission's granting Ameritech its request for an alternative form of regulation (IXC Brief at 6-7, 43; OCTVA Brief at 37; Sprint Brief at 7). According to Time Warner witness Selwyn, unless approval of Ameritech's alternative regulation plan and its attendant pricing flexibility is withheld until the barriers to competition are eliminated, Ameritech will have no incentive to cooperate in the generic proceeding (Tr. XXXXVII, 92). Time Warner asserts that "deferral of the competitive issues to a generic proceeding is against the public interest" (Time Warner Brief at 50).

Similarly, OPCA avers that no pricing flexibility should be afforded to Ameritech-provided public pay telephones until appropriate safeguards, such as imputation and unbundling, are in place (OPCA Brief at 4). OPCA points out that Ameritech does not provide unbundled services to COCOT providers and that the current unbundled rate structure contributes to the potential for the company to price squeeze. Furthermore, the fact that Ameritech only offers a message rate calling plan has eliminated competition on pay telephones that do not provide average revenues (Id. at 16-17). Should Ameritech be permitted to go forward under the stipulation without imputation and unbundling safeguards, OPCA maintains that significant damage to the level of competition in the public pay telephone market could occur (OPCA Ex. 1, at 32; OPCA Brief at 4).

The stipulation provides that the rate for nonresidence and residence local exchange access line service will be disaggregated into two rate elements, namely a network access line and a central office termination (Jt. Ex. 1, at 26). Ameritech witness McKenzie agrees that this disaggregation is a type of unbundling (Tr. XIX, at 269). Therefore, on brief, Time Warner questions why, if Ameritech is able to unbundle this portion of the local loop, it can not likewise do so for other components of the local loop (Time Warner Brief at 92).

The IXC Coalition and MCI disagree with the concerns expressed by Ameritech witness McKenzie that the intraLATA 1+ dialing issue must be considered within the context of a generic case because it will impact entities which are not parties to this case, as well as the ORP/SCO arrangement between the local exchange carriers which was established by the Commission in Case No. 83-464-TP-COI(Subfile C) (Tr. XXXXVI, 264-265; IXC Brief at 44). Rather, the IXC Coalition and MCI argue that the ORP/SCO arrangement comes in to play only when a secondary carrier must rely upon a primary carrier to carry its toll traffic. Therefore, they state that the implementation of intraLATA 1+ dialing presubscription in Ameritech's service territory would not effect ORP/SCO (Id.).

With regard to Ameritech's agreement in the stipulation that it will waive its exclusive franchise claim, such a waiver, in Time Warner's view, does not obligate Ameritech to waive its opposition to potential competitors on other grounds. Furthermore, Time Warner points out that the Commission in past orders has already effectively rejected Ameritech's assertion of a local franchise right (Time Warner Brief at 46). See Time Warner AxS of Western Ohio, L.P., Case No. 93-1370-TP-ACE, Order on Rehearing (March 10, 1994), and Time Warner AxS of Northeast Ohio, L.P., Case No. 93-2069-TP-ACE, Entry on Rehearing (May 4, 1994).

AT&T objects to the portion of the stipulation which states that certain issues addressed by the stipulation, such as minimum price floors, carrier access price levels, imputation, and cell classification, shall not be relitigated in the generic proceeding. In AT&T's view, these issues are directly related to the promotion of competition and, by eliminating these issues pertaining to Ameritech from the generic proceeding, the potential of addressing competition in a meaningful way in the generic will be severely hampered (AT&T Brief at 32). The IXC Coalition and MCI join in AT&T's concern that the imputation methodology agreed to by the signatory parties is not subject to review in the generic docket pertaining to competition during the term of the stipulated plan (IXC Brief at 7). Furthermore, Time Warner expresses concern that, if the Commission does order removal of barriers to competition in a generic proceeding, Ameritech has the ability pursuant to the stipulation to seek an amendment to the plan (Tr. XXXXVI, 185; Jt Ex. 1, at 72). Included among those portions of the stipulated plan which Time Warner alleges could be amended are the commitments, funding for community computer centers, the imputation standard, the section on intraLATA and competition issues, and the requirement for performance of fully distributed cost studies (Time Warner Brief at 48).

Time Warner believes that the section of the stipulation which states that the Commission will support the removal of the interLATA service restriction which currently applies to Ameritech is not in the public interest (Jt. Ex. 1, at 70-71; Time Warner Brief at 57). In Time Warner's view, the issues pertaining to interLATA relief for Ameritech have serious competitive and public policy implications and there should be no reason to delay the opening up of the local exchange market, even if Ameritech is not granted interLATA relief. Furthermore, Time Warner asserts that, when the Commission evaluates Ameritech's request for support of the lifting of the interLATA restrictions, the Commission should also evaluate the extent to which Ameritech has made actual progress in eliminating its control over the local bottleneck and not future promises by the company for such action (Time Warner Brief at 57-58).

OCC points out that, contrary to the viewpoints of many of the nonsignatory parties, neither Section 4927.02, Revised Code, nor the Commission's alternative regulation rules require that any particular competitive issue must be resolved prior to the Commission's approval of a company's alternative regulation plan (OCC Brief at 50). OCC submits that neither Title 49 nor Chapter 4927 of the Ohio Revised Code were enacted to protect the corporations which are the nonsignatory parties in these cases. Rather, the laws were enacted to protect their customers, whom the signatory parties represent (Id. at 35). Furthermore, OCC believes that the stipulation represents a move toward a pro-competitive policy (e.g., price cap, cell classifications, imputation, LRSIC, cell pricing rules, the future generic proceeding, Ameritech's waiver of its local franchise, and restrictions for Ameritech's provision of electronic publishing (Id. at 51-53). OCC maintains that the issues to be addressed in the generic proceeding are more effectively and equitably addressed within the context of a state-wide proceeding (Id. at 51). OCC points out that at least two of the nonsignatory parties, MCI and AT&T, in their objections to the staff report, requested that the Commission initiate a separate docket to consider the local competition issues (Id. at 57; AT&T Objection 10 and MCI Objection 11). AT&T goes so far as to submit that "the importance and complexity of these (local competition) issues mandate their coverage in a separate docket, or in a second phase of the existing docket" (OCC Brief at 57).

In support of the generic proceeding, staff points out that such a proceeding will provide a broader forum to address issues, such as compensation between providers, which are best handled in a proceeding involving all local exchange carriers. Furthermore, in the context of the generic proceeding the Commission could, in fact, order the implementation of the milestones set forth in the testimony of staff witness Potter should this result be found to be appropriate. However, staff points out that the issues set forth in the stipulation which are to be addressed in the generic are not all inclusive and that the actual docket will in all likelihood be much broader than the milestones espoused by staff in testimony (Id. at 41-42).

With regard to the intraLATA 1+ dialing concern of the IXCs, OCC argues that the Commission has not found, based on the record it had before it, that the lack of intraLATA 1+ dialing is equivalent to inadequate service. See Allnet Communications, Inc. v. The Ohio Bell Telephone Company, Case No. 86-771-TP-CSS, (April 15, 1993). Furthermore, OCC argues that the fact that the intraLATA 1+ dialing was approved by the Commission in two previous alternative regulation cases does not mean that the IXCs have any right to intraLATA 1+ dialing which would be substantial enough to justify the Commission's rejection of a stipulation which does not provide for the provision of intraLATA 1+ dialing (OCC Brief at 54). Furthermore, Ameritech points out that the Cincinnati Bell and Western Reserve cases are distinguishable from these matters because Western Reserve is a secondary carrier and Cincinnati Bell is not constrained by federal interLATA restrictions. In addition, while the IXCs did present evidence in these cases as to their view on the merits of intraLATA 1+ dialing, none of them attempted to quantify the implementation costs (Company Reply Brief at 62). Furthermore, OCC argues that the IXCs have failed to show on the record the extent to which intraLATA 1+ dialing would benefit the end user customers (OCC Reply Brief at 43). The company maintains that Ms. Hermerding's testimony supports the decision to maintain the existing dialing arrangement until Ameritech is free from the interLATA restriction (Company Brief at 63). Furthermore, contrary to the praise afforded by the nonsignatory parties in these cases to the Western Reserve and Cincinnati Bell alternative regulation stipulations and orders, OCC points out that, not all of the competitive issues which the nonsignatory parties submit must be resolved in these cases were resolved in the two prior alternative regulation cases (OCC Reply Brief at 38).

Ameritech, in response to OPCA's argument that no pricing flexibility should be afforded the company absent implementation of imputation and unbundling because COCOT providers can not now effectively compete, believes that this argument is an attempt by OPCA to resolve all contested issues in this area in favor of the COCOTs. Ameritech points out that the stipulation contains provisions which substantially benefit the members of the OPCA and, therefore, the stipulation is sufficient and represents a reasonable balance between the positions of OPCA and Ameritech (Company Brief at 56).

Ameritech explains that the ORP/SCO contracts were developed on the basis of primary toll carriers. Thus, if intraLATA 1+ dialing were implemented, that basis would change and so would the ORP/SCO contracts (Company Reply Brief at 63). Furthermore, Ameritech points out that AT&T witness Johnson recommends in her testimony that the ORP/SCO arrangement should be re-examined (Id. at 79; Tr. XXXIX, 140). Ms. Johnson goes on to state that, while AT&T is not opposed to moving those issues pertaining to the elimination of the barriers to competition along, AT&T believes that "all parties should have an opportunity to be involved in reviewing these issues" (Id. at 132-133). AT&T's recommendation for a generic proceeding dealing with competitive issues was further supported by AT&T witness Dietsch, who testified concerning unbundling (Tr. XXXVI, 151).

Ameritech responds to criticism by Time Warner that, even though Ameritech has promised not to oppose applications for certification on the ground of local franchise, Ameritech still has the right to challenge applications for local exchange services on a basis other than local franchise, by stating that "a party cannot reasonably be expected to agree in advance not to challenge a service application no matter what it proposes for terms and conditions". Ameritech maintains that it is too much to ask that the company state now that an application, regardless of its content, is in the public interest and should be granted (Company Reply Brief at 61).

Ameritech recognizes the arguments against the provision in the stipulation that the issues therein listed that are specific to the company and the stipulated plan may not be relitigated. However, Ameritech points out that there are other aspects of the plan that are not specifically addressed and that are generic to the industry which are specifically subject to the provision in the stipulation that provides for flexibility to accommodate changed circumstances for the company (Id. at 64).

Initially, we would point to our disagreement with Time Warner's argument that the stipulation neither promotes diversity nor recognizes the continuing emergence of competition in Ohio. Some of the concerns expressed by Time Warner and the other non-signatory parties center around the concern that the stipulation itself does not explicitly state that the barriers to competition recognized by the staff in its report and testimony filed in this case should be eliminated. Rather, they are concerned that the stipulation seems to leave open the inquiry as to if the barriers to competition should even be eliminated. Perhaps part of the reticence of the stipulation on this point has to do with the fact that the question of if the barriers to competition should be eliminated is a policy question on which only the Commission can make a final determination. The Commission fully embraces the concept of competition in the telecommunications market and we agree with the position taken by the staff in its report and testimony that the unreasonable barriers to competition should be eliminated as quickly as possible. As we have stated in previous orders, and once again reaffirm in this order, we believe that it is in the public interest that reasonable and fair competition be promoted in the state of Ohio with all deliberate speed.

The Commission does not find it incongruous to point out at this juncture that even AT&T witness Johnson recognizes that, to the extent the conditions necessary to allow for the development of local exchange competition are not established pursuant to the order in these cases, those unresolved conditions should be made the subject of either a second phase of these proceedings or a new Commission docket (AT&T Ex. 7, at 3). From this statement made by an intervenor competitor witness, it is obvious that there was some acknowledgment of the complexity and far reaching effects which the issues to be the subject of the generic proceeding will have, not only on Ameritech, but on all telecommunications providers in the state.

Furthermore, the Commission disagrees with the assertions made by the IXC Coalition and MCI that the ORP/SCO arrangements between the LECs would not be affected by the implementation of 1+ intraLATA presubscription in Ameritech's territory. We believe that, as competition evolves and more of the market is opened up to new entrants, both in the intraLATA and the interLATA markets, there is a very real possibility that the ORP/SCO arrangements, as well as other access related and compensation issues, will need to be reviewed and revised. To that end, we believe that it is essential that we look at the big picture on these very vital and important competitive issues and make our decision within the context of a generic proceeding wherein all stakeholders will have a fair and reasonable opportunity to respond to the staff's recommendation.[11]

We will be opening a generic docket in the very near future to ensure that all unreasonable barriers to competition in Ohio's telecommunications market be eliminated in as expeditious a manner as possible.[12] In keeping with our determination to expedite the generic docket, we are at this time directing the staff to develop, to the fullest extent possible, a recommendation to be presented to the Commission on the as-yet unresolved issues surrounding the elimination of unreasonable barriers to competition. We would expect the staff to consider the evidence presented in this case in formulating staff's recommendation in the generic docket. Furthermore, we expect staff to continue convening informal meetings with all the stakeholders prior to initiating the docket and to share its draft recommendation with them in order to ensure the complete nature of the document before the Commission formally issues it for comment. In this regard, any delays in formally issuing a docket number should not be viewed negatively by the industry, rather it will allow for informal dialogue on these issues with the staff and the Commission. Finally, we would note that the Commission expects Ameritech to be fully cooperative and aid in an expeditious resolution to the generic proceeding. This requirement is found in the stipulation and is a fundamental condition to our continued approval of the company's plan.

Some concern was expressed by OPCA about permitting Ameritech the pricing flexibility absent imputation and unbundling of services to COCOTs. The Commission notes that we will be reviewing unbundling in the generic docket and, to the extent appropriate, we will address OPCA's concern in that context. There was also some concern expressed about the language in the stipulation pertaining to the Commission's supporting the elimination of the interLATA restriction levied against Ameritech. Time Warner

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11. Nevertheless, since the filing of the stipulation, Time Warner has filed an application to provide switched telecommunication services in 37 counties in Ohio. Consistent with approaches taken by our counterparts in other states, including Maryland and New York, certain issues which require company-specific data may be decided in individual cases, rather than in the generic docket. This issue will be decided at a future point in time.

12. To the extent the Commission finds it appropriate, we will consider taking administrative notice of the record in these cases in the generic docket.

should be assured to know that it is our intent to evaluate the extent to which Ameritech has indeed accomplished, to our satisfaction, the preconditions relating to the elimination of various barriers to competition prior to our agreeing to a request by Ameritech for our support in this regard.

The Commission also finds the concern that certain issues resolved in this docket may not be relitigated within the context of the generic proceeding to be unfounded. The Commission has clearly reserved to itself the right to review certain competition issues such as imputation, albeit outside the context of the generic, as detailed above. As we stated previously in response to this same concern as it relates to the imputation policy, the Commission will closely monitor the stipulated plan and reserves the right to modify the imputation policy to ensure that it continues to meet the public policy objectives of promoting diversity and options in the marketplace. To that end, we will use our statutory authority to ensure that the balance between the needs of Ameritech and its customers is maintained. Contrary to the assertions of several of the nonsignatory parties, the fact that these specific issues, as applied to Ameritech, will not be addressed within the context of the generic proceeding should in no way hinder or limit the staff's recommendation. Any review by the Commission will be a consequence of the generic proceeding and/or the development of competition in Ohio. It would be unfair to the company to simply turn around in the generic proceeding and relitigate issues in that already complex proceeding.

Finally, Ameritech has requested a waiver of Rule XI(C) of the alternative regulation rules pertaining to the amendment of the stipulated plan to the extent the stipulation is inconsistent with the rule (Jt. Ex. 1, Ex. I, at 1). Time Warner has expressed a concern over Ameritech's ability to amend its stipulated plan. As with any amendment to a plan presented pursuant to the alternative regulation rules, the Commission will establish the procedures it deems necessary for considering any request to amend the stipulated plan. It is the Commission who will make the final determination as to whether the plan may be amended. In light of this safeguard, we find Time Warner's concern in this regard to be without merit. Therefore, we find Ameritech's request for waiver of the alternative regulation rules pertaining to amendments to the stipulated plan to be reasonable and, therefore, it should be approved only to the extent set forth in Exhibit I to the stipulation.

6. <u>Cellular Interconnection</u>:

In its brief, New Par objects to the failure of the stipulated plan to explain either how cellular interconnection services will be provided pursuant to the plan or what the pricing or costing parameters of cellular interconnection will be. Apparently, during the processing of these cases, New Par was considering the terms of an interconnection agreement offered by Ameritech. Under the original plan, Ameritech was advocating that interconnecting carriers were to be placed in the carrier basket and would be subject to the price cap protection under the federal price cap plan. However, New Par points out that the rates being offered to it by Ameritech in the context of the interconnection agreement were, in some instances, higher than those permitted under the federal price cap plan. If this discrepancy means that the cellular interconnection services are not subject to the alternative regulation rules, are not classified into cells, have no price caps or method of determining the price floors, and are vulnerable to anticompetitive cross-subsidization, then, in New Par's view, the stipulated plan is not in the public interest and should, therefore, be amended (New Par Brief at 3).

Based upon the testimony of Mr. McKenzie and in Ameritech's response to an interrogatory, New Par believes that, while Ameritech states that cellular interconnection services are subject to rate regulation, it is Ameritech's intent that the stipulation not specifically apply to cellular interconnection (Tr. XIX, 211; Time Warner Ex. 22, at response 1[S]). Finally, New Par states that it is not clear from the stipulation whether the issues to be addressed in the generic proceeding concerning competitive issues will address the issue of cellular interconnection services. However, since the stipulation provides that issues resolved in these proceedings, such as minimum price floors, carrier access price levels, imputation, and cell classification will not be relitigated in the generic proceeding, New Par infers that the classification of cellular interconnection services is not a contemplated subject for the generic proceeding (New Par Brief at 8).

New Par avers that some form of rate regulation is essential to the protection of the cellular companies against Ameritech's possible cross-subsidization of its competitive services with the revenues from the interconnection services (Id. at 5). Pursuant to the alternative regulation rules, New Par points out that all services, even those provided via contract, must be part of a company's plan (Id. at 6-7). New Par clarifies, however, that it is not requesting that the Commission set interconnection rates, it is merely asking that the Commission recognize the federal price caps for cellular interconnection rates and, thus, permit the cellular companies and Ameritech to negotiate their interconnection arrangements consistent with the FCC rules for such interconnection (Id. at 4). Finally, New Par suggests that the Commission reaffirm in its order that Ameritech is subject to Sections 4905.33 through 4905.35, Revised Code (Id. at 9).

In response to New Par's concern, Ameritech states that it did not contemplate that the stipulated plan would change the character of the interconnection contracts between the cellular companies and Ameritech. Ameritech contemplates that the contracts would continue to be negotiated between the two parties unless and until such an arrangement is changed by future Commission order. Ameritech points out that the Commission has the authority pursuant to Section 4905.48, Revised Code, to either approve or disapprove these interconnection agreements and, therefore, Ameritech does not believe it is necessary for the Commission to do anything further in this docket on this issue (Company Reply Brief at 57-58).

The staff maintains that this issue is more appropriately addressed in a different forum, such as the upcoming generic proceeding. Furthermore, staff states that, should Ameritech fail to enter into good faith negotiations with the cellular carriers, the cellular carriers are free to file a complaint case pursuant to Section 4905.26, Revised Code (Staff Reply Brief at 13).

The Commission does not believe that the fact that cellular interconnection agreements are not classified in a particular cell to be a fatal flaw of the stipulation. Rather, in accord with the policy of the state, as well as the apparent wishes of the cellular carriers, the cellular interconnection agreements are to be left to negotiations between Ameritech and the individual cellular carriers, pending further review as stated below. This is not to say, however, that Ameritech can charge cellular interconnection rates above its FCC price cap. We are specifically not addressing this issue at this time. Furthermore, the Commission notes that any existing interconnection contracts would remain in effect until new contracts were approved by the Commission.

Since the cellular interconnection issue was not addressed in the stipulation, we believe that this issue is not subject to the prohibition against relitigation of certain issues contained in the stipulation. Therefore, we will be reviewing the issue of cellular interconnection in the generic proceeding. Accordingly, we find that this concern raised by New Par is unfounded. Finally, and as a general matter, the Commission does affirm that nothing in the stipulation precludes our enforcement of Sections 4905.33 through 4905.35 of the Revised Code. The Commission emphasizes that Ameritech is required to treat any affiliated cellular carrier the same as it does any nonaffiliated cellular carrier. Thus, as pointed out by staff, to the extent one carrier believes that another carrier is not negotiating in good faith or is cross-subsidizing, a complaint case may be filed with the Commission.

7. Extended Area Service:

Pursuant to the stipulation, during the term of the stipulated plan Ameritech's provision of extended area service (EAS) will not be eliminated, redefined, or subject to the imputation policy for routes which: have EAS on the effective date of the stipulated plan; have EAS granted after the effective date of the stipulated plan and before the date the Commission revises the Ohio Administrative Code (O.A.C.) rules pertaining to EAS and in effect on the date of the stipulated plan; and those routes which have an application for EAS pending on the date the Commission issues an order revising the O.A.C. EAS rules and which are subsequently granted (Jt. Ex. 1, at 19-20).

The IXC Coalition and MCI maintain that the stipulation addresses the issue of EAS in such a way as to foreclose the possible implementation of the IXCs' recommendations as to how to deal with EAS in the future (IXC Brief at 45). These parties believe that measured-rate EAS should be considered a toll service and subject to the same imputation standards as the company's other toll services. They state that, while Ameritech's current measured-rate EAS could not meet an imputation test, this service could meet such a test were the company to either increase the rate to cover the cost of access or if access charges were reduced (Id. at 46). The IXCs aver that by setting forth the three types of EAS routes which, during the term of the stipulated plan, would not be eliminated, redefined, or subject to the imputation adjustment, Ameritech has tried to take over the role of the Commission in determining which EAS routes might be subject to the EAS solutions proposed by the IXCs (Id. at 47). The IXCs advocate that, while they would prefer that access reductions be ordered for EAS routes within the context of the alternative regulation case, at the very least, the Commission should strike from the stipulated plan the portion of the plan which sets forth the three types of EAS routes set forth above (Id. at 48).

OCC believes that the IXCs' position on EAS in these proceedings "represents a fundamental misunderstanding of the nature of EAS and how it is achieved" (OCC Brief at 54). OCC points out that the Commission has held that EAS is a local service. In OCC's view, the position taken by the IXCs is an argument against the Commission's EAS rules contained in Chapter 4901:1-7 of the Ohio Administrative Code and not against the stipulated plan presented in these cases (Id. at 55). Furthermore, OCC points out that the IXCs failed to show on the record how access charges could be reduced just for those routes for which EAS is adopted and they failed to guarantee that any access charge reductions would be flowed through to reduced toll rates for those routes

(OCC Reply Brief at 45).[13]

Ameritech points out that, since EAS is a local service and not a toll service, the imputation adjustment recommended by the IXCs does not apply to this currently noncompetitive service (Company Reply Brief at 55). Furthermore, Ameritech argues that the EAS provisions of the stipulation are a reasonable means to protect the rights of existing customers while recognizing that issues pertaining to EAS are evolving and that the EAS policy may change in the future. In Ameritech's view, the level of carrier access charges should not be utilized to hold existing customers along EAS routes hostage (Id. at 56).

Staff witness Montgomery correctly points out that EAS is considered to be a local service and is priced as such. He goes on to state that, if the Commission were to deem measured-rate EAS to be subject to the imputation adjustment, it would first have to conclude that such would be appropriate as a matter of public policy (Staff Ex. 30, at 23).

The Commission is aware of the IXCs' proposal regarding their view of the appropriate resolution to the EAS situation in Ohio. However, we do not believe that the language in the stipulation is contrary to the public policy which we must consider within the context of these cases. This policy applies not only to the promotion of options for the carriers, but also for Ameritech's residential and business customers. The consideration of EAS, to date, has been a local issue. We do not deem it appropriate to review and revise the long standing policy and history behind the EAS situation and the EAS rules within the context of an individual alternative regulation case. Such a review must be conducted within the context of a case in which all local exchange carriers, their subscribers, and other stakeholders, including the IXCs, would have an opportunity to comment. The stipulation does not preclude changes to our EAS policy, it simply grandfathers in the rights of customers who have come to rely upon EAS granted to date. We find this to be a reasonable and balanced resolution of this difficult issue. We hereby ask the staff to continue to review the EAS situation in Ohio and to develop a recommendation in this regard.

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13. The Commission recently challenged the IXCs on this very issue albeit relative to a smaller service territory. See Western Reserve Telephone Company, Case Nos. 92-1525-TP-CSS and 93-230-TP-ALT (March 30, 1994) at 38.

F. Flexible Regulatory Treatment:

Pursuant to Section 4927.02(A)(5), Revised Code, it is the policy of this state to recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications service where appropriate. As stated previously, competition is only developing in Ameritech's service territory. Therefore, the focus of the Commission's review on flexible regulatory treatment will be whether the flexibility afforded Ameritech under the stipulated plan will protect the ratepayers and would-be competitors from the market advantage possessed by Ameritech while, at the same time, allow Ameritech to successfully participate in a competitive market. In analyzing whether the stipulation strikes this balance, the Commission will review several aspects of the stipulation including: cell classifications and criteria for cell placement, the price cap plan, the term of the plan, and other procedural aspects of the stipulation.

1. Cell Classification/Reclassification:

Under the terms of the stipulation, all regulated services currently provided[14] are classified in Cells 1 through 4, a list of which is included in Exhibit B of the stipulated plan. The stipulated plan describes the cells as follows: Cell 1 services are basic local exchange services which services are further divided into core and noncore for purposes of the price cap plan; Cell 2 services are those for which an adequate alternative is available from at least one provider, but which are not fully competitive services; Cell 3 services are not basic local exchange access or usage, but do not properly fit into any other cells; and Cell 4 services are highly competitive and must satisfy, to a greater degree, the criteria for Cell 2. Services in Cells 1 through 3 will be tariffed and Cell 4 services can be tariffed or detariffed at the company's discretion (Jt. Ex. 1, Attach. 1, at 17-18).

In seeking reclassification, Ameritech will file an application with the Commission 30 days prior to the effective date of the change in cell classification. Included in an application for

14. During the pendency of this proceeding and through September 20, 1994, Ameritech has filed various applications to offer services. The stipulation provides for the classifications of those services, as set forth in Exhibit B. Ameritech will propose cell classifications for service applications filed after September 20, 1994, which will be subject to review and approval by the Commission under the procedure and time frames in place at the time the service application was filed (Jt. Ex. 1, Attach. 1, at 21).

reclassification into Cells 2 or 4, will be all available market share information and historic sales information that reflect gains or losses in sales of the service, or Ameritech must explain why it did not provide such information. The service will be reclassified on the 31st day after filing, unless the application is suspended by the Commission, legal director, or attorney examiner (Jt. Ex. 1, at 25). Under the terms of the stipulation, no residence Cell 1 services shall be reclassified to any other cell during the term of the plan. Furthermore, no residence core Cell 1 service shall be reclassified as a Cell 1 noncore service (Jt. Ex. 1, Attach. 1, at 20-21).

Time Warner objects to the cell definitions set forth in the stipulation, arguing that they do not match the cell definitions provided for in Rule II(D) of the alternative regulation rules. Time Warner also objects to the lack of cross-references between the definitions and other portions of the stipulation, and questions whether they apply to the cell placement of new services and the migration of services between cells (Time Warner Reply Brief at 51). OCTVA argues that Ameritech has not demonstrated the existence of competition for the services categorized in Cells 2 and 4 (OCTVA Brief at 30). OCTVA witness Hunt points out that, as it relates to Ohio, little information about market share, growth of market share, competitive rates, and terms and conditions for services were provided by Ameritech on the record. In addition, no market share studies were provided (OCTVA Ex. 1, at 40-41). AT&T and OCTVA both raise concerns that the plan fails to set forth criteria for the migration of services from a less competitive cell to a more competitive cell (AT&T Ex. 11, at 15; OCTVA Brief at 11).

None of the objections raised are sufficient to overturn the stipulation. First, we find the cell definitions, as set forth on pages 17 and 18 of Joint Exhibit 1, Attachment 1, to be reasonable. Although the wording of the cell definitions is not exactly the same as the rules, it comports with the underlying intent of the rules. To the extent that the cell definitions differ from the alternative regulation rules, Ameritech's request for a waiver of Rule II(D) is granted. In regard to Time Warner's concern that the stipulation is not clear as to the applicability of the definitions to other procedures set forth in the stipulation, we interpret the stipulation to mean that the cell definitions will apply to the classification of new services and the reclassification of existing services.

Next, we find that the classifications into the various cells for all existing services are reasonable, including the services in Cells 2 and 4. Finally, we find the objections raised concerning a lack of criteria in the stipulation for reclassifying a service are misplaced. The plan clearly sets forth the process

Ameritech will follow in filing an application to reclassify a service. While the plan specifically only refers to the Commission's review period of 30 days, unless suspended, we would expect that, if there are concerns about the information submitted with Ameritech's application, interested persons would file an objection to the application within 14 days after the filing of the application, consistent with Rule XIV(H) of the alternative regulation rules. The Commission does not intend to allow Ameritech to "self-certify" any services as competitive. We share Time Warner's concern as to the poor quality of the Ameritech testimony presented on competitive alternatives in these dockets. The poor quality of the testimony is especially troublesome given our clear statement on this issue in Cincinnati Bell's alternative regulation case. Cincinnati Bell Telephone Company, Case No. 93-432-TP-ALT (May 5, 1994). To that end, we expect the company to submit more than just anecdotal evidence. Market share information as described on page 25 of the stipulation is to be provided, absent extraordinary circumstances. The company also should undertake appropriate studies so as to present evidence using various recognized indices such as the Herfindahl-Hirschman Index and the 4-Firm Concentration Index, in addition to other standards which it might want to propose for the Commission's consideration. The Commission is not deciding a particular formula, but wishes to reiterate that, in the future, the quality of testimony presented in these cases will not suffice.

2. Classification of Services Used By Telephone Answering Services:

METAS-Ohio, a trade association of telephone answering service companies, argues that the stipulation allows for certain services and facilities used in connection with the provision of telephone answering service to be inappropriately classified in Cells 2 and 3 when they should be classified in Cell 1 (METAS-Ohio Brief at 1). First, METAS-Ohio asserts that the following groups of services should be classified in Cell 1 rather than Cell 3 when used in connection with services provided by answering service companies: Ameritech's custom calling services, such as call forwarding and call waiting, and central office optional line features, comprised of seven different features. To support this assertion, METAS-Ohio argues that Ameritech is the sole provider of these services, that the telephone answering services' customers must obtain the above services from Ameritech to use the answering service applications, and that the services have public safety characteristics when used in some telephone answering service applications (Id. at 7; METAS-Ohio Ex. 1, at 10). In response, Ameritech argues that these services are used by a wide variety of customers for a number of uses, and that the customers for these services are the end users and not answering services (Company Reply Brief at 42).

The Commission does not have enough information at this time concerning the use of central office optional line features and custom calling services by METAS-Ohio to persuade us to overturn the stipulation on this point and classify them in Cell 1. While we believe they are appropriately classified in Cell 3 at this time, we direct the company to meet with METAS-Ohio and the staff to determine whether there are other resolutions. Ameritech should report back to the Commission on this matter within 60 days of the date of this order.

Next, METAS-Ohio asserts that AUTOTAS concentrator equipment should be classified in Cell 1. Exhibit B of the stipulation indicates that other concentrator identifier equipment is classified in Cell 1, whereas the AUTOTAS concentrator equipment is listed under Cell 2. METAS-Ohio argues that, while telephone answering services can obtain concentrator equipment from other vendors, it is only allowed to locate the AUTOTAS concentrator equipment within Ameritech's central office facilities if it obtains that equipment from Ameritech. If the equipment is not physically located in the central office, the telephone answering service must then incur additional costs to extend private line or channel facilities from Ameritech's central office to the remote location of the concentrator. Since the telephone answering services would incur additional costs for those facilities that would be owed to Ameritech, "equal" competitive alternatives to AUTOTAS concentrators do not exist (METAS-Ohio Brief at 10).

As pointed out by Ameritech, there is no requirement that the competitive alternative available to METAS-Ohio be "equal" (Company Reply Brief at 43). Clearly, the AUTOTAS concentrator equipment is available from other vendors, and it is reasonable to classify this equipment in Cell 2. METAS-Ohio has failed to demonstrate that the classifications of services used in the provisioning of telephone answering services as set forth in the stipulation are unreasonable. We note that, since these services are placed in Cells 2 and 3, they will be subject to certain pricing limitations under the price cap plan, as addressed in the following sections. These pricing limitations should help in alleviating METAS-Ohio's concerns.

3. New Services:

The stipulation provides that proposed tariffs for new services which may have privacy implications are to be filed with the Commission and served upon the stipulating parties 30 days prior to the effective date. Any proprietary information relating to these applications will be available to the stipulating parties subject to a protective agreement. The tariff shall go into effect on the 31st day, unless the Commission, legal director, or attorney examiner suspends the tariff (Jt. Ex. 1, at 40-41). For services that do not have privacy implications, tariffs are to be provided to the Commission's staff and OCC on a proprietary basis at least 30 days prior to their effective date, which will allow the staff and OCC to determine whether the service meets certain specified criteria including the pricing parameters set forth in the stipulation. The new service tariff will become effective on the date set forth in the tariff filing, unless the staff determines that the service does not meet the criteria. For those new services that do not meet one or more of the criteria, the company may file an application to commence a tariff proceeding with an effective date on the 31st day after filing, unless the Commission, legal director, or attorney examiner suspends the tariff for an additional 150 days for investigation (Id. at 41-45). While the stipulation is silent on this point, we believe that, if a tariff proceeding is initiated by the company, as described above, then the stipulation does not preclude interested persons from filing objections to the application, within 14 days after filing, as provided in Rule XIV (F) of the alternative regulation rules.

New services shall be classified in Cell 3, unless they meet the criteria for Cells 1 or 2, in which case the new services will be so classified.[15] All other new services which meet the criteria for Cell 4 shall initially be classified in Cell 3 and, thereafter, Ameritech may apply to reclassify those services into Cell 4. A new service which displaces an existing service shall not be classified in a cell which provides more pricing flexibility than is provided the existing service (Id. at 24).

Time Warner takes exception to the provisions in the stipulation relating to new services, arguing that cost information for new services should be public, especially those services that will be classified in a noncompetitive cell. In addition, Time Warner argues that there are no means set forth in the stipulation by which an interested party can evaluate the appropriate classification of a new service (Time Warner Brief at 86-87). OCTVA objects to the provision since Ameritech is not required to submit a cost study for new services (OCTVA Brief at 33).

The arguments raised by Time Warner and OCTVA relating to cost studies should be rejected. The stipulation explicitly requires Ameritech to provide cost information to staff sufficient to determine whether the proposed price is above LRSIC plus the standard contribution to common costs (Jt. Ex. 1, at 43). Moreover, this information is currently only provided to staff and, therefore, the stipulation does not deviate from current pro-

15. An exception to this is that new Centrex intercom lines or features or new 800-type services which meet the criteria for Cell 4 shall be classified in Cell 4.

cedures.

Further, Time Warner's concern that it would not have the ability to challenge a new service cell classification should be dismissed for the reasons that follow. The stipulation provides that, in those cases where a new service has become effective on the effective date of the tariff without additional investigation by the Commission, the Commission may, upon complaint, or upon its own motion, within 120 days of the effective date of the new service, and after hearing, reclassify a new service if it finds that the new service classification fails to satisfy the new service classification standards (Id. at 24). This provision should satisfy the concern raised by Time Warner. We also interpret the stipulation to mean that, if Ameritech desires to place a new service in Cell 2, then Ameritech will have the burden of demonstrating that the service meets the competitive criteria for Cell 2. Thus, Ameritech, at the outset, will be required to submit the market information described on page 25 of Joint Exhibit 1, as further detailed herein, which is the same information needed for the reclassification of an existing service into Cells 2 or 4. Even though the stipulation provides a mechanism for the placement of a new service into Cell 2, we would expect Ameritech to use this provision only under extraordinary circumstances. We encourage Ameritech to place new services into Cells 1 and 3, and then utilize the provision for the reclassification of services.

4. Price Cap Plan:

Under the terms of the stipulation, the price cap will be adjusted on an annual basis to reflect the following factors: the Gross Domestic Product-Price Index (GDP-PI); a productivity factor of 2.8 percent and a consumer dividend of 0.2 percent, for a fixed offset of 3.0 percent; a service quality adjustment, with a potential offset of 1.3 percent; and an exogenous adjustment factor relating to significant tax and accounting changes. The updated price cap index (PCI) will represent the price cap for one year thereafter (Id. at 37).

The stipulation further provides that, on May 1, 1995, and by May 1 in subsequent years, the company will file with the Commission the updated PCI with documentation supporting its development. Also, documentation supporting the Group Price Index (GPI) will be provided. It will include quantities, based on demand in the previous calendar year, for tariffed offerings, nontariffed Cell 4 services, and contract offerings. Interested parties will have 14 days from filing to respond to the company's proposed PCI and GPI documentation. Ameritech will then have 14 days to respond to such comments. Thereafter, the Commission will review the documentation for the proposed PCI and any comments filed and issue an order authorizing an updated PCI to become effective on

July 1 of each year of the plan (Id. at 37-38).

Under the plan, three price cap service baskets will be established, two for residence services and one for nonresidence services. Residence service basket 1 shall include residence Cell 1 noncore services. Residence service basket 2 shall contain residence services in Cells 2, 3, and 4. The residence baskets will include services which Ameritech provides to any location where the use is primarily or substantially of a social or domestic nature. All nonresidence services which are not excluded from the price cap plan shall be placed in the nonresidence price cap service basket. These services are those provided to a subscriber, the use of which is primarily of a business, professional, institutional, governmental, or otherwise occupational nature (Jt. Ex. 1, Attach. 1, at 16). New services shall be part of a customer service basket and, thus, subject to a price cap, at the first price cap update which occurs at least six months after the service is introduced (Id. at 48).

Each of the residence and nonresidence price cap service baskets will have the same PCI to be applied separately, with the initial PCI value set at 100.0 at the start of the plan. The company's price cap service basket prices will remain at or under the price cap at all times. The service basket prices will be expressed by the GPI. The GPI shall always be at or below the existing PCI, with the initial value set at 100.0, the same as the PCI. Each GPI will be updated whenever the company proposes to change a price or set of prices for services within a service basket. The company shall demonstrate that any proposed price increases satisfy the limits of the price cap by showing that the updated service basket GPI remains at or below the PCI (Id. at 41-43).

The stipulation further provides for a productivity factor of 2.8 percent and a consumer dividend of 0.2 percent, for a total offset to the PCI of 3.0 percent (Jt. Ex. 1, at 37). Offsets ranging from 2.2 percent to 5.0 percent were proposed on the record. Specifically, the record reflects the following: Ameritech proposed a 2.2 percent productivity offset (Tr. XVI, at 10); staff proposed an offset of 4.2 percent, composed of a 2.2 percent productivity offset, a 1 percent price input differential component, and a 1 percent consumer dividend (Staff Ex. 22, at 4); The Executive Agencies proposed a minimum offset of 3.3 percent (Executive Agencies Ex. 1, at 7); and Time Warner proposed an offset of 5.0 percent, composed of a productivity offset of 3.0 percent, a price input differential of 1 percent, and a consumer dividend of 1 percent (Time Warner Ex. 1, at 5).

Time Warner asserts that the productivity offset should be greater because Ameritech "faces no present local exchange competition." Additionally, Time Warner asserts that, without an express input price differential included in the formula, large amounts of wealth will be transferred from Ohio ratepayers to Ameritech (Time Warner Brief at 21-23). OCTVA also argues that the general productivity offset should be higher (OCTVA Brief at 24-26).

The objections of Time Warner and OCTVA do not persuade us to overturn the stipulation on this point. While local competition may not be evident at this time, we certainly expect and welcome its arrival during the term of Ameritech's alternative regulation plan. Surely, Time Warner envisions the advent of local competition during the term of the stipulated six-year plan, as evidenced by its pending application to engage in such competition. See Time Warner Communications, Case No. 94-1695-TP-ACE. The productivity offset is a compromise reached by the parties and is a reasonable compromise, particularly when 60 percent of the company's overall revenues and 89.44 percent of its Cell 1 service revenues are capped in Cell 1 core services and are removed from the price cap altogether. Further, Time Warner's objection to the lack of inclusion of an express input differential is de minimis in light of the overall reasonableness of the productivity offset.

The stipulation further provides that exogenous impact adjustments, subject to Commission review, may be included in the price cap formula. In determining whether such an adjustment will be made, the Commission will consider the following criteria set forth in the stipulation: the adjustment must affect the company's annual intrastate regulated revenues by at least plus or minus .25 percent as calculated based on revenues; the adjustment must be a direct result of an accounting change, or change in rule or law; to the extent the adjustment is reflected in the GDP-PI, it must disproportionately affect the company; and the adjustment will be calculated using the most recent historical data. Any interested person may propose that a particular event meets the criteria and should qualify as an event (Jt. Ex. 1, at 39-40).

OCTVA raised several concerns with the exogenous adjustment provision contained in the stipulation. First, it argues that the threshold of .25 percent of annual intrastate regulated revenues is too small. According to OCTVA witness Hunt, the threshold should be increased to require the exogenous change to affect the rate of return by approximately 200 basis points (OCTVA Ex. 1, at 73). Second, OCTVA takes issue with the fact that the change allows for a selective adjustment without considering the impact of all other cost changes. Finally, OCTVA questions how the Commission will be able to gauge whether or not the proposed change meets the proposed threshold when Ameritech will not be required to file earnings and revenue reports (OCTVA Brief at 29). In addition, Time Warner witness Selwyn asserted that the provision in the stipulation relating to the exogenous factor is too broad and has an anticompetitive effect. He explained that the actions and orders of the Commission, the Ohio General Assembly and other federal regulatory authorities "may well be within the company's control and may also be costs that could not be passed on by service providers operating under competitive conditions" (Time Warner Ex. 3A, at 32).

The objections raised by OCTVA and Time Warner should be rejected. The alternative regulation rules specifically contemplate adjustments for exogenous factors. The provision set forth in the stipulation relating to the exogenous factor is very narrow and leaves little room for discretion in that all four criteria must be met before the Commission may approve the adjustment. Furthermore, as to OCTVA's concern that the Commission will not have earnings and revenue reports to review, we are confident that Ameritech will provide any such information to the staff upon request. We find the exogenous adjustment provision is a reasonable resolution to deal with externally-caused impacts, both negative and positive, on Ameritech's intrastate revenues.[16]

OCTVA objects in general to the adoption of the price cap plan, arguing that nothing in the plan improves the prospects for rate stability, quality of service, competition, or advances in technology over what is currently available under rate-of-return regulation. Specifically, OCTVA refers to it as "automatic increase regulation", and argues that consumers have enjoyed price stability during the past nine years under rate-of-return regulation (OCTVA Brief at 24-26).

OCTVA's argument that the plan produces automatic rate increases should be rejected. The record reflects that a current application of GDP-PI and the price cap formula as set forth in the stipulation causes a negative PCI result (Tr. XXXXVII, at 62-63). Additionally, in excess of 60 percent of Ameritech's revenues are capped and will not incur increases throughout the six-year term of the plan. We agree with the staff that the purpose of the significant threshold rate reductions set forth in the stipulation is to establish just and reasonable rates on a going forward basis prior to implementing alternative ratemaking (Staff Reply Brief at 11). Clearly, one of the most outstanding benefits of the plan is rate stability.

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16. We reserve the right to consider an exogenous adjustment for the impact of any state tax law changes which may be enacted during the term of the plan. In reviewing this issue, the Commission will look at the structure and design of any such tax law change and whether ratepayers are being assessed the tax through some other means.

Overall, we find the price cap formula, as set forth in the stipulation, to be a reasonable compromise, given the divergent points of view raised by the parties in this proceeding. Further, we find the objections to adopting price cap regulation in the absence of competition are misplaced. The price cap plan could stand on its own outside of any competition. We concur in Ameritech witness Romo's testimony that competition is not the predominant factor for the price cap proposal and that the plan does not rely on any specific level of competition to function. He suggested that the plan was needed more to address a transition in competition than it was to address a specific level of competition (Tr. XII, 138-143).

Further, the price cap plan as a whole provides for sufficient consumer safeguards, provides adequate flexibility for Ameritech to perform in a competitive environment, and protects would-be competitors from any advantage gained by Ameritech. Moreover, the price cap plan is but one facet of the alternative regulation plan, which in and of itself, contemplates Commission oversight. It would be inappropriate to solely focus on the price cap plan as a single element, since it is intertwined into the overall alternative regulation package, commitments and all. We believe the concerns raised by the competitors are adequately addressed, not only in the price cap plan, but the alternative regulation plan as a whole.

5. Pricing Flexibility in Each Cell:

The rates and revenues for Cell 1 core residence and nonresidence services will be excluded from the price cap plan. Included as Cell 1 core services are residence flat-rate, message rate service, minute line service, and measured service (Jt. Ex. 1, at 18-19). The maximum rate for each Cell 1 core service will be the existing rate, except for those services which will be adjusted upon the effective date of the plan. The stipulation also provides that the maximum increase for each noncore Cell 1 service, except carrier access, will be the percent change in the price cap index plus five percent per year. Except for carrier access services, prices for all Cell 1 noncore services, are capped for one year from the effective date of the plan. The minimum rate for each Cell 1 service shall be LRSIC as set forth in Paragraph 14 of Joint Exhibit 1 (Id. at 27).

For Cell 2 services that are already subject to minimum-maximum pricing, Ameritech must set rates within that existing range, and, for those services not currently subject to the minimum-maximum range, the maximum is set at 100 percent above the existing rate. The maximum increase in any given year for either type of Cell 2 service is 20 percent. For Cell 2 services not currently subject to minimum-maximum pricing, the maximum rate is

100 percent above existing rates and any increase shall be limited to 20 percent per year up to the maximum of the range. Except for carrier access, prices for Cell 2 services will be capped for one year. The rate floor for Cell 2 services will be the existing rate until such time as a LRSIC study has been approved, at which time the price floor will be LRSIC plus a common overhead allocation, as set forth in Paragraph 14 of Joint Exhibit 1. Notwithstanding the above, the maximum price for public/semi-public (payphone) local messages shall be capped at the existing rate of $.25 for the duration of the plan (Id. at 28-29).

As to Cell 3 services, the stipulation provides a maximum increase for Cell 3 services of 100 percent above the existing rate, with any increase limited to 25 percent per year up to the maximum. Except for carrier access services, prices for all services included in Cell 3 will be capped for one year. The rate floor will be the current rate until a LRSIC study has been approved, at which time the price floor will be LRSIC plus a common overhead allocation, as set forth in Paragraph 14 of Joint Exhibit 1 (Id. at 30).

There will be no maximum ceiling or limits on annual increases for Cell 4 services. The rate floor will be LRSIC plus a common overhead allocation, as discussed in Paragraph 14 of Joint Exhibit 1 (Id.). Interstate prices will continue to be mirrored for purposes of establishing a price ceiling for intrastate access rates. Ameritech will be able to adjust prices below that ceiling pursuant to the pricing provisions discussed above (Jt. Ex. 1, Attach. 1, at 49).

Although the price cap is updated only once a year, price changes for individual services, except for Cell 1 noncore services, may be made by the company at any time during the year subject to the cell pricing limitations and requirements. In the case of Cell 1 noncore services, any price increases are limited to one per year for each service to provide additional price stability to customers. Price decreases for Cell 1 services may be made at any time. Again, any price changes must leave the service basket at or below the existing price cap (Id. at 48).

Time Warner takes issue with the design of the service baskets, arguing that it does not address the concerns expressed by staff in its report, at page 43, that inclusion of monopoly and competitive services within the residence and nonresidence service groups could result in the cross-subsidization of such services. Specifically, Time Warner argues that permitting Ameritech to raise Cell 1 rates by as much as five percent above the price cap index provides it with excessive pricing flexibility that could lead to unwarranted and anticompetitive rate changes and revenue distribution among services within Cell 1. In addition, Time

Warner argues that all Cell 1 services should be affected equally by the price cap. According to Time Warner, it is critical that the pricing rules applicable to basic network components be driven by efficiency. Efficient pricing rules should result in cost-based rates and eliminate monopoly pricing, market-distorting subsidies, and price discrimination. The pricing parameters for Cell 1 services, according to Time Warner, do not result in cost-based rates. Since Cell 1 residence and nonresidence core services are excluded from the price cap plan, Time Warner also asserts that those services will not benefit from rate reductions which would occur as a result of the price cap formula (Time Warner Brief at 72-75). Time Warner also argues that the pricing parameters set forth for Cell 2 services provide unwarranted pricing flexibility for services that do not face effective competition and are not discretionary (Id. at 76). In fact, Time Warner advocates that Cell 2 be eliminated since services are either competitive or they are not (Time Warner Ex. 1, at 28).

Further, Time Warner and OCTVA argue that the pricing flexibility for Cell 3 is excessive (Time Warner Brief at 78; OCTVA Brief at 49). Time Warner witness Selwyn testified that, since Cell 3 includes some services that are not truly discretionary, but rather are externalities (need components of Ameritech's basic network in order to function properly), such flexibility is unwarranted (Time Warner Ex. 3A, at 44). OCTVA specifically asserts that the limit on Cell 3 should be the 20 percent advocated by staff witness Shields (OCTVA Brief at 49).

None of the objections raised by Time Warner or OCTVA are sufficient to overturn the stipulation. The alternative regulation rules specifically provide for pricing flexibility. As to complaints concerning Cell 2, the rules provide for recognition of emerging competitive services and provide for some flexibility for these services. For Cell 3, the pricing flexibility under the stipulation is more restrictive than that contained in the alternative regulation rules and Ameritech's original plan, both of which lack a price ceiling for Cell 3 services. The pricing flexibility afforded Ameritech in the stipulation is not unreasonable as part of the overall alternative regulation plan. As to Time Warner's concern that Cell 3 contains services which are basic network components, we will explore this issue as a part of unbundling in the generic proceeding.

6. Contract Authority:

Under the terms of the stipulation, Ameritech will be permitted to enter into contracts with a customer in an identifiable geographic area, who has a reasonably available competitive alternative to a service offered by Ameritech. The contract will be effective upon signing and, unless suspended, will be automatically approved on the 31st day after being filed with the Commission. Prior notice of such contracts will be provided to the staff, where practicable, at least 30 days prior to its filing. The notice will include the following: the terms and conditions of such contracts; a LRSIC cost study and, if appropriate, an imputation study; a description of the reasonably available competitive offering(s) that are available to the customer or group of customers; and information relating to the tariffed service (Jt. Ex. 1, at 48).

By way of the stipulation, Ameritech requests a waiver of Rule XIII of the alternative regulation rules, which sets forth the Commission's guidelines for contract filings for services in Cells 1 and 2. Ameritech specifically requests that it be permitted to enter into contracts with customers for any service that meets the competitive criteria set forth in the plan, to establish the specific procedure for filing and review of contracts, and to establish that contracts will be effective upon signing (Id. at Ex. I). While not objecting to Ameritech's request to enter into contracts in competitive situations, Time Warner raises two concerns about the waiver request. First, Time Warner states that the waiver request is not clear as to which competitive criteria it is referencing. Second, Time Warner asserts that the Commission needs an affirmation from Ameritech that it will indeed provide market share data and information on other "competitive criteria" set forth in the stipulation (Time Warner Brief at 95).

Ameritech contends that the contract provision requires it to provide staff with certain information or else be subject to Commission action and, therefore, nothing else needs to be said (Company Reply Brief at 82-83). Under the stipulation, Ameritech will not necessarily have to provide market share information. Since these contracts will be reviewed on a case-by-case basis, we expect Ameritech to cooperate fully with the staff in providing the appropriate information relating to the available competitive offering for the customers with whom it will be entering into contracts in advance of the filing. As clearly stated in the stipulation, the Commission may revoke the right of the company to enter into contracts without prior approval, if it determines that Ameritech is abusing this procedure (Jt. Ex. 1, at 48).

In addition, Ameritech seeks a waiver of Rule XIV(F) of the alternative regulation rules. Rule XIV(F) provides that interested persons may file objections to applications for tariff revisions, new service applications, as well as applications for contractual arrangements, within 14 days after the filing. The waiver request in the stipulation specifically reads "to establish specific procedures for tariff revisions including new services" (Jt. Ex. 1, Ex. I). Time Warner asserts that, since the stipulation does not provide for the filing of objections to the contract applications by interested parties, the stipulation in effect "contracts away" the right of the nonsignatory parties to file objections, as provided in the alternative regulation rules (Time Warner Brief at 96).

Time Warner's concern as it relates to contract filings is misplaced. The waiver request only goes to new service applications, and not contract applications. We interpret the stipulation, which sets forth a 30-day review period within which a contract application could be suspended by the Commission, to mean that interested persons are not precluded from filing an objection within 14 days after the filing, as provided in Rule XIV(F) of the alternative regulation rules. We will order this as one of our conditions for approval of the stipulation. Furthermore, the company should include language in each contract to the effect that the agreement shall be expressly contingent upon the receipt of such regulatory approvals or authorizations as may be required, and that failure to receive such approval shall render the agreement null and void.

7. Term of Plan:

Ameritech originally proposed an unlimited term for its alternative regulation plan. The staff in its report recommended a five-year term, with a review beginning in the fourth year of the plan (Staff Report at 52-53). The stipulation provides that the plan will remain in effect for at least six years. In addition, the stipulation sets forth that, at any time after the fifth anniversary of the plan, any person may propose, and the Commission may order, either a change in the plan, a replacement plan, or a different form of regulation to be effective after the sixth year of the plan. If the company decides to file a replacement plan, then it must comply with certain criteria set forth in the stipulation (Jt. Ex. 1, at 65-67). Rule XI(A) of the alternative regulation rules for large local exchange companies requires that an applicant who proposes a term greater than three years must demonstrate why such a longer term is in the public interest and must provide sufficient safeguards for the Commission to review the company's compliance with the terms of the plan.

OCTVA and Time Warner argue that the six-year term as provided for in the stipulation violates Rule XI(A) since Ameritech failed to provide any credible testimony as to why the six-year term is in the public interest. OCTVA specifically suggests a maximum term of five years, which corresponds to the projected completion of various commitments (OCTVA Brief at 17, 57; Time Warner Brief at 93). The staff submits that a six-year term is reasonable in view of the total stipulation, continues to meet the objectives articulated by the staff in its recommendation of a five-year term, and would allow the Commission an adequate review process relative to the eight-year sunset provision of Chapter 4927, Revised Code. In addition, both a five-year plan and a six-year plan would permit Ameritech to implement its price cap plan and gain experience with the plan, and for the Commission to then review the efficacy of the plan and the state of competition in the telecommunications industry at the end of that period (Staff Brief at 51).

The objections raised by OCTVA and Time Warner are not sufficient to overturn the stipulation as a whole. We agree with staff that the six-year term of this plan is not unreasonable and is in the public interest.

8. Conclusion on Flexible Regulatory Treatment:

As authorized by the statute, the stipulation will provide Ameritech with a degree of pricing flexibility where the situation warrants it, even with the majority of revenues coming from services whose prices are frozen or capped. The stipulation, as clarified and modified herein, strikes a reasonable balance of all of the interests represented in this proceeding. Moreover, the stipulation provides for a more streamlined procedure for the introduction of new services which is designed to comport with the changing communications environment. Clearly, the stipulation is in conformance with Section 4927.02(A)(5), Revised Code.

OVERALL CONCLUSION

Based upon our review, the Commission concludes that the stipulation submitted by Ameritech, the Commission's staff, OCC, AARP, Edgemont, Columbus, Cleveland, Toledo, GCWRO, ODAS, ODOE, OLC, and Bell Communications Research, as modified and clarified in this opinion and order, is reasonable, is in the public interest, and should be adopted. The stipulation meets the three-prong test established by the Commission and endorsed by the Ohio Supreme Court. The stipulation, as modified and clarified herein, also comports with the Commission's alternative regulation rules. Where the stipulation departs from the rules, waivers, to the extent set forth by the parties in Exhibit I of Joint Exhibit 1, are reasonable and are granted. Further, the stipulation comports with the policy of this state as set forth in Section 4927.02(A), Revised Code. That the stipulation is reasonable is illustrated by the overwhelming support of the stipulation presented by the public at the local public hearings. Almost without exception, representatives from schools, hospitals, chambers of commerce and business, local governments and consumer members of the public testified to the benefits of the stipulation and urged its adoption by the Commission. Finally, we find the alternative form of ratemaking, the price cap plan, to be in the public interest as required by Section 4927.04(A), Revised Code. The price cap plan, in conjunction with other provisions of the company's alternative regulation plan, will promote and reward efficiency, quality of service, and cost containment by Ameritech and will provide sufficient flexibility and incentives to Ameritech to provide high quality, technologically advanced, and universally available telecommunications service at just and reasonable rates and charges.

The Commission notes that the stipulation provides that the parties will use their best efforts to resolve any disputes regarding the meaning of the stipulation or plan (Jt. Ex. 1, at 88). Nevertheless, the Commission is the final arbiter of any disputes over the meaning of the stipulation and plan, and we retain jurisdiction over disputes concerning the meaning of the stipulation and plan.

The Commission would be remiss, however, if it did not clearly state its expectations and conditions as to implementation of the stipulation. A key aspect of success of an alternative regulation plan is a good trusting working relationship among the parties. The Commission in this case is approving a plan which allows the company to place many new services into effect immediately upon filing subject to later review. By approving this stipulation, the Commission is giving Ameritech the benefit of the doubt in terms of its claims of cooperation in making this process work.

We see the implementation of the plan as potentially going down one of two tracks. The first is either a cooperative one where Ameritech and the Commission staff work together to resolve issues ahead of time and where legitimate concerns raised by staff in response to competitor or consumer raised issues are dealt with in a proactive and responsive manner. The other potential path is one where confrontation increases, where the company challenges the staff and attempts to challenge or go around the Commission at every step of the process, and where obfuscation substitutes for cooperation and accommodation. Should we find the company going down the latter path, the Commission puts the company on notice that it will not hesitate to use its suspension authority and suspend or revoke services despite the negative consequences to customers that may result. It is up to the company to work through those issues so those unfortunate results to its customers do not occur.

Unfortunately, the level of cooperation and working relationship between Ameritech and the Commission staff has not been as good as it should be for many years. In fact, it is in significant contrast to those relationships the staff and the Commission have with other telephone companies in this state, most notably Cincinnati Bell Telephone Company. Despite repeated admonitions, senior management in Cleveland and Chicago have failed to take the necessary steps to correct these problems. The Commission reiterates that the successful implementation of this alternative regulation plan will require such cooperation. Senior management in Cleveland and Chicago are directed to make the necessary attitudinal and structural changes in the company's relationships with the Commission and its staff so as to ensure that this plan works smoothly for all concerned.

TARIFFS, CUSTOMER NOTICE, AND EFFECTIVE DATE

The stipulation provides that, if the Commission's opinion and order does not adopt the stipulation without modification, deletion, or addition, the stipulation may be withdrawn by notice of any stipulating party to all other stipulating parties and the Commission within 15 days of this opinion and order. In that event, all withdrawn objections shall be reinstated, and the stipulation will be null and void (Jt. Ex. 1, at 86). The Commission, in this opinion and order, has made certain modifications and clarifications to the stipulation. Therefore, pursuant to the stipulation, the parties have 15 days to notify the Commission concerning withdrawal of the stipulation. If the Commission does not receive a notice of withdrawal within 15 days of this opinion and order, we will presume that the Commission's opinion and order has been accepted by the stipulating parties. If the stipulation is, in any respect, withdrawn by one or more of the stipulating parties, the Commission will immediately proceed to a determination of the merits of both the alternative regulation and complaint proceedings based on the record before us.

Pursuant to the stipulation, the company shall provide copies of all proposed new or revised tariff pages necessary to implement the terms of the stipulation to the Commission staff at least 30 days before the effective date of the plan. Copies of any proposed new or revised tariff pages shall also be provided to all stipulating parties at the same time they are provided to the staff, and to any other requesting party to the proceedings (Jt. Ex. 1, at 87). Any suggestions or objections by the parties concerning these proposed tariffs should be provided to the staff within seven days after the company has served its revised tariffs. Ameritech should file its proposed tariffs for Commission review which are consistent in all respects to this opinion and order. Upon receipt of four complete copies of tariffs conforming to this opinion and order, the Commission will review and, if appropriate, approve those tariffs by entry.

The company should also file for Commission review a proposed customer notice advising its customers in sufficient detail about its new alternative regulation plan and its implications for customers. The notice should be filed with the proposed tariffs and will be subject to careful Commission review to ensure completeness and understandability.

Pursuant to the stipulation, the effective date of the new tariffs shall be 45 days after the stipulated plan is approved by the Commission (Jt. Ex. 1, Attach 1, at 3). The new tariffs should be permitted to become effective pursuant to the stipulation provided that the Commission has, by entry, approved the proposed tariffs and customer notice and the company has filed four printed final copies of its approved tariffs.

FINDINGS OF FACT:

1) On June 30, 1993, Ameritech Ohio filed its application for approval of an alternative form of regulation, Case No. 93-487-TP-ALT.

2) On April 6, 1993, the Office of the Consumers' Counsel filed a complaint, Case No. 93-576-TP-CSS, against Ameritech alleging that Ameritech's rates and charges are excessive under the ratemaking formula set forth in Section 4909.15, Revised, Code. OCC requested that the Commission find that Ameritech's base rates should be reduced.

3) By entry dated September 2, 1993, the Commission consolidated for hearing the complaint case and the alternative regulation case.

4) On September 20, 1994, a stipulation resolving the issues in both proceedings was filed by Ameritech, the staff of the Public Utilities Commission of Ohio, OCC, AARP, Edgemont, Columbus, Cleveland, Toledo, GCWRO, ODAS, ODOE, OLC, and Bell Communications Research, Inc. Among other things, the stipulation provides for the use of an alternative method of establishing rates for Ameritech. The stipulation is opposed by the IXC Coalition, Time Warner, OCTVA, ONA, New Par, MCI, Sprint, AT&T, Executive Agencies, OPCA, TCG, METAS-Ohio, AND ODVN.

5) Local public hearings were held on September 20, 1994, in Upper Arlington and Marietta, Ohio; on September 21, 1994, in Columbus, Ohio; on September 23, 1994, in Youngstown, Ohio; on September 27, 1994, in Cleveland and Euclid, Ohio; on October 4, 1994, in Ironton, Ohio; on October 6, 1994, in Akron, Ohio; on

October 11, 1994, in Tiffin and Perrysburg, Ohio; and on October 12, 1994, in Toledo, Dayton, and Gallipolis, Ohio. Evidentiary hearings were held in Columbus, Ohio, commencing on June 22, 1994, and concluding on October 19, 1994.

6) The stipulation is the product of serious bargaining among knowledgeable parties, benefits ratepayers and advances the public interest and, as modified and clarified herein, does not violate any important regulatory principles or practice.

7) The stipulation, as modified and clarified herein, ensures the availability of adequate basic local exchange service to customers in Ameritech's service territory; maintains just and reasonable rates, rentals, tolls, and charges for public telecommunications service; encourages innovation in the telecommunications industry; promotes diversity and options in the supply of public telecommunications services and equipment throughout the state; and recognizes the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services.

8) Ameritech's present tariffs should be withdrawn and canceled and applicant should submit new tariffs consistent in all respects with this opinion and order.

9) Successful implementation of the stipulation and plan is critical to achieving the telecommunications policy objectives of this state.

<u>CONCLUSIONS OF LAW:</u>

1) Ameritech's alternative regulation application was filed pursuant to Sections 4927.03 and 4927.04(A), Revised Code. OCC's complaint was filed pursuant to Section 4905.26, Revised Code. The company is subject to the jurisdiction of this Commission pursuant to Section 4905.04, 4905.05, and 4905.06, Revised Code.

2) A staff investigation was conducted and a re-

port duly filed and mailed, and public hearings have been held. Notice of the application, complaint, and local public hearings was published in accordance with Sections 4909.19, 4905.26, and 4903.083, Revised Code.

3) The stipulation satisfies all issues raised in both the alternative regulation case and the complaint case.

4) The stipulated alternative regulation plan submitted by the parties, as modified and clarified herein, comports with the policy of this state, as set forth in Section 4927.02(A), Revised Code.

5) The stipulation submitted by the parties, as modified and clarified herein, is reasonable, in the public interest, and should be adopted as set forth in this opinion and order.

6) Ameritech should be authorized to cancel and withdraw its present tariffs governing service to customers affected by these proceedings and to file tariffs consistent in all respects with the discussion and findings set forth in this opinion and order.

7) The Commission retains the continued oversight over this stipulation and its implementation in accordance with the stipulation and the opinion and order.

ORDER:

It is, therefore,

ORDERED, That the joint stipulation filed on September 20, 1994, in these proceedings is approved and adopted to the extent set forth in this opinion and order. It is, further,

ORDERED, That the application of Ameritech for approval of an alternative form of regulation is granted to the extent provided in this opinion and order. It is, further,

ORDERED, That any stipulating party who does not accept the provisions of this opinion and order which modify or clarify the stipulation, notify the Commission within 15 days in accordance with the provisions of the stipulation. It is, further, ORDERED, That the motion to strike Sprint's posthearing briefs from the record in Case No. 93-576-TP-CSS is granted. It is, further,

ORDERED, That Ameritech is authorized to cancel and withdraw its present tariffs governing service to customers affected by these cases and to file new tariffs consistent with the discussion and findings set forth in this opinion and order. Upon receipt of four complete copies of tariffs conforming to this opinion and order, the Commission will review and approve, if appropriate, those tariffs by entry. It is, further,

ORDERED, That Ameritech shall notify its customers of the new alternative regulation plan by insert or attachment to its billings, by special mailing, or by a combination of these methods. Ameritech shall submit a proposed form of notice to the Commission when it files its tariffs for approval. The Commission will review the notice and, if it finds it to be proper, will approve the notice by entry. It is, further,

ORDERED, That the effective date of the new tariffs shall be no sooner than 45 days from the date of this opinion and order, provided that the Commission has approved by entry the company's proposed tariffs and customer notice, and further provided that the company has filed four complete, printed final copies of its approved tariffs. One copy of the tariff should be filed in the company's TRF docket. The new rates should be implemented in accordance with the schedule set forth in the stipulation. It is, further,

ORDERED, That our approval of the stipulation to the extent set forth in this opinion and order does not constitute state action for the purpose of the antitrust laws. It is not our intent to insulate the company from the provisions of any state or federal law which prohibit the restraint of trade. It is, further,

ORDERED, That Ameritech comply with the stipulation approved in these cases, all of the terms of the opinion and order, and all Commission directives to be issued pursuant to this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

J. Michael Biddison

Jolynn Barry Butler

Richard M. Fanelly

David W. Johnson

CMTP/MKF/AKR/vrp

* See Separate Opinion

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Gary E. Vigorito
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.	)	Case No. 93-487-TP-ALT
In the Matter of the Complaint of the Office of Consumers' Counsel, Complainant, v. The Ohio Bell Telephone Company, Respondent.	)	Case No. 93-576-TP-CSS

Separate Concurring Opinion of Commissioner Richard M. Fanelly

I concur with the decision herein.

However, if a settlement had not been submitted I would have supported a price cap index consisting of the GDP-PI less a productivity differential of 2.2%, an input price differential of 1.0% and a consumer dividend of at least 1.0%, for a total offset factor of not less than 4.2%. I would have applied the price cap index only to Cell 1 services and would have permitted an additional 5% increase annually for Cell 1 services demonstrated to be priced below cost provided an equivalent revenue decrease was implemented simultaneously for other Cell 1 services demonstrated to be priced above cost. I would not have imposed the price cap index on Cells 2, 3 or 4. With respect to services migrating from Cell 1 to Cell 2 I would have imposed a two year price cap equal to the Cell 1 price at the time of transfer. With respect to Cell 2 pricing flexibility, I would have imposed a cap at 50% above the current price for current services and 50% above the then current price for new services following a six month introductory period. I would require at least a biennial showing by the company that Cell 2 placement continued to be justified by circumstances in the relevant market and reassignment to the appropriate cell at the lowest price charged during the review period in the event competition is found to be insufficient to justify continued placement in Cell

2. Lastly, I would rigorously apply the average price standard to all Cell 3 services regardless of the market in which they are sold.

Although I find the amount of the revenue reduction minimally acceptable for settlement purposes, I would have imposed all of it on a current basis and would have spread it among the Cell 1 services as identified in Attachment 1, Supplemental Testimony of R. G. Montgomery. I would have adopted additional price reductions to carrier access and business Cell 1 services in order to satisfy the FDC finding of N. Soliman for Cell 1.

I would not have exempted as many services from imputation as contained in the settlement.

I have not found any provision of the Stipulation that, properly interpreted, limits or restricts in any manner whatever actions are necessary, as ordered by the Commission and as implemented by the Company, in order to achieve elimination of barriers to competition and elimination of unfair conduct or practices in emerging competitive markets, subject only to the pricing cap imposed on below cost services by the Plan. Although the Commission has not yet addressed switched local certification, I fully concur with Time Warner and the IXCs that the record in this case more than adequately supports a finding that local service competition is in the public interest and, therefore, believe the only remaining issues for local service certification are applicant qualification and necessary terms and conditions in support of various public policies. Not all public policy matters need to be fully resolved prior to certification if the applicant accepts whatever provisions may be subsequently adopted.

The Company's authority to enter into flex priced individual contracts is grounded on the presence of competitive alternatives available to specific customers. In my view, it is inappropriate for the Company to be permitted to exercise such authority in circumstances where the Company elsewhere is impeding development of customer alternatives and options. The public interest is not served when competition is thwarted. The public interest also is not served when the LEC is restrained from the opportunity to compete. However, when confronted with a hierarchical choice among these two fundamental principles, I am prepared to leverage the LEC's contracting authority in order to "promote diversity and options in the supply of public telecommunications services and equipment throughout the state"; but only to the extent needed to insure an open network - not to hobble the LEC or arbitrarily manufacture market share distribution.

Richard M. Fanelly

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NOV 23 1994

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Gary E. Vigorito
Secretary