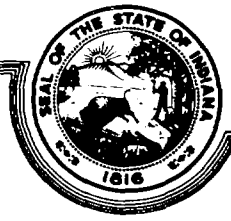
STATE of INDIANA



INDIANAPOLIS, 46204

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

FILED

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INDIANA UTILITY
REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF INDIANA BELL TELEPHONE COMPANY, INCORPORATED, D/B/A AMERITECH INDIANA PURSUANT TO I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS FOR COMMISSION REVIEW OF VARIOUS SUBMISSIONS OF AMERITECH INDIANA TO SHOW COMPLIANCE WITH SECTION 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996)	)	CAUSE NO. 41657

You are hereby notified that on this date, the Indiana Utility Regulatory Commission has caused the following entry to be made:

On October 26, 2000, the Commission noticed a meeting at which several parties participating in this Cause presented performance penalty plans. Plans were presented by Ameritech; Time Warner, McLeodUSA, and AT&T representing a Joint CLEC Proposal; Sprint; and Z-Tel.[1] After the presentations, the collaborative met; Mr. Kern distributed a short summary of the meeting to the presiding ALJ and the Ameritech271 ListServe on October 30, 2000. The summary states that the parties agree that there are key, fundamental differences between the various plans and due to these key differences, the collaborative is unable to develop a recommendation for the Commission's consideration.

The summary also states that the collaborative respectfully requests that the Commission establish a schedule to formally consider the various plans. The collaborative recommends that the Commission establish a date when parties would file their performance penalty plans. Initial comments would be filed by any interested party 30 days later and reply comments filed 30 days after the filing of initial comments. The Commission would issue a decision based on the comments and reply comments.

After giving due consideration to the presentations made to the Commission and the recommendations of the collaborative, the presiding officers find it appropriate to distribute to the parties general principles as a set of guidelines that the parties should address as part of their plans and use for generating comments on the other

[1] Worldcom did not make a presentation; however, it appears that Worldcom supports the Joint CLEC proposal, based upon a brief e-mail to Mr. John Kern and the Ameritech271 ListServe (dated October 25). In addition, ASCENT distributed a written set of concerns and recommended principles, which were distributed to the Ameritech271 ListServe on October 19, 2000; ASCENT also did not make a presentation.

performance penalty plans. All plans will be evaluated primarily on their ability or inability to meet these guidelines. These guidelines are attached to this docket entry.

After the parties have had an opportunity to review these guidelines, we will proceed along one of two paths. The parties can schedule additional collaboratives to discuss a performance penalty plan that meets these general guidelines in anticipation of presenting an agreed-upon plan. All parties must agree to this process in order to achieve the desired goal.

In the event all parties do not agree to proceed with Path I, the process recommended by the collaborative in Mr. Kern's October 30 e-mail will be implemented. The parties are to address and incorporate the guidelines attached hereto with their filings. Additionally, in the reply comments, each proponent of a plan should specify what modifications to each of the other plans would be required to make those other plans acceptable to the commenting party.

These two alternatives should be discussed by the parties at the regularly scheduled collaborative on November 14, 2000; Mr. Kern should notify the Commission of the decision no later than November 17, 2000.

IT IS SO ORDERED, consistent with the foregoing findings.

Camie J. Swanson-Hull

Camie J. Swanson-Hull
Commissioner

Abby R. Gray

Abby R. Gray
Administrative Law Judge

Dated: November 9, 2000

Nancy E. Manley

Nancy E. Manley
Acting Secretary to the Commission

PRINCIPLES FOR INDIANA PERFORMANCE REMEDY PLAN

PREAMBLE

The Principles below are a set of guidelines the Commission has determined should be addressed by any performance remedy plan ("remedy plan") affecting Indiana Bell d/b/a "Ameritech Indiana" or other SBC/Ameritech entities operating in Indiana and subject to Section 271 (collectively, "SBC/Ameritech"). The objectives for such a plan include, but are not limited to: (1) creating incentives for SBC to comply with the requirements in Section 271 and enhance the likelihood of winning ultimate "271 authority" for the state of Indiana and (2) ensuring that SBC/AIT remains in compliance – i.e., does not "backslide" – after such authority is granted for Indiana.

All remedy plans presented to the Commission will be evaluated on their ability to meet these principles. The principles were designed to give the collaborative the general guidelines for the remedy plan without dictating specific requirements. The collaborative remedy plan process used to revise and/or develop the Indiana Performance Remedy Plan will be open and will draw on input from SBC/Ameritech, the competitive local exchange carriers (CLECs), the Office of the Utility Consumer Counselor, and other interested participants.

The penalties assessed and collected under the Indiana Performance Remedy Plan must be large enough to eliminate the possibility that SBC/Ameritech will view them as simply a "cost of doing business" in Indiana.

The Commission will not provide a recommendation to the FCC that SBC/Ameritech has met the requirements under Section 271 of the Communications Act of 1934, as amended, until the Indiana Performance Remedy Plan for SBC/Ameritech is binding, legally enforceable, and in effect in Indiana (specifically including, but not limited to, the change management/change control mechanism)

Remedy Plan Structure

1. Oversight of the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC.

2. The remedy plan should adjust in a timely and efficient way to changing market conditions.

3. The remedy plan should contain measures and penalties for all relevant points of the 14-point checklist.

4. The remedy plan will clearly and unambiguously support the five factors identified by the FCC in its Bell Atlantic-New York and SBC-Texas 271 orders. These five factors are: (1) Potential liability that provides a meaningful and significant remedy to comply with the designated performance standards; (2) Clearly-articulated, pre-determined measures and

standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) A reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) Provide reasonable assurances that the reported data are accurate.

5. The remedy plan should not include a fixed termination date. The remedy plan should not assume an unchanging list of performance measures ("PMs") over the life of the plan. The plan will include criteria and procedures to add, delete, or modify the PMs used in the plan.

6. The remedy plan should be neutral as to the various entry strategies (resale; UNEs; interconnection; collocation; and other, non-UNE facilities) that competitive carriers are likely to use in entering the local exchange market.

7. The remedy plan will treat the selection of PMs, weight of the PMs, and the sample size in such a way as to maintain neutrality with respect to mode of entry (resale; UNEs; interconnection; collocation; and other, non-UNE facilities). For example, if a mode of entry is not represented in the set of PMs, then anti-competitive behavior with respect to that mode of entry might not be detected. Similarly, the way the PMs are weighted and the way their populations are sampled should be structured to not discriminate against a mode of entry.

8. The Indiana remedy plan should give the IURC explicit authority to reallocate the monthly distribution of penalty payments between the change management/change control portion of the plan and other portions of the plan.

Performance Measures

9. The remedy plan will be built on the Indiana-specific performance measures and metrics that support this performance remedy plan, as well as other measures and metrics that are developed, tested, and audited as part of the third party testing of operational support systems for SBC/Ameritech. These measures will be clearly articulated and encompass a comprehensive range of carrier-to-carrier performance. Where Indiana-specific goals and criteria are not compromised, performance measures or metrics may be common across SBC/Ameritech states. The remedy plan should specify how, if two or more PMs measure the same underlying performance or function, the PMs should be counted for penalty calculations.

10. The remedy plan should include performance measures and penalties regarding the availability, functionality, and quality of SBC/Ameritech's front-end/front-office and back-end/back-office systems.

11. The remedy plan will establish standards and measurements, as well as penalties for "network performance." There should be at least two broad categories of measurements and associated penalties: (1) insufficient trunk capacity, high trunk blockage levels, or excessive trunk provisioning intervals and (2) excessive collocation provisioning intervals.

12. The remedy plan will contain penalties for discrimination against any CLEC or class of CLECs based upon mode of entry (resale; UNEs; collocation; interconnection; or other, non-UNE facilities). These penalties should be in addition to any other penalties contained in the remedy plan.

13. The remedy plan should contain performance measures and penalties pertaining to the general ability of SBC/Ameritech to handle commercial volumes of CLEC traffic prior to the granting of 271 authority for Indiana. Issues that should be considered include the pre-271 scalability of SBC/Ameritech's facilities, equipment, systems, software, processes, etc.,

14. Raw data underlying a performance measure should be stored in a secure, stable, redundant, and auditable manner – e.g., as regards format and storage medium. All raw data files (both original and back-up(s)) should be maintained for at least three years.

15. The remedy plan will contain a quality control/quality assurance mechanism(s) to ensure that the reported data and results are accurate. At a minimum, this quality control/quality assurance mechanism(s) will include a well-defined method to permit auditing of both data and results. All such audit data and results will be disclosed publicly, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

16. The remedy plan may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

Service Quality Criteria

17. The remedy plan will establish minimum service quality levels below which penalties will apply. The remedy plan will include a mechanism for defining minimum service quality standards for particular performance measures where those standards are not already defined under Indiana law.

Analytic Criteria

18. The remedy plan will provide for a method of determining whether performance measures are being satisfied. If statistical methods are used to determine if performance in a particular area is "in parity,"a system designed to balance both type 1 and type 2 errors must be included as a part of the plan. Techniques including, or similar to, "stare and compare" will be used for performance measures with a benchmark standard. A detailed rationale must be used if statistical analysis is used for performance measures with a benchmark standard.

19. Where mitigation or "forgiveness" is desired, the remedy plan should identify and fully explain, at a minimum: (1) specific measurements, metrics, or other circumstances to which or under which mitigation or forgiveness would be applied); (2) clearly stated rationale and assumptions for why mitigation is appropriate), (3) the appropriate amount or level of mitigation/forgiveness to be applied; and (4) what criteria will be used to determine what that appropriate level of mitigation or "forgiveness" should be.

20. The remedy plan will disaggregate the resale performance measurements based upon the number and scope of SBC/Ameritech's retail rate groups.

21. The remedy plan will disaggregate the UNE, interconnection, and collocation performance measurements based upon the number and scope of zones that SBC/Ameritech uses to set prices for geographically deaveraged UNEs.

22. The remedy plan must contain measures and penalties for xDSL and other advanced services.

23. The remedy plan will contain a mechanism to permit changes to the plan to accommodate nascent or emerging services, elements, and functionalities provided to CLECs.

24. The remedy plan will provide means to ensure that the reported data and results are publicly disclosed, subject to appropriate procedures (as required under Indiana law) to protect any data or results that the Commission finds to be confidential, proprietary, or a trade secret.

25. The remedy plan should propose a mechanism for resolving disagreements regarding the format of the raw data to be shared between SBC/Ameritech and the CLECs in a timely and efficient way.

Enforcement Mechanism

26. The remedy plan will have a manageable enforcement structure for the IURC.

27. The remedy plan and its associated penalties must be legally enforceable and under the control of the IURC.

28. The remedy plan, including the accrual and payment of penalties, should take effect when the plan is approved by the IURC.

29. The remedy plan will clearly identify any proposed absolute exclusions or caps, as well as any associated assumptions or calculation methodologies. All absolute exclusions and caps in the Indiana CLEC performance remedy plan must be approved by the IURC prior to the IURC's approval of the remedy plan. In those instances where absolute caps are proposed, the plan must (1) describe what happens when the cap is reached (do the penalties continue to accrue or not, is there an escrow account, etc.); (2) explain why penalties should no longer be assessed and/or paid if the associated poor performance has not been corrected or the associated performance standard has not been met; (3) trigger a review of the underlying reason(s) for the performance and for reaching the cap, and (4) trigger a review of the level of the absolute cap in question.

30. The remedy plan should have a simple mechanism that CLECs will use to enter into the plan. It should not take a long time or require extensive negotiations for a CLEC to enter into the remedy plan.

31. The remedy plan will provide meaningful and significant financial penalties for non-compliance with the designated performance standards. The financial penalties shall be paid in such a way as to be publicly visible and traceable to the specific underlying poor performance. If penalties are under this plan are to be settled by bill credits, the plan should propose a mechanism that will allow such credits to be issued on an aggregated per-CLEC basis as well as on a per-account basis. The settlement process should be transparent and open to public scrutiny.

32. The remedy plan will include a procedure to determine the cause(s) of, or reasons(s) for poor performance. The cause(s) or reason(s) will be publicly disclosed. The plan will include a trigger to initiate this procedure.

33. The remedy plan should be open-ended in escalating penalties for continued poor performance ("duration") or it should include a rationale as to why the penalties should stop escalating after a specified time period and should identify and explain the specific duration in question.

34. The remedy plan should be open ended in escalating penalties for acutely poor performance (severity) or it should include a rationale as to why the penalties should stop escalating after a specified level of poor performance is reached and should identify and explain the specific "severity" level in question.

35. The remedy plan should be a separate agreement from other agreements entered into between SBC/Ameritech and the CLECs.

36. The remedy plan will contain methods to ensure that penalties are not passed on to, or recovered from, SBC/Ameritech's customers or ratepayers.

37. The penalties set forth in the remedy plan for SBC/Ameritech shall not offset, nor shall they be offset by, penalties contained in, and/or required or permitted by any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or contained in and/or required or permitted by any other ILEC-to-CLEC contract or performance/remedy plan affecting SBC/Ameritech or into which SBC/Ameritech has entered and that is not approved by a regulatory agency.

Change Management/Change Control Mechanism

38. The remedy plan will have a method to measure performance and assess penalties in the area of change management/ change control.

39. The remedy plan will contain a mechanism to permit adjustments to the plan to accommodate changes in the OSS systems, processes, or procedures.

40. The remedy plan should contain performance measures and penalties pertaining to the post-271 scalability of SBC/Ameritech's facilities, equipment, systems, software, processes, etc., in the context of the ability of SBC/Ameritech to handle commercial volumes of CLEC traffic following the granting of 271 authority for Indiana. For major releases or upgrades, change management and change control tests should include volume tests at "normal," "peak," and "stress" levels.

41. Change control authority over the remedy plan and the performance measures supporting the plan will ultimately rest with the IURC. There should be an explicit process or mechanism for the Commission, on its own motion, to identify problems and make changes to the remedy plan or the performance measures that support the plan.

42. The remedy plan will include an explicit, predictable, flexible, and public mechanism for SBC/Ameritech and other parties to identify problems to the IURC and permit changes to the remedy plan and the performance measures used to support the plan.

43. The change management/change control remedy plan for SBC/Ameritech may contain diagnostic measures, where appropriate, to further identify problem areas and to allow for fine tuning of the performance measure standards in future proceedings.

44. The penalties set forth in the change management/change control portion of the remedy plan for SBC/Ameritech shall not offset, nor shall they be offset by, penalties that are: (1) contained in, and/or required or permitted by any other portion of this remedy plan; (2) contained in, and/or required or permitted by any other IURC-approved plan, agreement, amendment, rule, order, or other mandate; or (3) contained in and/or required or permitted by any other ILEC-to-CLEC contract or performance/remedy plan affecting SBC/Ameritech or into which SBC/Ameritech has entered and that is not approved by a regulatory agency.