STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Joint Petition for Arbitration Pursuant to Condition 29 of the SBC/Ameritech Merger Regarding Operation Support Systems and Ameritech's Plan of Record	:	Docket No. 00-0592

BRIEF ON EXCEPTIONS OF STAFF OF THE ILLINOIS COMMERCE COMMISSION

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I. INTRODUCTION

The Staff of the Illinois Commerce Commission (hereinafter "Staff"), pursuant to Section 200.830 of the Rules of Practice before the Illinois Commerce Commission, 83 Ill. Admin. Code 200.830, submits its Brief on Exceptions:

II. EXCEPTIONS

The Staff takes the following exceptions to the Hearing Examiner's Proposed Order (hereinafter "HEPO") entered on November 9, 2000 in the above-captioned matter:

Issue 1
Application Versioning

Exception Number 1: The HEPO should clarify that the Application Versioning reporting requirement imposed on Ameritech includes verification by an

SBC/Ameritech officer as well as filing of the aforementioned report with the Chief Clerk of the Commission.

The HEPO correctly finds that the proposed March 2001 implementation date for application versioning is appropriate under the circumstances. HEPO at 22. The HEPO also adopts Staff's recommendation that the Commission require AI to provide verified monthly reports on the progress of its Application Versioning initiative. HEPO at 22. Staff commends the Hearing Examiner for the well-reasoned analysis contained in the HEPO and strongly supports the conclusions contained therein as pro-competitive, good public policy and consistent with the record developed in this case.

Staff suggests, however, one point of clarification regarding the reporting requirement imposed on AI with respect to this issue and other issues the HEPO addresses. The overriding need for public confidence in the expeditious development of operations support services that promote local exchange competition in AI's service area, and the need for Staff and CLECs to have unfettered access to information related to AI's efforts in this regard, warrant the Commission requirement (which the HEPO correctly imposes as to Issue 1) that an AI officer verify all reports it is required to file. The same considerations further warrant, however, that all such reports be filed with the Chief Clerk of the Commission, in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that such reports will be public records available for inspection and copying.

Accordingly, Staff recommends the following alterations to the HEPO at page 21:

Staff Position

Action:

Staff agrees that the March 2001 target date for application versioning is reasonable and should be accepted by the Commission as the absolute end date for its provisioning. Staff, however, recommended~~s~~ that the Commission require AI to provide verified monthly reports to the Commission ~~Staff~~ on the progress of its Application Versioning initiative. In its Brief on Exceptions, Staff refines its position to state that the Commission should order that verified reports be filed with the Office of the Chief Clerk of the Commission as public records available for inspection and copying.

Reporting:

Specifically, the Commission should order AI to provide a report to the Commission no later than the 15th of each month that would include a comprehensive and detailed evaluation of the project plan being used to track and manage the implementation of the Application Versioning initiative. The project plan should include all major milestones related to the project along with the estimated and actual target dates for each milestone. Any changes from the previous monthly report regarding planning assumptions or schedule changes should also be noted and an explanation should be provided for those changes. The overall impact of any such changes on the project should also be clearly identified and reported to the Commission. Staff believes the aforementioned report will inform the Commission and the CLECs as to Ameritech's progress toward meeting its committed implementation date. In its Brief on Exceptions, Staff concurs that the Commission require that an AI officer verify the aforementioned report and, requests that the report be filed with the Chief Clerk of the Commission in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that all such reports will be public records available for inspection and copying.

Additionally, Staff recommends the following alterations to the HEPO at page 22:

We are persuaded by the record, including the position of our Staff, that the March 2001implementation date is appropriate under the circumstances and will hold AI to its commitment. We also agree with Staff that a reporting requirement to keep the Commission apprised of AI's progress on Application Versioning is necessary. ~~In accord with Staff's proposal and as suggested by AT&T, we direct~~ The Commission, therefore, directs AI to provide a verified report in the specific manner and ~~time~~ timeframe specified by Staff to ensure that it is on track in meeting this absolute end date.

Similarly, a corresponding exception should be added to the Findings & Ordering Paragraphs (Section VI) portion of the HEPO as follows:

> (10) All reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying;

In addition, a new ordering paragraph should be added to read as follows:

> IT IS FURTHER ORDERED that all reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying.

Aside from the reporting requirement clarification, Staff takes no other exception to the conclusions contained in the HEPO with regards to Issue1: Application Versioning.

Issue 2
Joint Testing

Exception Number 2: The HEPO incorrectly dismisses Staff's recommendations regarding changes to Ameritech's current test environment and also fails to accurately reflect Ameritech's commitment regarding the availability of pre-ordering inquiries in testing.

The HEPO addresses joint testing issues by dividing its discussion into two sections: current test environment and future test environment. The current testing environment is in effect until January 2001 - the date that the new joint testing environment is scheduled to be implemented. Similarly, Staff will address issues relating to the two testing environments in turn.

Staff made the following four specific recommendations regarding the "current" test environment: (1) CLECs should be allowed to increase the amount of test records submitted per day from five to fifteen; (2) the turnaround time for pass/fail results on those

submitted records be reduced from four days down to one day; (3) CLECs should be afforded a minimum of fifteen days and a maximum of thirty days prior to a scheduled release for testing; and, (4) a dedicated resource, other than the CLECs AI Account Representative, should be assigned to the CLECs during a given test period to assist them during the test process. Staff Final Comments at 22.

Although the HEPO acknowledges that "….Staff raises many valid concerns about the current test environment," HEPO at 24. it fails to even consider, much less adopt the Staff's recommendations regarding the current testing environment. The HEPO dismisses these recommendations on the basis that "….changes ordered to the current testing environment would be obsolete in less than two months." HEPO at 25. The HEPO apparently accepts AI's argument that too many demands are being placed on Ameritech resources in this arbitration proceeding. HEPO at 25.

Staff maintains that current testing of intermediate releases is important to competition regardless of the fact that a new joint testing environment is scheduled to be released in less than two months. Every customer a CLEC loses over the next two months due to inadequacies in the current testing environment is a blow to competition in Illinois. Ameritech's "allocation of resources" argument lacks merit in this instance. Staff's recommended changes to the current testing environment simply require Ameritech to devote additional personnel. This is significantly different from asking Ameritech to upgrade software versions used in the joint testing environment or from speeding up implementation or rollout dates.

Accordingly, Staff recommends the following alterations to the HEPO at page 24-25:

Analysis and Conclusion:

The CLECs and Staff raise many valid concerns about the current test environment. We recognize the importance of comprehensive testing in order to ensure smooth OSS release. Although the ~~The~~ Commission~~, however,~~ needs to look at all the demands being placed on AI resources in this Arbitration, the Commission finds that the resources required to address the inadequacies of the current testing environment are minimal and would not be detrimental to Ameritech's other OSS obligations and commitments pursuant to this Order.

AI's future joint testing environment will be able for CLECs in January. The future environment will be available in time for testing for the many OSS releases planned for March, 2001. Nevertheless, the Commission agrees with Staff that correcting the inadequacies of the current testing environment is important to competitive telecommunications markets in Illinois. The Commission, therefore, directs Ameritech to make changes to its current testing environment in the manner specified by Staff. ~~Any changes ordered to the current testing environment would be obsolete in less than two months. The Commission sees no need to take resources away from other AI projects in order to make changes to a temporary system. Therefore, AT&T's proposed language for the beginning of the CLEC Joint Testing Section of the POR will not be adopted~~.

With respect to the "future" joint testing environment, Staff takes exception to the HEPOs conclusion on the availability of pre-ordering inquiries in testing. The CLECs argue that all pre-ordering inquiries should be made available during testing and point to a commitment made by Ameritech witness Cullen during the evidentiary hearings. HEPO at 27 (citing Transcript of Evidentiary Hearings at 690). The CLECs simply maintain that witness Cullen's commitment be reflected in the POR language. HEPO at 27.

The HEPO concludes that the aforementioned CLEC concern is alleviated by simply inserting the term "test databases, and test transactions" to the POR section on pre-ordering joint testing." HEPO at 29. Staff fails to see how the addition of the term "test

databases, and test transactions" accurately reflects the specific commitment made by Ameritech on this issue.[1]

Accordingly, Staff recommends that the following modifications be made to the HEPO at page 29:

> The fifth CLEC concern is whether all pre-ordering inquiries will be available in testing. ~~AT&T's comments do not specify which language should be inserted in the POR for this issue. However, the Commission believes that AT&T's concerned are answered by requiring the term "test databases, and test transactions" be added to the section on pre-ordering joint testing as outlined in the previous paragraph~~. As the CLECs correctly point out, Ameritech conceded during the evidentiary hearing the importance of access to all pre-order functions during testing. As such, the Commission directs that the following sentence be added to the appropriate POR section dealing with joint testing (POR Section 3, FMO, A. Overview Subsection - CLEC Joint Testing): All pre-ordering functions will be available in the joint testing environment.

Finally, Staff notes that the HEPO fails to address its recommendation that the Commission require AI to provide monthly reports to Commission Staff on the progress of its Joint Testing initiative. Staff, therefore, suggests that the following language be added to the HEPO (at page 30) as a final paragraph in the HEPO's "Analysis and Conclusion" section on Issue 2:

> Finally, we agree with Staff that a reporting requirement to keep the Commission apprised of AI's progress on Joint Testing is necessary. The Commission, therefore, directs AI to provide a report to the Commission no later than the 15th day of each month. The report shall include a comprehensive and detailed evaluation of the project plan being used to track and manage the implementation of the March 2001 release. The project plan should include all major milestones related to the project along

[1] Ameritech witness Cullen testified during the evidentiary hearing as follows: "All pre-ordering function, absolutely, yes. You should always have access to all pre-order functions." (Tr. at 690).

with the estimated and actual target dates for each milestone. Any changes from the previous monthly report regarding planning assumptions or schedule changes should also be noted. The overall impact of any such changes on the project should also be clearly identified and reported to the Commission. An AI officer should also verify the report and the report shall be filed with the Chief Clerk of the Commission in a form suitable for posting to the Commission's web page.

Issue 4

Change Management Process – Outstanding Issue Solution

Exception Number 3: Staff takes exception to the HEPO's conclusion that OIS votes should be governed by the quorum system proposed by Ameritech. The Commission should conclude that OIS votes should be determined by a majority of those participating.

The only area in dispute in this Issue was the process for taking a vote to determine the outcome of CLEC voting for the Outstanding Issue Solution ("OIS") within the context of the Change Management Process ("CMP"). Ameritech proposed a required minimum number (a quorum) of CLECs be present in order for an OIS vote to even occur. Ameritech would measure this minimum by either 50 per cent of qualified CLECs or 8 CLECs, whichever was less. The CLECs argued that the quorum proposal would effectively eviscerate the OIS vote. They cited the historical difficulty in getting CLECs together in sufficient numbers to meet Ameritech's proposed quorum. See, AT&T Initial Comments at 14. As their preferred alternative, the CLECS proposed that OIS votes be determined by a majority of CLECs that participate in the vote.

Staff, too, argued that the Ameritech quorum proposal would not be workable. Staff expressed strong reservations as to whether the quorum could be met. Staff pointed to situations such as those discussed by the CLECs where very few CLECs participated,

even in very important conferences. A clear example is this very case, where less than 15 CLECs participated, even though there are some 280 to 300 Certified CLECs in the State. See, Staff Final Comments at 28. Staff is also concerned that the barrier of the quorum could act to delay effective competition in the market for local service.

The HEPO, however, sides with Ameritech and determines that OIS votes will occur only if a quorum (as defined by Ameritech) of qualified CLECs participate. HEPO at 38. The outcome of any vote that does take place will be decided by a majority vote. The HEPO also accepts Staff's suggestion of OIS process reviews after the final approval of the CMP, but fails to specify that the reviews should be six months and twelve months after said approval.

Staff continues to believe that the quorum proposal is not the right solution for this issue. The difficulties in reaching a quorum for OIS votes are quite real, as shown by CLEC experience in Illinois to date. The CMP is a process vital for opening the local service market to competition. The quorum requirement could well amount to an unnecessary obstacle to open competition. As an example, assume that a particular OIS vote would carry a quorum of 8. There are seven CLECs that are vitally interested in opposing this particular CMP release because it will inhibit their ability to recruit new customers. The remaining 9 or more qualified CLECs are indifferent to the outcome of the OIS vote, and so do not 'appear' for the vote. Under this circumstance, by the HEPO's ruling, no vote could even be taken. The HEPO justifies its conclusion, in part, on Ameritech's musing that the process should be 'protected' from the situation where a single CLEC appears and votes (on the speculation that such a vote would be detrimental) – but it fails to provide any 'protection' for CLECs in situations such as the one just posited.

Staff also takes exception to the circular reasoning employed by the HEPO in finding in favor of a quorum. The HEPO posits that a quorum is really a threshold requirement, and that no party cited "any authority for dispensing with a quorum requirement altogether." HEPO at 38–39. But, the HEPO mostly relies on references to quorums in legislative settings, wherein quorum requirements have been established by statute (or constitution). The HEPO provides no support for imposing a quorum requirement on business decisions. It should not be presumed that Roberts Rules of Order is to be automatically imposed in all instances where voting occurs. The Rules establish a convention by which parties may agree to abide. They may also agree to abide by other rules, i.e., a majority vote of those present.

The HEPO speculates that a quorum requirement will stimulate participation in the vote. HEPO at 38-39. In fact, it may be that a majority vote, rather than a quorum requirement, would encourage CLECs to participate. Under the quorum regime, CLECs could be comfortable with non-participation merely because of the quorum threshold. That is, setting the bar that high provides CLECs with a 'comfort zone' of knowing the release will go forward unless, e.g., 8 CLECs participate. On the other hand, if the bar is set at the measure of the majority of those actually participating, all qualified CLECs would know that their votes must be counted. If a CLEC wants the release to go forward, it must be there to support it. Otherwise, there is a more significant chance that the vote will be to block the release (and vice versa).

Staff also proposes that the HEPO should more clearly adopt Staff's proposal for reviewing the OIS process at points six and twelve months after the final approval of the CMP process. Staff notes that the HEPO found Staff's suggested review to be

appropriate, but that the HEPO only noted that the process be examined from "time to time." HEPO at 40

Accordingly, Staff proposes the following changes to the HEPO:

Analysis and Conclusion

The question at hand is what rules should be adopted for OIS voting. More specifically, it is AI's proposal for a quorum requirement that is in dispute, and we examine if, and why, it is needed in the OIS voting process.

The record shows that AI's quorum proposal evolved from its being uncomfortable with the idea that just one CLEC could conceivably make a determination, the consequences of which would effect many CLECs in many regions. (Tr. 77). In other words, AI sought a way to ensure the participation of at least a minimum number of CLECs. In those instances where 50% of qualified CLECs was still a large population, AI considered a number of eight to be suitable for these purposes. (Tr. at 78).

Based on the whole of their respective comments, the CLEC position is clear: they believe it unlikely that either a quorum or 8 "qualified" CLECs would ever be present at an OIS vote; if a CLEC wishes to "opt out" of the debate for whatever reason, its abstention should not count as a vote in AI's favor; the majority of qualified CLECs that elect to actually "show up" for a vote, be it 1, 10 or 100, should be able to govern the result; and, these certain CLECs state their willingness to accept the consequences of such a "majority-participant" vote.

~~Notably, none of the parties addressing this issue rely on any authority or settled principles in setting out their respective viewpoints and positions. In order to resolve this issue on some reasonable, informed and impartial basis we turn to the fundamental principles of parliamentary law as set out in Roberts Rules of Order and in the case law.~~

~~Parliamentary law was established to guarantee that the will of the majority would prevail while the rights of the minority were protected. It is used at all levels of government from Congress and the House of Representatives to state, municipal and village assemblies. In 1876, Henry Martyn Robert completed the task of adapting those basic principles to apply to the specific needs of running a club, service organization or school meeting, The rules he established apply as readily and necessarily to the workplace and business setting and have value for our purposes.~~

~~Most people have been educated under a system of parliamentary law peculiar to this country and, knowingly or not, adhere to its principle. When Staff urges the parties to exercise "good faith" and allow for the "free exchange of ideas and information" it is actually recognizing these age-old principles. (These concepts clearly come into play during the debate on the vote). When AI speaks of a certain "comfort level" that comes about from having a quorum to partake in the vote it is, in reality, espousing the precepts of parliamentary law. (Tr. 78).~~

~~The OIS vote is presumed to be one of a body - the body of qualified CLECs. As such, the outcome of the vote should be, as nearly as possible, representative of that body.~~

~~All parties agree that when a vote is called, a majority of that vote should determine the outcome. For a majority vote to be valid, however, we are informed that there must be a quorum present. Indeed, it has been the rule for all time that when a quorum is present, the act of the majority of the quorum is the act of the body. U.S. v. Ballin, 144 U.S. 1 (1891); Rock v. Thompson, 85 Ill 2d. 410 (1981). So too, if all members of the select body have been duly notified and the minority refuse or neglect to meet with the others, a majority of those present may act, provided those present constitute a majority of the whole. Brown v. District of Columbia, 127 U.S. 579 (1888). We have not been directed to, nor have we found any authority which condones action taken in the absence of a quorum. Indeed, the definition of "majority vote" found in Roberts Rules of Order and cited in County of Kankakee v. Eugene Anthony , 304 Ill. App.3d 1040 (3rd Dist, 1999), provides:~~

> ~~The word majority means "more than half" and when the term majority vote is used without qualification it means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regularly or properly called meeting at which a quorum is present. RRO Sec. 43, at 395 (9th ed. 1990).~~~~Notably, none of the parties addressing this issue rely on any authority or settled principles in setting out their respective viewpoints and positions. In order to resolve this issue on some reasonable, informed and impartial basis we turn to the fundamental principles of parliamentary law as set out in Roberts Rules of Order and in the case law.~~

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~~In deciding the appropriateness of a quorum requirement for OIS, it is the debate and deliberations, as much as the actual vote, that concerns us. Prior to the vote itself, there is to be a discussion of the impact of a vote going in either direction. Experience teaches that at this juncture, alternatives might well be proposed and debated, consequences explored on a number of variables, and positions modified or amended or shifted.~~

~~None of what occurs at this stage can reasonably be foreseen or adequately reflected in the vote notice - it follows, by nature, from the process.~~

~~Without actual participation at this preliminary stage, however, a CLEC cannot know what is really at issue when the time comes for the actual vote. Nor can a CLEC be really sure if it is interested in either pursuing or waiving its voting rights or acceding to the will of those who do participate.~~

~~We believe that the largest possible number of qualified CLECs - who by virtue of meeting the set qualification criteria are in the position of being affected by a vote - should make an informed choice based on the debate before walking away from the actual vote. To this end and in our view, a quorum requirement is the only way to ensure such meaningful participation. The courts confirm that the purpose of a quorum requirement is to have a certain number of persons convene and "consider." Textron, Inc. v. American Woolen Co. 122 F. Supp. 305 (1954).~~

~~To be sure, the number of participants needed to constitute a quorum will vary based on a number of factors in any given situation. Unless there is a special rule on the subject, a quorum is generally a majority of all members. We are not directed to, nor have we found any authority for dispensing with a quorum requirement altogether. According to one commentator, many small organizations specify that a quorum is the largest number of people who can be relied on to attend. See, 21st Century Robert's Rules of Order, edited by The Princeton Language Institute (1995) at page 153. This appears in the CLEC and Staff view that, vote participation is expected to be minimal based on the level of participation in this proceeding. We are informed that only about 10 of some 300 CLECs eligible to participate in the collaboratives took part in those meetings. We are not advised, however, if it were the same participants each time or if the number varied defending on the matters in discussion. In any event, that 300 number is not telling for present purposes.~~

~~In the situation at hand, the quorum number would not and should not arise on the basis of the entire CLEC population (i.e., that 300 number), but only from the number of all "qualified' CLECs, i.e., those meeting the agreed-upon criteria to vote on a particular issue. We do not know what that exact number may be in each voting situation. It may also be the case that the number of CLECs eligible to vote is not a constant number. It is too early to make that call.~~ ~~To this end and in our view, a quorum requirement is the only way to ensure such meaningful participation. The courts confirm that the purpose of a quorum requirement is to have a certain number of persons convene and "consider." Textron, Inc. v. American Woolen Co. 122 F. Supp. 305 (1954).To be sure, the number of participants needed to constitute a quorum will vary based on a number of factors in any given situation. Unless~~

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~~In the situation at hand, the quorum number would not and should not arise on the basis of the entire CLEC population (i.e., that 300 number), but only from the number of all "qualified' CLECs, i.e., those meeting the agreed-upon criteria to vote on a particular issue. We do not know what that exact number may be in each voting situation. It may also be the case that the number of CLECs eligible to vote is not a constant number. It is too early to make that call. Staff appears to know this, and hence has recommended that the process be examined from time to time to see how it is working and what, if any, adjustments are needed. This is appropriate.~~

~~For the moment, however, AI proposes a quorum be 50% of all qualified CLECs or eight, whichever is less. This appears fair and workable. Regardless of how the eight number evolved, we know it is only operative if it is the lesser of 50% of the voting population of qualified CLECs. Moreover, no other quorum number proposal is before us.~~

~~Generally, no member of a group qualified to vote can be compelled to vote. This means that each qualified CLEC has the right to abstain. Nevertheless, the qualified CLEC has the obligation - as well as the right - to participate in the call and if choosing to opt out or abstain should put that position on the voting record. Simply put, the responsibility to partake in the debate should be outlined clearly, and distinctly, both in the CMP as well as in the vote notice.~~

~~For the moment, however, AI proposes a quorum be 50% of all qualified CLECs or eight, whichever is less. This appears fair and workable. Regardless of how the eight number evolved, we know it is only operative if it is the lesser of 50% of the voting population of qualified CLECs. Moreover, no other quorum number proposal is before us.~~

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~~participate in the call and if choosing to opt out or abstain should put that position on the voting record. Simply put, the responsibility to partake in the debate should be outlined clearly, and distinctly, both in the CMP as well as in the vote notice.~~

~~In the Joint Small~~ As expressed by the CLECs' ~~view~~ and by Staff the practical effects of AI's quorum proposal will be to silence the CLECs who have grave concerns about the impact of a proposed change. We ~~do not~~ ~~do not~~ agree. A standard of a majority vote should better encourage ~~E~~each of those concerned parties ~~will~~ to participate.~~, and could through notice or other means garner support for their situation.~~ If ~~the CLECs~~ the participants, including AI, contemplate settling disputes by vote - and not by veto power (preventing the existence of a quorum through non-participation) - then they must accept the democratic processes attendant to a meaningful and informed vote. ~~In the final analysis, we find AI proposal that a quorum be required consisting of 50% of those CLECs qualified to vote on a particular feature, or 8 CLECs, whichever is less comports with sound legal principles. It is reasonable for the purposes at hand and the language AI proposes for this dispute is accepted.~~

In the final analysis, we find AI proposal that a quorum be required consisting of 50% of those CLECs qualified to vote on a particular feature, or 8 CLECs, whichever is less, is not workable. ~~comports with sound legal principles. It is reasonable for the purposes at hand and the language AI proposes for this dispute is accepted.~~

Issue 6

OSS System Interface Availability

Exception Number 4: The HEPO should be amended to require AI to make available its ordering and pre-ordering interfaces on a synchronous basis. The HEPO should also require AI to offer Sunday availability for pre-ordering functions within a specified timeframe. Further, Staff recommends certain clarifications to the reporting requirements adopted by the HEPO.

As described in the HEPO, Issue 6 addresses whether the Commission should order AI to increase the availability of the ordering, maintenance and repair interfaces to a 24 hour, 7 day a week schedule of availability. HEPO at 38. The HEPO answers this inquiry in the negative, relying on Staff's determination that the age and design of AI's

current systems would make 24 x 7 availability cost prohibitive. HEPO at 44. Nevertheless, recognizing the benefit to competition of increasing CLEC access to such interfaces, the HEPO correctly calls for a gradual increase in the hours of availability for such interfaces, including the addition of Sunday hours both currently and over time. Staff agrees with the HEPO's conclusions with respect to the above points, taking exception to the HEPO only to clarify certain of these conclusions and to provide more stringent timeframes for their implementation. Staff argues that such clarifications and timeframes will both increase the ease of implementing the HEPO's orders as well as providing greater guidance and certainty to both to AI and the CLECs with respect to their future business plans.

Issue 6 also addresses whether the Commission should order AI to synchronize the hours of availability of the pre-ordering and ordering interfaces, as the availability of such interfaces is increased. HEPO at 38. The HEPO rejects synchronization finding AI's argument reasonable that "[t]he reduced maintenance needs (and consequently the greater availability) of ordering time explains why synchronization is impossible" and further, that the "only way for AI to keep these functions on an equal footing would be to reduce ordering availability to the hours available for pre-ordering." HEPO at 45. In coming to this conclusion, the HEPO incorrectly admonishes Staff for agreeing with the CLEC position that the hours of availability for pre-ordering and ordering systems should be synchronized. The HEPO contends that:

> [a]s its only support, Staff relies on the CLEC position and states that it is 'illogical to offer extended hours for the ordering interface but not the pre-ordering interface, since the pre-ordering interface needs to be accessed to prepare orders in the first place'. This is by no means a sound rationale given that it fails to take any account of the underlying reason for the difference between pre-ordering and ordering system availability.

HEPO at 44-45.

The HEPO is correct in that Staff does adopt the CLEC position that synchronization should be ordered by the Commission because of the benefit to competition to provide these mutually dependent interfaces within the same timeframes. Staff recognizes that, unlike AI's retail usage of such interfaces which generally occurs during business hours on line with customers, the CLECs often use these interfaces during non-business hours. Tr. at 276-279; Final Comments of Small CLECs at 20-22. Unlike AI, the CLECs must process their customer orders through AI and, as a result, often perform their "paperwork" at night or on weekends, verifying previously taken orders and correcting rejections that were received from AI. This is particularly true in light of the fact that CLEC orders are submitted in batches and processed after any interaction with the end user while, in contrast, AI's electronic retail orders are processed in "real time" with the end-user on line.

The HEPO's rejection of synchronization, therefore, is founded upon an erroneous set of facts. By relying upon AI's statements that "pre-ordering is an on-line function typically used when the user is on the phone…", the HEPO fails to recognize that AI's statements are only correct as to AI's usage patterns and not correct as to the CLECs usage. This reliance leads to the HEPO's erroneous conclusion that "it is not reasonable to assume, nor has it been shown, that there is a high level of such interaction that occurs in the wee hours." HEPO at 45.

AI indicated, in its final comments, that the AI systems were not *designed* for continuous availability and that a reasonable business choice was made by AI "…[g]iven

that pre-ordering is an on-line function, *typically* used while the end user is on the phone..[so that] there is more benefit from fast service during business hours than from availability in the wee hours." AI Final Comments (revised errata copy) at 39 (emphasis added). While AI's statements may be technically correct, they are misleading. AI's systems were designed prior to deregulation and, although AI's business choice made at that time may have been reasonable in light of AI's usage of pre-ordering systems, these same systems are now being used by competitors who have demonstrated that their usage does not only occur on-line with the customer but also occurs in the wee hours of the night, without live customer interaction, when they can verify orders to be placed and correct rejected orders. Tr. at 276-279; See also, Tr. at 202-204 and WorldCom's Final Comments at 4-5. Again, AI's statements are only correct in relationship to AI's historic and current usage patterns and are not relevant in attempting to determine the appropriate availability to CLECs of such interfaces.

Moreover, AI has offered only assertions that synchronization is not feasible, stating that ordering maintenance processes allow for more hours of availability than the pre-ordering systems due to the different underlying systems involved. AI Final Comments (revised errata copy) at 41-42. It is reasonable, therefore, for Staff to question AI's assertions because AI itself concedes that "..[u]ntil Ameritech Illinois' own analysis of pre-order maintenance requirements is complete, it is unable to determine the exact hours and functions that can be made available." AI Final Comments (revised errata copy) at 40. Despite AI's lack of current knowledge regarding the maintenance requirements of its pre-ordering systems, AI contends, without support, that it has sufficient knowledge of such maintenance requirements to conclude that synchronization is not possible. Id. Staff

contends that until AI's analysis is complete and verified, the Commission should continue to require synchronized pre-ordering and ordering functions and takes the exceptions set forth below.

Furthermore, neither Staff nor the CLECs are in a position to provide evidence as to whether or not the maintenance needs of AI's pre-ordering and ordering systems are so different from one another that AI is precluded from providing increased availability with respect to such systems on a synchronized basis. Since AI is the only entity that has access to its systems, maintenance records and requirements, it is AI, not Staff or the CLECs, which appropriately has the burden of proving that synchronization with increased enhancements is precluded.[2]

Although the HEPO correctly recognizes that there is "no evidence to the contrary" with respect to such assertions, such lack of evidence should not, in light of the equities of the relative positions of the parties, force the Commission to support AI's position. Moreover, the Hearing Examiner, as the trier of fact, is entitled, as a result of AI's failure to provide sufficient evidence to support its assertions, to make the negative inference that such failure on the part of AI can be construed to mean that AI's assertions are unfounded. Jenkins v. Dominick's Finer Foods, 288 Ill. App. 3d 827, 681 N.E.2d 129, 224 Ill. Dec. 147 (Ill.App.Ct.1st Dist.1997). Notwithstanding such entitlement, in light of the expedited nature

[2] Generally, the party seeking relief (typically, the petitioner) bears the burden of proof. People v. Orth, 124 Ill. 2d 326, 337 (1988). In this proceeding, where the parties have jointly filed a petition, it is appropriate that each party has the burden of providing sufficient support for its positions. The term "burden of proof" includes the burden of going forward with the evidence, and the burden of persuading the trier of fact. People v. Ziltz, 98 Ill. 2d. 38, 43 (1983). However, where one party has control over access to the relevant information, its is perfectly acceptable, as a general rule, for the trier of fact to make negative inferences regarding a party's failure to produce evidence within its control where such evidence is not equally available to adverse parties, a reasonable person would have offered the evidence if he believed the evidence to be in his favor and no reasonable excuse for the failure is shown. Jenkins v. Dominick's Finer Foods, 288 Ill. App.

of these proceedings and the resulting demands upon the parties hereto, Staff recommends that AI be afforded the opportunity to provide such evidence to the Commission on a post-order basis. Furthermore, in consideration of the ongoing nature of the deployment and implementation of AI's operational support systems pursuant to the Merger Order, Staff reasons that there is no necessity to foreclose AI from an opportunity to provide such supplemental evidence.

As described above, the HEPO correctly finds that AI must expand its hours of system availability. In addition, the HEPO correctly requires that AI report its progress in this regard to Commission Staff. HEPO at 45. Staff suggests, however, one clarification regarding the reporting requirement imposed on AI with respect to this issue and the other issues in which the HEPO requires reporting. As stated previously in this Brief on Exceptions with respect to Issue 1, the overriding need for public confidence in the expeditious development of operations support services and the promotion of competition, warrant that the Commission require that an AI officer verify all reports it is required to file and that all such reports be filed with the Chief Clerk of the Commission, in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that such reports will be public records available for inspection and copying.

Accordingly, Staff recommends the following alterations to Staff's Position regarding reporting set forth in the HEPO at page 44:

Reporting:

3d 827, 681 N.E.2d 129, 224 Ill. Dec. 147 (Ill.App.Ct.1st Dist.1997) (reasonably prudent person would have produced photographs of injuries sustained).

> Staff recommends that the Commission require AI to provide a monthly report, verified by a company officer, on changes to the hours of availability for all domain areas. AI should provide this report to the Commission no later than the 15th of each month. Any changes from the previous monthly report regarding the same should also be noted and an explanation should be provided for those changes. In its Brief on Exceptions, Staff requests that each such report be filed with the Chief Clerk of the Commission in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that all such reports will be public records available for inspection and copying.

Additionally, in view of the foregoing arguments, Staff recommends the following alterations to the Analysis and Conclusion section set forth in the HEPO at pages 44 - 45, which provide the clarifications discussed above with respect to AI's obligations as ordered by the HEPO but also address the issue of synchronization more fully discussed above :

> Here, the Commission is put in the position of balancing the need for system maintenance (AI concern) with the need for system availability (the CLEC concern). In so doing, we note at the outset, that AI's proposed hours of availability for each of the different functions at issue is either the same or greater than what is currently available for its retail operations.
>
> CLECs tell us that a truly competitive market, however, would allow CLECs to make the decision when to serve their customers, regardless of how AI decides to serve its retail customers. The current hours of availability, these CLECs claim, force them to mimic AI's inefficient practice of not processing pre-orders, and consequently orders, on Sunday. They want 24 x 7 availability.
>
> In reviewing the record, we trust Staff's determination that 24x7 availability is wholly cost-prohibitive and also take account of AI's assertion of insufficient customer demand to support such an economic burden. Hence, we reject the CLEC push for this option.
>
> Nearly all of the CLECs addressing this issue also ask that we require AI to provide expanded hours of availability to its pre-ordering and ordering systems. They further maintain that the hours for pre-ordering should be the same (and synchronized with) the hours of availability for ordering. The CLECs explain that the need for expanded pre-ordering time is to enable them to work on rejected orders.

Staff contends that AI should make both pre-ordering and ordering available concurrently, or in the alternative, pre-ordering should be available for a longer period than pre-ordering. ~~As its only support,~~ Staff relies on the CLEC position and states that it is "illogical to offer extended hours for the ordering interface but not the pre-ordering interface, since the pre-ordering interface needs to be accessed to prepare orders in the first place." ~~This is by no means a sound rationale given that it fails to take any account of the underlying reason for the difference between pre-ordering and ordering system availability.~~

AI explains that the ordering maintenance process allows for more hours of availability because different systems are involved. The reduced maintenance needs, (and consequently the greater availability) of ordering time explains why synchronization is impossible. The only way for AI to keep these functions on an equal footing would be to reduce ordering availability to the hours available for pre-ordering.

In Staff's Brief on Exceptions, Staff acknowledges that the maintenance requirements of the pre-ordering interface may prohibit AI from increasing the available hours of the pre-ordering and ordering interfaces on a synchronized basis but that until AI completes its analysis of the maintenance requirements of its pre-ordering systems, it is premature to accept AI's assertions, without support, that such synchronization is infeasible. Furthermore, Staff contends that AI has the burden of proof with respect to the technical infeasibility of synchronization since AI is the only party with knowledge of, and access to, its systems. Notwithstanding Staff's contention that AI has failed to satisfy its burden of proof, Staff nevertheless recommends that AI be permitted the opportunity to offer supplemental evidence supporting its assertions as to such technical infeasibility, citing equitable concerns including the expedited nature of these proceedings and the resulting demands upon the parties hereto as well as the lack of harm in providing such opportunity due to the ongoing nature of the deployment and implementation of AI's operational support systems pursuant to the Merger Order.

We find reasonable AI's argument that reducing the amount of maintenance on a system might add a few hours of availability, but it would likely reduce performance and processing speed when most needed. In light of there being no evidence contradicting or supporting AI's assertions that synchronization is impossible ~~to the contrary~~, we agree with Staff and order AI to finalize its analysis of its the maintenance requirements of its pre-ordering interfaces and to report its findings to Commission Staff and the CLECs within 1 month after the adoption of this Order. Such report shall include supporting evidence justifying AI's assertions in this proceeding that

synchronization of the ordering and pre-ordering interfaces is impossible due to the different maintenance needs of the different systems involved in such interfaces. In the event such report indicates that greater synchronization is possible, AI is hereby ordered to synchronize such systems accordingly over the next 6 months after the adoption of this Order, to the extent technically feasible. ~~AI should make that call.~~ Furthermore, ~~Nevertheless~~, as we understand AI's commitment, it will make pre-order functions available to CLECs on Sundays, at times when those functions are not undergoing maintenance. Indeed, AI~~i~~ states that it is currently in the process of developing a set schedule of such availability times. Thus, WorldCom's reasonable request for "some Sunday availability" is being addressed by AI at this instant.

By our math, we see that 24 x 7 availability translates into 168 hours per week. Under AI's proposal it is offering CLECs 133 availability hours for "ordering." AI's Figure 3 indicates that its retail hours of availability for "ordering" only total 82 hours. Thus, CLECs are clearly getting more time. Staff recommends 140 hours.

For " pre-ordering" AI offers CLECs a firm 92 hours of availability the exact same as is available to its retail, but it is also working to add in some Sunday hours for the CLECs. ~~Given our understanding that pre-ordering is an on-line function typically used when the user is on the phone - it is not reasonable to assume, nor has it been shown, that there is a high level of such interaction that occurs in the wee hours.~~

Of all the proposals on the table, Staff's is the most reasonable and is acceptable with some modification. While it is not clear to what extent the CLECs need any more hours of availability for ordering, AI will add, gradually, over the next 6 months, an additional 7 hours of availability with respect to its Ordering interface to its weekly schedule. It will keep the Staff and the CLECs informed of its efforts as Staff has recommended. Since we agree with Staff that a reporting requirement is necessary in order to keep the Commission apprised of AI's progress with respect to this Issue 6, the Commission directs AI to verify any and all reports ordered hereunder in the manner and within the timeframe specified by Staff or as otherwise ordered hereunder and in the form required in the Findings & Ordering section of this Order to ensure that AI is on track in meeting its obligations hereunder.

Further, AI tells us that very soon, after it completes its analysis of its pre-ordering maintenance requirements (which shall in no event be completed later than one month after the adoption of this Order), it will be adding some Sunday availability for each function within its pre-ordering interface, during whatever times any such function is not undergoing maintenance and that, in conjunction with the addition of Sunday hours of

availability, AI shall develop a schedule to provide notice, at least a week in advance, of such Sunday availability. In addition to requiring AI to fulfill its commitments set forth above, w~~W~~e hereby require AI to add ~~would expect that~~ at least 8 Sunday daytime hours of pre-ordering interface availability (one regular work shift) ~~will be added~~ to the weekly schedule within one month after the adoption of this Order. This will allow CLECs 100 hours of Pre-ordering availability in the near term. Over the next 6 months after the adoption of this Order, AI will study its maintenance needs and set out a plan expanding pre-ordering availability for an additional 8 hours to its weekly schedule (above and beyond the 8 Sunday daytime hours ordered above), which time corresponds to the ordering hours set forth on AI's proposed schedule. Again, AI will report its actions on the issue to both Staff and the CLECs as provided herein and in the Findings & Ordering section of this Order.

With respect to exceptions taken above regarding reporting, a corresponding exception should be added to the Findings & Ordering Paragraphs (Section VI) portion of the HEPO as follows:

(10) All reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying;

In addition, the following new ordering paragraph should be added to the HEPO regarding reporting:

IT IS FURTHER ORDERED that all reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying.

Issues 9, 16, 20, 24, 40

Interface Development Rule

Exception Number 5: The HEPO incorrectly determines that the CMP provides CLECs with a remedy equivalent to arbitration and therefore that SBC/Ameritech's failure to provides detailed specifications and business rules is essentially harmless and does not entitle CLECs to arbitrate these issues in Phase 3.

The HEPO finds, in summary, that the provisions of Condition 29 of the Commission's Order dated September 23, 1999 in Docket 98-0555 (the "Merger Order") which afford CLECs the right to arbitrate issues in dispute at the conclusion of collaborative sessions "was reasonable when entered," but reasonably subject to being reinterpreted in the "light of subsequent and unforeseen developments." HEPO at 49.

The "subsequent and unforeseen developments" in question are, the HEPO finds, the FCC's order requiring implementation of a Changed Management Process (hereafter "CMP"). HEPO at 49. Ameritech and the CLECs have, the HEPO observes, agreed to the CMP as to almost all material particulars. Id. The CMP, as has been seen, provides a forum pursuant to which CLECs can influence the development of new or existing OSS interfaces and processes. HEPO at 31. Accordingly, the HEPO frames the issue here as "determin[ing] if the CMP provides a remedy to the CLECs that is equal to what the Illinois Merger Order envisioned." HEPO at 50.

The HEPO finds that "to the extent that disputes can be worked out among the parties without Commission intervention, that is the optimal choice." HEPO at 50. That being the case, the HEPO concludes that the CMP "appears to extend the collaborative process of Phase 2 more technical matters and provides a fair and timely means of settling disputes." Id. The HEPO ultimately "find[s] that the processes and remedies agreed to in the CMP constitute an adequate and complete substitute for arbitration of any issues that might arise on [provision by SBC/Ameritech of the detailed specifications and business rules sought by the CLECs]. This means that the [Interface Development Rule] proposal is rejected." HEPO at 51.

The HEPO accepts that SBC Ameritech has "not yet provided the detailed business rules or specifications" sought by the CLECs. HEPO at 49. However, it characterizes the CLECs' argument (in which the Staff concurs) that Condition 29 affords them a right to arbitration, as stemming from some sense of "entitlement," rather than any real substantive need to exercise that right. This, however, is the defect in the HEPO's reasoning. HEPO at 49, 51.

The HEPO correctly notes Staff's argument that the CLECs would have had the right to arbitrate had SBC/Ameritech provided detailed specifications and business rules in a timely manner. HEPO at 48. The HEPO, however, concludes that, inasmuch as the CLECs have a "fair and timely" remedy under the CMP, their arguments should be rejected. HEPO at 50-51.

However, it appears to the Staff that the CMP is not a substitute for arbitration. While it may be, as the HEPO notes, "optimal" for the parties to resolve differences without Commission involvement, the fact is that in the Merger Order, the Commission recognized that such involvement might be necessary during Phase 2, and specifically provided for it, finding that:

> [i]f the CLECs and SBC/Ameritech have not reached agreement after … [conclusion of collaborative] sessions … the parties shall prepare a list of the unresolved issues in dispute and submit the remaining unresolved issues in dispute to arbitration by the Commission. Any arbitration shall be conducted before the Commission… [.]
>
> Merger Order at 254

Accordingly, the CLECs had a right to arbitrate this issue, which they were effectively denied by SBC/Ameritech's failure to provide information in its exclusive possession which would have made such arbitration possible. Rather than requiring

SBC/Ameritech, the party whose omission resulted in the time passing for arbitration, to mitigate the harm resulting from its failure, the HEPO takes a curious and inexplicable approach, which *rewards* SBC/Ameritech for failing to provide information necessary to arbitrate. This approach would, for that and other reasons, be improper even if its underlying assumption were true, which it is not.

The HEPO's logic is dependent upon the notion that the CLECs have substantially the same rights under the CMP as they would have pursuant to arbitration before the Commission. This is particularly difficult to credit. It cannot be colorably asserted that the CMP (one of the most important components of which is at issue in this proceeding in any case) constitutes access to a remedy which is in any way similar to that provided by arbitration before the Commission. The CMP does not offer a third-party resolution of an issue in dispute; rather, the issue is resolved by a vote among CLECs, with a quorum requirement, and with (as nearly as can be determined by the Staff) the vote of the smallest CLEC serving only a few customers being equal to that of the largest, which might serve hundreds of thousands. In addition, the CMP process appears to the Staff to allow CLECS to *prevent* proposed changes, rather than to *require implementation* of changes, whereas an arbitration award is clearly subject to no such limitations.

Accordingly, it is not difficult to see why CLECs prefer arbitration. It is also easy to see why the Commission believed it to be necessary. What is difficult, if not impossible, to see, is why the HEPO has concluded that arbitration is unnecessary and that the CLECs' desire to obtain access to it is unreasonable.

Further, it is clear that CLECs have a right to arbitrate certain issues, relating to third-party testing during Phase 3 of this proceeding. Merger Order at 254-55. Thus, it

cannot be asserted that there will be any ultimate saving of regulatory resources, inasmuch as there is a substantial likelihood that arbitration will be necessary to resolve issues in Phase 3 in any case.

Accordingly, the Staff proposes that the HEPO be amended as follows, beginning on page 51:

> Analysis and Conclusion:
>
> To be sure, in the Illinois Merger Order, the Commission intended that the parties work to reach agreement on OSS interfaces, enhancements and business requirements identified in AI's POR. The Order also contemplated that, to the extent that agreement could not be reached, a list of issues in dispute would be prepared and submitted to arbitration. (See Illinois Merger Order at 253-255). Our Order was reasonable when entered, however, it is also necessary and reasonable to construe its provisions in light of subsequent and unforeseen developments.
>
> As a condition of its merger approval, the FCC ordered the implementation of the CMP with the effect of having the collaborative process continue so as to work out the details of any OSS interface and process changes that could not be determined at the instant. We are informed that the CLECs and AI have agreed on all aspects of the CMP except the quorum issue. (Issue 4 above). Indeed, the CMP is referenced in the POR at hand and has been filed as part of the original pleading for this case.
>
> AI tells us that the arbitration measure that the CLECs proposed IDR would allow, cannot be reconciled with the CMP. (FC at 50) Given the existence of a solid CMP in which all the CLECs concur, AI contends that the proposed IDR should be considered anti-competitive to the extent that it would allow a single CLEC to stop a release that has been passed by other CLECs through the CMP. According to AI, a CLEC with significant resources could use this process to potentially disadvantage its competitor by delaying the implementation of functionalities that could benefit them.
>
> It is undisputed that AI has not yet provided detailed business rules or specifications with respect to its planned enhancements and that precludes litigation in this proceeding. It will, however be providing the requested details under terms of the CMP. In this regard, AI explains that within the

CMP negotiations, AI and the CLECs agreed to the timeline which allows for nearly a 150 days interval between the issuance of specifications and the delivery of the enhancement~~.~~ (a period of nearly 5 months). In line with this agreement, AI states that the detailed specifications for the March 2001 release will be issued on October 13, 2000.

Moreover, according to AI, there is a critical trade-off between releasing the specification far in advance of implementation and being able to make changes to accommodate new CLEC needs or demands. AI tells us that once specifications are released, carriers rely on that information to make changes to their systems. If the specifications are issued too early, some CLECs will act on the original document. Their efforts would be put in jeopardy, however, if any desired changes to the specifications by other CLECs, are ultimately implemented.

~~If there were no CMP in place, and consequently, no means by which the CLECs could raise and resolve their issues related to the presently unavailable specifications, then resolution of this issue would be simple (and undoubtedly favor the CLECs). No CLEC, however, has voiced such a claim. Instead they simply assert an entitlement to arbitrate under Condition 29~~.

As a general statement, AT&T claims that diverting the issues from the POR to the CMP dilutes the protections available to CLECs under Condition 29. (AT&T Final Comments at 32). It does not explain how or offer any supporting analysis.

The Joint Small CLECs assert that the specifications necessary to evaluate AI's proposed OSS improvements should have been provided during the OSS collaboratives, which would have allowed for a robust discussion of the proposals. It is imperative, they claim, for the CLECs to have a meaningful opportunity to address their concerns.

Without the ability to timely and effectively challenge the specifics of AI's OSS improvements through arbitration, Joint Small CLECs claim, the protections afforded them by Condition 29 of the merger order would be lost and they could not obtain a timely resolution of any disputed issues. In making these and similar claims, however, CLECs do not explain why the CMP is adequate to resolve any of the issues. Nor has any CLEC sufficiently explained the benefit of the IDR over the CMP or how the IDR would work alongside the CMP.

We decided, in our Merger Order, that:

> [i]f the CLECs and SBC/Ameritech have not reached agreement after … [conclusion of collaborative] sessions … the parties shall prepare a list of the unresolved issues in dispute and submit the remaining unresolved issues in dispute to arbitration by the Commission. Any arbitration shall be conducted before the Commission… [.]
>
> Merger Order at 254

Based upon the forgoing, we decline to order any deviation from our Merger Order or to in any way attenuate CLECs' right to arbitrate. In the Illinois Merger Order, we ordered that CLECs were to have the right to arbitrate open issues in Phase 2 of this proceeding. They sought to do so with respect to the question of detailed specifications and business rules for SBC/Ameritech's proposed OSS interfaces and enhancements, and were unable to do so, not because of their refusal to attempt to resolve the issues in the course of collaboratives, and not because the matter was not a proper one for Phase 2 arbitration, but because, and apparently only because, SBC/Ameritech failed to disclose to any party to this proceeding the detailed specifications and business rules for its proposed OSS interfaces and enhancements. Instead SBC/Ameritech has attempted to interpose the CMP as an adequate remedy with which CLECs ought to be satisfied. In light of the fact that SBC/Ameritech is entirely responsible for this issue not being either resolved in the collaboratives, or placed at issue for arbitration in this proceeding, we are of the opinion that it would be improper to consider the adequacy of the CMP as a substitute remedy.

~~Thus, the task before us is to determine if the CMP provides a remedy to the CLECs that is equal to what the Illinois Merger Order envisioned.~~

~~In other words, it both reasonable and dutiful on our part to consider the existence and effect of the CMP in determining whether the Phase 2 arbitration we are conducting needs to be left open in order for CLECs to have a remedy for their possible dispute or whether the scope of the Phase 3 arbitration should be enlarged to accomplish this end, or whether the CMP is adequate in setting out a remedy for disputes of the instant type. All the time we keep in mind that the CMP grew out of the FCC's merger order and was not in existence or even contemplated at the time this Commission issued the Illinois Merger Order.~~

~~AI tells us that the CMP is a reasonable collaborative process for present purposes, i.e., settling disputes that might arise from specifications. According to AI, any problems attendant to a release would or should be raised in the CMP. Indeed, AI cautions that it would nullify the very existence of the CMP to permit a change that has already passed through the process,~~

~~or through an OIS vote, to be reopened again by a single CLEC through arbitration before the Commission.~~

~~As we see it, Phase 2 and Phase 3 issues are settled by arbitration before the Commission and include with the participation of AI. On the other hand, CMP disputes are settled among the CLECs and in final form by a CLEC OIS vote (in which AI does not participate). In our view, the CMP appears to extend the collaborative process of Phase 2 for more technical matters and provides a fair and timely means for settling disputes. To the extent that disputes can be worked out among the parties without Commission intervention, that is the optimal choice.~~

~~To be sure, both the CLECs and AI have agreed on all aspects of the CMP, (with one exception that we have addressed), and, in our view, this process appears to provide for meaningful CLEC input at various stages together with a mechanism that allows disputes to be handled in a fair, timely and efficient fashion. No CLEC has complained of any inadequacy in the CMP process. Nor are they asking that the IDR be used as a substitute for the CMP. By their proposal, we perceive the CLECs to want an additional dispute remedy - not because they are without one but because they feel entitled.~~

Further, even if we were to accept that the question of whether the adequacy of the CMP as a substitute remedy for arbitration were properly before us, we would be compelled to find that it is not an acceptable substitute. The CMP, at least one significant detail of which remains hotly contested in this proceeding, is not a substitute for arbitration by any means. It appears to us to be much more in the nature of a consensus resolution, subject to being thwarted by dissension among CLECs with differing goals and needs, than a disinterested resolution of parties' rights and responsibilities such as would be provided by Commission arbitration. While we continue to be strongly of the opinion that the parties should make every effort to resolve their disputes short of arbitration, we accept that this will not invariably be possible even where parties negotiate in the best of faith. This is precisely why we provided for arbitration of these issues in the Merger Order.

In sum, we find that the processes and the remedies agreed to in the CMP do not constitute an adequate ~~and complete~~ substitute for arbitration of ~~any~~ issues that might arise on specification, and that, even if the CMP did provide such a substitute, our Illinois Merger Order provides specifically for arbitration. ~~This means that the IDR proposal is rejected.~~ Accordingly, we order implementation of the IDR proposal effective upon adoption of this Order.

Issue 13

Relaxed Customer Service Record Address Validation

Exception Number 6: Staff takes exception with the HEPO's determination that relaxed address validation should be implemented by February. The Commission should direct Ameritech to implement relaxed address validation by December 31, 2000. Staff also provides clarifications for the reporting requirements adopted by the HEPO.

The HEPO concludes that Ameritech should implement relaxed address ("lite") validation by February 2001. Ameritech's position has been that it would implement lite validation by March 2001. Both the Staff and the CLECs argued that, given the importance of lite validation, Ameritech should be directed to implement it in December 2000.

The HEPO apparently reaches the February date as a compromise between the two sides. Ameritech asserted it could not be done by December. The CLECs argued that a March release cost them customers (which in turn would delay competition for local service.) The CLECs claim a 30 to 40 per cent order rejection rate due to address-related errors. Tr. at 792-794. Covad believes that the error rate would be reduced to below 5 per cent after the implementation of Lite Validation. Tr. at 800. Ameritech does not dispute that the rejection rate will be reduced through the use of Lite Validation. Ameritech Initial Comments at 38-39. The CLECs note that the cost to them of the continued higher rate of rejection of service orders includes lost time in implementing the orders, additional costs and employee time in reviewing the rejections and resubmitting the orders, and poor service from a customer viewpoint. AT&T Initial Comments at 26; Covad Initial Comments at 4; Tr. at 797-799. These effects are exacerbated by the possibility of repeated rejections of orders. Tr. at 734-738.

However, as Staff pointed out in its Final Comments, Ameritech never claimed that lite validation could not be delivered by December 2000. Rather, the Company vaguely indicated that delivering lite validation by December 2000 would "perhaps" result in some other project being bumped to March 2001. Staff's Final Comments at 50–51. Lite validation should be equally important to other releases. In short, Ameritech should not use other projects as an excuse to skirt its obligation to implement lite validation in an appropriate timeframe.

There is a separate concern, if the Commission decides to maintain the February date[3] directed by the HEPO. In this case, Ameritech has taken the position, with agreement from the CLECs, that its releases should occur on a quarterly basis. The February date departs from the quarterly release schedule. The record is wholly without testimony as to whether the February date is workable.

The HEPO also declines to direct Ameritech to extend lite validation to xDSL bundled loop orders, as sought by Covad, concluding that it would be anti-competitive to do so. HEPO at 64. This is curious, since the HEPO recounts no arguments from the parties that Covad's position was anti-competitive.

Staff provides the following alternative language.

HEPO at 6, third paragraph:

> CLECs allege that many of their orders are rejected for inappropriate reasons: either because of minor discrepancies in format (the hypothetical advanced by counsel for Covad involved an order in which the CLEC abbreviated "avenue" as "av." instead of "Ave.") or because the address information in the customer service record ("CSR", another database that CLECs can access in pre-ordering) does not match the address databases.

[3] The final Order would also need to specify a particular date in February as a deadline for the implementation of lite validation.

> In response, AI has proposed to implement relaxed or "Lite" address validation for certain orders in March of 2001. (The Plan of Record, as provided to Staff and to the CLECs for red-lining on August 30, contains a proposed implementation date of December 2000. Although AI had planned to implement Lite validation in December, it determined on the following day that it would be unable to meet the December date, without delaying some other project scheduled for a December release, due to the schedule of other releases already planned for December. As the POR had already been distributed to the parties by that time, AI revised the implementation date to March 2001, and explained the reasons for that change, in its Initial Comments.) Lite validation allows a CLEC to submit an order *without* an address, using instead the customer's telephone number to identify the location at which AI is to install service, and thus bypass the address edit that is currently performed for all orders. The customer's address would become optional information.

As stated previously in this Brief on Exceptions with respect to Issue 1, the overriding need for public confidence in the expeditious development of operations support services and the promotion of competition, warrant that the Commission require that an AI officer verify all reports it is required to file and that all such reports be filed with the Chief Clerk of the Commission, in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that such reports will be public records available for inspection and copying. For the HEPO at page 64, under the discussion of Staff's position regarding "Reporting," Staff suggests the following changes, consistent with the above:

For the HEPO at page 64, under the discussion of Staff's position regarding "Reporting," Staff suggests the following changes, consistent with the above:

> Staff recommends that the Commission require AI to provide ~~verified~~ monthly reports, verified by a company officer, to Commission Staff on the progress of its implementation of lite address validation as well as the synchronization of the CSR and SAG databases. In its Brief on Exceptions, Staff requests that each such report be filed with the Chief Clerk of the

Commission in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that all such reports will be public records available for inspection and copying. Furthermore, eEach report should be provided to the Commission Staff no later than the 15th of each month and include a comprehensive and detailed evaluation of the project plan being used to track and manage the implementation of the list address validation initiative, as well as the project to synchronize the CSR and SAG databases . The project plans should include all major milestones related to the project along with the estimated and actual target dates for each milestone. Any changes from the previous monthly report regarding planning assumptions or schedule changes should be noted and an explanation provided for those changes. Further, the overall impact of any such changes on the respective projects should also be clearly identified in the report. In Staff's view, the aforementioned report will keep both the Commission and the CLECs informed as to Ameritech's progress toward meeting its committed implementation date.

Staff also proposes alternative language for the "Conclusion."

AI would commits to implementing relaxed address validation in March 2001. It opposes any earlier implementation of this function on grounds that the costs would exceed the benefit and that some enhancement is already in place to assist the CLECs. AI statedexplains that an analysis of the work involved and the competing requirements of other OSS changes, make provisioning earlier than March an unnecessary hardship.

We are not unsympathetic to AI's position. However, AI provided no support for its assertions of hardship, and, in fact, never asserted that relaxed address validation could not be accomplished by December 2000. Rather, AI stated that some other project – none of which AI specifically named – would have to be bumped in order to implement relaxed address validation in that time frame. Nevertheless, gNevertheless, gGiven the critical importance of this functionality to the CLECs (as expressed in their respective comments on the issue) we believe that the relaxed address validation committed to by AI should be given top priority. In doing so, we take account of AI's other commitments as well as the timing and other facets of our order in these premises. In the end In doing so , we take account of AI's other commitments as well as the timing and other facets of our order in these premises. In the end, Accordingly, we direct AI to implement relaxed address validation, pursuant to its commitment, by FebruaryFebruaryDecember 31, 20001. The service to which relaxed address validation will apply are all conversion resale, CFO, and loop with portability orders and orders for HFPL on loops used to provide Ameritech voice service to existing customers, and line shared loops. In addition, we

agree with Covad's proposal to extend relaxed address validation to xDSL unbundled loop orders. AI will implement this service by the same December 31, 2000 date.

Once "Lite" address validation is put into operation, AI will examine the ways and means by which it can synchronize its CSR and SAG databases. It shall set out a plan for the project, with detail, as per Staff's recommendations, and provide a report to the Commission on May 1, 2001. Since we agree with Staff that a reporting requirement is necessary in order to keep the Commission apprised of AI's progress with respect to this Issue 13, the Commission directs AI to verify any and all reports ordered hereunder in the manner and within the timeframe specified by Staff or as otherwise ordered hereunder and in the form required in the Findings & Ordering section of this Order to ensure that AI is on track in meeting its obligations hereunder. ~~We agree that Covad's proposal would not benefit competition, and could very well harm competition and reduce the quality of service to the end user, by creating confusion between AI, Covad, and the end user about where such service would be installed.~~

With respect to exceptions taken above regarding reporting, a corresponding exception should be added to the Findings & Ordering Paragraphs (Section VI) portion of the HEPO as follows:

(10) All reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying;

In addition, the following new ordering paragraph should be added to the HEPO regarding reporting:

IT IS FURTHER ORDERED that all reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying.

Issue 18

Flow Through

Exception Number 7: The HEPO failed to address Staff's recommendation that Ameritech be required to disaggregate its flow-through data by product type so that the CLECs and the Commission can more easily identify the areas where flow improvement is necessary and also failed to set out timeframes for the duration of the collaborative process or the resulting report to be filed by Ameritech Illinois.

As described in the HEPO, Issue 18 regards whether the Commission should order specific measures to be taken by AI to increase the "flow through" of its service orders. HEPO at 61. The HEPO answers this inquiry in the negative, reasoning persuasively, Staff believes, that "flow-through should not be required simply for its own sake." HEPO at 66. Rather, the HEPO determines that to the extent that flow through has the potential to enhance performance, a reasoned effort is necessary to identify those instances where the implementation of flow-through actually has just such an intended effect. Id. Staff agrees with and supports the overall tenor of the HEPO's conclusions that the flow-through enhancement process should be aimed at improving OSS performance and that flow-through should not be required simply for its own sake.

Staff believes the HEPO is consistent with the Merger Order's clear purpose in adopting Condition 29 which is to facilitate the improvement of the OSS systems and interfaces available to CLECs in Illinois. Merger Order at 253. Moreover, Staff would note that the Commission in the Merger Order stated its firm belief that "OSS are critical to engendering competition in the local exchange marketplace and protecting the interests of Ameritech Illinois' customers." Merger Order at 195. Accordingly, the HEPO's decision to focus on flow-through enhancements in terms of performance enhancement, and thereby, competition enhancement, is consistent with and clearly contemplated by the Commission's purpose in imposing Condition 29.

The foregoing having been said, Staff takes issue with three aspects of the HEPO's conclusions regarding the flow-through issue which it believes the Commission should consider in reaching its decision in this case. Staff's first concern regards the HEPO's failure to address Staff's recommendation that, in making its monthly reports to the Commission on the status of flow-through enhancements, AI be required to disaggregate its flow-through data by product type so that the CLECs and the Commission can more easily identify the areas where flow-through improvement is necessary. Staff Final Comments at 64. It is Staff's belief that AI has made a voluntary commitment to disaggregate its flow-through information by product categories. See Tr. at 517-520. However, the HEPO omits any discussion as to the possibility of the Commission mandating this commitment. Thus, it is unclear as to whether AI is under any Commission-ordered duty to provide flow-through statistics on a disaggregated basis.

Staff agrees with the CLEC view that the disaggregation of flow-through information by product type is an important tool to aid in identification of those areas where flow-through improvement is necessary. AI took no serious issue with disaggregation as a proposed requirement, has made a voluntary commitment to satisfy this requirement, and offered a witness who agreed that it was important to break out the improvement it has made on orders by product type. Tr. at 505-6. Since the CLECs have testified that disaggregation by product type is useful in order to identify areas where flow-through improvement is necessary, requiring such disaggregation dovetails neatly into the HEPO's conclusions that the flow-through enhancement process should be aimed at improving OSS performance. Accordingly, the Order should make clear that AI's commitment on this issue is mandatory and not voluntary.

The second aspect of the exception Staff makes with respect to this issue regards the apparently open-ended procedure leading to the preparation and filing by AI of a report for the Commission detailing its proposed plan for reducing flow-through exceptions. There are no timeframes associated with this requirement, creating what Staff assumes to be the unintended result that AI is given no deadline for the filing of its report. Neither is there a stated deadline for the end of the collaborative sessions which follow the filing of the April 15, 2000 report on enhancements, nor a timeframe for Staff and CLECs to provide AI with a writing that sets out, in order of priority, those items they believe should flow-through. Staff recognizes that the record in this case did not focus on the details of the reporting process. Nevertheless, given the Examiner's conclusions, Staff believes that some timeframes should be established in order to establish "a more certain and expedited schedule" consistent with the overarching purpose of Condition 29. Merger Order at 195. Staff hereby proposes in its exceptions language what it believes to be reasonable timeframes and has also permitted the extension of such timeframes by the mutual agreement of the parties. Accordingly, Staff urges the Commission to adopt changes to the HEPO as set out below.

In addition, the HEPO correctly requires that AI report its progress to Commission Staff with respect to the identification and removal of exceptions. HEPO at 66-67. Staff suggests, however, one clarification regarding such reporting requirements. As stated previously in this Brief on Exceptions with respect to Issue 1, the overriding need for public confidence in the expeditious development of operations support services and the promotion of competition, warrant that the Commission require that an AI officer verify all reports it is required to file and that all such reports be filed with the Chief Clerk of the

Commission, in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that such reports will be public records available for inspection and copying. Accordingly, Staff recommends the following alterations to Staff's Position regarding reporting set forth in the HEPO at page 65:

> Reporting:
>
> Staff recommends that the Commission adopt the following portions of the CLECs' proposal regarding reporting requirements:
>
> (I) Ameritech should continue to provide to the Commission Staff, on a monthly basis, detailed performance measures reflecting the improvement in flow-through, as well as publishing monthly the flow-through product types and a flow-through exception list which identifies those exceptions Ameritech plans to remove in the next software release;
>
> (II) Ameritech should, on a monthly basis, make available to the Commission Staff and the CLECs the flow-through rate applicable to all CLEC orders so as to allow the CLECs and the Commission to analyze, among other things, what percentage of all CLEC orders are flowing through; (iii) Ameritech should disaggregate its flow-through data by product type so that the CLECs and the Commission can more easily identify the areas where flow improvement is necessary; and (iv) Ameritech should be required to make significant progress in improving flow-through capabilities.
>
> All such reports required by the Commission to be filed under the foregoing paragraph should be verified by an officer of AI. <u>In its Brief on Exceptions</u>, <u>Staff requests that each such report be filed with the Chief Clerk of the Commission in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that all such reports will be public records available for inspection and copying</u>.

Finally, Staff is somewhat concerned with and puzzled by one statement in the HEPO. At page 66 the HEPO states:

> Further, based on the limited record in this proceeding, we are not convinced that parity is the right end but rather that increased performance is both the well settled and the optimal goal. This is what should guide the effort.

Staff believes that to the extent that the idea of "parity" can be conceived of as entailing the provision of the same quality of service to CLECs as is provided internally to analogous AI functions, that the goal of parity is indeed the "right end". This is in line with the firmly established requirement that, as network elements, OSS are required to be provided to CLECs on a non-discriminatory basis. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶ 517; 1996 FCC LEXIS 4312; 4 Comm. Reg. (P & F) 1 (August 8, 1996) (hereafter "First Report and Order")) In this regard, ILECs such as AI are required to provide non-discriminatory access to OSS functions to the same extent that such access is provided to their own internal personnel. See, for example, First Report and Order at ¶ 523 ("to the extent that customer service representatives of the incumbent have access to available telephone numbers or service interval information during customer contacts, the incumbent must provide the same access to competing providers."

With the foregoing in mind, the HEPO's statement regarding parity is potentially at odds with the concept of non-discriminatory provision of UNEs and is unnecessary to the Commission's conclusions. Staff recommends that this statement be altered in line with the attached exceptions language:

> Conclusion:
>
> While increases in flow-through can improve performance, AI believes that the CLEC proposal of a specific target for flow-through could be counterproductive, as it would not necessarily translate into real competitive benefits, and it might distract AI from more pr~~e~~o-competitive actions.
>
> On their part, the CLECs contend that "flow through" is imperative to the efficient processing of commercial volumes of orders. If orders do not flow through, manual intervention occurs, which results in delay in provisioning service to end use customers and greater likelihood of errors.

In the CLECs view, improved flow-through, both with respect to order volumes and the number of different types of transactions, is critical to improving the order provisioning intervals now faced by CLECs.

Having considered both parts of the equation, the Commission believes that flow-through should not be required simply for its own sake. To the extent that it has the potential to enhance performance, as even AI admits, a reasoned effort is necessary to identify those instances where the implementation of flow-through actually has just such an intended effect. Further, based on the limited record in this proceeding, we are not convinced that "parity", as such term has been understood by the CLECs in this proceeding, is the right end in all instances. ~~but~~ ~~r~~Rather, the Commission concludes that increased performance, as it regards the non-discriminatory provision of unbundled OSS, is both the well-settled and ~~the~~ optimal goal. This is what should guide the effort.

AI is required by this Order to improve its flow-through capabilities to the extent practical and meaningful to its performance. We here set out a plan to secure this end. In doing so, we recognize that AI has a number of obligations to fulfill between the time of this Order and March 2001. While not informed as to what AI staff is available to work on any given project, we believe it prudent to assume that AI's resources are being stretched. This may also be true for the CLECs, and we view their participation in the situation at hand to be equally critical.

In light of these observations, although we acknowledge that AI is currently providing to the CLECs, (as we understand, on a voluntary basis), monthly reports listing flow-through exceptions, the record has indicated that such lists have not been complete and accurate in all respects, therefore, we mandate that ~~direct~~ AI continue to compile and provide Staff and the CLECs with such monthly reports, which reports given after April shall include a verification by AI that the reported ~~complete and accurate~~ list of flow-through exceptions is complete and accurate ~~on April 15, 2001~~.

On or before May 15, 2001 (unless extended by the mutual agreement of the parties, including Staff), Staff and CLECs will review the exceptions and provide AI with a writing that sets out, in order of priority, those items they believe should flow-through together with the reasons therefor (including, to the extent necessary, an explanation of any corrections and/or recommended additions to AI's list of exceptions).

AI~~,~~ and the CLECs (to be monitored by ~~and~~ Staff) will then meet in collaborative sessions to review and discuss these proposals. (In the alternative, the parties might elect to work within the CMP). The parties will work together toward prioritizing the removal of flow-through exceptions -

based on those with the greatest potential for improving performance and aiding competition. At ~~In~~ the end of the collaborative sessions, to be completed no later than June 15, 2001, unless extended by the mutual agreement of the parties (including Staff), AI will prepare, and deliver to the CLECs and Commission Staff, a report ~~for the Commission~~ detailing its proposal and plan for reducing flow-through exceptions.

On or before the 15th day of each month thereafter, in conjunction with the monthly reporting of exceptions mandated above, AI will provide the Commission Staff~~,~~ and the CLECs with a current and updated list identifying the exceptions it intends to remove on a date certain as well as a listing of the exceptions already eliminated.

The Staff and the CLECs have also argued that in making its monthly reports to the Commission on the status of flow-through enhancements, that AI be required to disaggregate its flow-through data by product type so that the CLECs and the Commission can more easily identify the areas where flow-through improvement is necessary. Staff Final Comments at 64. The record indicates that AI has made a voluntary commitment to disaggregate its flow-through information by product categories. Tr. at 517-520. There appears to be general agreement among the parties that the disaggregation of flow-through information by product type is an important tool to aid in easily identifying the areas where flow-through improvement is necessary. In fact, AI witness Gilles agreed that it was important to break out the improvement it has made on orders by product type. Tr. at 505-6. Accordingly, the Commission adopts Staff's recommendation that AI be required to make monthly reports to the Commission on the status of flow-through enhancements in which reports, flow-through data is disaggregated by product type. Furthermore, since we agree with Staff that all reporting required hereunder should be verified and publicly available, the Commission directs AI to verify any and all reports ordered hereunder, in the manner and within the timeframes specified by Staff (or as otherwise ordered hereunder) and in the form required in the Findings & Ordering section of this Order, to ensure that AI is on track in meeting its obligations hereunder.

With respect to exceptions taken above regarding reporting, a corresponding exception should be added to the Findings & Ordering Paragraphs (Section VI) portion of the HEPO as follows:

(10) All reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying;

In addition, the following new ordering paragraph should be added to the HEPO regarding reporting:

> IT IS FURTHER ORDERED that all reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying.

Issues 29, 31

DSL Loop Qualification

Exception Number 8: The HEPO should clarify the specific requirements imposed on Ameritech for both the pre-ordering and ordering stages of the DSL Loop Qualification process.

The HEPO makes four specific findings with regards to AI's DSL Loop Qualification process. First, the HEPO finds that "AI should provide information on more than one loop in the pre-ordering stage." HEPO at 78. Accordingly, the HEPO concludes that "AI should provide information on a maximum of ten (10) loops. . ." HEPO at 78. Second, the HEPO finds that "AI's optimization process in the ordering stage is anti-competitive" because CLEC's are required to inform AI of exactly what services they plan on offering an end-user. HEPO at 78. The HEPO, therefore, correctly concludes that CLECs should have the ability to select a loop based on the types of service offerings they wish to make available to their end-users without having to disclose to AI the type of service they will be providing. The HEPO proceeds to require that "this functionality be included with the March 2001 release." HEPO at 78.

Third, the HEPO, agreeing with Staff's position, concludes that "loop reservation should not be allowed at this time" due to the likelihood of anti-competitive behavior on the

part of individual CLECs. HEPO at 79. Finally, the HEPO, once again agreeing with Staff, finds that "CLEC's terminal makeup request should not be granted at this time." HEPO at 79. The HEPO finds the CLEC proposal on terminal makeup request vague and unnecessary considering the information will be provided by AI during the loop qualification process. HEPO at 79.

Staff takes no exception with respect to the third and fourth findings. Staff, however, does take exception to the requirements imposed on Ameritech regarding the pre-ordering and ordering stages of the loop qualification process.

The HEPOs proposed remedy for AI's anti-competitive optimization process is to require AI to make the information from the optimization process available to CLECs in mechanized form. HEPO at 78. In those instances that the optimization information does not exist in mechanized form, the HEPO requires AI to ". . . provide the information to CLECs in the same manner and timeframe that the information is available for AI personnel, i.e. manually, if such is the case." HEPO at 78.

It is not entirely clear, however, whether this particular requirement applies exclusively to the optimization process during the ordering stage or whether AI is required to make the information regarding the ten loops during the pre-ordering stage available in the same manner.

Staff believes that it is important that the HEPO be clear on exactly what the Commission wants done and when for <u>both</u> the pre-ordering and ordering stages of the loop qualification process. As the HEPO acknowledges, "AI should not pick a loop for the CLEC based on the limited information about the service they plan on offering, but should instead,…provide information on lops based on a particular address." `HEPO at 78. The

HEPO, therefore, should outline a clear process by which a CLEC can uniquely identify which of the ten (10) offered loops it desires and then is able to make an ordering request for the given loop identified during the pre-order inquiry (assuming the loop is still available).

Accordingly, Staff proposes that the HEPO be amended as follows beginning at page 77:

> Analysis and Conclusion
>
> We agree with Staff that AI should provide information on more than one loop in the pre-ordering stage. As requested by CLECs, AI should provide information on a maximum of ten (10) loops during the pre-ordering stage. The UNE Remand Order states, "the incumbent LEC must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information to itself." (Para. 427) AI should not pick a loop for the CLEC based on the limited information about the service they plan on offering, but should instead, as the FCC requires, provide information on loops based on a particular address.
>
> AI argues that its retail operations are only given information on a single loop in the pre-ordering process and therefore it should not be required to give more information to the CLECs. However the FCC made clear that "the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel." (UNE Remand Order, Para. 430) The Commission is also concerned that in order for a CLEC to get information about a loop they must tell AI which service they plan on offering. This is proprietary information. The service that the CLEC is providing is not information that AI should have access to. A CLEC should merely have to provide an address and then have information on multiple loops returned to them.
>
> ~~In addition~~, AI's optimization processes during both ~~in~~ the pre-ordering and ordering stages of the DSL Loop Qualification process ~~is~~ are anti-competitive. Currently AI requires a CLEC to tell them what services they plan on offering an end-user. Based on that information, AI's computer selects a loop for the CLEC to use. However, CLECs should have the ability

to choose a loop based on the service they want to provide a customer and not have to disclose to AI what services they will be providing. We also find persuasive, as did Staff, AI's answer to data requests regarding the cost of conditioning a loop. AI charges $905.82 for removal of a load coil; $528.97 for removal of a bridged tap; and, $326.86 for removal of repeaters (*See* Covad Initial Comments at 7). If a CLEC can avoid these costs by choosing a different loop, that option should be available to them.

We believe that this information already exists in a mechanized form. As a result, the Commission finds that AI is able to return the information from the optimization process in a matter of seconds. To the extent, however, that AI does not maintain this information in an mechanized format, AI is required to provide the information to CLECs in the same manner and timeframe that the information is available for AI personnel, i.e. manually, if such is the case. (UNE Remand Order, para. 430, 431).

AI should also be required to implement a method of identification for each of the ten loops returned to the CLEC during the pre-ordering stage. CLECs should have the ability to verify they are receiving access to the same loop in the ordering stage that the CLEC had identified during pre-ordering (assuming the loop is still available).

AI should also be required to meet with the CLECs and jointly determine the specific fields that will be returned with the pre-order inquiry. AI is required to ensure that the pre-order inquiry function will return sufficient information that will allow CLECs to make their own determination as to the type of specific service they want to offer their customers.

~~CLECs request that AI implement this functionality by December 31, 2000. AI contends that this request would be "burdensome" and "unreasonable" and would require AI to "substantially reconfigure" its systems. In light of this, t~~ The Commission orders that ~~this~~ the aforementioned loop availability pre-ordering and ordering functionalities ~~functionality~~ be included with the March, 2001 release.

The Commission agrees with Staff and AI that loop reservation should not be allowed at this time. The possibilities for anti-competitive behavior on the part of individual CLECs from this process are far too abundant.

Furthermore, the Commission agrees with Staff and AI that CLECs' terminal makeup request should not be granted at this time. The proposal is vague and as Staff suggests, is simply not necessary because of the information that will be provided by AI in the loop qualification process.

Issue 46
Hot Cuts: Coordinated Process and Procedures

The Staff takes no exception to the HEPO's findings of fact and conclusions of law regarding this issue.

Issue 73 (B)
UNE-P Billing

Exception Number 9: The HEPO should clarify that the CABS Billing reporting requirement imposed on Ameritech include verification by an SBC/Ameritech officer as well as filing of the aforementioned report with the Chief Clerk of the Commission.

As the HEPO points out, "it is undisputed that AI will implement CABS billing for UNEs" with the only question at issue being the timing of CABs billing implementation. HEPO at 97. The HEPO correctly concludes that the "October 2001 target date for implementation of a CABS billing format here in Illinois is appropriate." HEPO at 99. Staff commends the Hearing Examiner for the well-reasoned analysis contained in the HEPO regarding the transition to the CABS billing format and strongly supports the conclusions contained therein as pro-competitive, good public policy and consistent with the record developed in this case.

Once again, however, Staff suggests one point of clarification dealing with the reporting requirement imposed on AI. The overriding need for public confidence in the expeditious development of operations support services that promote local exchange competition in AI's service area, and the need for Staff and CLECs to have unfettered access to information related to AI's efforts in this regard, warrant a Commission

requirement that an AI officer verify all reports it is required to file, and that all such reports be filed with the Chief Clerk of the Commission in a form suitable for posting to the Commission's web page. Staff also recommends that the Order specify that such reports will be public records available for inspection and copying.

Accordingly, Staff recommends the following alterations to the HEPO at page 98-99:

> Staff Position
>
> Staff recognizes the advantages to a CABS billing system. (*See* Staff Initial Comments at 49.) It, however, disagrees with the CLEC request to accelerate the implementation of CABS here in Illinois, ten months ahead of schedule, given the complexity involved in developing and implementing this billing format. Ameritech has indicated migrating from the ACIS system to the CABS system is a significant undertaking which takes time. (*See* WorldCom Cross Exh. #9 (Ameritech Response to Staff Data Request 73-5.03).) During the evidentiary hearing, Ameritech also explained why it would be difficult to devote additional resources to this particular project at the present time. (Tr. at 371-372.) Although, as the CLECs correctly point out, Ameritech had an opportunity to implement CABS billing two years ago, Staff does not believe that speeding up the implementation process at this point is prudent for the aforementioned reasons.
>
> In the end, Staff agrees that the October 2001 target date for implementation of a CABS billing format here in Illinois is appropriate.
>
> Reporting:
>
> While AI indicates its plans to evaluate its progress on this project at different stages, Staff still recommends that the Commission require AI to provide bi-monthly reports on the progress of its CABS implementation initiative. (Tr. at 371.) Specifically, the Commission should order AI to provide a report to the Commission no later than the 15th of every other month. The report shall include a comprehensive and detailed evaluation of the project plan being used to track and manage the implementation of the CABS billing initiative. The project plan should include all major milestones related to the project along with the estimated and actual target dates for each milestone. Any changes from the previous report regarding planning assumptions or schedule changes should also be noted and an explanation should be provided for those changes. The overall impact of any such

changes on the project should also be clearly identified and reported to the Commission. The Commission should also direct that those reports be verified by an AI Officer and that the report be filed with the Chief Clerk of the Commission in a form suitable for posting to the Commission's web page. Staff also recommends that the Order also specify that all such reports will be public records available for inspection and copying. Staff believes the aforementioned report will inform the Commission and the CLECs as to Ameritech's progress toward meeting its committed October 2001 implementation date.

Additionally, Staff recommends the following alterations to the HEPO at page 99-100:

Conclusion:

73(a)

We share Staff and Ai's view that the CLECs raise an issue here that is flatly outside the scope of this proceeding. Nothing more needs to be said on this point. With respect to Staff's proposal, we believe that the matter falls within the collaboratives pursuant to our directives in Issue 18.

73(b)

On the basis of the record, we believe that having Ameritech develop and transition to the CABS billing system by December 2000 not be prudent on our part.. As WorldCom admits, the CABS billing system must be "properly formatted" and "bill receipt, audit, and payment is predicated on a predictable, well defined electronic bill format." (WorldCom Init. Comments at 28.)

Moreover, Staff informs us that billing systems are some of the telecommunication industry's most complex systems. In Staff's view, rushing the implementation process may prove more detrimental than beneficial in the long run and thus, it does not recommend accelerating the implementation of the CABS billing system for all UNEs. (Staff Init. Comments at 48). We agree that it is foolhardy to risk the development of a faulty billing system that would adversely affect all CLECs that order UNEs., and hence reject the CLEC proposal. We also agree with Staff that a reporting requirement to keep the Commission apprised of AI's progress on CABS billing implementation is necessary. The Commission, therefore, directs AI to provide a verified report in the specific manner and timeframe specified by Staff to ensure that it is on track in meeting the October 2001 target date for CABS billing implementation.

Similarly, a corresponding exception should be added to the Findings & Ordering Paragraphs (Section VI) portion of the HEPO as follows:

> (10) <u>All reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying</u>;

In addition, a new ordering paragraph should be added to read as follows:

> <u>IT IS FURTHER ORDERED that all reports required by this Order shall be verified by an officer of AI and shall be filed with the Chief Clerk of the Commission as a public record available for inspection and copying.</u>

Aside from the reporting requirement clarification, Staff takes no other exception to the conclusions contained in the HEPO with regards to Issue #(73-B) UNE P Billing.

Issue 94
Dark Fiber/Copper Inquiry Process

Exception Number 10: The HEPO should be amended to require Ameritech Illinois to file a plan to mechanize its dark fiber inventory and also to reflect that the response times established by the order for dark fiber location inquiries are maximum response times which do not insulate AI from the requirements of the UNE Remand Order.

The HEPO concludes that AI should not be required to create a database to inventory its dark fiber since "[t]he benefits of such a database do not seem to outweigh the costs involved." Staff generally agrees with this assessment as it relates to the present record, and in fact stopped short of supporting 21st Century's call for the Commission to require AI to create a database and electronic interface for its dark fiber inventory. 21st

Century Final Comments at 10. Rather, mindful of the potential expense involved in such an undertaking and the relative lack of CLEC inquiries at present, Staff recommended that AI be required to submit a plan for future electronic mechanization of its facility inventory records and that, in the meantime, it should institute new practices to ensure that the paper records of the Central Offices are kept up to date by keeping track of the capacity and location of any dark fiber newly installed or verified by inspection. Staff Final Comments at 99. Such a plan should provide a cost-benefit analysis regarding mechanization, an explanation of what such mechanization entails and an analysis of the factors involved determining how and when the Company would implement such a plan.

Although not directly addressing Staff's position on this aspect of the issue, in the end, the HEPO does not accept Staff's call for the development or submission of a mechanization plan which would allow the Commission to at least gauge the scope of the potential undertaking. Neither did the HEPO require AI to institute new practices to ensure that the paper records of the Central Offices are kept up to date. In this regard, Staff takes issue with the HEPO's treatment of the issue.

While the HEPO accurately states the current level of expressed interest by CLECs in exploring AI's dark fiber inventory, Staff does not believe that this current level of interest should necessarily guide the Commission's decision in this case. As the Commission is aware, there is currently under consideration before it AI's tariff filing which would make Unbundled Dark Fiber available to telecommunications carriers. Illinois Bell Telephone Company, Proposed introduction of Unbundled Network Elements and Unbundled Dark Fiber, Ill. C.C. Dkt. No. 00-0538, consolidated with Illinois Bell Telephone Company, Proposed introduction of Unbundled Sub-Loops, Ill. C.C. Dkt. No. 00-0539. Resolution of

the issues in those consolidated dockets may well change dramatically the amount and frequency of dark fiber requests. As Staff pointed out in its Final Comments, since the information being tracked, i.e. the capacity and location of dark fiber, will possibly change with every order or with new fiber deployment, it is more important than ever to stay abreast of, and electronically document, all changes occurring to the network. Staff Final Comments at 99. Accordingly, the HEPO's focus on the current situation regarding dark fiber requests is misplaced.

AI itself acknowledges that it is necessary to the efficient operation of its network and for meeting service requests for AI to know what equipment, including cable, it has out in the field. Tr. at 1086-87. For its part, 21st Century explained the importance of this preordering functionality in view of its goal of providing service to an area as soon as possible after making the business decision to do so. 21st Century Initial Comments at 1. 21st Century explained that it needs to be able to determine where dark fiber is located throughout the AI network so that dark fiber can be used as part of 21st Century's own infrastructure, and that if dark fiber is not available, it may need to implement other technologies to establish service for its customers which implementation may be a more complex, time intensive and costly process. In light of the acknowledged benefits to those CLECs who intend to use dark fiber as part of their network architecture and AI's acknowledged need for accurate equipment location records, the Commission should, at the least, require AI to institute new practices to ensure that the paper records of the Central Offices are accurate and up to date.

Staff believes that the HEPO is also in error in failing to address its argument that AI should be required to file a plan for the future mechanization (i.e. creation of a dark fiber

database and electronic interface) of its facility inventory records. The record in this case does not contain sufficient evidence for the Commission to conclude whether the cost of such mechanization outweighs the benefits both to AI and the CLECs. However, the issue of accurate facilities records is important both to AI and interested CLECs. Accordingly, the Commission should accept Staff's recommendation to require AI to file, within 6 months of the date of the order in this case a plan for establishing a dark fiber inventory database as described in these exceptions.

In general, however, Staff believes that the HEPO accurately reflects two important truths. One is that AI's current response time to dark fiber requests is currently unacceptable. HEPO at 107. The other is that AI should respond to CLEC requests for dark fiber location information in the same time periods as it provides the information to its own personnel. Id. In recognition of AI's unacceptable current response times, the HEPO orders that for 1-10 inquiries, AI must respond within 5 days and that for more than 10 inquiries, AI must respond within 10 days. The HEPO also appropriately rejects as too vague AI's proposal that more than 20 inquiries will be handled on a case by case basis. The HEPO further adopts Staff's proposal to require AI to further define and test the inquiry and ordering process that it has in place for dark fiber and further requires AI to provide the Commission with documentation on the training process it has in place for its technicians handling dark fiber requests as well as the materials or correspondence it uses to educate its account representatives and the CLECs on the new process.

Staff supports the HEPO's recognition of the problems surrounding the dark fiber inquiry process. However, Staff requests that the Commission clarify the HEPO's conclusions in one important respect. There is testimony in this case which supports the

conclusion that AI is not offering access to this information to requesting competitors such as 21st Century on a non-discriminatory basis. For example, the evidence indicates that while AI has been taking more than 5 or even 10 days to respond to fiber location requests it takes substantially less time in responding to internal requests. Tr. at 1149-53. While the timeframes established in the HEPO represent a good start in bringing AI's inquiry responses to external parties more in line with its responses to inquiries from internal sources, Staff believes that the order in this case should emphasize that the inquiry response timeframes established by this order must be viewed as being maximum response times which do not define or lessen AI's obligation to meet dark fiber inquiries on a non-discriminatory basis. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, 15 FCC Rec'd 3696, 1999 Lexis 5663, 18 Comm. Reg. (P&F) 888, ¶ 429 (rel. November 5, 1999) ("UNE Remand Order").

Staff believes the proper scope of the inquiry in this case to be whether the procedures AI has in place to meet CLEC OSS demands are non-discriminatory vis-a-vis those of internal company personnel. In this regard, Staff would point to the record where 21st Century witness Palacios, a former facilities engineer with AI, testified that when AI has to turn up fiber between central offices or from a central office to a customer location, it can find if there are spare fibers fairly readily and that, from his experience, a realistic timeframe for answering such an inquiry is 24 hours. Tr. at 1148-9. This 24 hour figure appears to assume no site visit would be necessary. Id at 1150. However, 21st Century's witness also indicated that requests for facilities from 21st Century are generally for facilities between offices where AI probably has the best records. Tr. at 1151 In instances

where a site visit to a manhole is required, RCN's witness testified that 24 hours may be too short a response period and that an estimate for such a request might be 3 days. Tr. at 1151-52.

The foregoing evidence tends to show that the appropriate response time to a dark fiber inquiry varies depending on the nature of the inquiry, most specifically whether a site visit is necessary, which in turn appears to be dependant on whether the request concerns fiber locations between central offices. AI has conceded that most requests to date for dark fiber have not required field visits. Accordingly, whether AI is providing non-discriminatory responses to dark fiber inquiries, cannot, on the basis of the current record, be judged solely on the maximum response times established by this order. Rather, whether a response time to a CLEC request is reasonable and non-discriminatory is a function of the amount of work needed to be done to answer it and the degree to which the company's response time coincides with its internal response to similar inquiries.

In view of the foregoing arguments, Staff recommends that the HEPO's conclusions be altered as follows:

> Analysis and Conclusion
>
> The Commission does not believe that AI should, on the basis of the instant record, be required to create a database to inventory its~~their~~ dark fiber. The benefits of such a database do not, at present, seem to outweigh the costs involved. 21st Century, the only CLEC that was vocal on this issue has placed less than 10 inquiries for dark fiber (Tr.) (Covad and Rhythms, in their Final Comments, stated that they join in 21st Century's position on this issue.) This belief is also based on the UNE Remand Order which stated, "If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers." (Para. 429)
>
> The foregoing notwithstanding, the Commission is mindful that currently under consideration before the Commission is AI's tariff filing which

would make Unbundled Dark Fiber available to telecommunications carriers. Illinois Bell Telephone Company, Proposed introduction of Unbundled Network Elements and Unbundled Dark Fiber, Ill. C.C. Dkt. No. 00-0538, consolidated with Illinois Bell Telephone Company, Proposed introduction of Unbundled Sub-Loops, Ill. C.C. Dkt. No. 00-0539. Resolution of the issues in those consolidated dockets may well change dramatically the amount and frequency of dark fiber requests. Moreover, as Staff pointed out in its Final Comments, since the information being tracked, i.e. the location and capacity of dark fiber, will possibly change with every order or with new fiber deployment, it is therefore more important than ever to stay abreast of, and electronically document, all changes occurring to the network. Accordingly, the current situation regarding dark fiber requests offers no persuasive evidence of what the future may hold regarding dark fiber inquiries. Staff Final Comments at 99.

For its part, AI acknowledges that it is necessary for operating its network efficiently and meeting service requests for AI to know what equipment, including cable, it has out in the field. Tr. at 1086-87. This factor, in addition to the importance of this issue to interested CLECs supports the Commission's acceptance of Staff's assessment that AI should not only have a complete inventory of fiber for itself but should have one available to respond to CLEC requests. The Commission orders that AI institute new practices to ensure that the paper records of its central offices are accurate and up to date. The Commission also accepts as reasonable Staff's recommendation that AI be required to file with the Commission a plan for the electronic mechanization of its dark fiber database. The record in this case does not contain sufficient evidence for the Commission to conclude whether the cost of such mechanization outweighs the benefits both to AI and to the CLECs. Accordingly, AI should, within six months following the entry of this order, file with the Commission a plan for mechanizing its dark fiber location records. This plan should provide an update on the numbers of CLEC dark fiber inquiries, a cost-benefit analysis regarding mechanization, an explanation of what such mechanization entails and an analysis of the factors involved in determining how and when the Company would implement such a plan.

Finally, the Commission finds AI's response time to date unacceptable. Although~~However,~~ AI has convincingly demonstrated that accessing information on dark fiber does not merely require punching an inquiry into a back office computer system~~.~~, ~~I~~in the interest of competition, AI should respond to CLEC requests for this information in the same time periods as it provides the information to their own personnel. (See UNE Remand Order, Para. 431). The FCC found that "an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also

provide access to it to a requesting competitor on a non-discriminatory basis." (UNE Remand Order, Para. 429)

As stated earlier, ~~T~~this information is very important for CLECs in order to effectively compete in the market. AI argues that shorter time frames than those in its proposal are not necessary because then CLECs could use the information to build network architecture, rather than provisioning dark fiber on a customer-by-customer basis. However, as the discussion in Issue 19 and the Covad/Rhythms Arbitration made clear, CLECs should have this information in order to build their network and plan for future marketing. Moreover, the proper focus of this Order should be on whether AI is offering non-discrimintory access to dark fiber location information and not on what CLECs will do with the information.

In conclusion, the Commission finds that for 1-10 inquiries, AI will respond within 5 days. For more than 10 inquiries, AI will respond within 10 days. AI's proposal that more than 20 inquiries will be handled on a case by case basis is too vague. In light of AI's poor performance in the past, the Commission will adopt Staff's proposal to require AI to further define and test the inquiry and ordering process that it has in place for dark fiber. Furthermore, AI should provide the Commission with documentation on the training process it has in place for its technicians handling dark fiber requests as well as the materials or correspondence it uses to educate its account representatives and the CLECs on the new process. The Commission stresses that the foregoing time frames are to be viewed as maximum appropriate times for response. There is testimony in this case which supports the conclusion that AI is not offering access to this information to requesting competitors such as 21st Century on a non-discriminatory basis. For example, the evidence indicates that while AI has been taking more than 5 or even 10 days to respond to CLEC fiber location requests AI takes substantially less time in responding to its own internal requests. Tr. at 1149-53. Therefore, while the Commission orders AI to respond to dark fiber requests in the time frames set out above, the Commission stresses that these response times are maximum response times which do not define or lessen AI‘s obligation to meet dark fiber inquiries on a non-discriminatory basis. UNE Remand Order, Par. 429.

The Commission accepts Staff’s argument that the proper scope of the inquiry in this case is whether the procedures AI has in place to meet CLEC OSS demands are non-discriminatory vis-a-vis those of internal company personnel. In this regard, the record supports the conclusion that the appropriate time to answer dark fiber inquiries varies depending on the nature of the inquiry, most specifically whether a site visit is necessary, which in turn appears to be dependant on whether the request concerns fiber locations between offices. See Tr. at 1148-52. Also, AI has conceded that

most requests to date for dark fiber have not required field visits. Accordingly, whether AI is providing non-discriminatory response to dark fiber inquiries, cannot, on the basis of the current record, be based solely on the maximum response times established by this order. Rather, whether a response time to a CLEC request is reasonable and non-discriminatory is a function of the amount of work needed to be done to answer it and the degree to which the company's response time coincides with its internal response to similar inquiries.

III. CONCLUSION

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted:

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