

1 **REBUTTAL TESTIMONY ON REHEARING OF CAROL CHAPMAN**
2 **ON BEHALF OF AMERITECH ILLINOIS**

3
4 **I.**

5 **INTRODUCTION**

6 **Q. PLEASE STATE YOUR NAME, ~~TITLE AND BUSINESS ADDRESS~~**

7 **A.** My name is Carol A. Chapman.

8 **Q. ARE YOU THE SAME CAROL A. CHAPMAN WHO FILED DIRECT**
9 **TESTIMONY IN THIS PROCEEDING?**

10 **A.** Yes.

11 **II.**

12 **PURPOSE OF TESTIMONY**

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 **A.** The purpose of my testimony is to rebut the testimony of Staff, Covad and
15 Rhythms contrary to Ameritech Illinois' positions in the rehearing phase of this
16 proceeding on Issues 1 and 4 of the rehearing. Specifically, I address Ameritech
17 Illinois' position on the proposed unbundling of the Project Pronto architecture
18 from a competitive policy position and the appropriate recurring and non-
19 recurring prices (other than the monthly recurring HFPL charge) in light of the
20 global settlement between Covad Communications Company and SBC.

21 **III.**

22 **PROJECT PRONTO**

23 **Q. IS THE EFFICIENCY OF THE CURRENT ARCHITECTURE OF THE PROJECT**
24 **PRONTO NETWORK ONE OF AMERITECH ILLINOIS' KEY INCENTIVES FOR**
25 **INVESTING IN PROJECT PRONTO?**

CONFIDENTIAL FILE

00-0312/0313
Ameritech Ill. Ex. 8.1

1:4:01 CB

1 A. Yes. One of the incentives for investing in Project Pronto is the efficiencies that
2 can be gained in the Project Pronto network. However, both Torsten Clausen
3 and Melia Carter imply that this new, efficient network should have been tailor-
4 made to suit CLEC business plans. Torsten Clausen goes so far as to suggest
5 that Ameritech Illinois should not make improvements in its network until
6 consulting with the CLEC community. While CLECs should certainly benefit
7 from any unbundling of the embedded network to which they are entitled, it is
8 clearly unreasonable for CLECs to dictate how Ameritech Illinois spends its
9 money on an ongoing basis. Instead of investing in their own facilities, these
10 CLECs now seek to direct how Ameritech Illinois will invest in its facilities. This
11 suggestion would require Ameritech Illinois to take all the risks associated with
12 the investment, but give the CLECs the ability to determine how the investment
13 is made. Obviously, this type of arrangement would discourage, instead of
14 encourage, network investment.

15 **Q. WHY IS IT CRUCIAL TO ALLOW ILECS TO DETERMINE HOW NETWORK**
16 **INVESTMENTS WILL BE MADE?**

17 A. ILECs such as Ameritech Illinois will not want to make upgrades to their network
18 if not given the freedom to invest wisely in network configurations that will
19 provide efficiencies. In pricing unbundled elements, the FCC's Rules currently
20 require ILECs to consider only the most efficient, forward-looking network
21 configuration, and yet, when it comes to actually building the network, CLECs
22 are demanding that inefficiencies be introduced in order to better meet their
23 business plans. In plain English, the CLECs wish to have Ameritech Illinois

1 invest in a network built not to meet Ameritech Illinois' specifications, but to the
2 CLECs' specifications.

3 **Q. SHOULD CLECS HAVE THE ABILITY TO CONTROL THE NATURE OF**
4 **AMERITECH ILLINOIS INVESTMENTS WITHOUT SHARING IN THE RISKS**
5 **OF THE INVESTMENT?**

6 A, No. Efficiency in building the Project Pronto network is key to its deployment and
7 is captured in the current price structure. Introducing inefficiencies would
8 increase the cost of deployment to Ameritech Illinois, and, as a result, the prices
9 of the Broadband Service. This increased cost to Ameritech Illinois not only
10 increases Ameritech Illinois' investment risk, it also may, by virtue of the resulting
11 higher pricing, make the Broadband Service less attractive to CLECs. If CLECs
12 truly wanted to have input into the building of a new network, then CLECs should
13 join the ILECs in a joint venture where *all* parties are investing their capital up
14 front – sharing the risk and sharing the network. Shared control of Ameritech
15 Illinois' network is really what the CLECs are asking for; however, the CLECs are
16 not offering to share in the risk of investment.

17 **Q. MELIA CARTER ARGUES THAT PROJECT PRONTO SHOULD BE**
18 **DESIGNED SPECIFICALLY TO ACCOMMODATE THE VARIOUS CLECS'**
19 **PLANS. IS THIS A REASONABLE REQUEST?**

20 A. No. While CLECs benefit from the use of Ameritech Illinois' network, the
21 network still belongs to Ameritech Illinois, and Ameritech Illinois must design the
22 network in a manner that is cost effective and efficient to meet its business
23 needs. Ameritech Illinois is a business and must make investments accordingly.
24 It is possible that if SBC had chosen to invest 12 billion dollars instead of 6
25 billion dollars in Project Pronto, the network may have been able to be designed

1 in a manner more suited to a particular CLEC's business needs. However, it is
2 likely that such an investment would not have made good business sense.

3 Given the choice between a bad investment and no investment, it is likely that no
4 investment would have been made. If that had occurred, no CLECs would have
5 benefited from Project Pronto.

6 On the other hand, Ameritech Illinois does consider the requests and feedback
7 of CLECs when determining the types of wholesale service offerings it will
8 develop. As with any customer request, Ameritech Illinois has to examine many
9 factors, including any possible adverse impacts to the network, when
10 determining whether or not the customer's request can be met. ~~It is simply~~
11 unreasonable and unfair to expect an ILEC to build its network in a manner
12 designed to support each or any CLEC's business plans. When a CLEC makes
13 an investment in their network, they do so based upon their own business plans.
14 Just as CLECs have discretion over their investments, so must Ameritech Illinois
15 have discretion over its own investments. If a CLEC's request makes good
16 business sense from Ameritech Illinois' perspective, it is in the best interest of
17 Ameritech Illinois to accommodate the request. On the other hand, if the CLEC's
18 request does not make such good business sense, Ameritech Illinois has a
19 responsibility to its shareholders to turn it down. The business place is full of
20 examples of instances where companies, both large and small, have made
21 unwise investments and suffered terrible losses as a result.

22 **Q. HAS THE FCC PROVIDED DIRECTION REGARDING HOW REGULATION**
23 **SHOULD ENCOURAGE INVESTMENT IN ILEC NETWORKS?**

1 A. Yes. The FCC has clearly recognized the importance of encouraging investment
2 in network initiatives that will support advanced services, stating, "We are also
3 committed to ensuring that incumbent LECs are able to make their decisions to
4 invest in, and deploy, advanced telecommunications services based on market
5 demand and their own strategic business plans, rather than on regulatory
6 requirements. We intend to take deregulatory steps towards meeting this goal in
7 a subsequent order."¹ The FCC went on to state, "We intend to address, in a
8 future order, other specific forms of regulatory relief that may be needed to
9 stimulate investment and deployment of advanced services by incumbents or
10 new entrants, or whether other changes to the Commission's local competition
11 rules may facilitate deployment of advanced services by competing carriers."²

12 These statements of the FCC directly contradict the positions taken by the
13 Rhythms, Covad and Staff. These parties would have every network investment
14 subject to new and ever-broadening regulatory requirements; would disallow
15 ILECs from making investment decisions based upon their own business plans,
16 and would discourage future investment by making such investments
17 unattractive.

18 **Q. THE TESTIMONY OF TORSTEN CLAUSEN STATES THAT CLECS**
19 **"TYPICALLY TARGET SPECIFIC MARKETS AND/OR SPECIFIC**
20 **CUSTOMERS." IF THIS IS THE CASE, ISN'T IT EVEN MORE**
21 **UNREASONABLE TO EXPECT AMERITECH ILLINOIS TO MODIFY OR**
22 **UNBUNDLE ITS PRONTO ARCHITECTURE?**

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, ¶ 3.

²² *Id.* at ¶ 7.

1 Yes. The Project Pronto initiative is a widespread investment in the network. It
2 is not being rolled out only to the high-end business areas typically targeted by
3 data CLECs. Instead, it is an investment in the network serving residential and
4 business customers. Were Ameritech Illinois to incur significant additional
5 expenses to modify the Project Pronto Architecture throughout the entire Project
6 Pronto roll-out area, there is no guarantee that the CLECs would begin to market
7 outside of their current niche areas the additional capabilities they seek to
8 require Ameritech Illinois to provide them. In fact, since many of the services the
9 CLECs have requested are typically "high-end" services marketed at much
10 higher rates than those typically associated with an ADSL-type offering, it is very
11 likely that the services will not be marketed in residential areas. Moreover, as
12 Ameritech Illinois witness John Lube explains in his rebuttal testimony on
13 rehearing, CLECs can differentiate their services, where desired, through the
14 selective use of collocated DSLAMs at either Remote Terminals ("RT") or Central
15 Offices ("CO"). The location of these DSLAMs would be driven by the market.
16 This allows the CLECs to target market to their "high-end" customers while still
17 preserving the efficiencies of the Project Pronto architecture.

18 **Q. IS IT REASONABLE TO ASSERT THAT AMERITECH ILLINOIS MAY**
19 **SUDDENLY WITHDRAW THE BROADBAND SERVICE OFFERING UPON**
20 **THE EXPIRATION OF THE MERGER CONDITIONS?**

21 **A.** No. Speculating that Ameritech Illinois will suddenly choose to withdraw the
22 Broadband Service after the expiration of the merger conditions simply defies
23 logic. SBC is investing billions of dollars in the Project Pronto initiative.

24 Obviously, an investment of this size would be expected to provide a return for

1 years to come. It simply doesn't make sense for Ameritech Illinois to make this
2 investment, only to turn around in the very near future and cease to make use of
3 it. To do so would not be economically rational or make good business sense.
4 What does make sense is for Ameritech Illinois to continue to make the new
5 network available on terms and conditions that it has offered to CLECs, i.e.,
6 through wholesale Broadband Service offerings.

7 That being said, however, it does not make sense for Ameritech Illinois to make
8 specific long-term commitments regarding specific Broadband Service offerings.
9 A long-term commitment on a brand new technology would be unwise.
10 Broadband technologies are constantly evolving, changing, and improving. It is
11 possible, and even likely, that the Broadband Service offerings that Ameritech
12 Illinois is making available today will not look the same five years from now.
13 Committing to long-term conditions based upon today's understanding of the
14 technology will only serve to restrict Ameritech Illinois' ability to change with the
15 times and modify its offerings as technology improves.

16 **Q. THE FCC REVIEWED MANY OF THE SAME CONCERNS AS THOSE RAISED**
17 **BY RHYTHMS, COVAD AND STAFF IN THIS PROCEEDING IN ITS**
18 **CONSIDERATION OF SBC'S PROPOSAL FOR OFFERING THE**
19 **BROADBAND SERVICE OFFERING. WHAT WAS THE FCC'S**
20 **CONCLUSION?**

21 **A.** As illustrated in an attachment to an ex parte filed by Rhythms NetConnections,
22 Inc., Covad Communications Company, and NorthPoint Communications Inc.,³
23 the FCC has already considered many of the concerns regarding Project Pronto
24 that have been raised by Rhythms, Covad and Staff in this proceeding. Among

³ See Schedule CAC 1.

1 the issues the FCC considered were CLEC ownership of line cards, collocation
2 of line cards, the unbundling of the Project Pronto architecture including the line
3 card itself, the technologies that Project Pronto should support, line sharing over
4 the Project Pronto architecture, and SBC's responsibilities to consider CLEC's
5 desires when investing in the network. After considering all these factors, and
6 many more, the FCC concluded that SBC's proposal should be adopted. In the
7 *Project Pronto Order*,⁴ the FCC stated "we expect consumers will benefit not only
8 from a more rapid deployment of advanced services, but from the increased
9 choices that stem from the competitive safeguards contained in SBC's
10 proposal."⁵ The FCC went on to conclude that "SBC's proposal serves the public
11 interest" and "should provide consumers a greater choice of both services and
12 providers in the near term".⁶ The FCC went on to say, "In particular, we find that
13 SBC's proposal should affirmatively and identifiably promote the rapid
14 deployment of advanced services in a pro-competitive manner, thereby serving
15 the goals of section 706."⁷

16 **Q. WHAT POSITION DID RHYTHMS AND COVAD TAKE REGARDING RT**
17 **COLLOCATION IN THE ABOVE-REFERENCED EX PARTE?**

18 **A.** Rhythms and Covad requested that all new RTs deployed by SBC must be
19 designed to accommodate collocation by at least five CLECs.

⁴ See Second Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control*, CC Docket No. 98-141, FCC No. 00-336, 34-35 (rel. Sept. 8, 2000) ("*Project Pronto Order*")

⁵ *Project Pronto Order* at ¶ 2.

⁶ *Project Pronto Order* at ¶ 23.

⁷ *Id.*

1 **Q. IS THE ABOVE CONDITION ADVOCATED BY RHYTHMS AND COVAD**
2 **BEFORE THE FCC CONSISTENT WITH RHYTHMS AND COVAD'S**
3 **STATEMENTS IN THIS PROCEEDING?**

4 A. No. In this proceeding, Rhythms and Covad have painted RT collocation as
5 unattractive and impractical. If this were true, it would be highly unlikely that five
6 separate CLECs would request collocation at a single RT, and certainly it would
7 not occur frequently enough to justify the modification of all new RTs to
8 accommodate this possibility.

9 **Q. MELIA CARTER CLAIMS THAT COVAD NEEDS "LINE SHARING OVER THE**
10 **PROJECT PRONTO ARCHITECTURE" TO ACCOMPLISH THREE SPECIFIC**
11 **GOALS. DOES AMERITECH ILLINOIS CURRENT BROADBAND SERVICE**
12 **OFFERINGS MEET ALL THREE OF THESE GOALS?⁸**

13 A. Yes. Although Melia Carter claims that "line sharing" over the Project Pronto
14 architecture is necessary in order to accomplish these three goals, the
15 Broadband Service offerings accomplishes all three of these goals without the
16 need for any modification to the current offerings.

17 **Q. HOW DOES AMERITECH ILLINOIS' BROADBAND SERVICE "ELIMINATE[S]**
18 **THE NEED TO PROVISION A SEPARATE LOOP TO THE END USER'S**
19 **LOCATION"?**

20 A The Broadband Service offerings allow a CLEC to provide DSL service over the
21 same subloop copper facility as the voice service. CLECs also have the option
22 of collocating a DSLAM either at a remote terminal or at the central office and
23 line sharing over the copper subloop.

24 **Q. HOW DOES AMERITECH ILLINOIS' BROADBAND SERVICE "INCREASE**
25 **DSL AVAILABILITY TO CONSUMERS SINCE CLECS DO NOT HAVE TO**
26 **RELY ON THE AVAILABILITY OF SPARE COPPER FACILITIES IN THE**
27 **NETWORK"?**

⁸ Direct testimony of Melia Carter at 6.

1 A. As explained above, the Broadband Service allows a CLEC to provide DSL
2 service over the same copper subloop facility as the end user's voice service. If
3 the CLEC chooses this option, the CLEC does not have to rely on the availability
4 of an additional loop facility to serve the end user, just as is the case with line
5 sharing.

6 **Q. HOW WILL AMERITECH ILLINOIS' BROADBAND SERVICE ENABLE**
7 **"CLECS TO PROVISION ADSL SERVICE MORE AFFORDABLY TO**
8 **CONSUMERS?"**

9 A. Although the Broadband Service is not a UNE or combination of UNEs,
10 Ameritech Illinois has agreed to price the Broadband Service in accordance with
11 UNE pricing methodology. Ameritech Illinois has also committed to allowing the
12 pricing to be established in arbitration proceedings filed with state commissions.
13 Through this commitment, Ameritech Illinois has ensured that CLECs will be able
14 to obtain fair and just cost-based rates.

15 **Q. DOES AMERITECH ILLINOIS PROVIDE ANY FORM OF DSL TO END**
16 **USERS?**

17 A. No. Ameritech Illinois does not provide any form of DSL to its end users.

18 **Q. ARE THE TERMS AND CONDITIONS AVAILABLE TO AMERITECH ILLINOIS'**
19 **DATA AFFILIATE TO PROVIDE ADVANCED SERVICES ALSO AVAILABLE**
20 **ON A NON-DISCRIMINATORY BASIS TO ALL CLECS?**

21 A. Yes. Ameritech Illinois' data affiliate is a CLEC and must operate in the same
22 manner as any other CLEC. The terms and conditions available to Ameritech
23 Illinois' data affiliate for both line sharing and the Broadband Service are
24 available to any non-affiliated CLEC as well.

1 IV.

2 HFPL UNE PRICES

3 **Q: TERRY MURRAY REPEATEDLY ASSERTS IN HER DIRECT TESTIMONY ON**
4 **REHEARING THAT THE ILLINOIS COMMISSION SHOULD ADOPT RATES**
5 **FROM THE 13-STATE SBC/COVAD NEGOTIATED AGREEMENT. WHY IS**
6 **THIS INAPPROPRIATE?**

7 A: As I explained in my direct testimony, the prices that will be established in the
8 SBC/Covad 13-state agreement are negotiated rates and are not cost based. In
9 contrast, in the context of the arbitration, the Act and the FCC's rules clearly
10 require that cost-based TELRIC rates be established.

11 **Q: DO DIFFERENCES BETWEEN A COST-BASED RATE AND A NEGOTIATED**
12 **RATE MEAN THAT THE COST-BASED RATE IS INCORRECT?**

13 A: No. Negotiated rates are the result of the give and take of negotiations, whereas
14 cost-based TELRIC rates are determined strictly based upon costs, as defined
15 by the FCC. As a result, variations between the two are neither unexpected nor
16 surprising.

17 V.

18 CONCLUSION

19 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY ON REHEARING?**

20 A. Yes.

ORIGINAL



EX PARTE OR LATE FILED

Hamilton Square 600 14th Street NW Suite 750 Washington, DC 20005
 W > www.covad.com

T > 202.220.0400
 F > 202.220.0401

May 19, 2000

RECEIVED
 MAY 19 2000
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Carol Matthey
 Common Carrier Bureau
 Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C. 20554

RE: CC Docket No. 98-141, Response to SBC's Requests for Interpretation, Waiver or Suspension of Merger Conditions Affecting the Ownership of Plugs/Cards and OCDS

Dear Ms. Matthey,

This written *ex parte* communication is submitted by Rhythms NetConnections, Inc., Covad Communications Company, and NorthPoint Communications, Inc. in connection with the Commission's review of the recent request for interpretation, waiver or modification of the Merger Conditions in order for SBC Communications, Inc. ("SBC") to proceed with its planned provisioning of the Broadband UNE service.¹ Because SBC proposes, in its request for waiver, to reverse the requirements of the separate affiliate as set forth in the SBC/AIT merger conditions, Rhythms, Covad and NorthPoint noted that granting the proposal without further study would undermine the public interest and defeat the benefits of the separate affiliate.² In the intervening period, SBC has done nothing to assuage these concerns – indeed, in public meetings with CLECs and in its filings before this Commission, SBC's comments exacerbate legitimate concerns about the bona fides of SBC's proposals. Accordingly, Rhythms, Covad and NorthPoint continue to believe that granting the request as presented would substantially undermine the Commission's work toward ensuring a robust, competitive environment for facilities based DSL competition.

Should the Commission decide to grant SBC's request, it is essential that SBC undertake to adhere to certain conditions that are designed to mitigate the harm that its waiver would wreak on facilities-based competition within the proposed network

¹ Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief of Common Carrier Bureau, Federal Communications Commission (Feb. 15, 2000) ("February 15th Letter"); Letter from Marian Dyer, Vice President - Federal Regulatory, SBC Telecommunications, Inc., to Anthony Dale, Accounting Safeguards Division, Common Carrier Bureau, Federal Communications Commission (March 1, 2000) ("SBC March 1st Ex Parte"); Letter from Austin C. Schlick on behalf of SBC Communications, Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-141 (April 6, 2000) ("SBC April 6th Ex Parte").

² Comments of DATA on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49, et al. (March 3, 2000); Reply Comments of DATA on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49, et al. (March 10, 2000).

No. of Copies rec'd 0+1
 List ABCDE

topology. To that end, Rhythms, Covad and NorthPoint have submitted the appropriate conditions as an attachment to this document.³

The implementation of the attached conditions will provide an adequate safeguard against any anti-competitive behavior. Specifically, the conditions address SBC's obligation within the new fiber-fed DLC network to offer CLECs nondiscriminatory *interconnection arrangements and access to unbundled network elements*. The network topology proposed by SBC involves specific collocation and unbundling obligations, which must be clarified by the Commission. Furthermore, the conditions protect against the underutilization of the functional capabilities of the equipment SBC plans to deploy for its Broadband UNE. Under these conditions, the Commission can preserve the flexibility and capability of the equipment deployed in Project Pronto to support competitive advanced services.

The Commission must preserve its authority to ensure a non-discriminatory, competitive telecommunications market and explicitly affirm that its conclusion on the narrow issues presented by SBC's request remain subject to any further Commission action regarding competitively neutral network architecture. SBC has submitted several filings outlining its proposal, which collectively fail to evidence nondiscriminatory provisioning of the Broadband UNE, or to address the numerous technical and operational questions posed by the CLECs. If the Commission determines that further investigation into the technical and operational aspects of the fiber-fed network architecture are necessary to preserve facilities-based competition, any action taken on SBC's current request can carry no consequences in such an investigation.

Respectfully submitted,

Jeffrey Blumenfeld, Chief Legal Officer
Rhythms NetConnections Inc.
6933 South Revere Parkway
Englewood, CO 80112
303.476.2222
303.476.5700 fax
jeffb@rhythms.net

Michael Olsen
Vice President & Deputy General Counsel
NorthPoint Communications, Inc.
303 Second Street, South Tower
San Francisco, CA 94107

Christy C. Kunin
Kristin L. Smith
Blumenfeld & Cohen – Technology Law Group
1625 Massachusetts Avenue, Suite 300
Washington, D.C. 20036
202.955.6300
202.955.6460 fax
christy@technologylaw.com
kristin@technologylaw.com
Counsel for Rhythms NetConnections Inc.
Stephen P. Bowen
Blumenfeld & Cohen – Technology Law Group
4 Embarcadero Center, Suite 1170
San Francisco, CA 94111
415.394.7500

³ These conditions are, in response to the Commission's request, detailed in nature, and address specific issues that have arisen during the course of our review of SBC's proposal as well as its comments in public meetings regarding the implementation of the proposal.

Ex Parte Letter
May 19, 2000
Page 3

415/403-4003
molsen@northpoint.net

Ruth Milkman
Lawler, Metzger & Milkman, LLC
1909 K Street, NW
Suite 820
Washington, D.C. 20006
202/ 777-7700
rmilkman@lmm-law.com
Attorney for NorthPoint

Norton Cutler
General Counsel
Bluestar Communications
401 Church Street
Nashville, TN 37219
615.346.3848
615.346.3875 fax
norton.cutler@bluestar.net

Thomas S. Lyle
Regulatory Affairs Manager
Vitts Networks, Inc
77 Sundial Ave.
Manchester, NH 03103
Tel. no. 603.656.8017
e-Fax no. 603.656.8217
e-mail tlyle@vitts.com
cell: 603-494-6094

415.394.7505 fax
steve@technologylaw.com
Counsel for Rhythms NetConnections Inc.

Jason Oxman
Senior Governmental Affairs Counsel
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, DC 20005
Tel: 202-220-0409
Fax: 202-220-0401
Joxman@covad.com

Melanie Haratunian
General Counsel/Director of Regulatory
Affairs
HarvardNet, Inc.
500 Rutherford Avenue
Boston, MA 02129
617.712.1607
617.242.6991 fax
melanie@harvardnet.com

Ex Parte Letter
May 19, 2000
Page 4

cc: Lawrence E. Strickling, Chief of Common Carrier Bureau
Robert Atkinson, Deputy Chief of Common Carrier Bureau
Tony Dale, Accounting Safeguards Division
Mark Stone, Accounting Safeguards Division
Michelle Carey, Policy and Program Planning Division
Jake Jennings, Policy and Program Planning Division
Johanna Mikes, Policy and Program Planning Division
Staci Pies, Network Services Division

**NECESSARY CONDITIONS TO FCC GRANT OF TEMPORARY WAIVER
ALLOWING SBC ILECS TO OWN ATM SWITCHES/OPTICAL CONCENTRATION
DEVICES AND ADLU DLC LINE CARDS**

1. The Commission must clarify that its grant of a temporary waiver allowing SBC ILECs to own ADLU Digital Loop Carrier system ("DLC") plug-in line cards used to support both analog voice and ADSL-based advanced data services in no way affects, limits, or restricts the right and ability of CLECs to own a variety of DLC line cards supporting the full range of xDSL technologies offered by the DLC manufacturer, and the right and ability of CLECs to plug any such line cards into SBC ILECs' DLCs via physical or virtual collocation, at the option of the CLEC.
2. The Commission must clarify that, notwithstanding its grant of a temporary waiver, the SBC ILECs must allow CLECs to physically and virtually collocate, in SBC ILEC DLC channel bank chassis located in controlled environmental vaults, huts or cabinets, plug-in line cards supporting any xDSL technology that is presumed technically feasible pursuant to FCC rules. Specifically, SBC must allow the installation of any CLEC-owned line card manufactured to technical specifications compatible with the DLC channel bank chassis (*e.g.*, line cards manufactured by the DLC vendor), regardless of whether SBC deploys service(s) based on such technology itself or on behalf of any SBC affiliate, or whether any SBC affiliate deploys service(s) based on such technology.
3. The Commission must clarify that, notwithstanding its grant of a temporary waiver, the definition of a UNE loop encompasses all loop facilities between an SBC ILEC central office termination/interconnection point and a demarcation point at an end user premises, and includes all copper and fiber facilities between these two end points, as well as any associated electronic equipment located in the central office and/or in outside plant locations, regardless of whether the electronic equipment in outside plant locations includes Digital Subscriber Line Access Multiplexer ("DSLAM") functionality.
4. The Commission must clarify that, notwithstanding its grant of a temporary waiver, loops configured as fiber-fed DLC loops must be further unbundled by SBC ILECs pursuant to section 251(c)(3) of the Act, and offered to CLECs in their individual subloop components, including (1) the bandwidth required by CLECs on the fiber subloop between the termination/interconnection point at the central office and the line card side of the DLC located at a remote terminal ("RT"), (2) the DLC plug-in line card, and (3) the copper subloop between the DLC at the RT and the demarcation point at the customer premises.
5. The Commission must clarify that, notwithstanding its grant of a temporary waiver, a CLEC may purchase one or more fiber-fed DLC subloop components, at its option, and may combine any such subloop component(s) with its own equipment and/or facilities. A CLEC may connect the fiber subloop and the copper subloop by physically or virtually collocating a DLC plug-in card. If a CLEC purchases all three fiber-fed DLC subloop components for a particular loop ("fiber-fed DLC loop platform"), the SBC ILEC shall

not disassemble or disconnect the subloop components and/or require the CLEC to reassemble or reconnect the subloop components, except upon request from a CLEC.

6. The Commission must clarify that, notwithstanding its grant of a temporary waiver, a combined DSL/POTS DLC plug-in line card is subject to the unbundling requirements of section 251(c)(3) of the Act.
7. The Commission must clarify that, notwithstanding its grant of a temporary waiver, and pursuant to SBC's section 251(c)(3) unbundling obligation, SBC must provide CLECs with all technical capabilities associated with a fiber-fed DLC loop provisioned with an ADLU DLC plug-in line card, including, but not limited to:
 - a. the ability to specify any Asynchronous Transfer Mode ("ATM") Quality of Service ("QoS") class supported by the manufacturer of the ATM Switch/Optical Concentration Device ("ATM Switch/OCD") and ADLU DLC plug-in card, including (1) Constant Bit Rate, (2) Real-time Variable Bit Rate, (3) Non-real-time Variable Bit Rate, (4) Available Bit Rate, and (5) Unspecified Bit Rate.
 - b. the ability to establish multiple virtual circuits per port
 - c. the ability to provision all ADSL parameters (including, but not limited to, maximum and minimum line rates, target signal to noise margin, fast path and/or interleave path, interleave depth/delay, operating mode, and error thresholds)
 - d. the ability to monitor and troubleshoot ports, system cards, and other equipment for outages of all port-level conditions (port up/down, bit rate up/down, traffic cells received/transmitted per port, errors per port (e.g., near end/far end, retrain number and type)
 - e. the ability to oversubscribe truck capacity and meet service level agreement ("SLA") requirements without sharing bandwidth with other carriers.
 - f. the ability to monitor SLA parameters
 - g. the ability to access management software via API or similar interface
 - h. ATM-level provisioning of multiple ATM virtual circuits per port
8. The Commission must clarify that, notwithstanding its grant of a temporary waiver, SBC must allow CLEC, at CLEC's option, to (1) using SBC ILEC-provided tie cables, connect its facilities and equipment collocated at the SBC ILEC's central office to the ATM Switch/OCD in order to access the UNE loop or subloop; (2) order UNE transport from the SBC-ILEC, to be connected to the ATM Switch/OCD in order to access the UNE loop or subloop; or (3) order UNE transport from a third party carrier, to be connected to the ATM Switch/OCD in order to access the UNE loop or subloop.
9. The Commission must clarify that, notwithstanding its grant of a temporary waiver, SBC must provide the line sharing UNE to CLECs using the fiber-fed DLC loop configuration. This line sharing UNE shall use the same copper pair entering the end user premises as does the SBC ILEC analog voice service. At the SBC ILEC central office, this line sharing UNE shall be accessed by the CLEC at the ATM Switch/OCD in the same manner as described in Paragraph 8.

10. The Commission must clarify that, notwithstanding its grant of a temporary waiver, to the extent SBC seeks to transfer to any SBC affiliate any ATM/IP Switch(es)/OCD(s) and/or DLC line card(s) deployed, purchased, or installed by an SBC ILEC, that SBC affiliate shall be deemed to be a successor or assign of the SBC ILEC pursuant to section 251(h) of the Act and must provide CLECs with access to any such ATM/IP Switch(es)/OCD(s) and/or DLC line card(s), pursuant to section 251(c)(3) of the Act.
11. The Commission must clarify that, notwithstanding its grant of a temporary waiver, section 251(c)(2) imposes an independent obligation on SBC ILECs to permit technically feasible interconnection with the SBC ILEC network at remote terminals and other intermediate loop concentration or connection points.
12. The Commission must require SBC ILECs to offer all unbundled network elements discussed in these conditions, including the line sharing UNE and the fiber-fed DLC loop platform, to CLECs at prices that fully comply with the Commission's TELRIC pricing methodology.
13. The Commission must require SBC to maintain and support existing copper loops terminating in central offices with remote terminals in a condition that permits them to be used by competitors to provide DSL service. In addition, the Commission must clarify that, notwithstanding its grant of a temporary waiver, no customer currently served by any CLEC using xDSL technology over copper loop facilities may be migrated to fiber-based facilities without the express permission of the CLEC.
14. The Commission must require SBC to obtain the Commission's consent before retiring the separate data affiliate, and that SBC must make a showing that the DSL competitive landscape is sufficiently irreversible that the affiliate serves no significant further public policy or public interest purpose. In addition, the Commission must require that, notwithstanding its grant of a temporary waiver, all retail ISDN services must be provided through SBC's advanced data services affiliate, in order to ensure that all data services are provided in a nondiscriminatory manner.
15. The Commission must clarify that, notwithstanding its grant of a temporary waiver, when SBC acquires a DLC system, OCD, or other loop technology pursuant to this temporary waiver, it must use its best efforts to provide all features functions, and capabilities of that equipment to support unbundled access to that equipment, including acquiring intellectual property rights from the equipment manufacturer that would facilitate full CLEC access to the features functions and capabilities of that equipment.
16. All new remote terminals deployed after May 10, 2000 must be designed to accommodate collocation by at least five competitive local exchange carriers. Specifically, the remote terminals must permit at least five competitive LECs to collocate their own DSLAMs and multiplexing equipment. The competitive local exchange carriers' equipment, in turn, must be designed to be installed in remote terminals. (To the extent that traffic can be multiplexed using existing facilities in the equipment installed by the Incumbent LEC, space needs may be substantially reduced.)