STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COVAD COMMUNICATIONS COMPANY	**)**	
	)	
RHYTHMS LINKS, INC.	**)**	
	)	
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues.	**)**	**Docket No. 00-0312 and Docket No. 00-0313 (cons.)**

DRAFT ORDER OF COVAD COMMUNICATIONS COMPANY AND RHYTHMS LINKS, INC.

Carrie J. Hightman
SCHIFF HARDIN & WAITE
6600 Sears Tower
Chicago, Illinois 60606
(312) 258-5657

Counsel for
RHYTHMS LINKS, INC.
and
COVAD COMMUNICATIONS COMPANY

Stephen Bowen
Anita Taff-Rice
BLUMENFELD & COHEN
4 Embarcadero Center
Suite 1170
San Francisco, CA 94111
(415) 394-7500

Counsel for
RHYTHMS LINKS, INC.

Craig Brown
Assistant General Counsel
RHYTHMS LINKS, INC.
9100 Mineral Circle
Englewood, CO 80112
(303) 876-5335

Felicia Franco-Feinberg
Senior Counsel
COVAD COMMUNICATIONS COMPANY
227 W. Monroe Street, 20th Floor
Chicago, Illinois 60631

DATED; January 19, 2001

TABLE OF CONTENTS

I. REQUIREMENTS FOR INTERCONNECTION AGREEMENTS UNDER THE TELECOMMUNICATIONS ACT OF 1996 1
II. BACKGROUND AND PROCEDURAL HISTORY 1
III. CONTESTED ISSUES 3
A. Should Illinois Bell Telephone be ordered to provide line sharing over its "Project Pronto" architecture? 3
1. Rhythms' and Covad's Position 3
a. Effect of the Waiver Order 4
b. Packet Switching. 6
c. Unbundling does not result in unlawful recombination 7
d. Superior network 10
e. Access is required by the Telecommunications Act of 1996 10
f. Technical feasibility 11
g. Project Pronto Must Be Unbundled Under the FCC's Necessary and Impair Standard 12
h. The ability of data CLECs to compete effectively and efficiently in providing advanced services is already being substantially impaired. 14
2. Ameritech-IL's Position 16
a. Waiver Order 16
b. Packet Switching 17
c. Technical feasibility 17
d. Combination of elements 18
e. Pending FCC action. 19
f. Requirements of 47 U.S.C. § 261(c). 19
g. Necessary and Impair Standard 19
3. Staff's Position 20
4. Commission Analysis and Conclusion 20
a. Effect of the Waiver Order 21
b. Unbundling does not result in unlawful recombination 22
c. Packet Switching. 23
d. Superior network. 24
e. Technical feasibility. 25
f. Necessary and Impair Standard 26
B. Collocation of CLEC Line Cards in Project Pronto Architecture 31
1. Rhythms' and Covad's Position 31
2. Ameritech-IL's Position 34
3. Staff's Position 35
4. Commission Analysis and Conclusion 35
C. Are the non-recurring charges for cross-connects reasonable in light of the prices for cross-connects recently announced following the agreement between SBC and Covad Communications? 40
1. Rhythms' Position 40
2. Ameritech-Illinois's Position 41

3. Staff's Position.....42
4. Commission Analysis and Conclusion 42
a. Admission of Rhythms' Cross Exhibit J. 42
b. Non-recurring charges for cross-connects. 42

I. REQUIREMENTS FOR INTERCONNECTION AGREEMENTS UNDER THE TELECOMMUNICATIONS ACT OF 1996

Section 252(b) of the Telecommunications Act of 1996 ("1996 Act") addresses the procedures for arbitration between incumbent local exchange carriers (“ILECs”) and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides the non-petitioning party an opportunity to respond, and establishes time limits. Section 252(b)(4) provides that the State Commission shall limit its consideration to the issues set forth in the petition and in the response; and shall resolve each issue by imposing appropriate conditions on the parties as required to implement Subsection (c) (Standards for Arbitration). Subsection (d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic, and wholesale prices.

Under §252(c), a State Commission shall apply the following standards for arbitration:

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251; and

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

II. BACKGROUND AND PROCEDURAL HISTORY

On April 26, 2000, Rhythms Links, Inc. (f/k/a with Accelerated Connections, Inc.) (“Rhythms”) and Covad Communications Company (“Covad”) filed separate petitions for

arbitration with Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech-IL") seeking reasonable rates, terms, and conditions for line sharing. On May 4, 2000, the Hearing Examiner granted Rhythms' and Covad's motion to consolidate.

The Commission issued its Arbitration Decision on August 17, 2000, holding that Ameritech-IL was required to provide line sharing over the ILEC's Project Pronto architecture, and required to install line cards in Project Pronto digital loop carriers ("DLCs") to support all DSL-based services requested by CLECs. Arbitration Decision, at 30, 32.

Ameritech-IL and Rhythms filed separate applications for rehearing on September 18 and 21, 2000 respectively. On October 3, 2000, the Commission granted rehearing on the following issues:

> (1) Whether Ameritech-IL should be ordered to provide line sharing over its Project Pronto architecture;
>
> (2) Whether Ameritech-IL should be ordered to provide the GUI for pre-ordering and ordering by December 2, 2000;
>
> (3) Whether Rhythms should begin paying for loop costs upon ordering splitter functionality on a shelf-at-a-time basis; and
>
> (4) Whether the non-recurring charges for cross-connects are reasonable in light of the prices for cross-connects recently announced following the agreement between SBC Communications, Inc. ("SBC") and Covad, under which Covad will become the "DSL Arm" of SBC.

Ameritech-IL, Rhythms, Covad and Staff subsequently resolved issues (2) and (3) above, and agreed to limit the rehearing to only issues (1) and (4) above.

On November 21, 2000, Rhythms presented the Verified Statement of Terry L. Murray; Covad submitted the Verified Statement of Melia Carter; Staff presented the

Verified Statement of Torsten Clausen; and Ameritech-IL presented the Verified Statements of Sandra K. Baker, Carol Chapman, James E. Keown, and John P. Lube.

On December 11, 2000, Rhythms presented the Rebuttal Testimony of Terry L. Murray, Joseph P. Riolo, and Joseph Ayala; and Ameritech-IL submitted the Rebuttal Testimony of Sandra K. Baker, Carol Chapman, James E. Keown and John P. Lube.

On December 21, 2000, Covad submitted the Surrebuttal Testimony of Melia Carter; Rhythms submitted the Surrebuttal Testimony of Terry L. Murray and Joseph P. Riolo; Staff presented the Surrebuttal Testimony of Torsten Clausen; and Ameritech-IL presented the Surrebuttal Testimony of Carol Chapman, James E. Keown and John P. Lube.

The Commission conducted an evidentiary hearing on January 3, 4, and 5, 2001. The parties filed post hearing briefs on January 16, 2001. In lieu of reply briefs, the Hearing Examiner held oral arguments on January 18, 2001. The parties filed proposed Hearing Examiner's Proposed Orders ("HEPO") on January 19, 2001.

III. CONTESTED ISSUES

A. Should Illinois Bell Telephone be ordered to provide line sharing over its "Project Pronto" architecture?

1. Rhythms' and Covad's Position

Rhythms and Covad argue that the Commission and Hearing Examiner correctly concluded twice before that Ameritech-IL must allow access to components of the Project Pronto architecture for line sharing. The Commission initially reached this conclusion in the Arbitration Award in this proceeding and again in the HEPO for the related line sharing tariff case, Docket No. 00-0393. Ameritech-IL has presented no evidence on rehearing demonstrating the Commission's decisions were incorrect.

Specifically, Ameritech-IL has failed to provide proof for its arguments that line sharing and unbundled access to the Project Pronto architecture are technically infeasible, or that such access is not required under the FCC's "necessary and impair" standard. Accordingly, the Commission should reconfirm its previous holdings that Ameritech-IL must provide CLECs with access to its Project Pronto architecture on an unbundled network element basis for line sharing.

a. Effect of the Waiver Order

Rhythms and Covad argue that Ameritech-IL's attempt to deny them unbundled access to Project Pronto for line sharing based on the FCC's Waiver Order is misplaced. *In the Matter of Ameritech Corp., and SBC Communications, Inc., For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules,* CC Docket No. 98-141, Second Memorandum Opinion and Order (rel. on Sept. 8, 2000) ("Waiver Order"). First, the Waiver Order did not address the issue of whether line sharing should be permitted over the Project Pronto architecture, or whether Project Pronto components should be made available as UNEs. The Waiver Order was strictly limited to the issue of SBC/Ameritech ownership of certain advanced services equipment (*i.e.*, ADLU cards and Optical Concentration Devices ("OCDs") otherwise prohibited by the Merger Order. Rhythms and Covad note that the FCC expressly indicated throughout the Waiver Order that it was not intended to affect other interconnection and unbundling requirements imposed upon SBC and Ameritech by statute or order. *See, e.g*. *id.,* ¶¶ 1, 2, 7, 8, 20, 25, 30. The FCC did not consider the issue of whether the ADLU cards and the OCDs can be properly classified as network elements subject to the unbundling requirements of

section 251(c)(3)." *Id.* ¶ 20. Since the FCC explicitly declined to consider whether the ADLU card and the OCD should be unbundled, Rhythms and Covad argue that the FCC's Waiver Order can have no impact on the Commission's determination of that issue in this proceeding. Second, the Waiver Order has no force past the time that SBC is allowed to reintegrate its advanced service affiliate within its incumbent local exchange carrier operation. The FCC's underlying Order allowing the SBC/Ameritech merger set forth a requirement for a separate affiliate as a condition of approval. Under those merger conditions, SBC/Ameritech was automatically allowed to discontinue the use of a separate affiliate at the latest 42 months after the date of the Merger Order. Memorandum Opinion and Order, CC Docket No. 98-141 (Rel. Oct. 8, 1999), Appendix C, ¶ 12 ("Merger Order"). Further, on January 9, 2001, the U.S. District Court of Appeals for the District of Columbia issued a decision vacating the FCC's order approving the Merger Order. *Association of Communications Enterprises v. FCC,* U.S. Court of Appeals, D.C. Circuit, No. 99-1441 (Jan. 9, 2001), vacating the Merger Order. Because the Merger Order, which established the very conditions from which SBC sought a waiver, has been vacated, the Waiver Order may no longer be effective either. F.R.C.P. 60(b)(5) states that relief from a judgment or an order may be granted where a prior judgment upon which it is based has been vacated. Thus, for two independent reasons, the continuing requirement for a separate affiliate is in question, and the Commission must analyze this issue as though such requirement is ineffective.

SBC/Ameritech officials have already publicly announced that the continuation of a separate data affiliate is in doubt. Immediately following release of the court order, Jim Ellis, Senior Executive, Vice President and General Counsel of SBC

Communications, issued a statement that SBC could now legally "reabsorb" the "separate [data] affiliate…back into the telephone company" and would "be looking at the option of bringing the separate subsidiary back into the telephone company." *See* January 9, 2001 SBC Press Release, Statement of Jim Ellis, Attachment B to Covad and Rhythms' initial brief. Further, during the oral argument on rehearing on January 18, 2001, counsel for Ameritech-IL acknowledged that SBC/Ameritech has the unfettered right to discontinue use of the separate affiliate.

b. Packet Switching.

Under the UNE Remand Order packet switching must be unbundled if it meets four criteria. *UNE Remand Order*, ¶ 313; 47 C.F.R. 51.319(c)(3). Rhythms and Covad argue that Ameritech-IL is incorrect when it argues that the packet switching technology used in Project Pronto does not have to be unbundled because it purportedly does not meet all four conditions.

First, Ameritech-IL has deployed digital loop carrier systems. Second, by Ameritech-IL own admission, copper loops will not always be available, particularly spare copper "capable of supporting the xDSL services the requesting carrier seeks to offer." 47 C.F.R. 51.319(c)(3)(B). Third, the evidence demonstrates that CLECs are not able to collocate on the same terms as SBC. UNE Remand Order, ¶ 313. At the time of the UNE Remand Order, the FCC anticipated that ILECs would deploy stand-alone DSLAMs at RTs and sought to insure that CLECs would have equal access to those RTs in order to compete. SBC, however, opted not to place stand-alone DSLAMs at RTs; rather, it elected to deploy NGDLC and to insert ADLU cards that would allow SBC or its affiliates to provide DSL services. It is undisputed that the line card is the functional equivalent of a DSLAM. Thus, the third requirement is satisfied because

Ameritech-IL will not voluntarily allow CLECs to collocate line cards with DSLAM capability in the NGDLC equipment at the RT. Further, DSLAM collocation cannot be considered "available" as terms and prices for such collocation have not yet been established. And, fourth, SBC is undeniably Project Pronto for its own use. Ameritech-IL's claims that Project Pronto is being deployed for the convenience of CLECs is incredible. Substantial unrebutted evidence in this case demonstrates that SBC, Ameritech-IL's parent, is deploying Project Pronto solely for its own financial benefit.

c. Unbundling does not result in unlawful recombination

Rhythms and Covad maintain that line card collocation is wholly consistent with requirements of the 1996 Telecommunications Act and does not implicate the Eighth Circuit decisions in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) and 219 F.3d 744 (8th Cir. 2000), and the U.S. Supreme Court's decision in the same case, 525 U.S. 366 (1999).

Under Section 251(c)(2) of the Act, ILECs must allow CLECs to interconnect with the ILEC's network at "any technically feasible point within the carrier's network." The Act permits CLECs to interconnect with the ILEC's network through various methods, including collocation of CLEC-owned equipment at the ILEC's premises, so that CLECs can access unbundled network elements. 47 CFR § 51.321(b).

Rhythms and Covad argue that they have conclusively demonstrated that it is technically feasible to interconnect with Ameritech-IL's network at a remote terminal. Thus, Rhythms and Covad may interconnect, or in this case collocate, at Ameritech-IL's remote terminal in order to access unbundled network elements. Because Rhythms and Covad will collocate line cards at the remote terminal, Rhythms and Covad will access the unbundled network element, specifically the loop, themselves. In other

words, there is no combination of elements, let alone a combination created by Ameritech-IL.

Ameritech-IL's position is unsustainable because it relies on a contorted view of a "combination." An ILEC does not combine network elements for CLECs simply by connecting an unbundled loop to a CLEC's collocated equipment. If that were the case, a CLEC would be requesting an unlawful "combination" any time it virtually collocated a DSLAM at a central office and requested an unbundled loop from Ameritech-IL. Ameritech-IL does not—and indeed could not—claim that the process of connecting an unbundled loop to a CLEC-owned DSLAM, regardless of whether the equipment is physically or virtually collocated, requires an ILEC to combine network elements on behalf of a CLEC. Rhythms and Covad also assert that, regardless of how Ameritech-IL attempts to characterize the process, a CLEC's collocating a line card in order to access the loop at the remote terminal is no different from a CLEC's collocating a DSLAM at the central office in order to access the loop. In both cases, the CLEC is collocating its own equipment in order to access an unbundled network element at a technically feasible point. Neither case requires the ILEC to combine any network elements on behalf of a CLEC.

In the alternative, Rhythms and Covad argue that, even if this case involved a combination of two network elements, it would be analogous to a CLEC collocating equipment in a central office in order to gain access to unbundled transport and an unbundled loop in order to provide DSL service. In that case, a CLEC combines the two unbundled network elements—transport and a loop—using its collocated equipment in the central office. Accordingly, Ameritech-IL does not "combine" the network elements

for the CLEC even though Ameritech-IL provides the CLEC with two distinct network elements. Similarly, Ameritech-IL would not "combine" two network elements using the Project Pronto architecture; rather, Rhythms and Covad would combine the elements using their collocated equipment, in this case, the line card.

Rhythms and Covad also argue that Ameritech-IL's reliance on case law, such as *Iowa Utilities Board* and *Verizon North, Inc. v. Strand*, 5:98-CV-28 (W. D. Mich. Dec. 5, 2000), is unavailing , because the record demonstrates that Ameritech-IL will not combine network elements on behalf of Covad or Rhythms. As Rhythms and Covad noted at oral argument, the cases cited by Ameritech-IL involve UNE Platform offerings, where an ILEC combines various network elements without any CLEC collocated equipment. For example in *Verizon*, the federal district court examined whether a UNE-Platform offering would require Verizon to combine network elements on behalf of CLECs. Rhythms and Covad note, however, that a UNE Platform offering, and therefore the Verizon case, is distinguishable from the case before the Commission. In particular, Rhythms and Covad emphasize that the UNE Platform involves a combination of unbundled switching, transport, and loop, without any equipment supplied by the CLEC. In contrast, virtual or physical collocation by definition includes the use of CLEC equipment to provide service to the end user customer. As a result, the *Verizon* case is inapplicable to the Commission's determination in this case.

Because Ameritech-IL will not combine any network elements for Covad or Rhythms, Rhythms and Covad assert that the Commission is neither preempted nor barred by the Hobbs Act from reaffirming its original arbitration award relating to line sharing over Project Pronto.

d. Superior network

Rhythms and Covad argue that Ameritech-IL is incorrect when it claims that the CLECs are demanding the creation of a superior network in violation of the Iowa Utilities Board rulings. Ameritech-IL Brief, at 13-14. Specifically, Ameritech-IL is arguing that Rhythms and Covad are seeking a network architecture in which both voice and data are carried on single fiber between the RT and the serving wire center. Ameritech-IL is incorrect. Rhythms and Covad are not requesting that voice and data be carried on a single fiber. Rather, Rhythms and Covad have presented evidence demonstrating, and Ameritech-IL has admitted on the record, that it is technically feasible to carry both types of traffic on a single fiber by deploying wave-division multiplexers. However, Rhythms and Covad never asked that Ameritech-IL actually deploy such multiplexers. Rather, sole purpose of Rhythms' and Covad's evidence and argument was to demonstrate that voice and data could be carried on a single fiber facility, because Ameritech-IL had argued that unless voice and data shared a single physical facility, such arrangement cannot be classified as line sharing.

e. Access is required by the Telecommunications Act of 1996

Rhythms and Covad argue that several different provisions of the Telecommunications Act of 1996 require that Ameritech-IL must offer the components of its fiber-fed next generation digital loop carrier network architecture to CLECs as UNEs, and must offer these UNEs to support line sharing. First, since Ameritech-IL's affiliate will be able to use the Project Pronto architecture to support line sharing, Ameritech-IL must give CLECs access to Project Pronto under the non-discrimination and parity provisions of the Act. 47 U.S.C. § 251 (c). Second, the Act requires that

ILECs provide access to unbundled network components and facilities in a manner that gives CLECs a meaningful opportunity to compete. The unrebutted evidence in this proceeding demonstrates that Ameritech-IL will not support all types of xDSL service that can be line shared, nor will it support all capabilities of ADSL, the one chosen type of xDSL supported by Ameritech-IL. Therefore, Ameritech-IL must give CLECs unbundled access to the components of Project Pronto in order for CLECs to have a meaningful opportunity to deploy the full range of features and capabilities of line shared xDSL service to consumers.

f. Technical feasibility

Although SBC/Ameritech claims that line sharing as ordered by the FCC applies only to copper loops, the record in this proceeding proves otherwise. Ameritech-IL's witness admitted it is feasible to "fiber share" voice and xDSL traffic on the Project Pronto architecture and the Litespan 2012 and 2000 could be configured to carry CLEC xDSL traffic and voice on a single fiber. Cross Exh. A, Tr. 00-0393 (Lube) at 305-309; Tr. (Lube) at 368-369. SBC/Ameritech simply chose to configure Project Pronto differently. The Commission has already concluded that line sharing over the Project Pronto architecture is technically feasible in the Arbitration Award in this proceeding, and in the HEPO in the related line sharing tariff proceeding (Docket No. 00-0393). Ameritech-IL has presented no evidence that undermines the Commission's previous decisions, thus the Commission should confirm its decisions finding that line sharing over the Project Pronto architecture is technically feasible and must be supported by Ameritech-IL.

g. Project Pronto Must Be Unbundled Under the FCC's Necessary and Impair Standard

The FCC's "impair" standard requires ILECs to give unbundled access to a network element if lack of access "would merely limit a carrier's ability to provide the service it seeks to offer." *UNE Remand Order,* at ¶ 51. The evaluation must include a consideration of whether CLECs can obtain the network element in some other manner, including purchase from a third-party vendor, or self-provisioning by the requesting carrier. *Id.* ¶¶ 62-101. The impair standard includes a materiality component, *i.e*., there must be substantive differences between the use of a UNE and use of an alternative that would impair the competitive carrier's ability to provide service. *Id.* ¶ 51. In determining materiality, the FCC considers numerous factors, including but not limited to the following:

- The costs associated with alternatives, including the forward-looking costs of self-provisioning or purchasing, and fixed and sunk costs involved in self-provisioning; the different revenue-generating potential of different customer groups; and the economies of scale and scope available to incumbents (Id. ¶ 74, 80);
- The time associated with using alternatives, particularly in light of a rapidly changing market and the high-growth advanced services market (the FCC believes that "any delay" a competitive LEC experiences in provisioning service for the advanced services market can impair its ability to deliver services) (*Id.* ¶¶ 89, 91);
- The relative quality of available alternatives (*Id.* ¶ 96);

- The extent to which a competitive carrier can provide ubiquitous service using alternative facilities; ability to provide service may be impaired where lack of access to a UNE "materially restricts the number or geographic scope of the customers" a competitive carrier can serve (*Id.* ¶ 97); and
- The effect on a company's technical network operations of denying access to a facility as an unbundled network element (*Id.* ¶ 99).

Rhythms and Covad argue that there are substantive differences between access to Project Pronto components as UNEs and the available alternatives that would impair the competitive carrier's ability to provide service. *UNE Remand Order,* ¶ 51. Available alternatives, such as SBC's wholesale broadband offering or CLEC collocation, are more costly, entail considerable market entry delay, and fail to enable CLECs to provide ubiquitous service. Rhythms Exh. 1.1 (Murray), at 22:5-12.

Should the Commission fail to make access to Project Pronto's functionalities available on an unbundled basis, the ability of competitive carriers to provide advanced services in Illinois will be significantly impaired and Ameritech-IL will gain a virtual monopoly on provision of ADSL to the residential market. Factors the Commission should consider include costs and delay associated with alternatives, quality of service, and ubiquity.

SBC is investing six billion dollars in Project Pronto over three years. SBC Investor Briefing, October 18, 1999, at 2. The only available alternative for CLECS, if access to the Project Pronto architecture were denied, would be self-provisioning. It is clear that no competitive advanced services provider has the financial resources to

construct a six billion dollar advanced services network. Even if such resources were available, timing is critical in the advanced services market, as the FCC has recognized. *UNE Remand Order,* ¶ 91. While competitive carriers are scrambling to get access to SBC's Project Pronto, SBC is expanding its market share by 4,000 new DSL customers per day. SBC Investor Briefing, October 23, 2000, at 4.

h. The ability of data CLECs to compete effectively and efficiently in providing advanced services is already being substantially impaired.

Without access to Project Pronto, data CLECs cannot provide ubiquitous xDSL services. The provisioning of xDSL over home run copper has the disadvantage of distance limitations. Covad Exh. 3.0 (Carter), at 6; Ameritech-IL Exh. 6.0 (Lube), at 3:11. Project Pronto extends fiber to the remote terminal, making *x*DSL available to nearly all of Ameritech Illinois' voice customers. *Id.* If they are denied access to Project Pronto, data CLECs will only be able to provide *x*DSL via line sharing to customers located within 18,000 feet of a central office. Tr. (Lube), at 347-348. The FCC has stated that where lack of access to a UNE "materially restricts the number or geographic scope of the customers" a CLEC's ability to provide services is impaired. *UNE Remand Order,* ¶ 97. Thus, it is clear that lack of access to Project Pronto UNEs would impair CLECs' ability to compete.

In answer to Ameritech-IL's contention that the FCC did not expressly require Ameritech-IL to offer line sharing over a fiber-fed configuration Rhythms points out that the issue has not been presented to the FCC. Line shared xDSL was not technically feasible when the FCC issued the Line Sharing Order, nor had SBC's plans for Project Pronto been made public. Tr. (Lube), 314. The evidence presented in this case demonstrates the inaccuracy of Ameritech-IL's technically infeasibility arguments.

Ameritech-IL witness Lube admitted that Rhythms could access loop sub-elements by plugging in line cards into the Project Pronto NGDLC at the RT. Tr., (Lube) 335-338. Therefore, it is technically feasible for Ameritech-IL to allow CLECs to access UNEs by collocating line cards in the NGDLC equipment in the RT. The Commission should require Ameritech-IL to offer to place line cards (owned by either Ameritech-IL or the CLEC) in the NGDLC at the RT on behalf of Rhythms, or allow Rhythms to own and install its own line cards.

Finally, Rhythms and Covad believe the evidence demonstrates that Ameritech-IL's assertion that it may discontinue Project Pronto in Illinois if CLECs are allowed to own the line cards is an empty threat. Nothing in SBC's public statements or actual deployment suggests that SBC has any real plans to dismantle Project Pronto. Rhythms' position is that Ameritech-IL is attempting to preserve its monopoly over local telecommunications services by denying CLEC access to line sharing on the fiber portion of the loop. This conduct is discriminatory and anti-competitive conduct and contrary to the FCC's Line Sharing Order.

Although Project Pronto represents a modification to Ameritech Illinois' network architecture, it uses nonproprietary elements that conform to industry standards. The Project Pronto configuration consists of voice and data carried simultaneously on an all-copper loop from the customer location to a Remote Terminal ("RT"). Rhythms Exh. 8.0, Riolo, at 12:8-12. At the RT the voice and data traffic are split and carried on fiber optic facilities from the RT to the servicing wire center. *Id.* at 33:15-34:6. Transport of the data from the RT to the serving wire center uses the Asynchronous Transfer Mode ("ATM") signal format. *Id.* at 31:12-17. At the serving wire center the incoming ATM

data bitstream will terminate at an ATM switch (referred to by Ameritech Illinois as an "Optical Concentration Device" or "OCD." *Id.* at 32:16. The OCD aggregates many incoming ATM bitstreams from multiple RTs to a number of outbound OC-3 or DS3 facilities and routes packetized data traffic. *Id.* at 32:14-18; Schlackman Cross Exh. 1.0, at 17.

Each component of the Project Pronto architecture is offered by the component's vendor in the general marketplace. Moreover Ameritech Illinois has configured these components in a non-proprietary arrangement. Thus, Project Pronto is not proprietary under the FCC's definition.

2. Ameritech-IL's Position

Ameritech-IL takes the position that the ICC has no authority to order access to the components of its Project Pronto architecture as UNEs because it is preempted by the Telecommunications Act of 1996 and by the FCC's Waiver Order.

a. Waiver Order

Ameritech-IL argues that the FCC's Waiver Order precludes the Commission from requiring Project Pronto to be offered as UNEs. Ameritech-IL bases its argument primarily on the FCC's statement in the *Waiver Order* that "allowing SBC's incumbent LECs to own, install, and operate" the line cards used with Project Pronto NGDLCs would promote the pro-competitive objectives of the Act. Second Memorandum Opinion And Order CC Docket No. 98-141 (rel. Sept. 8, 2000), ¶¶ 1-2, 10. The FCC's statement supports an argument, according to Ameritech-IL, that the FCC has established as a matter of federal law that ILEC ownership and control of line cards affirmatively promotes the achievement of Congress' purposes and objectives under the Act. Ameritech-IL further reasons that allowing CLECs to own the line cards would stand "as

an obstacle to the accomplishment of the purposes and objectives of Congress" and thus is preempted. *Geier v. American Honda Motor Co.*, 120 S. Ct. 1913, 1921 (2000)(quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

b. Packet Switching

Ameritech-IL believes the CLECs' unbundling proposal conflicts with the *UNE Remand Order,* because the proposed new "Project Pronto UNE" would include the functionality of the OCD, which is an ATM switch utilizing packet switching. *Waiver Order*, ¶ 18; *see also UNE Remand Order*, ¶ 303. The FCC held in the *UNE Remand Order* that an ILEC is not required to provide packet switches unless the four conditions described in 47 C.F.R. 51.319 are met. It is Ameritech-IL's position that all four of these conditions will not exist in Ameritech-IL's Project Pronto network because collocation and spare copper loops will often be available to the CLECs. Ameritech-IL also argues that it is not deploying packet switching equipment for its own use but CLECs' use in provisioning retail xDSL services to end users. Ameritech-IL Ex. 6.1 (Lube) at 16-17.

c. Technical feasibility

Ameritech-IL argues that line sharing voice and data over a single fiber in the Project Pronto architecture is technically infeasible because the LiteSpan 2000 equipment that it is deploying does not perform wave division multiplexing. Ameritech-IL argues that it is not required to deploy any type of equipment for Project Pronto that is *different* from or additional to the equipment Ameritech-IL plans to deploy in order to facilitate line sharing, under the Eighth Circuit's decisions in Iowa Utilities Board I and II. *Iowa Utils Bd. v. FCC,* 120 F. 3d 753 *(*8th Cir. 1997)*, aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.,* 525 U.S. 366 (1999) *("IUB I"); Iowa Utils. Bd. v. FCC*, 219 F. 3d 744 (8th Cir. 2000) ("*IUB III*").

d. Combination of elements

Ameritech-IL claims that the virtual collocation of Project Pronto NGDLC line cards requires Ameritech-IL to affirmatively combine network elements for Covad and Rhythms, in violation of the Eighth Circuit decisions in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) and 219 F.3d 744 (8th Cir. 2000), and the U.S. Supreme Court's decision in the same case, 525 U.S. 366 (1999).

Ameritech-IL claims that, because Covad and Rhythms seek an "end-to-end combination of network elements" that are "by definition, necessarily not pre-combined with the CLEC's NGDLC line card," an NGDLC virtual collocation requirement would improperly require Ameritech-IL to affirmatively combine its network elements. Ameritech-IL Br., at 16.

In support of its position, Ameritech-IL cites the *Iowa Utilities Board* decisions for the proposition that CLECs, rather than ILECs, must combine previously uncombined network elements. Ameritech-IL Br., at 16 (citing *Iowa Utilities Board*, 219 F.3d at 759). In further support, Ameritech cites to *Verizon North v. Strand*, Case No. 5:98-CV-38 (W.D. Mich. Dec. 5, 2000) where the federal district court, applying *Iowa Utilities Board*, determined that the Michigan Commission could not order Verizon to combine network elements for CLECs as part of a UNE Platform offering. Ameritech-IL then concludes that the Commission is bound by the Eighth Circuit's decision in *Iowa Utilities Board* by virtue of the Hobbs Act. As Ameritech-IL argues, the Hobbs Act avoids the potential of conflicting litigation by consolidating before the Eight Circuit all petitions for review of FCC orders interpreting or implementing the 1996 Telecommunications Act. As a result, Ameritech-IL concludes that, if this Commission were to affirm its decision to allow virtual line card collocation, the decision would be preempted under federal law.

e. Pending FCC action.

Ameritech-IL asserts that the Commission should take no action on the issue of collocating line cards pending the FCC's decision in the *Collocation FNPRM. In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket 98-147, Order On Reconsideration And Second Further Notice Of Proposed Rulemaking In CC Docket No. 98-147 And Fifth Further Notice Of Proposed Rulemaking In CC Docket No. 96-98, (rel. August 9, 2000), at ¶ 82.

f. Requirements of 47 U.S.C. § 261(c).

In addition, Ameritech-IL argues that there is insufficient evidence on the record to establish that virtual collocation of line cards is "necessary to further competition in the provision of telephone exchange service or exchange access," as required by 47 U.S.C. § 261(c). Ameritech-IL asserts that virtual collocation is not necessary in light of the voluntary commitments it made in the Waiver Order, including the offering of the wholesale broadband service. Ameritech-IL also asserts that there is insufficient evidence to establish that collocation of line cards is "necessary for interconnection or access to unbundled network elements," as required by 47 U.S.C. § 251(c)(6). Ameritech-IL particularly argues that line cards are ineligible for collocation because they are not stand-alone telecommunications equipment but only sub-components.

g. Necessary and Impair Standard

Ameritech-IL argues that the record evidence is insufficient for the Commission to find that making line sharing and UNE access to Project Pronto are "necessary" to "further competition in the provision of telephone exchange service or exchange access." Ameritech-IL asserts that the available alternatives, such as its wholesale

broadband offering or collocation, are sufficient for CLECs to be able to provide xDSL services to their end users.

3. Staff's Position

Based on a thorough analysis of the record in this proceeding, the Staff has concluded that the FCC's Waiver Order does not preempt the Commission from ordering unbundled access to the Project Pronto architecture. Staff notes that the Waiver Order does not address the important issues that would impact line sharing over Project Pronto.

Staff also concludes that the alternatives are not adequate. Collocating a DSLAM at an RT, for instance, is prohibitively expensive and involves considerable time to deploy. Staff believes that providing *x*DSL service over existing copper facilities also presents problems in that spare copper loops are not often available and, in areas served by Project Pronto may well be too long to provision *x*DSL. Copper loops in Project Pronto areas may also suffer from electromagnetic interference from traffic on the fiber-fed loops. Finally, Staff emphasizes that the terms and conditions of SBC's broadband service offering are not subject to Section 252 arbitration under the Act.

4. Commission Analysis and Conclusion

The Commission or the Hearing Examiner in this case have already determined twice before that Rhythms and Covad should have access to the components of Ameritech-IL's Project Pronto as unbundled network elements (Arbitration Award, at 30). A principal reason for granting this rehearing was the issuance of the FCC's Waiver Order after the issuance of the Arbitration Award. The FCC's Waiver Order announced that the FCC's Merger Order had been modified based upon SBC's representations that Ameritech would be offering a wholesale broadband service using

the Project Pronto architecture (Docket No. 00-0393, HEPO, p. 15). This proceeding has compiled a thorough analysis of the FCC's Waiver Order and concludes the following: a) the FCC's Waiver Order does not preempt, or otherwise prevent, this Commission from ordering line sharing over the Project Pronto architecture or identifying Project Pronto components as UNEs; b) it is technically feasible to unbundled the elements of the Project Pronto architecture; c) line sharing over the Project Pronto architecture is technically feasible; d) Project Pronto unbundling is not precluded by the FCC's exception to unbundling packet switching; e) the appropriate analysis in this case is the "impair" standard because no claim has been made that the Project Pronto architecture or its components are proprietary; f) line sharing over Project Pronto, and the unbundling of the Project Pronto network, satisfy the "impair" standard; g) the Project Pronto network shall be unbundled and its elements offered to CLECs at just and reasonable rates as UNEs; and h) Ameritech-IL must allow CLECs to collocate line cards at RTs with NGDLC, including RTs in the Project Pronto network.

a. Effect of the Waiver Order

Ameritech-IL's reliance on the FCC's Waiver Order is misplaced. First, the Waiver Order does not address the issue of whether line sharing should be permitted over the Project Pronto architecture, or whether Project Pronto components should be made available as UNEs, but is strictly limited to the issue of SBC/Ameritech ownership of certain advanced services equipment otherwise prohibited by the Merger Order. *Waiver Order,* ¶¶ 1, 2, 7, 8, 20,25, 30. The FCC did not consider the issue of "whether this equipment (i.e., the plug-in card and the OCD) can be properly classified as network elements subject to the unbundling requirements of section 251(c)(3)." *Id.* ¶ 20. Since the FCC explicitly declined to consider whether the ADLU card and the

OCD should be unbundled in the Waiver Order, that order can have no impact on the Commission's determination of the issues here.

Second, the Waiver Order has no force past the time that SBC is allowed to absorb its advanced service affiliate within its incumbent local exchange carrier operation. The FCC's underlying Merger Order allowing the SBC/Ameritech merger set forth a requirement for a separate affiliate as a condition of approval. Under those merger conditions, SBC/Ameritech was automatically allowed to discontinue the use of a separate affiliate at the latest 42 months after the date of the Merger Order. Merger Order, Appendix C, ¶ 12. Further, on January 9, 2001, the U.S. District Court of Appeals for the District of Columbia issued a decision vacating the FCC's order approving the Merger Order. *Association of Communications Enterprises v. FCC,* U.S. Court of Appeals, D.C. Circuit, No. 99-1441 (Jan. 9, 2001), vacating the Merger Order. Because the Merger Order, which established the very conditions from which SBC sought a waiver, has been vacated, the Waiver Order may no longer be effective either. F.R.C.P. § 60(b)(5) states that relief from a judgment or an order may be granted where a prior judgment upon which it is based has been vacated. Further, during the oral argument on rehearing on January 18, 2001, counsel for Ameritech-IL acknowledged that SBC/Ameritech has the unfettered right to discontinue use of the separate affiliate. Thus, for two independent reasons, the continuing requirement for a separate affiliate is in question, and the Commission has analyzed this issue as though such requirement is ineffective. *See* Rhythms/Covad Brief, at 8-11.

b. Unbundling does not result in unlawful recombination

The Commission concludes that the collocation of the line card at the NGDLC does not require an ILEC to combine any network elements on behalf of a CLEC. In

reaching this decision, the Commission finds determinative the fact that CLECs will *collocate* a line card at the remote terminal. As discussed in this order, this Commission finds that collocation of a line card at the remote terminal constitutes permissible interconnection at a technically feasible point in the ILEC's network under Section 251 of the Act. Because Covad and Rhythms will use their collocated equipment to access an unbundled loop, Ameritech-IL will not combine any network elements on their behalf.

The Commission finds Ameritech's reliance on *Iowa Utilities Board* and related cases unavailing. Instead, the Commission finds that line cards are equipment that may be collocated under the Act. As a result, it will be Covad and Rhythms, not Ameritech-IL, that will combine any network elements where CLECs own the line cards. The Commission agrees with Covad and Rhythms that *Iowa Utilities Board*, *Verizon v. Strand*, and other cases cited by Ameritech-IL are inapplicable where, as in this case, the CLEC collocates its equipment, whether through physical or virtual collocation, in order to access network elements.

Based on this finding, the Commission holds that neither the *Iowa Utilities Board* decisions nor the Hobbs Act preempt or bar this Commission from reaffirming its original arbitration award, allowing Covad and Rhythms to collocate line cards in the NGDLC at Ameritech-IL's remote terminal.

c. Packet Switching.

Under the UNE Remand Order packet switching must be unbundled if it meets four criteria. *UNE Remand Order*, at ¶313; 47 C.F.R. 51.319(c)(3). The evidence demonstrates that all four criteria are satisfied and it is permissible to make OCD (ATM switch) available as a UNE.

First, it is undisputed that Ameritech-IL has deployed digital loop carrier systems. Second, Ameritech admitted, in the related tariff case, that, copper loops will not always be available, particularly spare copper capable of supporting xDSL services. Docket No. 00-0393, Hearing Tr. at 32:14-18 and Schlackman Cross Exh. 1.0, at 17. Third, the evidence demonstrates that Ameritech-IL will not voluntarily allow CLECs to collocate line cards with DSLAM capability in the NGDLC equipment at the RT. Further, the high cost of collocation and crowded conditions in RTs often make collocation unavailable. And, fourth, Ameritech-IL's claims that Project Pronto is being deployed for the convenience of CLECs lacks credibility. There is substantial evidence on the record that SBC, Ameritech-IL's parent, is deploying Project Pronto for its own financial benefit, both in terms of cost savings and development of the advanced services market. Hearing Tr. (Chapman), 493-495.

d. Superior network.

Ameritech-IL complains that the CLECs are demanding that Ameritech-IL provide a superior network to the network it is planning to deploy. Ameritech-IL Brief, at 13-14. ILECs are not required to provide superior facilities. *IUB I and IUB III*. However, the Commission is not convinced that the CLECs are in fact requesting a superior network. In the context of discussions of whether it would be technically feasible to provision voice and data over a single fiber, the CLECs have proven, and Ameritech-IL has admitted, that it could be done by, for instance, deploying wave-division multiplexers. Ameritech-IL seems to derive from this line of argument the conclusion that the CLECs are demanding that wave division multiplexers be deployed and line sharing be made available over a single fiber. It is the Commission's understanding that the CLECs have demonstrated the possibility of "fiber sharing" primarily to refute Ameritech-IL's claim

that line sharing over Project Pronto is impossible, technically infeasible. Refuting that claim is not the same thing as requesting deployment of additional or more sophisticated equipment. The Commission agrees with Ameritech-IL that it will generally not be required to deploy a superior network to benefit its competitors. The Commission also agrees with the Intervenors that line sharing over a single fiber is technically feasible. The CLECs are not requesting at this time the deployment of additional or superior equipment to the Project Pronto network currently being deployed.

e. Technical feasibility.

The Commission agrees with Staff and Intervenors that it is technically feasible to provide Project Pronto as UNEs. TA 96 calls for interconnection at any technically feasible point. 47 U.S.C. 251(c)(2). Ameritech-IL has the burden of demonstrating technical infeasibility. 47 C.F.R. 51.321(d). Not only has Ameritech-IL failed to meet that burden, its witness has admitted that line sharing over Project Pronto, including the "sharing" of a single fiber between data and voice traffic, is feasible. Cross Exh. A, Hearing Tr. (Lube) at 368-369. Ameritech-IL has also asserted that the Project Pronto architecture cannot be unbundled. SBC/Ameritech Exh. 6.0, Lube, at 13, 26. However, Ameritech-IL bases that assertion on the fact that the voice and data signals do not follow single, dedicated physical paths throughout over the Project Pronto architecture. Ameritech Exh. 6.0 (Lube), at 20. The evidence on the record demonstrates that the same effect as may be obtained via Project Pronto using virtual pathways. Rhythms Exh. 7.0 (Riolo) at 2-3, 10-11; ICC Staff Exh. 1.0 (Clausen), at 5-6; ICC Staff Exh. 1.0 (Clausen), p. 3.

In sum, Ameritech-IL has failed to meet its burden of proof on the threshold question of technical feasibility. Whether line sharing is provisioned over home-run

copper or an equivalent is provisioned over a combination of copper and fiber is ultimately irrelevant. From the customer's perspective the composition of the loop does not matter and line sharing merely means receiving both basic voice services and high speed *x*DSL without adding a second line to their premises.

f. Necessary and Impair Standard

After a thorough review of the substantial and complete record in this proceeding, the Commission concludes that Project Pronto must be unbundled under the FCC's necessary and impair standard. 47 U.S.C. 251(d)(2). Ameritech-IL has made no claim that the components of the Project Pronto system are proprietary and has not disputed assertions by Rhythms and Covad that the components and configuration of the new network are non-proprietary. Further, there is no evidence on the record that would demonstrate that the components of the Project Pronto network or its configuration are proprietary. Therefore, the proper legal test to apply is the "impair" standard. *Id.*

Under the FCC's "impair" standard, a network element must be unbundled if lack of access "would merely limit a carrier's ability to provide the service it seeks to offer," taking into consideration the ability to provide the service with available alternatives. Staff Exhibit No. 10, at 3; *UNE Remand Order,* at ¶51. The impairment must be material; *i.e.*, there must be substantive differences between the use of a UNE and use of an alternative that would impair the competitive carrier's ability to provide service. *Id.*, at ¶ 51. The Commission may consider considers numerous factors in applying the impair standard, including the costs associated with alternatives, the different revenue-generating potential of different customer groups, the economies of scale and scope available to incumbents, the time associated with using alternatives, the relative quality of available alternatives, the extent to which a competitive carrier can provide ubiquitous

service using alternative facilities, and the effect on a company's technical network operations of denying access to a facility as an unbundled network element. *UNE Remand Order*, at ¶¶ 72-101.

The evidence in this case demonstrates that there is a substantive difference between providing *x*DSL based services by use of components of Ameritech-IL's new Project Pronto network and the available alternatives.

Ameritech-IL's wholesale broadband service offering is not an adequate substitute for access to the Project Pronto network elements as UNEs. ICC Staff Exh. 1.0 (Clausen), at 5-6. The wholesale service offering leaves all control in the hands of Ameritech-IL as to the types of xDSL service that may be provided. Covad Exh. 3.0 (Carter), p.6; Rhythms Exh. 1.1 (Murray), p. 3. Moreover, limiting CLECs to the broadband service would restrict them to reselling only those xDSL services also provided by Ameritech's affiliate, without an opportunity to provide different types of xDSL services and different qualities of service. Rhythms/Covad Exh. 2.11, (Riolo) Surrebuttal at 18:23. Of equal concern is the fact that services are not subject to arbitration under the Telecommunications Act of 1996, and may be modified or withdrawn unilaterally by Ameritech-IL. Hearing Tr. (Lube), at 339; Cross Exh. A. The wholesale broadband offering is, therefore, not an adequate substitute for unbundled access to Project Pronto.

Although collocation of DSLAMs in RTs offers an alternative, it is a costly alternative that will not be not uniformly available in every RT. Rhythms Exh. 1.1 (Murray), at 11. Collocation is limited by space constraints, is quite expensive (and may even be uneconomic in many or most RT locations), and takes considerable time to

deploy. Rhythms Exh. 2.0, Riolo Dir. at 67:20–68:14. Collocation is, therefore, not an adequate substitute for unbundled access to Project Pronto.

It would be nearly impossible for any CLEC to approach the magnitude of SBC's Project Pronto effort in terms of cost and geographic scope. *See* SBC Investor Briefing October 18, 1999, at 2; SBC Investor Briefing, October 23, 2000, at 4. Even if equivalent financial resources were available, self-provisioning would cause market entry to be so late that meaningful competition would be precluded. The FCC has particularly emphasized the importance of rapid deployment to a meaningful opportunity to compete in the advanced services market. *Line Sharing Order,* at ¶166. Self-provisioning is, therefore, not an adequate substitute for unbundled access to Project Pronto.

One compelling reason to unbundle Project Pronto is the inability of CLECs to offer ubiquitous xDSL-based services without access to the Project Pronto as UNEs. Covad Exh. 3.0 (Carter), at 6. Project Pronto is being implemented to enable Ameritech-IL to provide xDSL services to customers it is unable to serve using all-copper loops and existing DLC systems. Ameritech-IL Exh. 6.0, Lube Direct, at 3:11. The Commission is not persuaded by Ameritech-IL's allegations that it is implementing Project Pronto for the benefit of CLECs. Ameritech-IL Brief, at 43-44. The evidence in this case clearly and unequivocally demonstrates that SBC is deploying Project Pronto to generate significant savings in maintenance costs and to increase the ability of its data affiliates to serve customers with xDSL service. Hearing Tr. (Chapman), 493-495; SBC Investor Briefing, October 18, 1999, at 2: SBC Investor Briefing, October 23, 2000, at 4. Project Pronto will enable SBC's affiliates to reach the approximately 20 million

customers who live more than 18,000 feet from a CO. Ameritech-IL Exh. 6.0, (Lube), at 3:11. If Ameritech-IL is permitted to deny access to CLECs, then no carrier other than Ameritech-IL will be able to provide xDSL services to those customers with loops in excess of 18,000 feet. Hearing Tr. (Lube), at 347-348.

Ameritech-IL argues that the FCC has found that it is not a monopoly provider of advanced services. Ameritech-IL Brief, p. 46. The Commission wants to ensure that the situation does not change. If CLECs are denied UNE access to Project Pronto, Ameritech-IL would gain such significant market advantage that it would become a monopoly provider of advanced services. Rhythms Exh. 1.1 (Murray),. at 90:1-5.

Ameritech-IL complains that it cannot be required to provide new or different equipment than it has in place. Ameritech-IL Brief, p. 14. However, in deploying this new network, Ameritech-IL must comply with its FCC- and Commission-mandated interconnection unbundling and access obligations. If Ameritech-IL has failed to deploy all equipment necessary to meet these obligations, it must do so now. Ameritech-IL asserted that it is installing this network, not for its own benefit, but for the benefit of CLEC providers of xDSL based services. Ameritech-IL Brief, at 43-44. If that is so, Ameritech-IL should provide CLECs with the access they need and are willing to purchase.

The Project Pronto configuration will substantially alter the technical characteristics of a large number of loops in Illinois. If CLECs do not have access to line shared loops over the Project Pronto architecture, they will be constrained in the number of customers they can serve due to loops that are too long to support xDSL service. Rhythms Exh. 1.1 (Murray), at 14:8-19; 22:5-23:2. Finally, the continued use

of home run copper after Project Pronto may not be viable due to cross talk problems created by the card-based DSLAMs at the RT. Hearing Tr. (Lube) 247-255. Such a result would be devastating to competition in Illinois because of the magnitude of the Project Pronto deployment. Rhythms Smallwood Cross Exh. 4 (Project Pronto M&P), at 11-12.

SBC has made only very short-term commitments that home run copper will continue to be available as a means of line sharing. *Waiver Order,* at ¶ 53; Rhythms Exh. 7.0 (Riolo), p. 6:16-20. Should Ameritech-IL begin to phase out its copper loops, and continue to refuse line sharing over its Project Pronto network, Ameritech-IL could effectively bar all other providers from large segments of the potential market for xDSL based services. Rhythms Exh. 7.0 (Riolo), p. 13. The Commission therefore directs Ameritech-IL to support line sharing over its Project Pronto network in the form of the UNEs discussed below, at just and reasonable prices.

Based upon the foregoing, the Commission hereby requires Ameritech-IL to make available to competitive providers nondiscriminatory access, at just and reasonable rates, to Project Pronto UNEs as follows:

a. Lit Fiber Subloops between the RT and the OCD in the CO consisting of one or more PVPs ("permanent virtual paths") and/or one or more PVCs ("permanent virtual circuits") at the option of the CLEC;

b. The High Frequency Portion of copper subloops consisting of the following segments:

i. the copper subloop from the RT to the NID at the customer premises;

ii. the copper subloop from the RT to the SAI ("serving area interface");

iii. the copper subloop from the SAI to the NID at the customer premises.

c. ADLU line cards owned by the ILEC in the NGDLC equipment in the RT;

d. A port on the OCD in the CO; and

e. Any combination thereof, including a line-shared xDSL loop from the OCD port to the NID.

B. Collocation of CLEC Line Cards in Project Pronto Architecture

1. Rhythms' and Covad's Position

Rhythms and Covad argue that CLECs must be allowed to collocate equipment, including line cards, that would lower the cost of providing advanced services, and increase the range of services available to their customers. *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Docket No. 8-147, First Report and Order and Further Notice of Proposed Rulemaking (Mar. 31, 1999) ("Advanced Services Order"), at ¶ 29. Rhythms/Covad Exh. 2.11, Riolo Surrebuttal at 19:11. Section 251(c)(6) of the 1996 Act requires ILECs to provide, on a nondiscriminatory basis and at just and reasonable rates, physical collocation of equipment necessary for interconnection or access to unbundled network elements. The FCC determined in its Advanced Services Order that the pro-competitive provisions of the Act are technology-neutral and apply to advanced data services as well as to voice services. *Id.*. The standards set by the FCC serve only as a floor, and the authority to resolve other issues not addressed in the Advanced Services Order is expressly reserved for state commissions. *Id.* at ¶ 22.

The FCC is receiving comments on the meaning of the term "necessary" in regard to line cards as well as other issues. *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98 (rel. Aug. 10, 2000)("Collocation Order on Reconsideration"). Rhythms has filed comments in that proceeding proposing that access to a network element is necessary so long as it is "directly related to" interconnection and access to unbundled elements, and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently. Rhythms proposes that this Commission adopt the same standard because it meets the requirements of the Act and furthers the goals of facilitating competition and the deployment of advanced services.

Rhythms and Covad assert that the evidence in this proceeding demonstrates line cards are necessary for interconnection and access to unbundled network elements. Line cards are the point and method of interconnection with ILEC networks and access to UNE subloops, substituting for a traditional stand-alone DSLAM when the loop is served by a transmission facility that contains fiber optics. The line cards also contain the splitter functionality necessary to support line sharing. Without the ADLU line cards, the NGDLC equipment in the RT cannot perform DSLAM and splitter functions. Therefore, the electronics on the line cards are necessary to generate and receive the data transmissions carried across the unbundled loop from the end user through the RT back to the central office. Rhythms asserts that, without the ability to collocate line cards in the NGDLC chassis at the RT, xDSL providers would not be able

to compete efficiently and effectively with the advanced services of the ILECs or their advanced services affiliates.

First, it would be impossible to place a stand-alone DSLAM in all of Ameritech-IL's RTs, due to either space exhaustion or economic infeasibility. Second, competitors who must collocate a DSLAM at the CO would be disadvantaged because Ameritech-IL's affiliate would be able to access line cards at the RT, and therefore provide xDSL over a significantly shorter copper facility. As a result, Ameritech-IL's affiliate would be able to provide a higher speed offering over a wider area to consumers than would a CLEC. Third, CLECs would be foreclosed from offering any xDSL type, feature or functionality other than those that Ameritech-IL chooses to support with its line cards. Finally, CLECs might be altogether precluded from offering xDSL services over home-run copper due to the interference caused by the xDSL signals generated at the RT locations.

Ameritech-IL's witness, Mr. Keown, raised complaints of numerous "operational" difficulties that would accompany CLEC collocation of line cards. Ameritech Exh. 7. On cross examination it became clear that the witness had exaggerated the level of difficulty involved and incorrectly cited routine functions as problems unique to line card collocation. Hearing Tr. (Keown), at 187*ff*.

Rhythms' and Covad's position is that CLEC line card collocation does not pose any serious danger of bandwidth exhaust. There is substantial evidence on the record illustrating the types of action telecommunications providers normally take to increase available bandwidth. Hearing Tr. (Keown), at 244-250. Furthermore, other than Ameritech-IL's projections for its own affiliate, there is very little evidence on the record

as to the likely long term demand for bandwidth on the Project Pronto architecture. Without evidence to support the allegation that collocation will exhaust the available bandwidth, imposition of bandwidth conservation measures would be premature. Any action the Commission might take, to limit the QoSs that can be offered, or to reduce traffic, could slow technological development in the industry.

Rhythms and Covad believe it is imperative to ensure that Ameritech-IL does not have the ability to foreclose technological options to CLECs when it makes its own deployment choices. The Commission should not permit Ameritech-IL to *de facto* dictate to its competitors what technology they may deploy.

Rhythms and Covad are convinced that collocation of CLEC line cards in the NGDLC equipment in the RT is necessary and urges the Commission to allow such collocation.

2. Ameritech-IL's Position

Ameritech opposes CLEC ownership of line cards in Project Pronto on the basis that such ownership is not "necessary for interconnection or access to unbundled network elements." 47 U.S.C. 251(c)(6). Ameritech-IL argues that line cards are not used for the exchange of traffic with Ameritech-IL's network, and thus are not necessary for interconnection. *See* 47 C.F.R. 51.5; Ameritech-IL Ex. 6.1 (Lube) at 23-24. Rather, Ameritech-IL argues that CLECs would use such line cards to access the packet switching functionality of Project Pronto NGDLCs which the FCC has declined to classify as UNEs.

Ameritech-IL also argues that the ADLU card is unable to access any actual UNE at an RT site. There are only two UNEs accessible to a CLEC at an RT site—unbundled dark fiber and copper distribution subloops. Ameritech-IL claims that a

CLEC cannot obtain access to either of the UNEs by placing an ADLU card in Ameritech-IL's NGDLC RT equipment.

Ameritech argues that the line card is merely a sub-component of an NGDLC, with no stand-alone functionality until it is integrated with the rest of the software and hardware in the NGDLC system, (Ameritech-IL Ex. 6.1 (Lube) at 18-23), and the FCC has not previously required collocation of such sub-components. *Id*. Ameritech-IL also asserts that there would be operational problems associated with CLECs owning line cards such as premature exhaust of the NGDLC, (Ameritech-IL Ex. 6.1 (Lube) at 24-25), complication of Ameritech-IL's provisioning processes, and maintenance problems. Ameritech-IL asserts that these issues would require SBC to re-evaluate and/or refocus its deployment plans for Project Pronto and could delay or eliminate the continued deployment of Project Pronto in Illinois. Ameritech-IL Ex. 6.1 (Lube) at 27-28.

3. Staff's Position

The Staff continues to advocate virtual collocation of CLEC line cards in the Project Pronto architecture at RTs. Staff's position is that the collaborative process is an appropriate venue for addressing implementation issues surrounding virtual collocation of alternative line cards. Staff proposes that the Commission direct Ameritech-IL to accept alternative line cards by a date certain approximately nine months from the date of the final Commission order in this matter.

4. Commission Analysis and Conclusion

The Commission finds that line cards for the provision of xDSL-based services fit the definition of equipment necessary for interconnection or access to unbundled network elements. Section 251(c)(6) of the Act requires ILECs to provide, on a nondiscriminatory basis and at just and reasonable rates, physical collocation of

equipment necessary for interconnection or access to UNEs. The FCC determined in its Advanced Services Order that the pro-competitive provisions of the Act are technology-neutral and apply to advanced data services as well as to voice. ("*Advanced Services Order*"). The FCC has also found that competitive providers of advanced services should be allowed to collocate integrated equipment that would lower the cost of providing advanced services, and increase the range of services available to their customers. *Advanced Services Order,* at ¶ 29; *UNE Remand* Order, at ¶¶ 107-115. The Advanced Services Order did not specifically address the issue of line card collocation in a Project Pronto environment, but the FCC stated its reliance on state commissions to resolve issues not addressed in the order and to impose additional requirements where needed. *Advanced Services Order*, at ¶ 23.

The Commission is aware that the FCC is currently receiving comments on the meaning of the term "necessary." *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98 (rel. Aug. 10, 2000) ("Collocation Order on Reconsideration"). However, the FCC has acknowledged that time to deployment is vitally important in the advanced services market. *Line Sharing Order*, at ¶ 5. Ameritech-IL is rapidly deploying Project Pronto and intends to allow its affiliate to use Project Pronto for line shared xDSL. SBC/Ameritech Exh. 8.0 (Chapman), at 3. Therefore, the Commission will not put on hold its decision regarding CLEC collocation of line cards, given the urgency of the issue for Illinois competitive providers and end users.

Intervenors propose that the Commission determine that collocation of equipment is necessary so long as the equipment is "directly related to" interconnection or access to unbundled elements, and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently. Rhythms/Covad Brief, p.27. The HEPO issued in the related tariff case, Docket No. 00-0393, adopted this proposed standard and Intervenors urge the Commission to adopt it here as well. *Id.* The Commission finds that this standard meets the requirements of the Act and furthers the goals of facilitating competition and the deployment of advanced services in Illinois.

The evidence in this case establishes that access to line cards is necessary for interconnection and/or access to the UNEs identified by this Commission *supra.* (*See also*, Docket No. 00-0393, HEPO, at 16-17). Line cards are the point of interconnection with the ILEC fiber-fed NGDLC network, substituting for a traditional DSLAM and splitter. Rhythms Exh. 7.0 (Riolo). at 9. Line cards are also the means by which CLECs access subloops. Cross Exh. A. In the NGDLC loop network, the line cards determine what types of xDSL based services can be provided to end users. Rhythms Exh. 7.0 (Riolo), at 5. Without the ability to collocate line cards in the NGDLC chassis at the RT, xDSL providers would not be able to compete efficiently and effectively with the advanced services of the ILECs or their advanced services affiliates. Rhythms Exh. 7.0 (Riolo), at 7:8-18. CLECs would be able to achieve the same functionality by collocating a stand-alone DSLAM at the RT. Rhythms Exh. 7.0 (Riolo), at 6:20-22, 8:2-7. However, as discussed above, collocation is expensive and entails considering planning and delays in provisioning as compared to the use of the line card. Covad

Exh. 4.0 (Carter), p. 3. Furthermore, xDSL based services are distance sensitive and, in many cases, a collocated DSLAM solution would not give service equivalent in quality to a xDSL service provisioned using line cards. Rhythms Exh. 7.0 (Riolo), at 4-5.

Ameritech-IL presented a witness, Mr. Keown, who asserted a litany of operational problems that would result from allowing CLECs to collocate line cards. These concerns were largely dispelled on cross examination as some claims were exaggerated and others amounted to attributing problems to line card collocation that are more general and routine. For instance, Mr. Keown testified that if CLECs were permitted to own and collocate NGDLC cards, DSL provisioning would be delayed because provisioning would require 10 distinct steps. Ameritech Ex. 7.0 (Keown) at 9-10. Yet, Mr. Keown admitted on cross-examination that many of these provisioning steps, such as identifying the customer, qualifying the loop, dispatching a technician to install the card, and confirming installation of the card, would occur regardless of whether SBC/Ameritech or the CLEC owned the card. Hearing Tr. (Keown) at 283-84; 297. Moreover, Mr. Keown acknowledged that he hadn't even "thought" about whether all of the provisioning steps outlined in his testimony would be necessary if a CLEC owned the ADLU line card, or whether those processes could be streamlined. Hearing Tr. (Keown) at 205-206;208. Thus, there is no support for Mr. Keown's statements that CLEC ownership of line cards would adversely impact DSL provisioning.

Finally, Ameritech-IL objects to CLEC collocation of line cards on the grounds that it will contribute to premature bandwidth exhaust. Ameritech-IL Brief, at 25-27. Common sense dictates that as voice and, particularly, data traffic increase bandwidth begins to be depleted. There is, however, substantial evidence on the record illustrating

the types of action telecommunications providers normally take to increase available bandwidth. Hearing Tr. (Keown), at 244-250. The Commission is convinced that, first, should bandwidth depletion become a problem, it is not an insurmountable problem. Second, the Commission is convinced that it would be inappropriate to take action to prevent bandwidth depletion when no problem as yet exists.

The evidence as to forecasted growth in the *x*DSL market is, by definition, speculative. Ameritech-IL has made expansive predictions for its own data CLEC and the Commission has no doubt that, should AADS find itself in need of bandwidth capacity, a solution would be forthcoming. There has been very little evidence presented as to forecasted demand by CLECs for bandwidth. Furthermore, any action the Commission might take, such as limiting the QoS types that can be offered, could slow technological development in the industry. In addition, it is important to ensure that the ILEC is not foreclosing technological options when it makes its own deployment choices. The Commission should not dictate to Ameritech-IL what equipment it should deploy and, likewise, Ameritech-IL should not be permitted to *de facto* dictate to its competitors what equipment they may deploy.

It is increasingly difficult for regulatory bodies to keep pace with technological advance, particularly in communications, and it is important for this Commission to act to further technological advances and encourage the deployment of advanced services to Illinois citizens. Permitting CLEC to collocate line cards is in keeping with those goals.

The Commission orders that Ameritech-IL shall allow all CLECs to collocate, on non-discriminatory terms and at just and reasonable prices, their own line cards in the NGDLC equipment in the RT.

C. Are the non-recurring charges for cross-connects reasonable in light of the prices for cross-connects recently announced following the agreement between SBC and Covad Communications?[1]

1. Rhythms' Position

Rhythms' position is that the non-recurring price of $10.00 in the SBC/Covad agreement establishes that either: a) $10.00 is an appropriate, cost-based rate for cross-connection, or b) the agreement sets a below-cost rate for the benefit of Covad and is discriminatory and anti-competitive.

The SBC/Covad agreement calls for Covad to pay a $5.75 recurring charge and a $10.00 non-recurring charge as the total cost for line sharing across SBC's thirteen-state territory. Rhythms Cross Exh. J, at 11. This non-recurring price is $81.57 below the supposedly cost-based price the ILEC proposed and the Commission adopted. That amount is not fully offset by the increased recurring price—the recurring price in the Covad agreement is $3.00 higher than the cost-based price of $2.75 the Commission adopted, based on Ameritech-IL's reported costs, excluding the HFPL element. Since it is Ameritech-IL's position that it is appropriate to assign 50% of the cost of the local loop to the HFPL element alone, the Covad agreement provides line sharing at a price significantly below Ameritech-IL's claimed costs.

Rhythms argues that, though Ameritech-IL's witness stated that the prices in the Covad agreed are a compromise between higher prices in some states and lower prices

[1] Covad takes no position on this issue.

in others, Ameritech-IL uses a company-wide costing model. Rhythms Exh. 1.1, Murray Rebuttal, at 31. The non-recurring costs and allegedly cost-based prices that SBC's ILECs have proposed and defended in various state proceedings are consistently much higher than those in the Covad agreement. *Id*. It would take anywhere from 27 to 48 months (depending on the Access Area) for Ameritech-IL to recoup its alleged costs using the Covad contract rates. Rhythms position is that, either SBC has consistently overestimated the costs for providing line sharing elements and interconnection, or SBC is willing to provide those same elements and interconnection arrangements to Covad at a loss.

Rhythms proposes that SBC's actual non-recurring costs must actually be below or near $10.00—well below the $91.57 proposed in this arbitration. Rhythms believes a non-recurring cost below $10.00 is consistent with actual expected costs. Ameritech-IL's cost study included excessive times for a number of tasks and its costing analysis is based on inefficient arrangements and inaccurate assumptions.

Rhythms proposes that the Commission either accept the SBC/Covad agreement price of $10.00 as an appropriate, cost-based rate for cross-connection for all CLECs, or adopt Rhythms' proposed cost-based non-recurring prices.

2. Ameritech-Illinois's Position

Ameritech-IL's position is that the uniform 13-state prices negotiated between Covad and SBC are irrelevant to this case. Ameritech-Il asserts that its proposed rates are cost-based for Illinois and are based on the actual CO configuration that will be used in provisioning the HFPL UNE. In addition, the rates in the SBC/Covad are not TELRIC based rates but were negotiated and are not required to meet the TELRIC standard.

Ameritech-IL continues to assert that the rates in the Covad agreement are a compromise of varying rates in the thirteen states covered by the agreement and their appropriateness is determined in part by other, non-price terms of the agreement.

3. Staff's Position

Staff filed no testimony on rehearing on this issue and did not brief the issue.

4. Commission Analysis and Conclusion

a. Admission of Rhythms' Cross Exhibit J.

The Commission finds that Rhythms' Cross Exhibit J, consisting of an executed agreement between SBC and Covad, is relevant and shall be admitted into evidence.

b. Non-recurring charges for cross-connects.

The Commission agrees with Rhythms that the agreed upon non-recurring price of $10.00 in the SBC/Covad agreement is sufficient evidence to establishes that $10.00 is an appropriate, cost-based rate for cross-connection that should be made available on a non-discriminatory basis to all CLECs. TA 96 requires that prices for interconnection and UNEs be just, reasonable and nondiscriminatory. 47 U.S.C. § 251(2)(D), and (3). Ameritech-IL is proposing prices for cross-connects in this case that are significantly higher than prices it has offered to Covad for the same functions.

The SBC/Covad agreement calls for Covad to pay a $5.75 recurring charge and a $10.00 non-recurring charge as the total cost for line sharing across SBC's thirteen-state territory. (Rhythms Cross Exh. J, at 11). This non-recurring price is $81.57 below the purportedly cost-based price the ILEC has proposed for this arbitration. The recurring price of $5.75 is not adequate to offset the lowered non-recurring price and the Commission is not persuaded that Ameritech-IL is intending to provide line sharing to

Covad at a loss. (*See* Rhythms Exh. 4.0, Murray Direct, at 11; Rhythms Exh. 1.1, Murray Rebuttal, at 30-32.)

The Commission is also unpersuaded by Ameritech-IL's testimony that the prices in the Covad agreed are a compromise between higher prices in some states and lower prices in others. The Commission is aware of the fact that Ameritech-IL uses a company-wide costing model (Rhythms Exh. 1.1, Murray Rebuttal, at 31) and SBC ILECs have consistently proposed and defended as cost-based much higher rates than the Covad rates in various state proceedings. *Id*. Based on the testimony and exhibits filed in this case the Commission concludes that SBC has overestimated the costs for providing line sharing elements and interconnection. Accordingly, the Commission hereby approves the SBC/Covad agreement price of $10.00 as a just, reasonable, cost-based rate for cross-connection to be made available on a nondiscriminatory basis to all CLECs.

By order of the Commission this _____ day of January, 2001.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)