Regarding the benchmark for the combined measure, Ameritech Illinois calculated a weighted average of the existing benchmarks, using 1994-2000 data to compare the number of Information calls to the number of Toll and Assistance calls. The combined benchmark, based on that calculation, is 5.61 seconds.[23] (Am. Ill. Ex. 3.4, Sch. 3.41 (corrected)). Staff agreed that a weighted average would most accurately determine the combined benchmark, but preferred to base its calculation on 1998-99 data. (Tr. 2036, 2042). The combined benchmark, based on Staff's approach, would be 5.65 seconds. (Appendix D to this Brief). Ameritech Illinois believes that either approach is reasonable, but continues to support the calculation it presented in Mr. O'Brien's Supplemental Surrebuttal Testimony (as corrected).

Trunk Groups Below Objective (Current). Staff and Ameritech Illinois agree that Trunk Groups Below Objective (trunk blockage) should be removed from the Alternative Regulation Plan. GCI questioned whether removal of this measure would be appropriate, in light of interim data that indicated that trunk blockages had occurred during 2000. (GCI Ex. 12.0, pp. 31-32). Subsequently, Mr. Hudzik testified that the interim data were incorrect due to an administrative error. (Am. Ill. Ex. 12.1, p. 28). Thus, the measure for Trunk Groups Below Objective should be eliminated from the Plan, as Staff suggested.

Missed Installation Commitments (New). The parties generally agree that some measure of missed installation commitments (or appointments) should be included in the Plan. The primary questions have been the appropriate definition and benchmark for the proposed measure.

Missed installation commitments or appointments are not among the existing Plan benchmarks or the Commission's Part 730 rules. For internal purposes, Ameritech Illinois tracks installation "commitments." A commitment is met when the necessary work is completed within

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23 Because the data would be used only to determine the appropriate weighting of two existing benchmarks, any questions about service quality during 2000 would not affect use of that year's data for this purpose. (Tr. 2035).

the time committed to the customer. The measure does not track whether a technician appears at the customer's premises at a particular time (which Ameritech Illinois would call an "appointment"). (Am. Ill. Ex. 12.0, p. 28). Data are available for all installation commitments (whether or not field visits were required) from 1996 to the present, and separately for commitments requiring field visits beginning in 2000. (Am. Ill. Ex. 3.2, pp. 4-5). Ameritech Illinois proposes a benchmark of 2.08% Missed Installation Commitments, for all commitments, based on actual, historical performance for the years 1996-99. (Am. Ill. Ex. 3.4, p. 16).

Staff, however, appears to favor a measure that would exclude vertical services, consistent with Staff's views on Installation Within Five Business Days. (Staff Ex. 23, p. 23). No installation commitment data are currently available excluding vertical services.[24] However, Part 730 of the Commission's rules provides a benchmark of 90% for "regular service" commitments met. 83 Ill. Admin. Code § 730.540(c). Staff has also supported that standard in the ongoing Part 730 review in Docket 00-0596. (Am. Ill. Ex. 12.1, pp. 20-21; Am. Ill. Ex. 3.4, p. 16). Therefore, if the Commission wishes to adopt a measure that would exclude vertical services, the Commission should adopt a measure and benchmark of 90% of "regular service" installations completed within the time committed, consistent with Part 730 and Staff's proposed rule in Docket 00-0596. That benchmark should be subject to any changes in the standard in the pending proceeding. (Am. Ill. Ex. 3.4, p. 16).[25]

Staff's recommended benchmark for Missed Installation Commitments was undetermined, as of Staff's rebuttal testimony. Therefore, Ameritech Illinois will respond to

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[24] Some data are available for the subset of installation commitments that require field visits, beginning in 2000. Based on the available data for Missed Installation Commitments (Field Visit), the proposed benchmark would be 14.66%. (Am. Ill. Ex. 3.2, p.4).

[25] Ameritech Illinois understands "regular service" installations, as used by Staff in this proceeding, to exclude vertical services and to include all "dial tone" service orders (both field-visited and non-field-visited).

Staff's proposed benchmark in its reply brief.

GCI proposes that two, separate measures be adopted: for missed installation "commitments" (which GCI equates with all commitments) and for "appointments" (which GCI equates with field visited commitments). GCI proposes extremely stringent benchmarks of one percent for each. (GCI Ex. 12.0, pp. 41-44). That proposal should be rejected.

Initially, GCI's proposal is based on a fundamental misunderstanding of the measures it has proposed. Those measures do <u>not</u> track commitments requiring field visits separately from those that do not. In her rebuttal testimony, Ms. TerKeurst contended that what she called "POTS Missed Installation Commitments," reported to the FCC, reflects all commitments, while what she called "POTS Missed Installation Appointments," reported to NARUC, separately reflects field visited commitments. Thus, she concludes that the measures are significantly different and that both should be included in the Plan. (GCI Ex. 12.0, pp. 43-44). Ms. TerKeurst is wrong. Both the FCC and NARUC data reflect total installation commitments, including both those that require field visits and those that do not. The two measures differ somewhat in their parameters, but neither of them is limited to commitments requiring field visits. (<u>See</u> Am. Ill. Ex. 12.1, p. 31). The <u>only</u> available data that separately track installation commitments requiring field visits are the data Ameritech Illinois began to provide to Staff in 2000. (Am. Ill. Ex. 3.2, p. 4).

Ms. TerKeurst's proposed benchmarks for these measures are also inappropriate. Ms. TerKeurst proposed a benchmark of one percent for each measure, based on the Company's internal performance target for Missed Installation Commitments (All Commitments). (GCI Ex. 2.0, pp. 58-59; GCI Ex. 12.0, pp. 43-44). In the alternative, she proposed that a benchmark of 1.32% be imposed on an interim basis for Missed Installation Commitments (as reported to the

FCC), phased to one percent in the second year. For Missed Installation Appointments (as reported to NARUC), her alternative proposal is 0.81%. The alternative proposals are based on the Company's best single-year performance for each measure. (GCI Ex. 12.0, pp. 43-44). The GCI benchmark proposals should be rejected for several reasons.

First, internal goals do not provide appropriate bases for benchmarks. As Mr. Hudzik testified, "Such goals are used to motivate employees. They are typically chosen as measures of excellence, rather than reasonableness." Those goals do not reflect actual, historical performance. (Am. Ill. Ex. 12.0, pp. 27-28). Moreover, adoption of such goals as regulatory requirements would have the perverse effect of encouraging the Company to minimize its performance goals, rather than striving for excellence. (Am. Ill. Ex. 12.1, p. 30). And, to the extent Ms. TerKeurst would apply her one-percent benchmark to commitments requiring field visits, she has applied the wrong internal target. (Am. Ill. Ex. 12.0, p. 39). The actual internal target for Missed Installation Commitments (Field Visit) was five percent, not one percent. (GCI Ex. 2.2, Resp. to D.R. 4.5).[26]

Ms. TerKeurst's alternative benchmarks, based on the Company's best year of performance, are equally flawed. Ms. TerKeurst's approach reflects "exactly the type of picking and choosing that would clearly be inappropriate" for determining service quality benchmarks. By choosing the single best year for each individual benchmark, that approach fails to account for year-to-year variability in factors such as weather and economic conditions that can very substantially affect service quality data. As Mr. Hudzik explained, "it is necessary to consider both enough data and a consistent pool of data, so that a full range of conditions is reflected in

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26 That target has since been changed to six percent, as the previous target was too stringent even as a "stretch" goal.

the resulting benchmarks." GCI's "best year" proposal fails to do so. (Am. Ill. Ex. 12.1, pp. 24-25; see also id., pp. 22, 31).

Missed Repair Commitments (New). Staff's proposal to include a new measure and benchmark for Missed Repair Commitments raises issues similar to those for Missed Installation Commitments. Ameritech Illinois defines and tracks "commitments" for repair in the same manner that it defines and tracks installation commitments. That is, they are measured according to whether a repair has been completed on time, not whether a technician arrived on time, or even whether a field visit is required. (Am. Ill. Ex. 12, p. 28). However, unlike installation commitments, data are separately available for repair commitments requiring field visits, back to 1995. (Am. Ill. Ex. 3.2, pp. 5-6; Am. Ill. Ex. 3.4, p. 16). Based on historical performance for the years 1995-99, the Commission should adopt a benchmark of 9.58% for Missed Repair Commitments (Field Visit). (Am. Ill. Ex. 3.4, p. 16).

Staff's proposed benchmark for Missed Repair Commitments was undetermined, as of Staff's rebuttal testimony. Therefore, Ameritech Illinois will respond to Staff's proposed benchmark in its reply brief.

GCI proposes a benchmark of one percent for Missed Repair Commitments. This proposal is based on Ameritech Illinois' internal target for Missed Installation Commitments (All Commitments). (GCI Ex. 2.0, pp. 59-60). In the alternative, GCI proposes that performance for the single best year (6.35%) be applied as an interim benchmark, changing to one percent in the second year of the Plan. (GCI Ex. 12.0, pp. 45-46).

GCI's proposal should be rejected for reasons similar to those discussed for Missed Installation Commitments. First, as explained above, internal targets do not provide appropriate service quality benchmarks under an Plan. (Am. Ill. Ex. 12.0, p. 29). Second, Ms. TerKeurst has again used the wrong target. Ms. TerKeurst has applied a target for all installation commitments (whether or not a field visit is required) to repair commitments requiring field visits. This is a complete mismatch. (Id.). The internal target for Missed Repair Commitments (Field Visit) actually was five percent, not one percent—entirely consistent with the target for Missed Installation Commitments (Field Visit). (GCI Ex. 2.2, Resp. to D.R. 4.5).[27]

Repeat Trouble Rate (New). The parties agree that Repeat Trouble Rate should be included among the service quality measures in the Alternative Regulation Plan. Repeat troubles are cases of trouble within 30 days after a previous trouble report at the same customer location.[28]

Average Speed of Answer—Repair (New). The parties agree that answer time for repair offices should be included in the service quality measures in the Plan.

Regarding the benchmark for this measure, Ameritech Illinois proposes that the Commission adopt the Part 730 standard: an average if 60 seconds for all calls. The standard in Part 730 is new, having become effective in October 2000. The limited data available show that, while Ameritech Illinois has recently performed at a level consistent with the Part 730 benchmark, it has not yet done so consistently. Therefore, the 60-second average required by Part 730 should be applied. This is the approach the Commission adopted to address OOS>24 in the 1994 Order. (Am. Ill. Ex. 3.4, p. 16; Am. Ill. Ex. 12.0, pp. 30-31; Am. Ill. Ex. 12.1, pp. 3, 28).

Staff initially proposed that the Commission adopt a benchmark of 80% of calls answered within 20 seconds. (Staff Ex. 9.0, pp. 22-24). Staff witness Jackson argued that this standard

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27 This internal target has also subsequently been changed to six percent.

28 Repeat troubles do not necessarily reflect a repetition of the same type of trouble. They simply reflect multiple reports at the same location within 30 days.

was appropriate, based on Ameritech Illinois' internal performance targets. (Id., p. 24). Then, in her rebuttal testimony, Staff Ms. Jackson stated that she would reconsider her proposal in light of additional historical data to be provided by Ameritech Illinois (Id., pp. 28-29). GCI has also proposed a standard of 80% answered within 20 seconds. (GCI Ex. 12.0, p. 34).

The Commission should follow the 1994 Order and adopt the 60-second benchmarks that appear in the Part 730 rules. 1994 Order at p. 58. The Commission should enforce its own standards, not those of other states. Parity is not a relevant consideration, as each Commission will make its own determination of what constitutes a reasonable answer time. (Am. Ill. Ex. 12.1, pp. 18-19). GCI's proposed answering time standard lacks either a historical performance record or a Commission rule to support it. As a result, it cannot be said to "maintain" any recognized level of performance, and it is therefore inconsistent with the Act and the 1994 Order. (Id., p. 17).[29]

Average Speed of Answer—Customer Calling Centers (New). The parties also agree that answer time for business offices should be included in the service quality measures in the Plan. Staff has proposed, and Ameritech Illinois has agreed, that a single measure should be adopted to reflect both residence and business calling centers. (Staff Ex. 23, p. 29; Am. Ill. Ex. 12.1, p. 28). GCI, however, proposes that separate answering time measures should be adopted for residential and business Customer Calling Centers. (GCI Ex. 12.0, pp. 32-34).

GCI's proposal should be rejected. GCI's proposal is inconsistent with the manner in which business office answering time is defined in Part 730. Contrary to GCI's proposal, the Commission's rules provide a single, combined measure and benchmark for both residence and

[29] In addition, while Ms. TerKeurst testified that that this benchmark should be based on pre-Plan data, those data do not support her proposed benchmark. (Compare GCI Ex. 12.0, pp. 32-34 with Am. Ill. Ex. 3.4, p. 18 & Sch. 3.44).

business Customer Calling Centers. 83 Ill. Admin. Code § 730.510(c). In addition, a single measure is fully adequate to track business office answering time. Adopting two measures would over-emphasize answering time in the context of the overall service quality component of the Plan. (Am. Ill. Ex. 12.1, p. 28). If both measures were adopted, the Commission should split the relevant penalty between the two measures.

Ameritech Illinois' proposed benchmark (the 60-second average answering time imposed by Part 730) should be adopted for the same reasons provided for Average Speed of Answer—Repair, above.

2. GCI's Proposed Measures and Associated Benchmarks.

The current Alternative Regulation Plan includes eight service quality measures. Staff's and Ameritech Illinois' proposals include nine. However, GCI's proposal includes twenty—nearly tripling the number of measures in the existing Plan. GCI's proposal is entirely unwarranted, particularly considering that, for the most part, the existing Plan has clearly succeeded in maintaining service quality at appropriate levels. (Staff Ex. 23, pp. 28-29; Am. Ill. Ex. 12.0, pp. 37-40).

The additional measures proposed by GCI are largely redundant—focussing on service quality parameters (installation, repair, etc.) that are already captured in the nine measures proposed by Staff and Ameritech Illinois. In addition, GCI has redefined (or simply invented) many of the measures, rendering available data and benchmarks completely inapplicable to them. Furthermore, the benchmarks for the additional measures proposed by GCI are unreasonably stringent, and are generally unrelated to either established performance levels or the Commission's service quality rules. As a result, the additional measures and benchmarks proposed by GCI should be rejected. (Am. Ill. Ex. 12.0, pp. 37-46; Am. Ill. Ex. 12.1, pp. 25-31).

Operator Speed of Answer. As discussed in the section above, GCI proposes to retain both Operator Speed of Answer—Toll & Assistance and Operator Speed of Answer—Information as separate measures. GCI's position should be rejected for the reasons explained above.

Trunk Group Below Objective. As noted in the section above, GCI has questioned Staff's and Ameritech Illinois' position that this measure should be removed from the Alternative Regulation Plan. As explained above, GCI's position is based on an administrative error and should be rejected.

POTS Missed Installation Commitments/Appointments. As discussed in the section above, GCI proposes two measures for missed installation commitments, on the mistaken assumption that one of the measures tracks all commitments while the other tracks commitments requiring field visits. GCI's position should be rejected for the reasons explained above.

Average Speed of Answer—Customer Calling Centers. As discussed in the section above, GCI has proposed two measures for business office answer time, separately measuring answer times for residence and business Customer Calling Centers. GCI's position should be rejected for the reasons explained above.

Percent of Calls Answered. GCI proposes to include three separate measures of calls answered (or, conversely calls abandoned), for both residence and business Customer Calling Centers and for Repair Centers. (GCI Ex. 2.0, pp. 43-46). Staff initially took a similar position, proposing two abandoned call measures, for Customer Care Centers (Residence and Business combined) and Repair, respectively. (Staff Ex. 9.0, pp. 24-25). However, Ms. Jackson agreed in her rebuttal testimony with Ameritech Illinois' position that the Commission should not adopt a measure for the percentage of calls answered or abandoned. (Staff Ex. 13, pp. 13-14). GCI's position should be rejected.

As Mr. Hudzik explained, in Docket 98-0453, the Commission rejected Staff's proposal to include measures for abandoned calls in the Part 730 rules. (Am. Ill. Ex. 12.0, pp. 31, 44). In that proceeding, the Commission concluded, "measurement of abandoned calls is imprecise and the Commission declines to impose a measurement of abandoned calls at this time." Order, Ill. C.C. Dkt. 98-0453, p. 8 (Feb. 9, 2000). As Mr. Hudzik explained, "Abandoned calls are at best an indirect measure of answering performance. . . . Why use a less direct and less accurate measure when you can measure answering performance directly?" (Am. Ill. Ex. 12.0, p. 31). Staff ultimately agreed that a single measure for answer time "will provide the Staff with the information needed" to monitor answering performance. (Staff Ex. 23, pp. 13-14). Thus, consistent with the 1994 Order, the Commission should again decline to adopt a measure for completed or abandoned calls.

<u>POTS Mean Installation Interval</u>. In addition to the measure for Installation Within Five Business Days, above, GCI proposes that the Commission adopt a measure for POTS Mean Installation Interval, with a benchmark of four business days. The recommendation is based on Ms. TerKeurst's speculation that, unless the Commission adopts this additional standard, installations not completed within five business days would be moved "to the bottom of the work queue." (GCI Ex. 2.0, pp. 35-36).

Once again, GCI's position should be rejected. Ameritech Illinois has never engaged in the practice that Ms. TerKeurst alleges. Thus, the record provides no factual basis for adopting the proposed measure. (Am. Ill. Ex. 12.0, p. 44). Moreover, Ms. TerKeurst's proposed benchmark is not based on historical performance, Commission rules or any other known standard. Ms. TerKeurst has simply invented it. (Id., p. 40).

POTS Mean Time to Repair. In addition to OOS>24, GCI proposes that the Commission adopt a standard for POTS Mean Time to Repair. Ms. TerKeurst's rationale is essentially the same as for POTS Mean Installation Interval: "the two repair measures provide complementary information and discourage Ameritech Illinois from neglecting out of service problems older than 24 hours." (GCI Ex. 12.0, pp. 36-37).

This GCI proposal should be rejected for similar reasons. The measure is redundant, and there is not a shred of evidence that the Company has ever engaged in the practice Ms. TerKeurst alleges. (Am. Ill. Ex. 12.0, p. 45; Am. Ill. Ex. 12.1, p. 29). In addition, Ms. TerKeurst has proposed as her benchmark an internal "stretch" goal of 21 hours. Such a benchmark would be inappropriate for the reasons explained above regarding the use of internal targets as benchmarks. Moreover, what Ms. TerKeurst calls "POTS" Mean Time to Repair would apparently be "limited to POTS" service (see GCI Ex. 12.0, p. 37 (discussing "POTS" installation)). This is not the same measure as the one tracked by the Company's Mean Time to Repair data, which is not limited to "POTS" service. As a result, the proposed benchmark would be inappropriate, even if internal targets were otherwise an appropriate basis for determining benchmarks.

POTS Installation Repeat Trouble Reports. GCI has proposed that repeat reports be included in the Alternative Regulation Plan for Installation as well as for repair. (GCI Ex. 12, pp. 37-38). Ameritech Illinois does not generally believe that repeat reports for either installation or repair need to be included in the Commission's service quality measures; however, customers are more sensitive to repair repeats, because they have already experienced one instance of trouble. (Am. Ill. Ex. 12.1, pp. 29-30). Therefore, Ameritech Illinois agreed with Staff's proposal to include repair repeat reports, but not installation repeat reports, in the Plan. (Am. Ill. Ex. 12.0, pp. 27, 45).

Ms. TerKeurst's proposed benchmark for this measure (5%) is also inappropriate. First, Ms. TerKeurst's definition of POTS Installation Repeat Troubles is different from the Company's, making its internal performance target, as well as its actual performance, completely inapplicable to the GCI proposal. (Am. Ill. Ex. 12.1, pp. 39-40). Moreover, the Company has changed both the measure and the performance target for installation repeat reports over the years, to accommodate changing training objectives. Thus, any comparison to either past performance data or internal targets, even using the Company's own current definition, would be suspect. (Am. Ill. Ex. 12.0, p. 45).

C. THE COMMISSION SHOULD RETAIN THE EXISTING SERVICE QUALITY PENALTY STRUCTURE, MODIFIED TO ELIMINATE REVENUE REDUCTIONS FOR MISSES WHEN THE COMPANY SUBSEQUENTLY ACHIEVES THE RELEVANT BENCHMARKS.

Ameritech Illinois' Proposal. Because the current Plan has generally succeeded in maintaining service quality, only one change should be made in the Plan's service quality penalty structure. Currently, if the Company misses a service quality benchmark, a permanent .25% reduction of the PCI is required, even if Ameritech Illinois never misses that benchmark again. As a result, penalties for a single miss can accumulate far beyond the year in which the benchmark was missed. To correct this situation, the Plan should be modified to provide that the PCI should be adjusted back upward when the Company subsequently achieves a benchmark that it had previously missed. (Am. Ill. Ex. 3.0, pp. 13-14). Ms. TerKeurst supported a similar proposal, when she testified on behalf of Staff in Docket 92-0448. (Am. Ill. Cross TerKeurst Ex. 45).

Staff's Proposal for Service Quality "Inside" the Price Index. Staff's proposal for addressing service quality within the price index calculation is similar to Ameritech Illinois' proposal. Staff's proposal would continue the existing service quality adjustment of .25 percent for most of the annual benchmarks, both old and new, except for OOS>24 and Installation Within Five Days. As Ms. Jackson testified, "the $4 million [.25 percent] rate reduction for each of these standards was enough incentive for the company to meet the standards." She recommended the same penalty for Staff's proposed new measures. (Staff Ex. 9.0, p. 45). Ameritech Illinois generally agrees with Staff's approach. There is certainly no evidence that greater penalties are either necessary or appropriate, given that Ameritech Illinois has not missed any of those benchmarks. (Am. Ill. Ex. 12.1, pp. 33-34).

Ameritech Illinois' position differs from Staff's in two respects. First, as explained in Mr. O'Brien's direct testimony, an element of symmetry should be added by permitting Ameritech Illinois to "earn back" the rate adjustment if, after missing a particular benchmark, it achieves that benchmark in a subsequent year. (Am. Ill. Ex. 3.0, pp. 13-14; Am. Ill. Ex. 12.1, p. 34). Second, the Commission should reject Staff's proposal to increase the penalties for OOS>24 and Installation Within Five Days, to two percent each. (Am. Ill. Ex. 12.1, p. 34; Am. Ill. Ex. 3.4, pp. 5-6).

Regarding 00S>24, the Company's conduct since 1999 demonstrates that the existing penalties (including the $30 million merger penalty) are adequate to maintain reasonable performance. In 1999, the Commission imposed a $30 million dollar penalty if Ameritech Illinois fails to attain 5% OOS>24. As shown by the very significant improvement in 00S>24 performance since that penalty was adopted, this incentive has been adequate to insure the Company strives to meet the benchmark. (Am. Ill. Ex. 12.1, p. 35). Moreover, the problems experienced in the latter half of 2000 have been addressed by force additions in the Network organization. These force additions demonstrate a strong commitment to deliver the required level of service. (Id., pp. 34-35).

Staff's proposal to increase the penalty for Installation Within Five Days should also be rejected. Despite Staff's (and GCI's) concerns about the manner in which the data have been calculated, the fact remains that the Company reported this measure in the same way as it always has, consistent with the manner used when the original benchmark was developed. The Company has met this measure on a consistent basis. As noted above, Ameritech Illinois would not object to redefining this benchmark. However, to penalize the Company for Staff's and GCI's concerns over the calculation methodology, when it has never missed the current benchmark, would be unfair. (Am. Ill. Ex. 12.1, p. 35).

Staff's Proposal for Service Quality "Outside" the Price Index. In contrast to Staff's "inside the index" proposal, Staff's proposal for handling service quality "outside" the price cap index is clearly excessive and punitive.

That proposal would impose a $13 million penalty for each month in which the Company missed a benchmark, for six of Staff's nine proposed measures. (Staff Ex. 9.0, p. 38). The maximum penalty for each measure is therefore nearly 40 times the penalty Staff proposes "inside" the price index. (Am. Ill. Ex. 12.0, pp. 35-36). Mr. Hudzik evaluated the likely impact of this proposal, assuming that Ameritech Illinois would perform at the same level it did in 1999, when Ameritech Illinois met all eight of the Commission's existing benchmarks. Service quality in 1999 was excellent, so that year provides a reasonable basis for comparison. The evaluation showed that the non-customer specific penalty would total $351 million per year in (Am. Ill. Ex. 12.15). In addition, Ameritech Illinois would pay significant customer-specific penalties. Such penalties would be completely unreasonable in light of the high quality of service provided in that year. In fact, Staff witness Jackson conceded that the likely penalties were higher than she anticipated when she developed Staff's proposal. (Tr. 2052-53).

The enormous penalties result from two factors. First, because Staff's proposed credit of $2.25 would go to all customers, not just affected customers, the monthly penalties would be approximately $13 million per month. Second, by applying annually-based benchmarks to monthly performance, a significant number of monthly misses is virtually guaranteed, even if the Company performs at levels at or above the years in which the benchmarks were set. (Am. Ill. Ex. 12.1, p. 36). Indeed, Ms. Jackson conceded that her proposed monthly penalties are fundamentally inconsistent with Staff's methodology for calculating benchmarks. That methodology is specifically intended to measure annual, not monthly, performance. (Tr. 2055).

Ameritech Illinois does not object to removing service quality from the price index calculation. (Am. Ill. Ex. 3.4, pp. 5-6). However, Staff has failed to justify, or even explain, the enormous financial difference between its proposals for addressing service quality "inside" and "outside" the price index calculation.

GCI's Proposals. GCI's proposed penalties -- both "inside" and "outside" the price cap index -- are clearly unreasonable. GCI's penalty structure would increase the annual base penalty to approximately $12 million inside the price index and approximately $23 million outside the price index, coupled with a "multiplier" of 1.5 to be applied whenever the Company missed any service quality measures in consecutive years. The GCI proposals are entirely unreasonable. They would result in annual penalties of hundreds of millions of dollars annually, and billions within the next five-year term of the Plan, even if service quality were maintained at excellent levels. (Am. Ill. Ex. 12.1, pp. 40-43).

Mr. Hudzik evaluated the impact of the GCI proposals for addressing service quality "outside" the price index calculation. In his first scenario, he assumed actual performance levels from 1999 to the extent such data are available, and his best estimate of a reasonable 1999 performance level where actual data were not available. He also assumed that level of performance would continue over a five-year period. The results of Mr. Hudzik's evaluation were staggering. Assuming that the Company matched its excellent 1999 performance, the Company would incur a penalty of $288 million in the first year of the new structure, escalating to $1.45 billion by the fifth year, with a five-year total of $3.8 billion. This number does not even include the credits which would have been paid to customers for missed installation and repair appointments under Ms. TerKeurst's plan. (Am. Ill. Ex. 12.1, pp. 40-41 & Ex. 12.12).

In fact, the Company would pay penalties many times greater than those in the existing Plan, even if service quality were incredibly good. To test the impact of the GCI proposal under conditions of truly exceptional service quality, Mr. Hudzik performed an analysis in which he assumed the Company would miss just one of GCI's twenty-two proposed measures each year for five years, that the one measure was missed by just one percent and that no measure was ever missed twice over the five-year period. Given the very aggressive targets proposed by Ms. TerKeurst, these "misses" each would represent truly exceptional service by any standard. In fact, it is highly unlikely that any telephone company in the country could perform at that level.[30] Nevertheless, under this scenario, the Company would be penalized $12 million during the first year, $18 million in the second year, $27 million in the third year, $40 million in the fourth year, and $61 million in the fifth year, for a five-year total of $159 million. These numbers would not include the additional credits that the Company would pay for missed repair and installation

[30] Ms. TerKeurst conceded that she could not name a single local exchange carrier whose performance would meet all of her proposed benchmarks. (Tr. 2134).

appointments. (Am. Ill. Ex. 12.1, p. 42 & Ex. 12.14). This would be the Company's "reward" for providing service at impossibly high levels of quality.

GCI's proposal for addressing service quality within the price cap index is equally unreasonable. GCI's proposals "inside" and "outside" the price index calculation are basically the same; however, in the "inside the price cap" version, GCI's base credit is $13 million per miss, versus $12 million outside the cap. Thus, the penalties would be approximately eight percent higher inside the price cap. Based on 1999 performance levels, the resulting penalties would be approximately $311 million in the first year, approximately $1.57 billion by the fifth year, and $4.1 billion over five years. (Am. Ill. Ex. 12.1, pp. 42-43).

To illustrate just how preposterous the GCI proposals are, compare the proposed penalties to Ameritech Illinois total revenues from non-competitive services (i.e., those services from which the current service quality penalties are taken). By the fifth year of the plan, if Ameritech Illinois performed at the same, excellent level that it did in 1999, service quality penalties would exceed all non-competitive revenues. (See City Cross Gebhardt Ex. 10). Thus, if service quality remained a component of the price cap index and Ameritech Illinois provided excellent service, rates for non-competitive services would be negative by the fifth year of the plan.

D. GCI'S ADDITIONAL PROPOSALS SHOULD ALSO BE REJECTED.

Ameritech Illinois also opposes GCI's proposed additional reporting requirements. GCI would require that every one of its 20 proposed service quality measures be reported monthly, that each be reported separately for business and residence, that each be reported separately by each of 12 geographic areas in Illinois, and that each be reported separately for single versus multiple lines. (GCI Ex. 20, pp. 58-60). The required data are currently maintained in a multitude of separate data bases and are not now reported on a regular basis, either internally or externally. The GCI proposal would create a significant administrative burden. Moreover, should the Commission desire any information beyond what is currently being reported, it is free to request that information. The Company should not be required to report extensive and detailed data simply in the event it might be needed for analysis at some later date. (Am. Ill. Ex. 12.1, p. 46). At the same time, the data would also be unlikely to help consumers, as they would be far too technical and far too detailed to be of use to an ordinary consumer. (Id., p. 47).

The Commission should also reject the GCI proposal to require a minimum investment of $29 per access line in the "cable and wire" account. (GCI Ex. 12.0, p. 7). First, the service metrics which are currently in place provide the best gauge of whether or not the Company's investment levels are appropriate. If the Company is able to meet the established repair and installation objectives, this is proof that the investment levels are appropriate. (Am. Ill. Ex. 12.1, p. 47). Further, the use of a fixed investment per access line figure ignores changes in the costs of network construction and maintenance. Should new technologies be more cost effective than previous technologies, the Company would lose the incentive to utilize these lower cost, more efficient investment alternatives. This would be directly contrary to alternative regulation: to allow a company to capture the benefits of increased efficiency. (Id.).

Nor has Ms. TerKeurst provided any analysis to support her $29 figure, except that it represents approximately the amount Ameritech Illinois spent in that account in 1996. She has simply picked a number. However, the number is completely meaningless unless a similar level of investment would be needed now, based on today's network needs, technical and engineering standards, and other factors. The fact that Ameritech Illinois spent a certain amount in the past proves nothing about what it should spend today or tomorrow. (Id.). Ms. TerKeurst has also failed to explain why she has focused the "wire and cable" account. It is only one of many accounts that would affect network performance, but Ms. TerKeurst has completely ignored the other relevant accounts.

Finally, the Company has substantially increased network expenditures on its own, without any regulatory requirement that it do so. Comparing 1999 spending levels with 2000 and 2001 (estimated budget) levels, both capital and expense spending have increased very significantly. Capital investments in Illinois have increased from $787 million in 1999, to $918 million in 2000, and $1.043 billion (estimated budget) in 2001. Similarly, expenses have increased from $495 million in 1999, to $664 million in 2000, and to more than $798 million (estimated budget, excluding network planning and engineering) in 2001. The increases include service quality improvements, as well as other network initiatives such as Project Pronto. These increases demonstrate a major commitment by SBC management to invest in the infrastructure in Illinois.

As a result, Ms. TerKeurst's proposed capital spending requirement is both unsupported and unnecessary.

V. THE "REVENUE REQUIREMENTS" ANALYSES OF GCI AND STAFF GROSSLY OVERSTATE THE COMPANY'S EARNINGS

In support of its rate reduction proposal, GCI purported to perform a "revenue requirements" analysis. Staff also developed a proposed "revenue requirement" in the event that the Commission deems it appropriate to reinitialize rates, although Staff was opposed to doing so. For the reasons previously discussed, GCI's proposal to reinitialize rates on the basis of a traditional regulatory analysis of the Company's earnings during a "test year" is fundamentally incompatible with the goals of price cap regulation. Accordingly, there is no need for the Commission to make a determination of the Company's "revenue requirements."

Moreover, the "revenue requirements" analyses performed by GCI and Staff are fundamentally flawed. The Company's actual 1999 operating results (as adjusted to reflect known changes and the elimination of abnormal and prior period items) are presented in Ameritech Illinois Exhibit 7.3, Schedules 1 and 2.[31] GCI and Staff propose to arbitrarily adjust these results by (i) "disallowing" reasonable expenses actually incurred by the Company to provide service and (ii) "imputing" to the Company revenues which it did not (and will not) actually receive. The effect of these adjustments is to overstate the Company's earnings by hundreds of millions of dollars.

A. REVENUE AND EXPENSE ADJUSTMENTS

1. Depreciation and Amortization Expense

a. The Company's Position

As discussed in Section II.B., above, under the Plan, Ameritech Illinois assumed all responsibility for managing the recovery of its capital investments within the constraints of the price index. In return for the assumption of what would otherwise be the legal obligation of its customers, the Company was granted freedom to establish its own depreciation rates and other capital recovery practices, rather than having them prescribed by the Commission. (Am. Ill. Ex. 1.1, pp. 55-56). Pursuant to this capital recovery freedom, the Company (i) implemented an eight year amortization of the $1.152 billion asset value write-down resulting from the discontinuance

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[31] During the course of the proceeding, the Company accepted certain adjustments to the operating income statement and statement of net original cost of property shown in Schedules 1 and 2, respectively, of Ameritech Illinois Exhibit 7.0. Staff and GCI proposed certain adjustments related to 2000 revenues and advertising expense (Staff) and reciprocal compensation (GCI) which they later withdrew. In this brief, the Company addresses only the adjustments that remain contested.

of the application of Financial Accounting Standards No. 71 ("FAS 71"), Accounting for the Effects of Certain Types of Regulation, in late 1994[32]; and (ii) adopted depreciation rates which are higher than the depreciation rates last approved for the Company under traditional ratemaking formulas. (Am. Ill. Ex. 1.1, pp. 56-57). These capital recovery practices were required to more accurately reflect the economic value of Ameritech Illinois' assets and the diminished assurance of full capital recovery in an increasingly competitive marketplace. (Id.). In accordance with the commitment made by the Company to the Commission in 1994, no increases in customer rates have resulted from these practices. (Id.).

For 1999, the annual level of depreciation and amortization ("depreciation") expense resulting from the Company's exercise of its capital recovery freedom was $607.758 million. (Am. Ill. Ex. 7.3, Sch. 1). This amount represents the actual level of depreciation expense incurred by the Company in 1999 on a regulated, intrastate basis, as adjusted during the course of this proceeding for the following known changes: (i) elimination of depreciation expense incorrectly recorded on accounts fully depreciated prior to 1999; and (ii) a correction to the calculations made to separate depreciation and amortization expense between the interstate and intrastate jurisdictions. (Am. Ill. Ex. 7.1, p. 4; Am. Ill. Ex. 7.3; pp. 1-4, Schs. 1, 3, 4, 5).

b. Staff's Position

Staff witness Green developed a jurisdictional depreciation expense level of $606.108 million. (Staff Ex. 24.0, pp. 4-8, Sch. 24.1). In recognition of the Company's depreciation freedom, Mr. Green did not challenge the Company's depreciation rates or otherwise question

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32 The discontinuance of FAS 71 was necessary to recognize the restrictions on the Company's ability to recover specific costs due to increased competition and the adoption of price regulation under the Plan. (Am. Ill. Ex. 1.1, p. 104). The discontinuation of FAS 71 resulted in writing up the depreciation reserve or, equivalently, writing down the net value of assets for financial reporting purposes. The Company is amortizing the asset write-down over an eight year period for regulatory reporting purposes. (Id., pp. 104-06).

the total unseparated depreciation figures. (Id., p. 8). The small difference between the Company's proposed level ($607.758 million) and the number developed by Mr. Green is attributable to a minor difference in the approach used to jurisdictionally separate total Company depreciation expense. (Am. Ill. Ex. 7.2, pp. 6-7; Am. Ill. Ex. 7.3, p. 3).[33]

Staff witness Marshall, however, proposed an adjustment to reduce depreciation expense by approximately $108 million to reflect removal of the FAS 71 amortization. In support of her proposal, Ms. Marshall asserted that the "Commission found in Docket 92-0448 that no amortization of a depreciation reserve deficiency was appropriate for inclusion in an alternative regulatory plan" and that "the Company's analog switching account should be amortized over a five year period which has expired." (Staff Ex. 18.0, p. 14). Thus, Ms. Marshall argued, the Company's "recasting of this depreciation issue as a FAS 71 adjustment is nothing more than a second attempt to recover costs previously disallowed for rate making purposes." (Staff Ex. 18.0, p. 14).

Ms. Marshall's argument is unfounded. The decisions regarding the reserve deficiency and the amortization of analog switching referred to by Ms. Marshall went only to the determination of a revenue requirement for the purposes of establishing "going-in" rate levels under the Plan. Those decisions were expressly not intended to constrain the Company's capital recovery freedom. (1994 Order, at p. 133; Am. Ill. Ex. 1.5, p. 11). Pursuant to the conditions on which that freedom was granted, the Company has never sought, and does not now seek, to

[33] In accordance with FCC-approved procedures, the Company calculated the $606.108 million figure by subtracting total non-regulated expense from total company expense to derive a subject-to-separations amount, which was then jurisdictionally separated by primary plant or related account. (Am. Ill. Ex. 7.2, pp. 6-7; Am. Ill. Ex. 7.3, Sch. 5). Mr. Green, by comparison, first performed a jurisdictional separation of total expense (both regulated and non-regulated) by USOA account and then estimated a jurisdictional non-regulated amount. (Am. Ill. Ex. 7.2, pp. 6-7).

change either its rates, or the price cap formula, to reflect recovery of increased depreciation and amortization expenses over the level included in the "going-in" level of rates approved in the 1994 Order. (Am. Ill. Ex. 1.5, pp. 12-13). Accordingly, there is no basis for Ms. Marshall's allegation that the Company is seeking to "recover costs previously disallowed for ratemaking purposes." The issue arose in this case <u>only</u> because of the adjustments proposed by Staff and GCI to eliminate the FAS 71 amortization from the Company's 1999 income statement for purposes of establishing a "revenue requirement." A decision to "reinitialize" rates on that basis would have the effect of depriving the Company of the capital recovery freedom granted in the 1994 Order and, therefore, should be rejected. (<u>Id</u>.).

Ms. Marshall also alleged that the Company's adoption of an eight year amortization period is an "artificial device to assure consideration of the issue in the planned five year review of the [Plan]." (Staff Ex. 18.0, p. 15). Ms. Marshall presented no evidence to support this allegation. As Mr. Gebhardt explained, the eight year period was selected to recognize the financial impact of the write-down over a reasonable period of time and was fully supported by studies showing that assets such as electronic and digitally based consumer and professional products, computers and automobiles and light trucks lose all service value (less salvage) over a period of eight to eight and one-half years . (Am. Ill. Ex. 1.1, p. 105; Am. Ill. Ex. 1.5, p. 14). An eight year amortization period is also consistent with the FCC's adoption of an (i) eight year amortization period for expenses incurred to provide equal access and (ii) a ten year period for compensated absences. (Am. Ill. Ex. 1.5, p. 14).

For the reasons discussed above, Staff's proposal to eliminate the FAS 71 amortization should be rejected. As discussed in Section V.B.1., however, if Staff's proposed expense adjustment is adopted, it is imperative that a corresponding adjustment be made to the accumulated reserve for depreciation to reflect restoration to rate base of the value of the assets which were written down pursuant to the discontinuance of FAS 71. Failure to do so would unfairly flow through to ratepayers the entire benefit of the asset write-down -- a write-down which would not have occurred but for the adoption of price regulation and the related imposition on Ameritech Illinois of the entire risk associated with capital recovery.

c. GCI's Proposal

Mr. Dunkel proposed an adjustment to reduce the level of depreciation expense to \$382.40 million (GCI Ex. 9.9), a reduction in the Company's actual depreciation expense, as adjusted, of over \$225 million. Of this reduction, \$108 million represents that proposed elimination of the FAS 71 amortization amounts. For the reasons discussed above, the proposal should be rejected.[34] The remaining amount of the reduction (approximately \$117 million) reflects Mr. Dunkel's proposals to eliminate certain other amortizations and to calculate depreciation expense on the basis of theoretical depreciation rates calculated using FCC parameters last prescribed in 1995, rather than on the basis of the actual depreciation rates applied by the Company pursuant to its capital recovery freedom. Mr. Dunkel's "business-as-usual" regulatory approach to the calculation of depreciation expense completely negates the depreciation freedom granted by the Commission in the 1994 Order and should be rejected.

In support of his position, Mr. Dunkel argued that an analysis of the test year data must be made to determine whether it is "reasonable and representative of what is expected when the

[34] Mr. Dunkel argued that the "FCC has specifically ordered that the telephone companies cannot amortize FAS 71 for regulatory purposes." (GCI Ex. 8.0, pp. 45-46). The Company, however, is amortizing FAS 71 in the Illinois intrastate jurisdiction, pursuant to the freedom granted by this Commission, not in the interstate jurisdiction. (Am. Ill. Ex. 1.5, p. 14). Moreover, the FCC does permit a price cap regulated carrier to amortize a FAS 71 related depreciation reserve deficiency on the same conditions as that imposed on the Company in the 1994 Order, i.e., that any change in depreciation and amortization expense will not affect the price cap formula used to set rates. (Am. Ill. Ex. 1.5, p. 15).

rates that result from utilizing that test year will be in effect." (GCI Ex. 9.0, pp. 31-32). Mr. Dunkel, however, offered no evidence that the depreciation expense reflected in the 1999 operating income statement shown in Exhibit 7.3, Schedule 1 is not "representative." Instead, his position was that the Company's 1999 level of depreciation expense is unreasonable because it exceeds the amount of depreciation expense that would be calculated on the basis of a remaining life analysis of the type which is uniquely required by regulators (e.g., development of projection lives, survivor curves, historical analysis of retirements and so forth) and which has been the subject of endless regulatory scrutiny in the past. (Am. Ill. Ex. 1.3, pp. 99; Am. Ill. Ex. 1.5, pp. 22-23).

The intent of the 1994 Order, however, was to free the Company from precisely the kind of second-guessing and micromanaging of capital recovery proposed by GCI. The Company is now allowed to make the capital recovery decisions that competitive companies make everyday -- decisions which are not made on the basis of FCC-style depreciation studies of the type endorsed by Mr. Dunkel. Like competitive companies, the Company has made its depreciation decisions using generally accepted accounting principles (GAAP). (Am. Ill.. Ex. 1.3, pp. 99-100). GAAP does not prescribe the remaining life methodology used by Mr. Dunkel in his analysis. Rather, GAAP describes depreciation as a systematic and rational allocation process over the estimated useful life of the asset(s). (Am. Ill. Ex. 1.3, p. 107). The Company, in the exercise of its depreciation freedom under alternative regulation, fully adhered to GAAP. (Id.).

If the Commission were to require a rate reduction to reflect Mr. Dunkel's adjustments to depreciation expense, the effect would be to deprive the Company of its freedom to manage capital recovery within the constraints of the price index -- which was one of the core objectives of the 1994 Order. As previously discussed, this freedom was granted on the condition that the

Company would not seek to recover increased depreciation expense resulting from the exercise to its freedom through increases in non-competitive rates or adjustments to the price cap formula. By comparison, inherent in the traditional regulatory paradigm espoused by Mr. Dunkel is the principle that customers <u>are</u> responsible for full capital recovery. GCI completely ignores this principle. Instead, GCI apparently intends that Ameritech Illinois would continue to bear all the risk and that ratepayers would continue to enjoy the freedom from capital recovery responsibility which price regulation brought. Such a one-sided approach is fundamentally unfair and should be rejected. (Am. Ill. Ex. 1.3, pp. 99-100).

Moreover, Mr. Dunkel's analysis of the reasonableness of the Company's depreciation rates was flawed because it was based on a comparison of total depreciation expense, including the FAS 71 amortization, to depreciation expense calculated on the basis of FCC and ICC remaining life parameters which do <u>not</u> reflect FAS 71 amortization. As Mr. Gebhardt demonstrated, when the effect of the FAS 71 amortization is properly excluded, the resulting composite depreciation rate of 6.3% (Am. Ill. Ex. 1.6, p. 3) is not unreasonable as compared to rates developed using FCC and ICC parameters. (Am. Ill. Ex. 1.3, p. 105; Am. Ill. Ex. 1.5, pp. 28-29). In fact, that composite rate is virtually identical to the composite rate (6.2%) which would be produced by depreciation rates reflecting remaining lives at the low end of the FCC's authorized ranges.[35] (Am. Ill. Ex. 1.3, p. 105).

Mr. Dunkel cited the 1994 Order's statement that "any abuse [in the formulation and application of depreciation rates] will result in a reevaluation of the alternative regulatory plan pursuant to Section 13-506.1(e) of the Act." (GCI Ex. 9.0, p. 33). Contrary to Mr. Dunkel's

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[35] The FCC has adopted ranges of remaining service lives within which ILECs are free to adjust depreciation rates without the need to file detailed cost support. <u>See</u> <u>Report and Order in CC Docket No. 98-137</u> and <u>Memorandum Order in ASD 98-91</u>, FCC 99-397, CC Docket 98-137, ASD 98-91 (Dec. 17, 1999).

suggestion, however, the Company's adoption of the capital recovery policies which result in depreciation expense levels different from those which would result from depreciation studies of the type traditionally required for regulatory purposes is the very essence of depreciation freedom and cannot logically be deemed to be an "abuse" of that freedom. (Am. Ill. Ex. 1.3, pp. 99-100; Am. Ill. Ex. 1.5, pp. 23-24). As Mr. Gebhardt testified, Ameritech Illinois would be guilty of abusing its depreciation freedom only if it had violated GAAP principles or otherwise deliberately manipulated its depreciation practices. (Id.). There is no evidence of any such abuse. To the contrary, the evidence shows that the Company's composite depreciation rate (calculated with or without reflection of the FAS 71 amortization) is, for comparable major plant categories, below the composite depreciation rates of CLECs and IXCs whose depreciation practices are also unregulated and subject to GAAP. (Am. Ill. Ex. 1.1, pp. 108-09, Sch. 8; Am. Ill. Ex. 1.5, pp. 28-29). Accordingly, there is no basis for Mr. Dunkel's assertion that the depreciation practices of Ameritech Illinois are unreasonable or constitute an "abuse" of its capital recovery freedom. If anything, the comparison of the Company's composite rate to its competitors indicates that the Company's depreciation practices may be too conservative. (Am. Ill. Ex. 1.1, p. 109).

Furthermore, Mr. Dunkel's proposed adjustment to depreciation expense is attributable not only to the use of different depreciation rates, but also to his proposal to eliminate the FAS 71 amortization and certain other reserve deficiency amortizations. (GCI Ex. 9.9). Mr. Dunkel did not allege, nor is there any evidence to support an allegation, that these amortizations constitute an "abuse" of the Company's capital recovery freedom. (Am. Ill. Ex. 1.5, pp. 24-25). Mr. Dunkel erroneously asserted that the Company "abused" its depreciation freedom by not following the FCC's Part 36 jurisdictional separation rules. (GCI Ex. 9.0, pp. 33-34). In fact, however, the Company followed the FCC's separation rules, but made an unintentional error in the manner in which those rules were applied -- an error for which the Company made a correcting adjustment. (Am. Ill. Ex. 7.3, pp. 1-4). This error had nothing to do with the Company's reasonable exercise of its freedom to amortize the FAS 71 write-down over eight years and establish depreciation rates which do not rely on FCC regulatory conventions such as projection lives, curve shapes, and other parameters. (Am. Ill. Ex. 1.5, p. 25).

In an attempt to justify his proposal, Mr. Dunkel argued that the "observed" lives of assets for major accounts are longer than the "projection" lives adopted by the FCC for those accounts in 1995. (GCI Ex. 8.0, pp. 101-102). Mr. Dunkel's comparison of projection lives and observed lives was, however, misleading. Projection lives are intended to represent the average life expectancy of <u>new</u> additions to plant. (Tr. 1723). Observed lives, on the other hand, reflect retirements of plant assets which have already been in service for many years (Tr. 1724-26) and, therefore, do not fully reflect technological developments and other factors that shorten service lives. Accordingly, the mere fact that observed lives exceed the 1995 projection lives does not, contrary to Mr. Dunkel's suggestion, mean that the Company's projection lives have increased since 1995.

Mr. Dunkel also maintained that the Company had a reserve surplus at the beginning of 1999. (GCI Ex. 9.0, p. 50). That assertion, however, was based entirely on a calculation of a theoretical reserve using a formula which incorporates the same FCC remaining life parameters which Mr. Dunkel claims should be used to calculate depreciation expense. (Am. Ill. Ex. 1.5, p. 29; Tr. 1727-28). As Mr. Gebhardt testified, therefore, Mr. Dunkel's argument is circular: he used a calculation of a theoretical reserve "surplus" using his proposed service lives to support an argument that there is no reserve deficiency and, therefore, that the Commission should adopt Mr. Dunkel's proposed service lives. (Am. Ill. Ex. 1.5, p. 29). Because the Company does not rely (and is not required to rely) on the FCC's service lives and methods for purposes of setting intrastate depreciation rates, Mr. Dunkel's construct is of no value. (Id.).

Mr. Dunkel further argued that the 1999 amortization of Analog Circuit Equipment in the amount of $11.2 million should be eliminated. As Mr. Dominak testified, however, this amortization was authorized by the 1994 Order and reflects an actual expense which is properly reflected in the Company's reported financial results for 1999. (Am. Ill. Ex. 7.2, p. 8; Tr. 1169-73). Mr. Dunkel also proposed to disallow $32.1 million of "Other Freedom" amortizations. This amount represents amortization of a portion of the reserve deficiency resulting from the adoption of more realistic depreciation rates in 1994. (Am. Ill. Ex. 7.2, p. 8; Tr. 1074-75). Mr. Dunkel's proposal to eliminate that amortization is yet another example of GCI's improper attempt to negate the Company's capital recovery freedom.

For the reasons discussed, GCI's proposals with respect to depreciation and amortization expense should be rejected. If those proposals are adopted, however, it would necessitate offsetting adjustments with respect to capital recovery. This is because GCI's position implicitly assumes that the Commission had continued to exercise control over the Company's depreciation rates under the Plan. If the Company had remained under rate-of-return regulation, there would have been no write-down of assets and depreciation rates would have remained at an inadequate level. Under those circumstances, Ameritech Illinois would be proposing amortization of its reserve deficiency in this proceeding. (Am. Ill. Ex. 1.3, pp. 102-03). With the passage of time since Docket 92-0448, subsequent technological changes and increases in competitive activity, the need for corrective action would be even more urgent now than it was in 1994. (Id., p. 103).

The amortization plan which would be required to restore the Company's depreciation reserve to the necessary level would include the entirety of the 1994 write-down and the additional depreciation taken on the Company's remaining plant in service over the last five years, as compared to what Mr. Dunkel's proposed rates would have accomplished. (Am. Ill. Ex. 1.3, p. 103). This amounts to $1.1 billion, on an intrastate basis. A three-year amortization would be necessary at this time to (i) permit recovery of the Company's investment in a reasonable manner and (ii) put the Company in the same position that it would have been had it been permitted to manage its capital recovery as the Commission envisioned in 1994. (Id., pp. 103-04).[36] The annual intrastate expense effect would be $367.8 million. This amount would need to be subtracted from any so-called "overearnings" claimed by GCI. (Id.).

2. Directory Services

Staff and GCI recommend that the Commission impute $126 million of directory advertising revenues to Ameritech Illinois' regulated accounts. For the reasons discussed below, the proposed imputation should not be adopted.

a. History of the Issue

Ameritech Illinois has never been in the classified advertising business, never published the Yellow Pages[37] and never owned any Yellow Pages assets. Its employees have never sold yellow page advertising, and the Company has never been paid a percentage of advertising revenues by the Yellow Pages publisher. (Am. Ill. Ex. 1.3, pp. 112-114).

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[36] Because Staff is not contesting the Company's higher depreciation rates, the amortization amount required if rates were reinitialized on the basis of Staff's revenue requirement would include only the 1994 FAS 71 write-down, about $863.4 million on an intrastate basis. This translates to a $287.8 million annual expense effect over the next three years. (Am. Ill. Ex. 1.3, p. 104).

[37] The terms "classified directories" and "Yellow Pages directories" are used interchangeably in this Brief.

From before the turn of the last century until 1984, Reuben H. Donnelley Corporation ("Donnelley") published the Yellow Pages in Ameritech Illinois' service territory. Donnelley owned the assets and employed the sales and production personnel. Donnelley purchased listing information (names, addresses and telephone numbers of customers) and billing and collection services from Ameritech Illinois, as well as the right to co-bind its Yellow Pages with Ameritech Illinois' white page alphabetical directories. Because Ameritech Illinois exclusively owned, controlled and held the copyright in directory listings (so that no one could copy the white pages or co-bind white and yellow page listings without Ameritech Illinois' permission), the Company was able to negotiate a high price for the services it provided. Ameritech Illinois and Donnelley entered into a series of long-term agreements under which the Company designated Donnelley its official directory publisher, and Donnelley made substantial annual payments to Ameritech Illinois. (1994 Order, at p. 98; Am. Ill. Ex. 1.5, p. 36).

The Commission does not regulate classified advertising or the Yellow Pages and has never regulated Donnelley. The Yellow Pages are not subject to regulation because classified advertising does not fall within the definition of a "telecommunications service" under Section 13-203 of the Public Utilities Act, 220 ILCS 5/13-203. (The Yellow Pages do not involve the "transmittal of information, by means of electromagnetic, including light, transmission," nor are the Yellow Pages "facilities, apparatus and services . . . used to provide such transmission.").

The revenues the Company receives for providing directory listings and other services to directory publishers are included in Ameritech Illinois' regulated accounts pursuant to the "Incidental Activities" rule in the Uniform System of Accounts, 83 Ill. Admin. Code, Section 711.15. This Rule provides, in part:

> "a) This Part requires that cost allocation procedures reflect the existence of activities in each carrier which are accorded incidental accounting treatment and allowed to remain

> on the regulated books of the business. . . . "Incidental activities" include, but are not limited to, items such as land and building space rental, cable locating, and pole contract rental."

In 1984, Ameritech Corporation formed an unregulated subsidiary, Ameritech Publishing, Inc. ("API"), to engage in the directory publishing business on a consolidated basis in the five Ameritech states and elsewhere. In Illinois, API came into conflict with Donnelley, and federal court litigation ensued that included Ameritech Illinois. As a result of the negotiated settlement of that lawsuit, Donnelley and API formed a partnership under which they jointly participated in, and shared the profits from, the Yellow Pages. Also, as a part of the negotiated settlement, the parties entered into a ten year Directory Agreement with Ameritech Illinois under which the Company continued to receive payments and other benefits equivalent to what it had received under the prior agreement with Donnelley. Donnelley/API agreed to pay Ameritech Illinois a minimum of $75 million per year for listing information and billing and collection services, to co-bind Ameritech Illinois' white page directories, and to reimburse Ameritech Illinois' costs associated with its white page directory operations. The Agreement included a renewal clause under which Ameritech Illinois had the unilateral right to renew the Agreement for an additional five years (through the end of 1999). The Commission formally reviewed the new Directory Agreement and approved it as being in the public interest. (Am. Ill. Ex. 1.3, pp. 120-121; Order, Docket No. 84-0359 (Aug. 22, 1984); 1994 Order, at pp. 96, 98).

In 1990, Donnelley and API renegotiated their partnership agreement. Ameritech Illinois did not participate in those negotiations. As part of the negotiations, Ameritech Corporation guaranteed Donnelley that Ameritech Illinois would exercise its right to renew the Directory Agreement for the additional five years. (1994 Order, at pp. 96-97).

In the 1994 Order, the Commission concluded that Donnelley's insistence upon renewal of the Directory Agreement in 1990 demonstrated that the exclusive option had substantial value. The Commission concluded that Ameritech Corporation had wrongfully traded away Ameritech Illinois' valuable renewal option for the exclusive benefit of its unregulated subsidiary API. Therefore, for purposes of the test year, the Commission imputed an additional $51 million to the Company under the Directory Agreement (over and above the $75 million the Company already received). The Commission stated:

> "The Commission finds that during the 1990 negotiations which involved IBT's exclusive option to renew the directories agreement, IBT, Ameritech, and API failed to engage in arms length negotiations. Instead, Ameritech and API used IBT's option as bargaining leverage in negotiating an agreement that benefited only API – Ameritech's unregulated subsidiary. This was done to the detriment of IBT – Ameritech's regulated subsidiary. By diverting the contract revenues from IBT to API, Ameritech shareholders received a windfall by not having the revenues count towards IBT's revenue requirements." 1994 Order, at p. 101.

The Commission recognized that "it is difficult to determine exactly what IBT would have earned under the Directory Agreement had IBT used its bargaining leverage and participated in the 1990 negotiations." (Id., p. 102-103). Therefore, the Commission estimated what the Company would have earned based upon what Ameritech Illinois' sister companies— Ameritech Michigan, Ameritech Ohio, Ameritech Indiana and Ameritech Wisconsin-- were paid for their directory services, calculated on a per access line basis. The same per access line amount applied to the Company's access line count resulted in the $51 million imputation that the Commission used. (Id., p. 103).

On December 31, 1999, the five-year renewal period ended, and the 1984 Directory Agreement expired by its own terms. API informed Ameritech Illinois that the partnership had no desire to negotiate a comparable agreement for the future. (Am. Ill. Ex. 1.3, p. 110). Instead, API offered Ameritech Illinois its standard Listing and Directory Services Agreement that it already used with Ameritech Michigan, Ameritech Ohio, Ameritech Indiana, Ameritech Wisconsin, independent local exchange carriers ("ILECs"), and over 70 competitive local exchange carriers ("CLECs). (Am. Ill. Ex. 11.0, pp. 12-13). Under this Agreement API pays Ameritech Illinois the maximum rates set by the FCC for listing information (4¢ per initial listing and 6¢ per updated listing). (Am. Ill. Ex. 11.0, p. 7). In addition, in exchange for the exclusive right to place Yellow Page directories at Ameritech Illinois' public payphone locations and the referral of sales leads from customers who specifically inquire about directory advertising, API agreed to print and distribute alphabetical directories for the Company and to otherwise fulfill Ameritech Illinois' regulatory obligations under Section 735.180 of the Commission's Rules, 83 Ill. Admin. Code, Section 735.180. API provides the same service for its ILEC and CLEC customers. (Am. Ill. Ex. 11.0, pp. 12-13). API also signed a standard agreement with Ameritech Illinois for billing services at the same market rates Ameritech Illinois charges all customers.[38] (Am. Ill. Ex. 11.0, p. 13).

Michael Barry, API's Director of External Affairs, testified that the costs associated with fulfilling Ameritech Illinois' regulatory obligations substantially exceeded the value of the benefits API received from exclusive payphone placements and customer referrals.[39] (Id.).

In its 1999 Operating Income Statement, the Company reflected the expiration of the 1984 Directory Agreement at the end of 1999 as a known change and reduced operating

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38 Pursuant to Section 13-601 of the Act, neither the Listing Agreement nor the Billing and Collection agreement required Commission approval. 220 ILCS 5/13-601.

39 Mr. Barry testified that sales leads from the business office are extremely rare and are of little value because API obtains information on new customers through listing updates and would contact the customer anyway. The exclusive right to place directories at Ameritech Illinois' public payphones is of minimal value because of the decline in the number and use of payphones due to wireless alternatives, because location owners increasingly control the shelf space around public payphones, making exclusivity impossible, and because directories are constantly being removed and defaced at payphone locations. (Am. Ill. Ex. 11.0, p. 14). By contrast, the incremental costs associated with fulfilling Ameritech Illinois' white page directory obligations are significant due to the costs of printing and distributing the standalone Chicago white page directory (which produces no advertising revenue for API) and maintaining fulfillment centers to respond to customer requests for directories. (Id. at pp. 12-13).

revenues by $76.449 million . This amount represented the net of the revenues lost upon expiration of the Agreement less the revenues earned at market rates under the new Listing and Billing and Collection Agreements with API. (Am. Ill. Ex. 7.0, Sch. 1; Am. Ill. Ex. 7.1, Sch. 1; Am. Ill. Ex. 7.3, Sch. 1). Staff and GCI both recommended that in addition to these directory service revenues, the Commission should impute $126 million of directory advertising revenues to Ameritech Illinois' test year operating income.

b. Staff Provided No Rationale For Its Proposed Imputation

Staff witness Everson admitted that the sole basis for Staff's proposed imputation was the Commission's 1994 Order in Docket 92-0448/93-0239 (Consol.). (Tr. 801). Staff proposed simply to replicate the imputation in that docket (albeit at a $75 million higher rate) without any analysis of whether that imputation was still warranted. (Tr. 801).

Ms. Everson acknowledged that the Commission's 1994 Order imputed directory revenues only for the test year used in that docket, and said nothing about how long the imputation presumably should last. (Tr. 802-803). Furthermore, the 1994 Order imputed revenues under the 1984 Directory Agreement which expired by its own terms on December 31, 1999. Consequently, the Commission's 1994 Order is irrelevant to current circumstances and is not determinative of the issue in the present proceeding.

It is axiomatic that Commission decisions are not res judicata. Each case must be decided on its own facts. Mississippi River Fuel Corp. v. Illinois Commerce Commission, 1 Ill. 2d 509, 513, 116 N.E. 2d 394, 396-397 (1953). Additionally, the Commission may not rely upon evidence in a prior docket for its decision in a pending proceeding unless the evidence is introduced into the current record. The Commission's order must be based exclusively on the record evidence presented in this case. 220 ILCS 5/10-103 ("any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case"); Business and Professional People for the Public Interest v. Illinois Commerce Commission, 136 Ill. 2d 192, 227, 555 N.E. 2d 693, 709 (1989); Pullman Co. v. Illinois Commerce Commission, 390 Ill. 40, 46, 60 N.E. 2d 232, 235 (1945). Staff could not introduce the evidence from the prior case because all of the facts have changed, and Staff did not offer any new evidence. Consequently, Staff's proposed imputation is without evidentiary support in the record.

Ms. Everson acknowledged that the basis for the Commission's 1994 imputation was that Ameritech Illinois could have increased its annual revenues under the Directory Agreement by $51 million if it had engaged in arm's length negotiations with Donnelley and API. (Tr. 806). Ms. Everson further acknowledged that for purposes of determining whether there should be any new imputation following the final expiration of the Directory Agreement, "it could be" appropriate to consider the level of payments the Company would be able to achieve in arm's length negotiations after that expiration. (Tr. 807). The Company presented undisputed testimony that its new agreement with API is equally as favorable to the Company as the agreements that over 70 CLECs and one ILEC have negotiated at arm's length with API. API is paying Ameritech Illinois at the maximum rate prescribed by law for listing information and at market rates for billing and collection services. (Am. Ill. Ex. 11.0, pp. 7, 12-13). No directory publisher was identified that pays more than API. Ms. Everson failed even to consider this evidence.

Ameritech Illinois also presented evidence showing that it no longer possessed any bargaining power in arm's length negotiations that would induce a directory publisher to make substantial directory payments to the Company. The changes that wiped out this bargaining power included (i) the loss of Ameritech Illinois' copyright in directory listings, which made it possible for any publisher to publish an alphabetical directory and co-bind it with its yellow pages without permission from, or payment to, Ameritech Illinois; (ii) the prohibition on discrimination between directory publishers, which took away Ameritech Illinois' ability to provide premium listing services to a preferred publisher; and (iii) the fixed, maximum rates set by the FCC for directory listings, which took away any incentive for any publisher to pay Ameritech Illinois additional charges for listing services. (Am. Ill. Ex. 1.5, pp. 47-50). Unlike the situation in 1990, Ameritech Illinois' loss of bargaining power in 1999 was not due to an improper act by Ameritech Corporation, which would justify imputation. Rather, Ameritech Illinois' loss of bargaining power was due to public policy changes implemented by Congress and the courts. Staff ignores these public policy changes and bases its proposed imputation on out-of-date facts that do not apply to present circumstances.

The 1994 Order does not support imputation in the present case for another reason. In 1994, the Commission estimated the level of revenues that Ameritech Illinois should have been able to obtain through arm's length negotiations based upon the average revenues, calculated on a per access line basis, that Ameritech Illinois' sister operating companies were then receiving for directory services. (1994 Order, at p. 103). Today, those companies operate under the same limitations and agreements as Ameritech Illinois and enjoy the same level of payments. (Am. Ill. Ex. 11.0, p. 13). Under the Commission's rationale used in 1994, there should be no imputation in the present case.

The Commission's rules also militate against Staff's proposed imputation. Commission Rule 310.60, for example, waives the requirement for approval of an affiliate contract (where such approval is still required) in the case of:

> "Contracts or arrangements made in the ordinary course of business for the purchase of services, supplies, or other personal property at prices not exceeding the standard or

prevailing market prices, or at prices or rates fixed pursuant to law." 83 Ill Admin. Code, Section 310.60.

API is paying Ameritech Illinois the maximum rate required by law for listing services and the standard rate paid by all customers for billing and collection services. Under the Commission's rules, these payments are per se reasonable.

For all these reasons, Staff's proposed imputation is without substance, without merit and would be contrary to law, if adopted.

c. GCI Offered A Variety Of Reasons For Imputing Directory Advertising Revenues, None of Which Have Merit

GCI witness Smith's principal rationale for imputation appeared to be his belief that the Commission regulates the Yellow Pages and has discretion to allocate to Ameritech Illinois whatever portion of API's advertising revenues it deems appropriate. Mr. Smith based his belief on the Commission's statement in the 1994 Order that "The Commission has always included revenues from IBT's Yellow Pages advertising in the calculation of the Company's revenue requirements." (1994 Order, at p. 101). Mr. Smith also cited the appellate court's affirmance of the Commission's order.

As pointed out by Mr. Gebhardt, Mr. Smith has read the Commission's statement out of context. (Am. Ill. Ex. 1.5, pp. 35-38). Ameritech Illinois has never received any advertising revenues. The full text of the Order makes clear that only Ameritech Illinois' contract revenues for providing directory services to Yellow Pages publishers ever have been included in Ameritech Illinois' regulated accounts. (Id.). As to the appellate court decision, the court explained that the Commission regulated "transactions" between Ameritech Illinois and its affiliates, not that the Commission regulated API or the Yellow Pages. Illinois Bell Telephone Company v. Illinois Commerce Commission, 283 Ill. App. 3d 188, 669 N.E. 2d 919, 931 (2d

Dist. 1996). Thus, contrary to Mr. Smith's impression, the Commission does not regulate the Yellow Pages or API.

Mr. Smith also rationalized that Ameritech Illinois could publish its own Yellow Pages, and by choosing to enter the publishing business through API, Ameritech Corporation had improperly diverted advertising revenues away from ratepayers. Mr. Smith overlooks that the decision that API, rather than Ameritech Illinois, would enter the directory publishing business was made in 1984 with the explicit approval of the Commission. The 1984 Directory Agreement was a multi-party agreement including Donnelley, API and Ameritech Illinois. The Agreement spelled out the respective roles and responsibilities of each party and the revenues and profits each would receive. Under the Agreement, Donnelley and API would split directory revenues and profits between themselves. Ameritech Illinois would share in neither the risks nor the profits of the business, but would receive guaranteed payments of at least $75 million per year for as many as fifteen years in exchange for providing listing information and billing and collections services. (Am. Ill. Ex. 1.3, pp. 120-121; Am. Ill. Ex. 1.5, p. 43). The Commission's Order described these arrangements and approved the Directory Agreement as being in the public interest. Order No. 84-0359 (Aug. 22, 1984). The Commission reviewed directory operations again in 1994, and did not find fault with Ameritech Illinois' limited role as a contract provider of directory services. Mr. Smith's rationale is presented 16 years too late.

Another reason why Ameritech Illinois' failure to enter the directory publishing business cannot be used as a ground for imputation is that Ameritech Illinois has no legal obligation to publish the Yellow Pages or enter the classified advertising business. The Yellow Pages are not a "telecommunications service" under Section 13-203 of the Public Utilities Act; therefore, Ameritech Illinois has no obligation to provide them. The Commission's Rules also do not, and cannot, require Ameritech Illinois to publish Yellow Pages directories. Ameritech Illinois cannot be penalized through imputation for not doing what it has no legal responsibility to do.

Finally, if Ameritech Illinois were to enter the directory publishing business, it would operate directory publishing on an unregulated basis as a separate line of business not subject to Commission regulation. Ratepayers would have no claim on the unregulated division's advertising revenues, just as they have no claim on Donnelley's or API's advertising revenues.

Mr. Smith and Dr. Selwyn cited a decision by the Washington Utilities and Transportation Commission, Docket No. UT-980948, Order Denying Petition, July 2000, that they contended supported imputation in Illinois. Because the law and facts were different in Washington than in Illinois, Mr. Smith and Dr. Selwyn are mistaken. In Washington, Pacific Northwest Bell ("PNB") had always published the Yellow Pages and reported all of the revenues and expenses in its regulated accounts. At divestiture, PNB transferred its advertising and publishing business to an unregulated affiliate at less than fair value. To obtain Commission approval of the transfer, PNB guaranteed the continuation of the directory revenue stream to ratepayers. When PNB reneged on the guaranty, the Commission imputed a portion of directory advertising revenues to PNB's regulated accounts to keep ratepayers whole. In Illinois, Ameritech Illinois has never published the Yellow Pages or included advertising revenues and expenses in its regulated books of account. There was no transfer of Yellow Pages assets. PNB and Ameritech Illinois were polar opposites in their relationship to the Yellow Pages. For that reason, the Washington decision is not analogous to the circumstances in Illinois and does not support imputation.

GCI witness Dunkel adopted a different approach to the Yellow Pages than Mr. Smith. Mr. Dunkel argued that independent directory publishers would be willing to pay Ameritech

Illinois a "publishing fee" in exchange for the use of the Ameritech name and "endorsement" on their directories, and Ameritech Illinois had failed to capture these "publishing fees" in its new agreement with API.

Mr. Dunkel's argument assumed that Ameritech Illinois owned the "Ameritech" name, or at least had authority to license third parties to use it. This is not the case. Ameritech Corporation owns the Ameritech name, and only Ameritech Corporation (or SBC Communications) has authority to license its use by a third party. (Am. Ill. Ex. 1.3, p. 123). Furthermore, API has used the Ameritech name in directory publishing since 1984 and will continue to use it in the future. (Am. Ill. Ex. 11.0, p. 10). Even Ameritech Corporation could not license a second directory publisher to use the same name in the same territory because it would cause confusion among customers and the public.

In prior proceedings, the Commission has disallowed all of Ameritech Illinois' operating expenses associated with building brand identity and the Ameritech image on the ground that these expenditures benefited only shareholders. (Am. Ill. Ex. 11.0, p. 10). Since the Ameritech name is not owned or controlled by Ameritech Illinois, is not a regulated asset, and was not paid for by ratepayers, the Commission has no authority to impute revenues based upon how the name is used.

It also is interesting to note that while Mr. Dunkel was glib in his opinions, he was unable to identify a single directory publisher that was paying a "publishing fee" or a single ILEC that was receiving a "publishing fee" solely for the ILEC's "endorsement" and the use of its name. (Am. Ill. Ex. 1.5, pp. 50-54). In response to discovery, Mr. Dunkel referred to the Washington Utilities and Transportation Commission order discussed earlier and to a recent rate decision by the Regulatory Commission of Alaska. However, in Washington, PNB did not receive a publishing fee from a directory publisher for using PNB's name. To the contrary, PNB was the directory publisher. The Washington case had nothing to do with the payment of publishing fees for the use of PNB's name or endorsement. The same is true for the Alaska decision. The Matanuska Telephone Association ("MTA") was the Yellow Pages publisher. Rather than the directory publisher paying MTA a publishing fee, MTA paid its directory contractor a percentage of advertising revenues for the directory services it provided to MTA. (Am. Ill. Ex. 1.5, p. 53; Gebhardt Cross Ex. 6).

Mr. Dunkel referred to a 1992-1994 survey by NARUC regarding state regulatory treatment of directory advertising revenues. (Gebhardt Cross Ex. 6). In the survey, every state commission except North Dakota indicated that it included directory advertising revenues for ratemaking. This is not surprising since at the time of divestiture, every Bell company except Illinois Bell published their own Yellow Pages, and their revenues and expenses were included in regulated accounts. (Am. Ill. Ex. 1.3, p. 116). However, the survey has no probative value for Mr. Dunkel's contention that independent directory publishers pay ILECs "publishing fees" for their endorsement and use of their names. Most Yellow Pages carry a telephone company's name because the telephone companies publish them, not because an independent publisher is paying for the use of the telephone company's name.[40]

Mr. Dunkel's reference to the Directory Revenues sub-account of the Uniform System of Accounts also proves nothing. This account includes all types of directory revenues, including

[40] It is interesting to observe the Illinois Commerce Commission's response to the survey. While the Commission answered yes to the question whether it included directory advertising revenues for ratemaking, it responded NA (not applicable or not available) to all of the questions asking for the amount of directory advertising revenues included for ratemaking. It is not clear whether the Commission included contract revenues for providing directory services within the category of "directory advertising" revenues, but if it did not, the reason the Commission responded NA was that, at least for Ameritech Illinois, there were no directory advertising revenues to consider. The footnotes to the NARUC report also reveal that state commissions are all over the map in their treatment of directory advertising revenues. (Gebhardt Cross Ex. 6).

bold face listings, the sale of additional directories and even charges for non-list and non-pub numbers. What would be relevant would be evidence of a specific company that had booked "publishing fees" to the account that were paid in exchange for use of the telephone company's name and endorsement. Mr. Dunkel was unable to provide this evidence.

While Mr. Dunkel offered conjecture that independent directory publishers would pay "publishing fees" for the use of Ameritech Illinois' endorsement and name, Mr. Barry provided direct evidence of how directory publishers view this issue in the real world. Mr. Barry explained that directory publishers are indifferent to the telephone company's endorsement. (Am. Ill. Ex. 11.0, pp. 8-9). API does not pay a publishing fee to, or use the name of, any of the ILECs, CLECs or Ameritech companies with which it contracts because it has no business reason to do so. (Am. Ill. Ex. 11.1, pp. 2-3).

In summary, not only is Mr. Dunkel's argument predicated upon rights in the Ameritech name that Ameritech Illinois does not have, but it is also based upon facts which have not been shown to exist in the real world.

Another flaw in Mr. Dunkel's rationale is that while he conjectured that directory publishers would pay "publishing fees" for the use of Ameritech Illinois' name and endorsement, he provided no evidence of what the level of those publishing fees would be.[41] Nor does Mr. Smith. The Commission cannot impute "publishing fees" to Ameritech Illinois when the only direct evidence in the record (from Mr. Barry) is that use of the telephone company's name and endorsement has no value to a directory publisher. Certainly, GCI has shown no nexus between the alleged "publishing fees" and its proposed $126 million imputation.

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[41] Mr. Dunkel, perhaps, should be forgiven for this lapse since there apparently is no precedent in the real world for the arrangement he has postulated.