

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company	)	
AT&T Communications of Illinois, Inc.	)	
CoreComm Illinois, Inc.	)	
Covad Communications Company	)	
MCI WorldCom Communications, Inc.	)	
McLeod USA Telecommunications Services)	)	Docket No. 00-0592
Inc.	)	
NEXTLINK Illinois, Inc.	)	
Northpoint Communications, Inc.	)	
Rhythms Netconnections and Rhythms	)	
Links, Inc.	)	
21 <sup>st</sup> Century Telecom of Illinois, Inc.	)	
Ushman Communications, Inc., and	)	
Sprint Communications Company L.P.	)	
d/b/a Sprint Communications L.P	)	
	)	
Joint Submission of the Amended Plan	)	
of Record for Operations Support	)	
Systems	)	

**COVAD COMMUNICATIONS COMPANY'S  
INITIAL BRIEF ON REHEARING**

(Non-Proprietary Version)

Covad Communications Company ("Covad") hereby files its Initial Brief on Rehearing and requests that the Commission reaffirm its January 2001 Order requiring Ameritech to provide CLECs with loop makeup information on up to 10 loops available to serve a particular end user and to allow CLECs to identify an available loop for provisioning.<sup>1</sup> In addition, Covad requests the Commission correct the erroneous legal

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<sup>1</sup> On June 7, 2001, Covad and Ameritech reached a settlement regarding the DSL loop qualification issue (Issues 29/31) on rehearing. Ameritech subsequently reneged on its agreement. By filing its briefs in this proceeding, Covad does not waive its rights to enforce the June 7, 2001 agreement between Covad and Ameritech.

conclusion in its January 2001 Order that CLECs are not entitled under federal law to direct, read-only access to Ameritech's OSS.

## **INTRODUCTION**

Covad is a competitive local exchange carrier (CLEC) that provides high speed internet and network access utilizing digital subscriber line (DSL) technology. To provide such services, Covad and other CLECs must rely on various aspects of Ameritech's pre-ordering and ordering OSS which allow them to examine loop makeup information during the pre-ordering process and submit orders for xDSL capable loops. As not every loop can support xDSL services, one of the most important pre-ordering functions for xDSL providers is loop qualification. Through loop qualification, CLECs such as Covad can determine the type of DSL service that can be provided to the end user.

Under established law, CLECs must be able to access the underlying loop qualification information so that "the requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer." UNE Remand Order ¶ 428. Ameritech's current system, however, falls far short of meeting this legal obligation. Ameritech's pre-ordering and ordering processes do not allow CLECs to make their own independent judgment about whether those loops are suitable for the services CLECs seek to provide. Indeed, every step of the way Ameritech – rather than the CLEC – determines what loop will either be examined by the CLEC during the pre-ordering loop qualification process or be provisioned to the CLEC upon receipt of the CLEC's order. As discussed below, Ameritech cannot restrict CLEC

access to loop information on the grounds that it selects the “optimal” loop and is capable of making provisioning decisions on the CLECs’ behalf.

**I. CLECs REQUIRE ACCESS TO LOOP INFORMATION AVAILABLE IN AMERITECH’S OSS SO THAT CLECS CAN DETERMINE WHETHER THEY CAN PROVIDE A PARTICULAR DSL SERVICE TO AN END USER.**

In this proceeding, CLECs seek access to pre-ordering and ordering features of Ameritech’s OSS. Under federal law, CLECs are entitled to access Ameritech’s OSS as an unbundled network element to ensure that they have a meaningful opportunity to compete. To do so, CLECs may obtain loop information that exists anywhere within the ILEC’s back office and can be accessed by any of the ILEC’s personnel so that each CLEC can exercise its independent judgment about whether a loop is capable of supporting a particular type of xDSL service. As discussed below, the record demonstrates that Ameritech’s OSS has loop information available for 100% of the loops available in its network. As that information exists in Ameritech’s back office, CLECs are entitled to such information under existing federal law.

**A. ILECs Must Provide CLECs With Access to All Loop Information In Its OSS.**

Under well-established law, Ameritech must provide CLECs with unbundled access to its OSS. Because this case involves an established network elements – OSS – the Commission cannot undertake a “necessary and impair” analysis. Indeed, if the Commission were to do so, it would be tantamount to removing OSS from the list of unbundled network elements on a state-by-state basis, which would be inconsistent with the goals of the 1996 Act. Accordingly, any application of the “necessary and impair” standard as part of this rehearing would be redundant and legally erroneous.

**1. As OSS Is Already An Unbundled Network Element, the “Necessary And Impair” Standard Does Not Apply Here.**

The “necessary and impair” standard applies only when the FCC considers whether competitors must have access to a new “network element.” 47 U.S.C. § 251(d)(2). Here, Covad seeks access to Ameritech’s Operations Support Systems (OSS) – an existing network element.

Under federal law, competitors have been entitled to unbundled access to an ILEC’s OSS functions, consisting of “pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC’s databases and information,” since the 1996 Act. 47 C.F.R. § 51.319(g). The FCC in its UNE Remand Order specified that “the OSS element includes access to all loop qualification information contained in any of the ILEC’s databases and other records.” Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, rel. Nov. 5, 1999 ¶ 426 (“UNE Remand Order”).

The FCC already applied the “necessary and impair”<sup>2</sup> standard in the First Report and Order and the UNE Remand Order when it found that CLECs would be impaired without access to an ILEC’s OSS as an unbundled network element. UNE Remand Order at ¶¶ 421-437. In examining whether OSS should be made available to CLECs as an unbundled network element, the FCC recognized that CLECs did not have any alternatives for the information and functions housed in the ILEC’s OSS. Indeed, as the FCC observed, “[t]he incumbents’ OSS provides access to *key information* that it

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<sup>2</sup> The “necessary” standard only applies “when there is a serious question of whether access to the element will infringe upon the incumbent’s intellectual property.” UNE Remand Order at ¶ 47. Accordingly, as the FCC found, the “necessary” standard does not need to be invoked when considering OSS issues. See UNE Remand Order at ¶ 432.

*unavailable outside the incumbents' networks and is critical to the ability of carriers to provide . . . service*” and accordingly required ILECs “to offer unbundled access to their OSS nationwide.” UNE Remand Order, ¶ 433 (emphasis added). Third party vendors and CLECs “cannot provide a sufficient substitute for the incumbent LECs underlying OSS because *incumbent LECs have access to exclusive information and functionalities needed to provide service.*” UNE Remand Order, ¶ 434 (emphasis added). Thus, because there were no alternatives to the ILEC’s OSS for key information required by CLECs to provide service, the FCC ordered ILECs to provide unbundled access to their OSS.

The Commission, therefore, cannot apply the “necessary and impair” standard to this proceeding consistent with requirements of the 1996 Act. The FCC has already found OSS to be an unbundled network element. State commissions cannot remove network elements from the ILEC’s unbundling obligations under the 1996 Act. UNE Remand Order at ¶ 157. Yet, if the Commission applied the “necessary and impair” standard here and found that Ameritech need not make available all its OSS functions to CLECs, it would be tantamount to this Commission removing Ameritech’s OSS from the federal list of unbundled network elements.

In the alternative, even if Commission were to apply the “necessary and impair” analysis (which it cannot do consistent with existing law), the Commission must reach the same result – Covad and other CLECs are impaired without access to Ameritech’s OSS functions. In the UNE Remand Order, the FCC detailed the “impair” analysis, which required the Commission to examine whether a CLEC’s “ability to offer a telecommunications service in a competitive manner is materially diminished in value

without access” to certain network elements, including OSS. UNE Remand Order at ¶ 51. In applying the “impair” analysis, the Commission considered the totality of the circumstances to determine “whether an alternative to the incumbent LEC’s network element is available in such a manner that the requesting carrier can realistically be expected to actually provide service using the alternative.” UNE Remand Order at ¶ 63. This analysis requires an examination of alternatives “available through both self-provisioning and from third-party suppliers and whether these “alternatives are available as a practical, economic, and operational matter.” UNE Remand Order at ¶ 62.

As the record establishes, a CLEC’s ability to provide particular DSL services depends on the technical characteristics of the loop. (Covad Ex. 1.0 (Carter Rehearing Testimony) at 9). Because not every loop can support xDSL services, it is critical for CLECs who seek to provide DSL services to Illinois consumers to have access to loop information and to select the loop that will best support the service it seeks to offer. (Covad Ex. 2.0 (Szafranec Rehearing Testimony) at 2-3).

Such pre-ordering (loop information) and ordering (loop identification) functions can only be supported by Ameritech’s OSS. It is undisputed that there are no viable alternatives for CLECs to obtain the loop information and ordering functions necessary to provide DSL service to Illinois consumers without access to Ameritech’s OSS. As only Ameritech has access to exclusive information and functionalities needed to provide service, the CLECs have no choice but to rely on Ameritech’s OSS. For example, CLECs cannot turn to third party vendors to obtain information on loops in Ameritech’s network; nor can CLECs generate such loop information themselves. Similarly, CLECs cannot turn to a third party vendor to select an available loop in Ameritech’s network for

ordering and provisioning. In sum, access to an Ameritech's OSS is a precondition to Covad and other CLECs providing service because they must use the ILEC's OSS to pre-order and order unbundled network elements such as xDSL capable loops.

Finally, the 1996 Act's "necessary and impair" standard does not apply if a state is considering whether to adopt additional "requirements" (rather than new network elements), or (2) whether to require additional requirements or additional network elements pursuant to state law authority. In the latter case, a state may adopt any requirement that would "further competition" so long as that requirement is "not inconsistent" with the 1996 Act. 47 U.S.C. § 261. Accordingly, the Commission cannot apply the "necessary and impair" standard to the issues in this case.

**2. The Kansas/Oklahoma 271 Order does not require the application of the "necessary and impair" standard.**

In its application for rehearing, Ameritech claimed that, prior to requiring Ameritech to provide CLECs with loop makeup information on multiple loops, the FCC's Order In the Matter of Joint Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, rel. Jan. 22, 2001 ("Kansas/Oklahoma 271 Order"), requires this Commission to embark upon and complete the "necessary" and "impair" analysis under the Act. Tellingly, Ameritech fails to cite anywhere in the Kansas/Oklahoma 271 Order where the FCC requires that a state commission apply the "necessary" and "impair" standard. Nor could it do so. Indeed as discussed above, the FCC already applied the necessary and impair standard and determined that an ILEC's OSS, including all pre-ordering, ordering, maintenance and

repair, and billing functionality, constitutes an unbundled network element that must be made available to CLECs. Thus, the Kansas/Oklahoma 271 Order does not mandate any application of the “necessary and impair” analysis.

**B. The Loop Information At Issue Exists In Ameritech’s Databases and Is Essential to Covad and Other CLECs Ability To Provide xDSL Services to Illinois Consumers.**

CLECs are entitled to access any loop information that exists in Ameritech’s databases or back office and that is available to any ILEC employee “regardless of whether the retail arm of the incumbent has access to the underlying loop qualification information.” UNE Remand Order, ¶ 430. The record on rehearing demonstrates that the loop information requested by CLECs exists in Ameritech’s OSS. Where, as here, loop information exists in an ILEC’s OSS, CLECs cannot be denied access to such information that it needs to provide service on the grounds that the ILEC’s retail arm (or data affiliate) does not have access to such information. Id.

**1. The loop information sought by Covad and other CLECs exists in Ameritech’s OSS.**

It is undisputed that loop information on multiple loops exists within Ameritech’s OSS. Tellingly, Ameritech has never claimed that the loop information that Covad seeks is not available in its OSS or other databases. Nor could it as Ameritech – in the ARES system -- has actual loop makeup information for 100% of its loops (Staff Cross Ex. 7, Covad Data Request 4; Tr. at 1777).

Indeed, the record establishes that Ameritech’s systems can return loop makeup information on multiple loops. For example when a CLEC makes a loop qualification

request today, LFACs, when queried on an address level, returns complete information on up to two loops. (Tr. at 1775). Mr. Zills testified that:

When loop makeup exists, when the query is made at the address level, LFACS reports back all of the information relevant to that loop, all of the attributes of the loop, the cable impair, the serving terminal, the customer address, and other attributes.

(Tr. at 1778). In addition, LFACs returns a “loop makeup flag” that reports back to Ameritech’s other systems that loop makeup information exists for the particular loop. In addition, LFACs currently returns partial information, including circuit id information, on up to 50 loops when queried at the address level. (Tr. at 1776). In particular, Ameritech \*\*\* **BEGIN CONFIDENTIAL**

**END CONFIDENTIAL\*\*\*** conduct multiple queries using the loop's identifier to generate and examine loop information for multiple loops before providing CLECs with loop information on Ameritech's preferred loop. In sum, when LFACS returns information to Ameritech's other systems it provides information on more than one loop and identifies each loop either by specific circuit id or by another identifier. In all cases, Ameritech's systems can provide actual loop makeup on the loops in Ameritech's network. Accordingly, there is no basis to deny CLECs access to the information housed in Ameritech's OSS.

**2. CLECs cannot be limited to the information sought by Ameritech's data affiliate.**

Under existing law, CLECs are entitled to loop qualification information that exists within Ameritech's systems, *regardless of whether Ameritech's retail arm has access to the underlying loop qualification information*. CLECs cannot be limited to only the information available to Ameritech's data affiliate or its retail operations. Thus,

Ameritech's claims that its data affiliate and CLECs are similarly situated and receive the same loop qualification information is a red herring.

Moreover, while Ameritech claims that its data affiliate and CLECs have identical access to loop makeup information, the record belies Ameritech's statements. For example, Mr. Coehlo testified under oath that "in the case of a manual loop request the requestor identification is suppressed and not presented to the person fulfilling the request. In this way the loop qualification system is completely blind to the source of each request." (Coehlo Direct Testimony at 7). Mr. Coehlo's representations to this Commission, however, were not true. As Ameritech was subsequently forced to admit, Ameritech today does know whether AADS or another CLEC has submitted a particular request for manual loop makeup. (Tr. at 1689). There is similarly no record support for any claim by Ameritech that AADS and CLECs receive the exact same manual loop information. In his testimony, Mr. Mitchell responded to the following question:

- Q. Is the actual, archived actual or manual loop information that Ameritech Illinois provides to a CLEC the same information that it would provide its advanced services affiliate (Ameritech Advanced Data Services, or AADS)?
- A. Yes. The information provided via loop qualification is precisely the same mechanized information that Ameritech Illinois provides to its advanced services affiliate for its operations. . . ."

While questioned about whether CLECs and AADS have access to the same manual loop information, Mr. Mitchell's glaringly omits any statement that AADS and CLECs in fact receive the same manual loop information. \*\*\***BEGIN**

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In any event, Covad and other CLECs are entitled to any loop information in Ameritech's OSS and cannot be limited to the information retrieved or sought by AADS.

**3. Access to loop information housed in Ameritech's OSS is critical to Covad's ability to compete.**

Covad and other CLECs providing xDSL service require loop information to determine whether they can offer service to a particular customer and to order the UNE loop necessary to offer that service. (Covad. Ex. 1.0 (Carter Rehearing Testimony) at 2). Covad and other CLECs offer a wide variety of xDSL services such as HDSL, IDSL, ADSL, RADSL. (Covad Ex. 1.0 (Carter Rehearing Testimony) at 3; Covad Ex. 2.0 (Szafraniec Rehearing Testimony) at 2). As loops with different characteristics will support different DSL services, CLECs must be able to obtain loop information on multiple loops to determine what DSL services may be offered to a particular Illinois consumer. In addition, if a CLEC determines that a particular loop can best support the service it intends to offer, it should be able to identify the loop for provisioning. CLECs such as Covad can move from the pre-ordering process (loop qualification) to the ordering process in a matter of minutes. By doing so and identifying its desired loop, the

CLEC maximizes the CLEC's ability to provide the xDSL service desired by the end user.

Ameritech claims, however, that information on multiple loops and the ability to identify a desired loop are not critical to a CLEC's ability to provide xDSL service. Ameritech apparently believes that a CLEC does not need this information because (1) Ameritech selects the "optimal loop" or "preferred loop" to fill the CLEC's request, and (2) Ameritech already provides sufficient information from which a CLEC can decide whether to provide xDSL service.

The record reveals the folly of Ameritech's claims. First, Ameritech claims that it does not provide retail xDSL services. Yet, Ameritech believes that it – rather than a xDSL provider – can select the "optimal" or "preferred" loop for any type of xDSL service in both the pre-ordering and ordering stage. As the FCC's orders recognize, CLECs, rather than Ameritech, are in the best position to determine what loop can support the xDSL service it intends to provide and to decide what information will be relevant to their analysis. UNE Remand Order at ¶ 428. For that reason, Ameritech cannot act as a gatekeeper, preventing Covad and other CLECs from offering the widest variety of services by purporting to provide the "optimum" loop to Covad without giving Covad and other CLECs the opportunity to determine if another loop would better support the service it seeks to offer. (Covad Ex. 1.0 (Carter Rehearing Testimony) at 4).

During the rehearing Ameritech touted the value to CLECs of completing a loop qualification request prior to placing an order. As Ameritech's witness John Mitchell testified:

A loop qualification request is highly recommended prior to a CLEC submitting a request for a loop. By providing access in pre-

ordering to loop makeup information, Ameritech Illinois ensures that every CLEC has the unrestricted opportunity to decide whether to provide xDSL services to its end users, the ability to select a particular xDSL based technology to offer, and the information necessary to order such services.

(Mitchell Rehearing Direct Testimony at 10, lines 13-17). Yet, Ameritech's loop qualification and loop ordering process does not allow CLECs the opportunity to decide whether to provide xDSL services to its end users or the ability to select a particular xDSL based technology to offer as Ameritech claims. As Ms. Carter testified:

Ameritech now acts as a gatekeeper, providing only select loop makeup information and then assigning a facility to Covad based on its unilateral determination as to which facility is "optimum for Covad. This is no better than if Covad had no access to loop makeup information at all. What is the use of receiving loop makeup information if Covad has no way of knowing if the loop it is going to get from Ameritech is the same loop for which Ameritech provided loop makeup information. This is not merely speculation – Ameritech's own witness concedes that the loop that Covad gets from Ameritech is not necessarily the loop that Ameritech provided loop makeup information on.

(Covad Ex. 1.0 (Carter Rehearing Testimony) at 6).

Ameritech's current loop qualification and ordering process fails CLECs as it artificially restricts CLECs to information on a single loop. As a result, CLECs lack access to all the information with which to make an informed decision as to whether it can provide xDSL service to an end user and what xDSL services can be offered to a particular end user. In addition, Ameritech's current system does not allow CLECs to identify a loop in some manner to maximize the chance that Ameritech will provision the loop best suited to CLEC's service needs. Without such a system CLECs cannot be assured that the loop necessary to provision the service requested the consumer will be available. (Covad Ex. 1.0, (Carter Rehearing Testimony) at 5).

During the initial phase of this arbitration, Ameritech repeatedly claimed that CLECs did not need access to loop makeup information on multiple loops available to serve a particular end user because Ameritech's current process selected the "optimal" loop for the CLEC to examine. Yet, the record on rehearing reveals that Ameritech's representations to this Commission during the October 2000 hearing were not accurate. Indeed, rather than select the "optimal" xDSL loop for CLEC's to examine during the pre-ordering, loop qualification process, Ameritech's systems simply selected the first one generated by its query. (Tr. at 1591, Derrick Hamilton). As Ameritech's witnesses have admitted, Ameritech's selection process does not necessarily select the most optimal xDSL capable loop and in fact may choose a loop that requires conditioning even though another loop is available at the same address that does not require conditioning. (Tr. 839-842).

As a result, CLECs in Illinois have been forced to determine whether to they could provision xDSL service based on information on the single loop that Ameritech provided – regardless of whether that loop could support xDSL service or whether other loops could better support the xDSL service CLECs sought to provision. If the loop makeup information reported by Ameritech indicated that the loop would not support xDSL service, CLECs would likely not place an order for a loop – even if another loop existed that would support the xDSL service that CLEC sought to provide.

Apparently recognizing the obvious flaw in its loop qualification process, Ameritech has now committed to deploy an OSS enhancement, dubbed "CR-69A", by August 2001 which will search during the loop qualification process for a non-loaded copper loop if one is available. This "enhancement", however fails to consider other

characteristics of the loop that may hinder or impair xDSL service. (Tr. at 1652). Ameritech's "enhancement", therefore, continues to make judgments on the loop for CLECs. While now "prioritizing" loops, Ameritech still restricts CLECs to information on a single loop and thereby limits CLECs' ability to prioritize the loops differently and to access other loop information that may be relevant to the CLEC and needed to determine whether to provision xDSL service to end users using particular loops. Moreover, if the CLEC does determine that the loop qualified will support its DSL service, it cannot use the circuit id or any other identifier to attempt to obtain its desired xDSL capable loop. In sum, Ameritech's artificial restrictions on the loop information effects CLECs ability to provide xDSL services in Illinois and denies CLECs the access to Ameritech's OSS to which they are entitled..

**C. Requiring Ameritech to Provide Loop Makeup Information on Multiple Loops Without Also Allowing Requiring The Ability to Identify A Loop is Meaningless.**

In its January 2001 Order, the Commission required that Ameritech "implement a method of identification for each of up to ten loops returned to the CLEC during the pre-ordering stage." (Commission Order at 90). The Commission also required that Ameritech implement a process by which CLECs could verify that it is receiving access to the same loop in the ordering stage that it had identified during pre-ordering – assuming that the loop is still available." Id.

The Commission's order recognizes that to give substance to the Commission's order that a CLEC, rather than Ameritech, should be able to "make their own determination as to the loop that they want." (Commission Order at 90). It makes absolutely no sense to, on the one hand, conclude that Ameritech should provide CLECs

access to additional loop information in the pre-ordering process so as to not stymie the CLECs' ability to inform their customers as to their available service options and then, on the other hand, to conclude that a CLEC should not be able to obtain the loop it identified during the ordering stage, if it is available. Without the ability to identify a loop, CLECs will only be able to examine information on several loops and decide to provide a particular xDSL service based on the loop information it received. CLECs, however, will have no ability to obtain the loop they have identified as best able to support the xDSL services they seek to provision – even if the very loop that they viewed loop makeup information is still available to be provisioned. As the specific characteristics of the loop limit the type of DSL that CLEC can offer to end users, a CLEC's inability to select the best loop for its service – even when the pre-ordering loop qualification process indicates that the desired loop is available -- often results in a failure to meet the end user's expectations and service needs. CLECs require a process by which they can identify the loop they need to provision the service requested by the end user. Without such identification of the desired loop, the loop qualification does not allow CLECs to decide whether to provide xDSL services to an end user.

As Ms. Carter testified, loop makeup information can only be meaningful if a CLEC knows that the loop that Ameritech will provision will be the same loop for which Ameritech provided loop makeup information. (Covad Ex. 1.0 (Carter Rehearing Testimony) at 7). Otherwise, CLECs will make determinations about what type of xDSL service can be offered based on the characteristics of one loop, yet receive an entirely different loop that may or may not support the service CLECs intended to provide the particular consumer. While Covad recognizes that identifying a loop does not guarantee

a CLEC that the particular loop will be available to the CLEC, it greatly increases the chance that loop best able to support the CLEC's particular service will be provisioned. As mentioned above, CLECs such as Covad can immediately move from the pre-ordering (loop qualification) to ordering process. Given that only minutes would lapse between those two processes, the loop that the CLEC identified would likely still be available for provisioning by Ameritech. Thus, the ability to identify a loop would maximize the CLEC's ability to provide a variety of xDSL services to Illinois consumers.

**D. The practices of other ILECs demonstrates that the loop information sought by Covad exists in the ILEC's OSS and can be readily provided to CLECs.**

Ameritech's continuing refusal to provide CLECs with the loop information available in its OSS stands in stark contrast to the positions of other Regional Bell Operating Companies (RBOCs). While every other RBOC either currently offers, or has committed to offer, CLECs information on multiple loops, SBC/Ameritech steadfastly refuses to provide CLECs with information on more than a single loop. For example, Verizon has offered to allow CLEC to view up to ten available loops to an address to allow the CLEC determine if the available facilities meet the transmission requirements of the service requested. (September 1, 2000 Verified Statement of Bogdan Szafraniec, Covad. Ex. 2, Ex. A). Similarly, Qwest provides CLECs with information on multiple loops by transferring such information to CLECs in an electronic file, colloquially known as a "data dump." (September 1, 2000 Verified Statement of Bogdan Szafraniec).

In addition, BellSouth provides CLECs with loop makeup on multiple loops via mechanized or manual loop makeup requests. In the nine-state BellSouth region, a CLEC obtain loop makeup on spare facilities with or without loop reservation. (Covad

Ex. 2.0, Szafraniec Attachment 3 at 4). As BellSouth's documents reveal, the existing and spare loops are identified by telephone number or circuit ID. (Covad Ex. 2.0, Szafraniec Attachment 3 at 4, 8). BellSouth then queries LFACs and searches for loop makeup information on up to 10 loops and returns that information to the CLEC within 45 seconds. (Covad Ex. 2.0, Szafraniec Attachment 3 at 9). At the time BellSouth returns loop makeup data to the CLEC from its Loop Facilities Assignment and Control System (LFACS), BellSouth provides an identifier labeled a "Facility Reservation Number (FRN)" with the returned data. If the CLEC desires a particular loop, it submits an order with the facility number on it. BellSouth will use its "best efforts to assign to the CLEC the facility" requested. (Covad Ex. 2.0, Szafraniec Attachment 2 at 7). "For those limited occasions when BellSouth's assignment system cannot assign the specific facility of preferred loop makeup. . . BellSouth will assign the CLEC a facility that meets the BellSouth technical standards of the BellSouth type loop as ordered by the CLEC." (Covad Ex. 2.0, Szafraniec Attachment 2 at 7).

BellSouth also provides manual loop makeup on multiple loops, including existing and spare loops, both with and without loop reservation. (Covad Ex. 2.0, Szafraniec Attachment 1 at 6). If a CLEC submits a manual loop makeup request, the CLEC may request loop makeup information on a maximum of three spare facilities for a single service address. (Covad Ex. 2.0, Szafraniec Attachment at 7). BellSouth's standard service interval calls for BellSouth to return this manual loop makeup information to the CLEC is 3 business days. (Covad Ex. 2.0, Szafraniec Attachment at 7).

The practice of other Verizon, Qwest, and BellSouth evidences that the Commission should reaffirm its January 2001 Order.

**E. The Commission Should Require Ameritech To Provide CLECS with Loop Makeup Information on Multiple Loops and the Ability to Identify a Loop for Provisioning by September 2001.**

Ameritech has done nothing to implement this Commission's order requiring Ameritech to provide CLECs with loop makeup information on multiple loops and the ability to provide CLECs the ability to identify or tag a loop. While Ameritech attempts through its testimony to claim that such OSS information is not necessary given its other "enhancements," the Commission must see through Ameritech's transparent attempts to avoid its legal obligations. First, while Ameritech trots out a series of new "enhancements," every single "enhancement" still relegates CLECs to loop makeup information on a single loop. (ICC Staff Ex. 1.0 at 4). For example, Ameritech's witness Mr. Mitchell claims that CLECs do not need the loop information ordered by the Commission in its January 2001 Order because Ameritech has enhanced its OSS to include manual loop qualification requests via the Enhanced Verigate and EDI/CORBA interfaces and archived data. (Mitchell Direct Testimony at 3-16). Mr. Mitchell's testimony is largely smoke and mirrors, intended to obfuscate the fact that Ameritech still only provides CLECs with actual loop information on a single loop today – just as it did when the Commission entered its final order in January 2001. As Mr. Mitchell admitted, the March 2001 release "loop qualification features" neither allow CLECs to view information on multiple loops or to identify a loop for provisioning loops. (Tr. at 1873).

Despite the fact that Ameritech has had five months to analyze the Commission's Order and determine what would be required to implement it, Ameritech has elected to

invest its time and resources to implement an OSS enhancement that will continue to provide loop makeup on a single loop, Ameritech's "preferred" xDSL capable loop. As the record demonstrates, Ameritech did not consult with any CLECs in designing this OSS enhancement or to determine whether this enhancement met the CLECs' needs.

Nor has Ameritech consulted with any CLECs regarding implementation of the Commission's January 2001 Order relating to loop qualification issues. For example, Ameritech represented to this Commission that it could not implement the Commission's Order by March 2001 because it needed time to work with CLECs to develop initial requirements. (Ameritech Application for Rehearing at 7-8). The record is devoid of any evidence that Ameritech consulted with CLECs on or prepared such requirements. Similarly, Ameritech did not trigger the Change Management Process when the Commission issued its Order. In sum, Ameritech could have, and should have, begun the process to implement the Commission's Order in January 2001. Ameritech's decision to sit on its hands since January 2001 cannot justify further delay in CLECs obtaining access to the information and functionality to which they are entitled under law. Accordingly, the Commission should order Ameritech to provide CLECs with loop information on up to 10 loops and the ability to identify a loop for provisioning no later than September 2001.

**II. AMERITECH MUST PROVIDE CLECS WITH DIRECT ACCESS UNDER EXISTING FEDERAL LAW.**

In its January 2001 Order, the Commission concluded that Ameritech need not provide CLECs direct access to its OSS. That decision is contrary to the law and must be revised during this rehearing. In no event should the Commission allow its erroneous legal conclusion to stand.

The Commission's determination of this issue addresses both the legal requirements as well as the record evidence. The Commission's Order concluded that given the limited record before it, the Commission would not require Ameritech to include direct access in its Plan of Record. Covad does not challenge on rehearing the Commission's finding regarding the factual record; rather, Covad requests the Commission correct its legal error.

In its Order in this proceeding, the Commission failed to accurately identify Ameritech's OSS obligations as outlined in the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (rel. Nov. 5, 1999) ("UNE Remand Order"). The UNE Remand Order requires that CLECs be given access to the same loop information and OSS functionality in the same timeframe and manner as Ameritech and its affiliates. UNE Remand Order, ¶¶ 172, 428.

In addition, the Commission inappropriately omitted any analysis of Ameritech's OSS obligations under the Telecommunications Act of 1996 ("the Act"). The parity and non-discrimination principles of the Act mandate that CLECs have access to the same OSS data and functionality available to Ameritech. 47 U.S.C. § 251(c)(3). Thus under federal law, if Ameritech has direct access to a greater amount of OSS data than CLECs or has at its disposal OSS functionality not available to CLECs, then Ameritech must, at a minimum, make those available. If employees of Ameritech or its affiliates have direct access to OSS data or functionality, then CLECs must have direct access as well in order for CLECs to utilize such OSS data or functionality to have a meaningful opportunity to

offer their own innovative advanced services beyond what Ameritech may choose to offer.

Indeed, the Commission has twice concluded that federal law does require Ameritech to provide direct, read-only access to its OSS to CLECs in Illinois. Order, 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, Docket Nos. 00-0312/00-0313 (Aug. 17, 2000) (“Covad/Rhythms Arbitration Award”) at 43; Order, Illinois Bell Telephone Company d/b/a Ameritech Illinois Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing, Docket No. 00-0393 (March 15, 2001) (“Line Sharing Tariff Order”). In both the Covad/Rhythms Arbitration Award and the Line Sharing Tariff Order, the Commission concluded that Ameritech Illinois must provide direct, read-only access to its OSS under the non-discrimination requirements of the Telecommunications Act of 1996 and the UNE Remand Order.

In both cases, there was ample record evidence that Ameritech Illinois’ employees have the type of direct, read-only access that CLECs seek. As a result, the Commission concluded that CLECs were entitled to similar access under the non-discrimination requirements of the 1996. As the Commission concluded in both cases, federal law imposes two separate, but related, non-discrimination obligations upon ILECs such as Ameritech. First, an ILEC to provide OSS functions to a CLEC that are “equal . . . in terms of quality, accuracy and timeliness in order to be sufficient.” Covad/Rhythms Arbitration Award at 43; Line Sharing Tariff Order at 62. Second, the ILEC must give

CLECs a meaningful opportunity to complete by providing access to OSS systems and functionalities required to support a service even when there is no retail analog. Covad/Rhythms Arbitration Award at 43; Line Sharing Tariff Order at 62.

In addition, the Commission concluded twice that federal law requires Ameritech to provide CLECs with direct access because CLECs are entitled to the same level of access to data as the ILECs enjoy themselves and in the same format. Covad/Rhythms Arbitration Award at 44; Line Sharing Tariff Order at 63. In particular, the Commission twice noted that the UNE Remand Order requires that CLECs be given access to any loop information that exists “anywhere within the incumbent’s back office and can be accessed by any of the incumbent LEC’s personnel.” Covad/Rhythms Arbitration Award at 43; Line Sharing Tariff Order at 63.

The Commission examined the evidence submitted in both cases, including admissions from Ameritech’s OSS witness, that revealed that Ameritech personnel have direct access to all available data in Ameritech’s records, backend OSS systems, and databases. Thus, relying on federal law mandate, the Commission concluded that CLECs must have the same access. Covad/Rhythms Arbitration Award at 44; Line Sharing Tariff Order at 62; see also UNE Remand Order at ¶ 434.

The Commission’s Order in this proceeding, however, concludes that “[d]irect access to an ILEC’s back office, or legacy systems is not required by the FCC or any authority to which we have been referred.” Order, Docket No. 00-0592 at 82. In addition, the Commission noted that pursuant to Condition 29 of the Illinois Merger Order, CLECs desiring direct access to service order processing systems must contract with Ameritech for 50% of the costs of development and deployment. Order at 83. The

Commission then observed that “[w]e question why the direct access the CLECs seeks should not correspond to the features (particularly the cost aspect) of this provision.” Order at 83.

The Commission during this rehearing must revise its Order to remove any statement that direct, read only access to an ILEC’s back office or legacy systems is not required by the FCC or other federal law. Indeed, consistent with the Commission’s decisions in Covad/Rhythms Arbitration Award and the Line Sharing Tariff Order, such access is mandated by federal law and FCC orders if Ameritech personnel have such access.

Moreover, if Ameritech personnel have such access, CLECs cannot be required to pay for half of the costs of development and deployment under Illinois Merger Condition 29. As an initial matter, Illinois Merger Condition 29 refers only to direct access to service order processing systems, not all of Ameritech’s OSS. In particular, Merger Condition addresses service order processing systems that are a subset of Ameritech’s OSS and that would have to be revised to accommodate CLEC orders. The OSS systems at issue in this proceeding are predominately Ameritech’s *existing* Legacy data and backend systems. Accordingly, the only issue before the Commission is the method that CLECs are entitled to access these databases and systems, not revisions to the actual systems themselves.

As the Commission concluded in the Line Sharing Tariff Order, Ameritech must provide read-only direct access at no additional charge because it was persuaded by the evidence that CLECs “may utilize such [direct, read-only] simply by using the same means of access (i.e., a personel computer running in terminal emulation mode) as do

Ameritech's employees. Line Sharing Tariff Order at 29. Accordingly, the Commission should revise its Order on rehearing to remove any statement that would require CLECs seek direct, read-only access to Ameritech's OSS to fall within the cost requirements of Condition 29 of the Illinois Merger Order.

Federal law requires Ameritech to provide CLECs with direct, read-only access to its OSS if its personnel have such access. It appears that the Commission concluded that the record *in this case* did not demonstrate that Ameritech's personnel had such access. While the Commission within its discretion could find that the record was inadequate on those grounds, it erred when it concluded that as a matter of law federal law would not require such direct, read-only access even if Ameritech's personnel have such access. Accordingly, the Commission must revise its Order on rehearing to remove such an erroneous legal conclusion.

### **CONCLUSION**

For the foregoing reasons, Covad respectfully requests that the Commission issue an Order reaffirming that Ameritech must provide CLECs with loop makeup information on up to 10 loops and the ability to identify an available loop for provisioning. In addition, Covad requests that the Commission issue an order on rehearing concluding that Ameritech must provide CLECs direct, read-only access to its OSS.

Respectfully submitted:

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