

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Bell Telephone Company, d/b/a</b>	)	
<b>Ameritech Illinois</b>	)	
	)	
	)	<b>Docket No. 00-0393</b>
	)	
<b>Proposed Implementation of High</b>	)	
<b>Frequency Portion of Loop (HFPL)/Line</b>	)	
<b>Sharing Service</b>	)	

**AMERITECH ILLINOIS' PROPOSED ORDER ON REHEARING**

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## INTRODUCTION { TC \1 "1" }

On April 21, 2000, Ameritech Illinois voluntarily filed its HFPL UNE tariff that is the subject of this proceeding. On June 1, 2000, the Commission elected to suspend and investigate Ameritech Illinois' HFPL UNE tariff pursuant to Section 9-201 of the Illinois Public Utilities Act. Several parties filed petitions seeking leave to intervene, which were granted by the Hearing Examiner, including Rhythms Links, Inc. ("Rhythms"), AT&T Communications of Illinois Inc. ("AT&T"), Sprint Communications LP ("Sprint"), Covad Communications Co. ("Covad") (who later withdrew from the case, but reappeared on rehearing), WorldCom, Inc. ("WorldCom"), Focal Communications of Illinois ("Focal"), and the CLEC Coalition (a consortium of CLECs including @Link Networks, Inc., CoreComm Illinois, Inc., DSLnet Communications, LLC and Vectris Telecom, Inc). After proper notice, evidentiary hearings were held in this matter before a duly authorized Hearing Examiner at the Commission's Springfield, Illinois offices on October 16 through October 19, 2000. Ameritech Illinois, Rhythms, AT&T, Sprint and the CLEC Coalition filed Initial Briefs on November 17, 2000 and Reply Briefs were filed on December 18, 2000. Exceptions and Replies to Exceptions were filed on January 26, 2001 and February 2, 2001, respectively.

The Commission issued its Order on March 14, 2001 ("the Order"). On April 13, 2001, Ameritech Illinois filed an Application for Rehearing pursuant to 220 ILCS 5/10-113. The Commission granted the Application on May 1, 2001 as to Issues No. II, III, VI, VIII, IX, XIII, and XIV, with those numbers corresponding to the roman numeral sections in Ameritech Illinois' Application for Rehearing (we use those issue numbers in our headings below). After proper notice, evidentiary hearings were held at the Commission's Springfield, Illinois offices before a duly authorized Hearing Examiner from July 17 through July 25, 2001. The following witnesses testified on behalf of Ameritech Illinois: Debra Aron, Christopher Boyer, Christopher Cass, Robert Crandall, Derrick Hamilton, Ross Ireland, James Keown, Stanford Levin, Cherylann Mears, John Mitchell, Niel Ransom, Stephen Waken, and Mark Welch. Torsten Clausen and Robert Koch testified on behalf of Staff; Michael Starkey testified on behalf of AT&T and WorldCom; Terry Murray, Melia Carter, and Larry Gindlesberger testified on behalf of Covad; and Joseph Ayala and Danny Watson testified on behalf of Rhythms. On August 3, 2001, the parties filed their Initial Briefs on Rehearing. The Hearing Examiner issued a Proposed Order on Rehearing on \_\_\_\_\_, and the parties filed exceptions briefs on \_\_\_\_\_ and \_\_\_\_\_.

The issues on rehearing are as follows:

- II. Whether requiring Ameritech Illinois to unbundle its Project Pronto DSL facilities violates federal law.
- III. Whether Project Pronto NGDLC line cards meet the federal legal standards for collocation.
- VI. Whether unbundling Project Pronto DSL facilities is technically, practically, and economically feasible and efficient.

- VIII. Whether setting the monthly recurring charge for the HFPL UNE at \$0 is unlawful.
- IX. Whether Ameritech Illinois must allow CLECs to have direct access to its back office systems.
- XIII. Whether setting the nonrecurring charge for manual loop qualification at \$0 is unlawful.
- XIV. Whether setting the monthly recurring charge for OSS modifications at \$0 is unlawful.

The Commission granted rehearing because, among other things, the decision in this case will have a significant impact on the future of advanced services deployment and availability in Illinois. Full and robust competition in the advanced services market is a primary goal of the 1996 Telecommunications Act, as is making sure that those services, including especially high-speed Internet access services, are available to *all* Americans. It is widely recognized that in this nascent and rapidly evolving market – also known as the broadband market – multiple technologies and providers exist for delivering competing advanced services. For instance, advanced services may be provisioned via cable modems, DSL facilities, wireless systems, and satellites.

Following our March 14 Order in this docket, Ameritech Illinois suspended deployment of its Project Pronto DSL facilities in Illinois, claiming the Order violated federal law and, as a legal and policy matter, improperly foisted regulation upon only one of the technologies and one of the providers of advanced services in Illinois. Ameritech Illinois stated that this asymmetric regulation rendered deployment of its Pronto DSL facilities infeasible. The Commission was concerned that the various legal, policy, economic, and technical issues surrounding deployment of Ameritech Illinois' Pronto DSL facilities, and the ramifications of the Commission's foray into regulating the nascent broadband market, required further development of the record to ensure that we had an adequate basis for reasoned decision making.

Thus, the Commission granted rehearing so it could get the full picture. The extensive testimony submitted on rehearing has been very beneficial in clarifying the facts and issues. It is now clear that significant legal, technical, economic, and competitive policy issues must inform a decision whether to regulate Ameritech Illinois' Pronto DSL facilities. But it is also clear that the Commission need not – and cannot – address these issues on a clean legal and policy slate, for the FCC, in the *UNE Remand Order* and the *Project Pronto Order*, has already directly addressed and decided the key legal and policy issues surrounding regulation of Pronto DSL facilities. For the reasons that follow, the Commission concludes that the Order's unbundling and collocation requirements related to Pronto DSL facilities should, upon reflection, not be imposed. Therefore, the Commission modifies its earlier decision accordingly and removes any such requirements. We also modify our earlier decision in other ways, as discussed herein.

## ANALYSIS{ TC \I "1" }

### ISSUE II. WHETHER REQUIRING AMERITECH ILLINOIS TO UNBUNDLE ITS PROJECT PRONTO DSL FACILITIES VIOLATES FEDERAL LAW. { TC }

#### A. Packet Switching.{ TC }

#### *Ameritech Illinois' Position:{ TC \I "3" }*

Ameritech Illinois argues that the Order errs in requiring the unbundling of the Project Pronto DSL architecture, or any part thereof, because that architecture provides packet switching functionality. Ameritech Illinois asserts that the FCC, in its Rule 319(c), established that packet switching functionality can only be unbundled in very limited circumstances. Rule 319(c) requires that four conditions must exist before packet switching functionality can be ordered to be unbundled. Ameritech Illinois contends that the FCC arrived at these conditions after applying the “impair” test from Section 251(d)(2) and Rule 317, and the goals of the 1996 Act, to packet switching functionality, and that the FCC concluded that CLECs are not “impaired” by a denial of access to packet switching functionality except when all of the limited circumstances delineated by Rule 319(c) exist.

Ameritech Illinois asserts the Commission is bound by the FCC’s analysis here and is not free to subject the Project Pronto packet switching facilities to an independent “impair” analysis under Section 251(d)(2) and Rule 317. Ameritech Illinois contends that the record on rehearing indicates that none of the four Rule 319(c) conditions exist in Illinois, and therefore, that the Commission cannot order the unbundling of its Pronto DSL facilities.

*Condition 1:* “The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (*e.g.*, end office to remote terminal, pedestal or environmentally controlled vault).”

Ameritech Illinois argues that this condition is not met simply where an ILEC has deployed digital loop carrier (“DLC”) systems *anywhere* in its network. Rather, the condition must be applied on a location-by-location basis, and is only satisfied when the DLC system is one “in which fiber facilities replace copper facilities in the distribution section” of the loop. Ameritech Illinois argues that the FCC’s concern here was with situations where an ILEC had *actually* “replaced” copper distribution facilities with fiber and where no spare copper facilities were available. *UNE Remand Order*, ¶ 313. Ameritech Illinois asserts this condition is not met in Illinois because Project Pronto involves purely overlay DSL facilities that do not “replace” or displace *any* of the existing copper distribution facilities. Ameritech Illinois adds that under the *Project Pronto Order* there are requirements regarding maintenance of existing copper facilities. Ameritech Illinois argues this condition would be rendered a nullity if it were satisfied simply because an ILEC deployed DLC systems, because it would be automatically satisfied everywhere (since virtually all ILECs have some DLC systems in their network).

*Condition 2:* “There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer.”

Ameritech Illinois argues that a determination of whether this condition exists can only be made on a case-by-case (that is, an RT-by-RT) basis. Ameritech Illinois contends that the FCC was interested here in a specific “limited situation” where “no spare copper facilities are available,” because it is only in that specific case that a CLEC’s ability to provide broadband service might be impaired. *UNE Remand Order*, ¶ 313. Ameritech Illinois asserts that because Pronto DSL equipment is an overlay, any spare copper facilities that existed before Pronto DSL deployment would still be available after deployment. And, Ameritech Illinois continues, these spare copper facilities will be useful to CLECs for providing DSL services, either by collocating a DSLAM at an RT or elsewhere. Ameritech Illinois further argues that the only empirical evidence submitted on “cross talk” problems between CO-based DSL service and RT-based DSL service indicates that Ameritech Illinois has not encountered any such problems and that it has implemented a measure that will remove any such problems should they arise.

*Condition 3:* “The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this Section.”

*First*, Ameritech Illinois argues that this condition also asks an RT-by-RT question of whether the ILEC has actually denied a CLEC request to deploy a DSLAM at a particular RT or similar location or to virtually collocate a DSLAM in that location. Ameritech Illinois asserts that this condition is not met because it has never denied a specific request by a CLEC to collocate a DSLAM at an RT or similar location in Illinois; in fact, no CLEC has even requested such collocation at an Ameritech Illinois RT. Ameritech Illinois further asserts that it is undisputed that it allows collocation of DSLAMs at its existing RTs and has committed to allow such collocation in future RTs. Ameritech Illinois adds that it is required to create space or build extra space in RTs specifically to accommodate such collocation, which should remove any alleged space concerns. *Project Pronto Order*, ¶¶ 34-35 and App. A at 38-40.

*Second*, Ameritech Illinois addresses the CLECs’ claim that it has denied DSLAM collocation because it has not allowed “collocation” of ADLU cards. Ameritech Illinois asserts that an ADLU card is not a DSLAM because an ADLU card does not perform each of the four functions listed in ¶ 303 of the *UNE Remand Order* that define a DSLAM. Specifically, Ameritech Illinois argues that the CLECs concede that an ADLU card does not perform the third and fourth functions listed in ¶ 303 (packetizing and multiplexing), which are performed by the ABCU card and the rest of the NGDLC hardware and software. Ameritech Illinois contends the only equivalent to a DSLAM in the Pronto architecture would be the NGDLC system as a whole.

*Third*, Ameritech Illinois argues that this condition focuses only upon the objective denial of DSLAM collocation by an ILEC, and does not permit consideration of subjective factors that might keep the CLEC from requesting collocation, such as the economic feasibility of

collocation. Therefore, Ameritech Illinois concludes, the expense to CLECs of DSLAM collocation cannot be considered and is irrelevant. Ameritech Illinois also asserts that CLEC claims that DSLAM collocation is too expensive are belied by evidence that Sprint has included DSLAM collocation in its business plans. Moreover, Ameritech Illinois adds that the FCC has already considered the expense and other factors related to DSLAM collocation in its packet switching unbundling analysis, *UNE Remand Order*, ¶ 309, and that the FCC's conditions in the *Project Pronto Order* responded to these very same CLEC concerns. Ameritech Illinois asserts that it is required by that order to have adequate space for DSLAM collocation, and to construct an Engineering Controlled Splice ("ECS") upon request to enable a CLEC to access copper subloops from a collocated DSLAM.

*Condition 4:* "The incumbent LEC has deployed packet switching capability for its own use."

Ameritech Illinois argues this condition asks the case-by-case question whether the *ILEC* deploys packet switching for its own use at a particular RT. Ameritech Illinois asserts that the condition does not exist in Illinois because Project Pronto DSL facilities would be used by (1) CLECs in provisioning their own xDSL services, and (2) Ameritech Illinois' separate affiliate, AADS, in providing xDSL services. Thus, Ameritech Illinois concludes, it would not use the Project Pronto DSL facilities for any retail services that it provides, and thus would not be deploying packet switching "for its own use."

### ***CLECs' Position: { TC \l "3" }***

The CLECs argue that the Commission is not constrained by Rule 319(c)(5) and that it may order the unbundling of packet switching functionality if it finds on its own that denial of unbundled access would "impair" CLECs. However, the CLECs argue that, assuming Rule 319(c)(5) provides the exclusive criteria under which a state commission can order the unbundling of packet switching functionality, each of the four Rule 319(c)(5) conditions exist in Illinois. Thus, the CLECs continue, the Commission has the authority to unbundle Ameritech Illinois' Pronto DSL facilities and their attendant packet switching functionality.

As to the first Rule 319(c)(5) condition, the CLECs argue that that condition is met whenever an ILEC deploys a DLC system. Thus, the CLECs contend, that condition is met here because Ameritech Illinois has deployed DLC systems. The CLECs also argue that the Pronto DSL facilities are not an overlay that will leave existing copper loops undisturbed. Rather, the CLECs assert, those Project Pronto DSL facilities are an upgrade of Ameritech Illinois' network.

As to the second condition, the CLECs assert that the spare copper loops in the areas where Pronto DSL facilities will be deployed will be unusable for DSL services. Some CLECs also argue that this condition is met because "cross talk" or spectral interference problems will prevent them from providing DSL services where Pronto NGDLCs are deployed.

As to the third condition, the CLECs argue that the ADLU card in the NGDLC is a DSLAM, and that Ameritech Illinois does not allow collocation of ADLU cards. Some CLECs also argue that this condition is satisfied because DSLAM collocation is too costly and therefore

economically infeasible, and/or that DSLAM collocation takes too long or that there is often insufficient space for DSLAM collocation. Finally, the CLECs argue that they are constructively denied DSLAM collocation because the hard-wired nature of the Pronto RTs makes it infeasible to access copper subloops at the RT.

As to the fourth condition, the CLECs argue that because Ameritech Illinois' separate advanced services affiliates, AADS, would use the Pronto DSL facilities, Ameritech Illinois would be deploying the facilities for "its own use."

***Staff's Position:*** { TC \1 "3" }

Staff appears to believe that the conditions in the FCC's packet switching rule have been met.

***Commission Analysis and Conclusion:***{ TC \1 "3" }

For the reasons stated by Ameritech Illinois, the Commission finds that it cannot order Ameritech Illinois to unbundle its Pronto DSL facilities under the FCC's packet switching unbundling criteria. It is beyond dispute that the Pronto NGDLCs, the ATM facilities, the OCDs, and the associated transport provide packet switching functionality. The unbundling of such packet switching functionality is governed by the FCC's Rule 319(c)(5), which establishes four conditions that all must exist before the Commission can order Ameritech Illinois to unbundle packet switching functionality. Specifically, the FCC's rules provide that "[a]n incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability *only where each of the following conditions are satisfied.*"<sup>1</sup>

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
- (ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;
- (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and

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<sup>1</sup> 47 C.F.R. 51.319(c)(5) (emphasis added).

- (vi) The incumbent LEC has deployed packet switching capability for its own use.

The Commission agrees with Ameritech Illinois that none of the four conditions exist anywhere in Illinois.

*Condition (i):* The Commission agrees that Ameritech Illinois' Pronto DSL network is an overlay network and that its Pronto DLC systems will not replace copper distribution facilities. Spare copper distribution facilities will continue to exist for CLECs to provide DSL services after the deployment of the Pronto DSL facilities. The Commission is not persuaded by the CLECs' argument that this condition is met whenever an ILEC deploys a DLC system. That reading renders meaningless the condition's requirement that the DLC systems "replace" copper distribution facilities, as virtually all ILECs have some DLC systems in their network. The Commission also agrees with Ameritech that this condition must be evaluated on a location-by-location basis, as the mere fact that an ILEC deploys DLC systems in one part of a state (say, Springfield) obviously does not require packet switching to be unbundled in another part of the State (say, Evanston).

*Condition (ii):* Because the Pronto DSL network is an overlay network, spare copper loops will remain after Pronto's deployment for the CLECs to use in providing their own DSL services. CLECs will be free to provide xDSL services over these loops by collocating DSLAMs at the RT or elsewhere. In creating this condition, the FCC was concerned with the limited situation where "no spare copper facilities are available," because it is only in that case that a CLEC's ability to provide xDSL service might be impaired. *UNE Remand Order*, ¶ 313. Thus, the Commission must reject the CLECs' argument that unbundling is required if there is *anyplace* in the ILEC's network where no spare copper loops are available. Such an interpretation renders this condition meaningless. As with the first condition, a determination of whether this condition exists can only be made on a case-by-case (*i.e.*, an RT-by-RT) basis.

*Condition (iii):* The CLECs have offered no evidence that Ameritech Illinois has ever denied a request to collocate a DSLAM at an RT, or even that they have ever requested such collocation. That alone settles the issue. Moreover, Ameritech Illinois is required by the *Project Pronto Order* to make more collocation space available at existing RTs upon request and to build in extra space for collocation in future RTs. *Project Pronto Order*, ¶¶ 34, 35, 61, and App. A at 38-40. The Commission rejects the CLECs' argument that an ADLU card is a DSLAM and that Ameritech Illinois has denied DSLAM collocation at the RT because it refuses to allow collocation of ADLU cards. An ADLU card is not a DSLAM. Paragraph 303 of the *UNE Remand Order* provides that a DSLAM performs at least four functions, but the CLECs concede that ADLU cards do not perform two of these functions (packetizing and multiplexing). In addition, the Commission agrees with Ameritech Illinois that this condition focuses only on the objective question of whether the ILEC permits DSLAM collocation; subjective considerations regarding the economic feasibility of collocation are irrelevant. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 389 ("*IUB II*"); *GTE Service Corp. v. FCC*, 205 F.3d 416, 424 (D.C. Cir. 2000). CLEC concerns about the alleged lack of adequate collocation space or lack of access to copper subloops are also irrelevant because Ameritech Illinois has committed to provide adequate collocation space (indeed, nobody but SBC's ILECs has such a duty, so DSLAM collocation

space in RTs should be more available in SBC states than elsewhere) and to allow subloop access via the ECS.

*Condition (iv):* Only CLECs and Ameritech Illinois' separate data affiliate will use the Pronto DSL facilities. Ameritech Illinois will not use the Pronto DSL facilities for any retail services that it provides, and thus will not be deploying packet switching "for its own use."

Given these facts, the Commission concludes it has no legal basis to require Ameritech Illinois to unbundle its Project Pronto DSL packet switching architecture.

**B. If The FCC's "Impair" Test Could Apply, Whether Unbundling Project Pronto DSL Facilities Satisfies That Test.{ TC }**

***Ameritech Illinois' Position:{ TC |l "3"}***

Ameritech Illinois repeats its view that the FCC already applied the "impair" test to packet switching in arriving at its packet switching unbundling criteria in Rule 319(c)(5), and thus, the Commission lacks authority to conduct a "fresh" application of the FCC's "impair" test to the Pronto DSL facilities in this case. Ameritech Illinois also argues that because the FCC has found that CLECs are not impaired today in their ability to provide advanced services, it is logically impossible for them to be impaired if Pronto DSL facilities are deployed and they gain more options to provide DSL services to more customers. However, Ameritech Illinois argues that even under an independent application of the Rule 317 "impair" test – which it believes is impermissible – the CLECs have not demonstrated that they are "impaired" by lack of access to unbundled Pronto DSL facilities – that lack of unbundled access does not "materially diminish" the CLECs' ability to provide the services they seek to offer.

First, Ameritech Illinois argues that the Rule 317(b)(2) factors do not support a finding of "impairment" in light of the available alternatives to unbundling Pronto DSL facilities. Ameritech Illinois argues there are three primary alternatives to unbundling Pronto DSL facilities: (1) the Broadband Service required by the *Project Pronto Order*, (2) collocating DSLAMs and using unbundled copper subloops or loops with the CLEC's own equipment; and (3) self-provisioning or buying or leasing facilities from a third-party provider.

*Cost:* Ameritech Illinois argues that the Broadband Service would be less expensive for the CLECs than using Pronto "UNEs" because the TELRIC-based price for the Broadband Service would not include the millions of dollars Ameritech Illinois would have spend to be able to provide Pronto "UNEs." (Ameritech Illinois adds that it would have no way of guaranteeing recovery of these expenditures because the CLECs would never be required to buy the "UNEs.") Ameritech Illinois also asserts that DSLAM collocation is a cost-effective means of competition, noting that the CLECs exaggerate the costs of DSLAM collocation at RT sites, that Sprint has included such collocation as a leading component of its DSL business plans, and that the investments for such collocation are less than those made by cable modem service providers to provide broadband services. Finally, Ameritech Illinois points out that CLECs are free to invest in their own new equipment, and that the FCC has recognized that the deployment costs of

wireless and satellite broadband technologies are generally much lower than the costs for cable modem and DSL service.

*Timeliness:* Ameritech Illinois argues that CLECs using the Broadband Service will be able to access customers as rapidly as the Pronto DSL facilities are deployed. Moreover, Ameritech Illinois argues that because the standard provisioning interval for the Broadband Service is three days, CLECs could quickly use the Broadband Service in the interim while pursuing DSLAM collocation at RTs in chosen areas. In contrast, Ameritech Illinois asserts, providing advanced services via “unbundled” Pronto DSL facilities would depend on the deployment of new facilities and on the development of new systems and procedures. Ameritech Illinois further notes that CLECs could use wireless and satellite systems to provide broadband service, the deployment times of which are generally much faster than those of DSL and cable modem service.

*Quality:* Ameritech Illinois argues the Broadband Service would offer the same quality of service as an end-to-end “UNE” using the Pronto DSL facilities. Ameritech Illinois also explains that CLEC attempts to demand higher-bandwidth services or qualities of service over the Pronto DSL “UNEs” would increase the cost of and decrease the bandwidth available for serving the mass market for which the Pronto DSL architecture was designed. Ameritech Illinois asserts that self-provisioning and DSLAM collocation would give CLECs substantially more control over the quality of service they offer than would “unbundling” the Pronto DSL facilities.

*Ubiquity:* Ameritech Illinois argues that the Broadband Service would be available with the same ubiquity as the deployment of Pronto DSL facilities themselves and would allow Ameritech Illinois to ensure that the capacity (and thus the reach) of the Pronto DSL infrastructure is maximized. In contrast, Ameritech Illinois argues, mandatory “unbundling” of Pronto DSL facilities would preclude any deployment of Pronto DSL facilities, and even if they were deployed, CLECs would be able to tie-up capacity in RTs by hogging certain elements, thereby preventing other CLECs from serving the areas covered by those RTs. Ameritech Illinois further asserts that self-provisioning would allow CLECs to determine exactly where they want to deploy advanced services facilities.

*Impact on Network Operations:* Ameritech Illinois argues that CLEC use of the Broadband Service, DSLAM collocation, or wireless and satellite technologies by CLECs would minimally impact its network operations and should not threaten network reliability. Ameritech Illinois contends that requiring it to re-engineer the Pronto DSL facilities to meet CLEC demands and “unbundling” requirements would adversely impact capacity and service.

Second, Ameritech Illinois argues that even if the Commission determines that the CLECs are “impaired,” that does not end the analysis. Rather, the Commission must still examine whether “unbundling” Pronto DSL facilities is proper in light of the Rule 317(b)(3) factors, which show that such an “unbundling” requirement would conflict with the goals of the 1996 Act.

*Rapid Introduction of Competition:* Ameritech Illinois asserts that the deployment of DSL facilities as planned would rapidly allow all DSL providers to reach huge numbers of new

customers and thus vigorously compete with cable modem and other broadband service providers. Ameritech Illinois contends that, in contrast, the Order's Pronto "unbundling" requirements would impede the development of competition because Ameritech Illinois would either not deploy its Pronto DSL facilities, or, if it did deploy them, the costs of doing so would result in rates that would be too high for DSL providers to be competitive with other broadband service providers.

*Promotion of Facilities-Based Competition, Investment, and Innovation:* Ameritech Illinois argues the Order's "unbundling" requirements will discourage facilities-based competition because CLECs will lease parts of its network where doing so is cheaper than building their own facilities and where they can do so without taking any of the investment risk necessary to deploy their own facilities. Ameritech Illinois also asserts that "unbundling" is not needed here as a stepping-stone to facilities-based competition because broadband services require new investment in new equipment no matter who the carrier is and thus, this is not a case of a monopoly-to-competition transition. Ameritech Illinois further argues the Order's requirements discourage investment and innovation in advanced services facilities and send negative signals to other potential facilities-based providers of advanced services because (1) they increase the costs and risks of Ameritech Illinois' investment to such an extent that Ameritech Illinois has had to suspend the deployment of Pronto DSL facilities, and (2) they deprive Ameritech Illinois of control over and the fruits of its investment. Ameritech Illinois contends the net result of these negative impacts is that consumers in the mass market will be left with little choice in the broadband market aside from cable modem service providers.

*Promotion of Reduced Regulation:* Ameritech Illinois argues that the Order's unbundling requirements would do nothing but increase regulation because every unbundling requirement increases regulation – regulators must oversee the terms and conditions of the sharing. Moreover, Ameritech Illinois asserts, the technical and operational difficulties caused by the Order's requirements would inevitably require regulatory decisions regarding what is technically feasible and compatible. Ameritech Illinois further asserts that these rigid requirements would be administratively difficult to apply to other deployment plans and carriers as the technologies change.

Finally, Ameritech Illinois argues that the Order's "unbundling" requirements violate the Eight Circuit's decisions in *IUB I* and *IUB III* because they impose UNE combining requirements on Ameritech Illinois – by requiring it to combine Pronto DSL elements with CLEC line cards – and because it threatens to require Ameritech Illinois to build new facilities for and provide a superior quality network to CLECs – by, for instance, buying and installing wave division multiplexing equipment and new line cards as they become available. Ameritech Illinois asserts that the Eighth Circuit held in those decisions that the 1996 Act forbids any requirement that an incumbent affirmatively combine UNEs for CLECs or that an incumbent build new facilities or deploy a superior-quality network for a CLEC.

### ***CLECs' Position: { TC \l "3" }***

The CLECs argue that without unbundled access to Pronto DSL facilities, their ability to provide advanced services in Illinois will be significantly "impaired" under Rule 317. They also

argue that unbundled access to Pronto DSL facilities meets the FCC's "necessary" test, a test that must include a consideration of whether CLECs can obtain the network element in some other manner, including purchase from a third-party vendor, or self-provisioning by the requesting carrier. The CLECs claim unbundled access to Pronto DSL facilities is required because each of the available alternatives is inadequate.

*First*, the CLECs claim it would be completely infeasible, from both a technical and an economic perspective, for any one CLEC to replicate the Project Pronto architecture via separate investment in an identical fiber-fed DLC architecture.

*Second*, the CLECs argue that the Broadband Service offering is both legally and practically insufficient. They argue that Ameritech Illinois can unilaterally withdraw the offering once the mandated time-frame set forth in the *Project Pronto Order* expires. They further assert that the availability of reselling a retail service is no substitute for unbundling. Finally, the CLECs argue there will be little chance for them to differentiate their offerings via the Broadband Service, as they will be restricted to the offerings made available via the Broadband Service.

*Third*, the CLECs argue that the ability to collocate DSLAMs at RTs and provide advanced services using subloops is not an adequate alternative because in most instances the collocation of a DSLAM at the RT is problematic, inefficient, and uneconomic for CLECs. The CLECs assert that often times there will not be sufficient space at an RT to permit DSLAM collocation, and that the number of customers served by an RT may be too small to justify collocating a DSLAM there. The CLECs argue they will need to make numerous necessary cross connections at the RT and that they will need to lease dark fiber (which they assert is limited in quantity) from Ameritech Illinois at each RT in which they collocate.

*Fourth*, the CLECs argue that using the existing copper loop network is equally unavailing. The CLECs argue that because of the distance limitations of copper loops, they will not be able to offer xDSL services to the same number of customers as will be reached by Pronto. The CLECs also argue that Ameritech Illinois can start retiring its copper loop plant in 2003 and that Ameritech Illinois will have an incentive to do so. Finally, the CLECs argue copper loops will be subject to serious and unknown types of electromagnetic interference from the Pronto architecture.

The CLECs also argue that the Rule 317(b)(2) factors warrant unbundling of Pronto DSL facilities.

*Cost:* The CLECs argue the cost of collocating at each RT dictates unbundling, because the cost of doing so would alone be astronomical, and much larger than the costs of obtaining unbundled access to the Pronto DSL facilities. The CLECs add that replicating Ameritech Illinois' vast fiber-fed Project Pronto DLC network architecture would be prohibitively expensive and delay competitive entry.

*Timeliness:* The CLECs contend that without unbundled access, their entry into the local market (or their expansion of an existing line-shared offering) would be materially delayed.

They assert that it would take too long to collocate DSLAMs in Ameritech Illinois RTs, and that securing necessary access to rights-of-way, zoning approvals, on a power supply may add to the delay.

*Quality:* The CLECs believe that without unbundled access, they will suffer a material degradation in service quality from using an alternative elements. The CLECs also assert the transmission quality of dark fiber may not be comparable to the transmission quality of the fiber used over the Pronto DSL network.

*Ubiquity:* The CLECs argue that limited availability of dark fiber and collocation in RTs materially impairs their ability to offer DSL services over the broad geographic area that the Pronto DSL facilities will be able to reach.

The CLECs state that in addition to the necessary and impair standards, the Commission *may* consider other factors under Rule 317 in making an unbundling determination. The CLECs urge the Commission to find that the unbundling requested here (1) promotes the rapid introduction of competition for line shared services in the residential and small business marketplace; (2) promotes facilities-based competition, investment, and innovation for new innovative xDSL services that can be offered to line sharing customers; and (3) ensures the certainty requesting carriers require to provide line sharing ubiquitously throughout Ameritech Illinois' territory.

Finally, the CLECs assert that the nature of the Pronto DSL network is essentially "like" a UNE and therefore should be unbundled. *First*, the CLECs assert that Ameritech Illinois proffered testimony in this case (later retracted) that the Broadband Service offering is subject to the unbundling requirements of Section 252. *Second*, they state that the service is described by the FCC as a network element. *Third*, the CLECs state that the service is ordered by CLECs in the same manner that UNEs are ordered. *Fourth*, the CLECs note that the service will be offered at TELRIC prices like UNEs.

***Staff's Position: { TC \l "3" }***

Although it previously argued in favor of "unbundling" Project Pronto DSL facilities, on rehearing Staff has taken the position that a proper course for the Commission would be to require Ameritech Illinois to provide an "NGDLC Platform" as a UNE, with that platform being identical to the Broadband Service offering, instead of requiring the "unbundling" of individual "UNEs." Staff couples this recommendation with a recommendation to force Ameritech Illinois to deploy new features and functions in the Pronto DSL architecture as the manufacturer makes them available.

***Commission Analysis and Conclusion: { TC \l "3" }***

The Commission agrees with Ameritech Illinois that it lacks the authority to conduct an independent application of the FCC's "impair" test to the Pronto DSL facilities. As noted above, these are packet switching facilities. The FCC has already applied the "impair" test to packet switching facilities and concluded that CLECs are not allowed unbundled access to those

facilities except in very limited circumstances that do not exist here. *UNE Remand Order*, ¶ 313-17. The Commission cannot revise or alter this conclusion. *IUB II*, 525 U.S. at 378 n.6. However, even if the Commission could independently apply the “impair” test – though we believe federal law prevents us from doing so – the Commission concludes, for the reasons advanced by Ameritech Illinois, that the CLECs have not shown that the Rule 317 requirements for unbundled access to the Pronto DSL facilities have been met. As the parties requesting an unbundling requirement, the CLECs bear the burden of proof.

With respect to the Rule 317(b)(2) factors, Ameritech Illinois has shown that unbundling the Pronto DSL facilities would be more costly to CLECs than using the Broadband Service. DSLAM collocation at RT sites is also a cost-effective strategy for CLECs, as evidenced by the fact that Sprint has incorporated that strategy into its business plans. Using unbundled Pronto DSL facilities would also take longer than other alternatives, because Ameritech Illinois would need additional time to develop and implement new equipment and procedures to provision unbundled elements of that architecture. Unbundling would also likely adversely impact the quality of Ameritech Illinois’ ADSL offerings and the functioning of its operations. In contrast, the Broadband Service would offer the same quality of service as an end-to-end UNE offering, and DSLAM collocation would afford CLECs much more control over the quality of service they offer. Thus, the Broadband Service would be superior to unbundling in terms of cost, timeliness, ubiquity, and network reliability, at a minimum. Other alternatives also are equal to or superior to unbundling, including DSLAM collocation and self-provisioning, alternatives that the CLECs seem to reject purely on economic grounds. Such grounds are not a determinative factor in the impair analysis, and are outweighed by all of the other factors counseling against unbundling.

Unbundling the Pronto DSL facilities also would be precluded by the Rule 317(b)(3) factors, which are designed to give weight to the overarching goals of the 1996 Act. As explained in detail in Ameritech Illinois’ Brief on Rehearing, the March 14 Order’s unbundling requirements would seriously, if not altogether, impede the deployment of DSL facilities in Illinois by making it uneconomical for Ameritech Illinois to deploy, or CLECs to use, the Pronto DSL facilities. This would hurt competition and consumers, as it would severely restrict the availability of DSL service as a competitive alternative to cable modem broadband service, especially in the mass market for small business and residential customers that Pronto DSL facilities were largely designed to serve. Those requirements would also hinder the development of facilities-based competition by making it extremely risky and costly for carriers to deploy advanced services facilities and by giving CLECs an incentive to lease parts of Ameritech Illinois’ network instead of building their own facilities. And there can be no doubt that the unbundling requirements will only increase, rather than decrease, the amount of regulation of the advanced services market, and that they would likely be difficult to apply to new technologies in that nascent market.

Finally, the Commission agrees that the March 14 Order’s unbundling requirements would violate the Act as interpreted by the Eighth Circuit in the *IUB I* and *IUB III* decisions because they would apparently require Ameritech Illinois to affirmatively combine UNEs and provide a superior quality network to CLECs. Those requirements would unlawfully require Ameritech Illinois to create a “new” combination of its facilities and CLEC-owned line cards,

the latter of which has never yet existed in Ameritech Illinois' network. Those requirements also would unlawfully require Ameritech Illinois to add new facilities to its network even if it had no intent to ever deploy such facilities, and with no regard for concerns of network reliability and impacts on the capacity of the Pronto DSL architecture and service provided to other customers.

**ISSUE III. WHETHER PROJECT PRONTO NGDLC LINE CARDS MEET THE FEDERAL LEGAL STANDARDS FOR COLLOCATION. { TC }**

***Ameritech Illinois' Position: { TC |l "3" }***

As an initial matter, Ameritech Illinois argues that on rehearing, the CLECs made two important concessions regarding "collocation" of CLEC-owned line cards: (1) ADLU cards that are not manufactured or licensed by Alcatel will not work with the Alcatel NGDLC systems that Ameritech Illinois is deploying, and the CLECs therefore would never want, need, or be able to "collocate" such cards, and (2) the CLECs do not need line card "collocation" at all, but would be content with the ability to use individual ports on line cards in an end-to-end offering as long as they could differentiate their services. Ameritech Illinois concludes that because the Broadband Service already affords the CLECs these features, the CLECs' actual business desires could be met without a "collocation" requirement and the operational and legal problems it creates.

Despite these concessions by the CLECs, Ameritech Illinois asserts that even if the CLECs want only to collocate Alcatel-manufactured or licensed line cards, a collocation requirement ignores the economic, technical, and capacity-related problems that could arise from forcing Ameritech Illinois to deploy equipment different from that which it might otherwise deploy. But turning first to the legality of the Order's "collocation" requirement, Ameritech Illinois argues that the requirement violates Section 251(c)(6)'s mandate that collocation can be required only where "necessary" for interconnection or access to UNEs. Ameritech Illinois states that "necessary" has been interpreted by the D.C. Circuit to mean "required or indispensable to achieve a certain result," and that collocation of ADLU line cards does not meet this test.

*First*, Ameritech Illinois asserts that line card "collocation" is not required or indispensable for interconnection or access to UNEs because CLECs can achieve these ends by collocating DSLAMs among other means. Ameritech Illinois contends that the CLECs have not shown that line card "collocation" is "required or indispensable" to interconnect with Ameritech Illinois or access any UNE.<sup>2</sup> Ameritech Illinois also notes that, while economic considerations are irrelevant under the "necessary" test, as the D.C. Circuit held in *GTE Service Corp. v. FCC*, 205 F.3d 416, 424 (D.C. Cir. 2000), by Sprint's own estimate, the long-term investment per customer of DSLAM collocation would be less than the comparable investment by a cable modem service provider.

*Second*, Ameritech Illinois argues that Section 251(c)(6) refers only to what is "necessary" for *interconnection* or *access to UNEs* – the only two permissible purposes for

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<sup>2</sup> Ameritech Illinois notes that no CLEC has requested DSLAM collocation at an Ameritech Illinois RT, and that it will provide DSLAM collocation at remote sites when requested.

collocation under the 1996 Act. Thus, it is irrelevant whether CLECs believe (as they incorrectly do) that line card “collocation” is “necessary” for CLECs to differentiate their services.<sup>3</sup> Ameritech Illinois asserts that this too is consistent with the holding in *GTE Service*.

*Third*, Ameritech Illinois argues that line cards cannot even be used for interconnection or for access to UNEs. As for interconnection, Ameritech Illinois notes the FCC has defined interconnection as the “linking of two networks for the mutual exchange of traffic.” Ameritech Illinois argues that line cards do not link two discrete networks. Ameritech Illinois asserts that line cards are not the CLEC’s complete network, but are merely components in the transmission path of one network – the ILEC network. (And, Ameritech Illinois contends, the fiber-fed NGDLC “network” is not a network at all, but simply a small part of its network). Ameritech Illinois also asserts that line cards cannot connect two networks because they are inseparable functionally from the rest of the packet switching facilities in the NGDLC and because they are cannot be separately accessed from other equipment. And perhaps most importantly, Ameritech Illinois argues that there is no mutual exchange of traffic between two carriers’ networks at an NGDLC line card. Rather, the line card is simply a component that a single carrier uses to receive and deliver its traffic to and from its own customers.

As for access to UNEs, Ameritech Illinois argues line cards cannot be used to gain access to any UNE. Specifically, Ameritech Illinois argues that line cards cannot be used to access subloops because they do not provide accessible cross-connect points, but instead reside in a slot within a channel bank within an NGDLC. Ameritech Illinois argues that it is the channel bank, not the line card, that is hard-wired to the NGDLC’s backplane, and thus only the rest of the NGDLC itself, and not a separate subloop, is accessible from the channel bank slot in which the line card resides.

*Fourth*, Ameritech Illinois argues that the CLECs’ proposal on rehearing – that they supply Ameritech Illinois with line cards but obtain access to such cards only on a port-at-a-time basis – is not a proposal for collocation, because the CLECs would not be placing any equipment at all, but rather just using up capacity credits on a type of equipment. And, Ameritech Illinois adds, it investigated such a proposal in early 2000 and concluded it was impracticable, as further demonstrated in the testimony of its witnesses, Mr. Boyer, Mr. Keown, Mr. Hamilton, and Mr. Waken.

*Finally*, Ameritech Illinois argues that line card “collocation” violates federal law because it allows CLECs to dictate where on Ameritech Illinois’ premises their equipment would be “collocated.” Ameritech Illinois asserts that Section 251(c)(6) does not allow CLECs to “pick and choose” preferred space on an ILEC’s premises for collocation. However, Ameritech Illinois asserts, the Order requires Ameritech Illinois to let CLECs “collocate” line cards inside a specific piece of Ameritech Illinois’ equipment (the NGDLC) and to functionally integrate those line cards with the rest of the hardware and software in the NGDLC. Ameritech Illinois

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<sup>3</sup> Ameritech Illinois points out that the Broadband Service allows CLECs to differentiate their services by offering different configurations and speeds within the limits of the Pronto DSL architecture, and that DSLAM collocation would provide CLECs with at least as much freedom to differentiate their services as would a line card “collocation” requirement.

contends that it is precisely because the line cards work only in the NGDLC that the Order's requirement is not a collocation requirement, but an illegal and unprecedented co-engineering requirement. Ameritech Illinois argues the FCC's collocation rules apply only to complete pieces of equipment with stand-alone functionality, and that the ADLU line card has no independent functionality of its own.

### ***CLECs' Position: TC 13***

Rhythms argues that, due to the D.C. Circuit's decision in *GTE Services* vacating the FCC's interpretation of Section 251(c)(6) in the *Advanced Services Order*, the FCC is currently receiving comments on the meaning of the term "necessary" as well as certain other aspects of collocation. The FCC has specifically asked for comments on whether the plug-in line cards used in NGDLC systems constitute equipment necessary for interconnection or access to UNEs. Rhythms proposes that the Commission adopt the standard urged by Rhythms before the FCC: ILECs must permit physical collocation of equipment so long as it is "directly related to" interconnection and access to unbundled elements and an inability to collocate such equipment would interfere with a CLEC's ability to compete effectively and efficiently.

The CLECs argue that collocation of line cards is "necessary" to provide interconnection to the fiber feeder interface at the Ameritech Illinois' remote terminals because CLECs will not be able to compete in the advanced services market without the ability to collocate line cards. First, the CLECs contend that line cards perform the same function as a DSLAM, and that in the many cases the collocation of a DSLAM is impractical and/or uneconomical, either because of a lack of space or the lack of economic subscriber density. Second, the CLECs assert that because the speed of the DSL service available to consumers is directly proportional to the length of copper over which DSL is deployed, forcing CLECs to collocate DSLAMs at the ILEC central office requires them to offer a noncompetitive service. The ILEC would be offering DSL over a significantly shorter copper facility and, as a result, the ILEC would be able to provide a higher speed offering to consumers than would a CLEC. Third, the CLECs claim that they might be altogether precluded from offering DSL services over home-run copper due to cross-talk and interference problems caused by the DSL signals generated at the remote terminal locations. Fourth, the CLECs assert that they should not be forced to spend money to overlay Ameritech Illinois' fiber feeder facilities and construct their own adjacent arrangements at each remote location in order to place a DSLAM to perform the necessary multiplexing. Finally, the CLECs contend Ameritech Illinois' Broadband Service Offering is nothing more than a resale offering and thus, is irrelevant in determining the need for such collocation.

The CLECs disagree with the contention that line cards do not constitute "equipment" eligible for collocation because they cannot function on a stand-alone basis. The CLECs assert that there is nothing in the FCC's rules or the Act to suggest that the right of collocation varies with the size and location of the equipment. The CLECs further assert that the FCC concluded that the ADLU cards are advanced services equipment because the card provides functionality similar to a DSLAM.

The CLECs also disagree with Ameritech Illinois' assertion that the card does not provide interconnection. Instead, the CLECs claim that a line card is a discrete piece of

equipment that is installed in the NGDLC RT and multiplexes the combined data signal for interconnection with the fiber feeder loop.

Finally, the CLEC assert that collocation is an “entry strategy permitted under the Act,” and therefore that the Commission is not barred or preempted from allowing the collocation of line cards under the *Project Pronto Order*. They argue that nothing in the *Project Pronto Order* bars this Commission from requiring Ameritech Illinois to allow the installation of CLEC-owned line cards. To the contrary, the CLECs assert that the *Project Pronto Order* merely waived the requirement imposed by the FCC in the *SBC/Ameritech Merger Order* requiring the merged company to transfer all advanced services equipment, including line cards, to an advanced data affiliate.

***Staff's Position:{ TC \l "3"}***

Staff previously advocated the collocation of CLEC line cards in Project Pronto architecture. As explained above in the discussion of the impair test, however, Staff appears to have taken a position on rehearing that would not require such collocation.

***Commission Analysis and Conclusion:{ TC \l "3"}***

The Commission concludes that the March 14 Order erred in requiring Ameritech Illinois to permit line card, “collocation.” Under Section 251(c)(6) of the Act, collocation is permitted only where “necessary” for interconnection or access to UNEs. Collocation is “necessary” when it is “required or indispensable to achieve a certain result.” *GTE Service Corp. v. FCC*, 205 F.3d 416, 422 (D.C. Cir. 2000).

For the reasons advanced by Ameritech Illinois, the Commission finds that collocation of line cards does not meet this test. The Commission finds that collocation of line cards is not necessary because the CLECs have an alternative to line card collocation – they can collocate DSLAMs in order to interconnect or access UNEs. While the CLECs argue that DSLAM collocation is too expensive to be a viable alternative, the Commission is unconvinced. The CLECs have not shown that they have ever requested DSLAM collocation in Illinois, much less that such collocation is too costly in Illinois. And even if they had, the expense of DSLAM collocation or the presumed cost savings of line card collocation (as well as the length of planning and delays in such collocation) are not factors that may be considered under the “necessary” test of Section 251(c)(6). *GTE Service*, 205 F.3d at 424, 426. The Commission also notes that if Ameritech Illinois deploys its Pronto DSL facilities, it is required by the *Project Pronto Order* to create space for DSLAM collocation in existing RTs upon request, and to overbuild future sites to ensure there is adequate space for collocation. In imposing these conditions, the FCC felt they were sufficient to overcome any perceived limitations of DSLAM collocation. Finally, while the CLECs claim that line card collocation is necessary for them to differentiate their services, this too is irrelevant. Section 251(c)(6) refers only to what is necessary for interconnection or access to UNEs, not to everything a CLEC finds useful for its business plans.

The Commission also finds that line cards can not even be used for interconnection with the ILEC's network or for access to UNEs. These are the only two purposes for which collocation is permissible. Interconnection is the "linking of two networks for the mutual exchange of traffic." 47 C.F.R. 51.5. The Order found that line cards "are the point of interconnection with the ILEC fiber-fed network." Order at 29. However, upon reflection, the Commission agrees with Ameritech Illinois that this fiber-fed network is only a small part of Ameritech Illinois' network. Moreover, the line card is not the CLEC's "network" for interconnection purposes; it is simply a component of an NGDLC system, and a component in the ILEC's – not the CLEC's – network at that. Thus, line cards do not link two "networks" as required by the FCC's rules. And, line cards do not exchange carriers' traffic; they are used by single carriers to send and receive their own customers' traffic.

Line cards also cannot be used to access UNEs. The line card resides in a slot within a channel bank within an NGDLC. The slot in the channel bank, not the line card, is hard-wired to the NGDLC's backplane. Thus, only the NGDLC, and not a separate subloop, is accessible from the channel bank slot. And the CLECs do not dispute that the hard-wired connection cannot be broken to access subloops from the RT. The Commission also agrees with Ameritech Illinois that the CLECs' "port-at-a-time" proposal for line card "collocation" is not collocation at all because the CLECs would not be placing equipment, but simply using up capacity credits on the cards.

The Commission also agrees with Ameritech Illinois that it is improper to allow CLECs to dictate where on Ameritech Illinois' property any collocation equipment would be placed. Section 251(c)(6) does not allow CLECs to pick and choose collocation locations in this manner. *GTE Service*, 205 F.3d at 426.

Finally, it is undisputed that line cards have no functionality of their own and are useful only when integrated with the rest of the equipment in an NGDLC system. The FCC, however, has always been clear that its collocation rules apply only to complete pieces of equipment with stand-alone functionality. 47 C.F.R. 51.323(b), *partially vacated by GTE Service*.

**ISSUE VI: WHETHER UNBUNDLING PROJECT PRONTO DSL FACILITIES IS TECHNICALLY, PRACTICALLY, AND ECONOMICALLY FEASIBLE AND EFFICIENT. { TC \l "1" }**

***Ameritech Illinois' Position:*{ TC \l "3" }**

Ameritech Illinois argues that the Order's unbundling and collocation requirements are not technically feasible to implement, and therefore violate federal law. Ameritech Illinois explains that the FCC has directed in ¶ 203 of the *Local Competition First Report and Order* that a technical feasibility analysis must consider legitimate threats to network reliability and security, that negative reliability effects are necessarily contrary to a finding of technical feasibility, and that each carrier must be able to retain responsibility for the management, control, and performance of its own network.

*First*, Ameritech Illinois argues that the integrated nature of the Pronto DSL packet switching equipment precludes the unbundling of individual components. Ameritech Illinois argues that those components, including the ILEC-owned line cards, are interdependent and are not capable of providing the same functionality if they are separated.

*Second*, Ameritech Illinois argues that the RT to NID and RT to SAI unbundled copper subloops required by the Order are not technically feasible because they lack a recognized access point at the Pronto RT; rather, these subloops are hard-wired to the RT backplane. Ameritech Illinois further asserts that the engineering decision to use hard-wiring rather than a separate cross-connect field at each RT is consistent with past practice, reduces costs, eliminates a potential point of failure, and has many other benefits over other alternatives. Ameritech Illinois also argues that the CLECs have no right to determine precisely how Ameritech Illinois deploys new equipment.

*Third*, Ameritech Illinois argues that allocating PVPs to CLECs would endanger the capacity of the Pronto DSL system and lead to increased costs through stranded capacity. This would result because a CLEC leasing a PVP would commandeer for itself all of the capacity of that PVP's assigned channel bank assembly – one-third of the DSL capacity of an RT. Ameritech Illinois asserts that future software releases by the NGDLC's manufacturer that may allow for multiple PVPs per channel bank are speculative, and have not yet been tested or deployed. Ameritech Illinois further asserts that such software would not reduce stranded capacity problems because Ameritech Illinois could not ensure that CLECs were using only their allotted bandwidth on a PVP. Ameritech Illinois also contends that other proposals by the CLECs to avoid stranded capacity problems at the RT and on the fiber feeders by increasing the bandwidth in the Pronto DSL architecture simply shift those problems to the central office because they require additional ports on the OCD to receive the incoming traffic. Ameritech Illinois argues this would lead to the exhaust of existing OCD ports and that it would therefore be forced to install additional OCDs, which are extremely expensive. Ameritech Illinois emphasizes again that there is no guarantee CLECs would ever use these extra facilities and thus no guarantee Ameritech Illinois would ever recover the additional costs caused by the CLECs.

*Fourth*, Ameritech Illinois argues that unbundling ports on the OCD is not technically feasible because it would lead to capacity problems by prematurely exhausting the limited number of ports on the OCD. Ameritech Illinois argues that it is simply too expensive and risky to add new OCDs, as doing so may be premature for the reasons stated above.

*Fifth*, Ameritech Illinois asserts the evidence on rehearing indicates three technical problems with CLEC line card collocation: (1) ADLU cards not manufactured or licensed by Alcatel would not work in Alcatel equipment deployed by Ameritech Illinois; (2) collocation of compatible cards would lead to premature exhaust of line card slots and inefficient use of the DSL capacity in an RT, leading to stranded capacity and substantial increased costs for Ameritech Illinois; and (3) such collocation would require extensive and expensive changes to Ameritech Illinois' systems and processes in order to accept, store, inventory, install, and return a CLEC line card. Ameritech Illinois points out that the CLECs concede that they could never collocate incompatible line cards in the Alcatel equipment. Ameritech Illinois argues that while the CLECs attempt to mitigate their line card collocation demands on rehearing and now seek

only a port on a line card and the ability to use new types of cards as they become available, the Order permits single CLECs to collocate entire line cards of any sort in the Pronto NGDLCs, and, in any event, the CLECs' proposal would do nothing to reduce the operational complexity and cost of attempting to oversee such an unprecedented pseudo-collocation arrangement.

*Sixth*, with respect to features and functions that may become available in the future, Ameritech Illinois contends the collaborative process established by the FCC in the *Project Pronto Order* provides for adequate discussion of such technical issues and affords the CLECs a wide range of enforcement alternatives if the collaboratives do not reconcile the issues.

*Finally*, Ameritech Illinois asserts that the combinations of the listed UNEs required by the Order raise the same technical and capacity problems as present in the individual elements.

### ***CLECs' Position:{ TC \l "3"}***

As an initial matter, the CLECs claim that the Order's requirements do not lead to technical or economic infeasibility because SBC allegedly always intended to unbundle the Pronto DSL architecture and allow CLECs to own ADLU cards.

The CLECs next argue that it is technically and economically feasible to unbundle the Pronto DSL architecture. First, the CLECs argue Ameritech Illinois could have placed a cross-connect field within each Pronto RT instead of opting for the hard-wiring architecture. The CLECs contend doing so would have reduced some of the stranded capacity problems caused by line card collocation. Second, the CLECs assert that the upcoming software release 11 for Alcatel's Litespan NGDLC equipment will allow multiple PVPs per channel bank assembly, thus mitigating stranded capacity problems. Third, the CLECs claim there are multiple ways to increase the bandwidth capacity of an NGDLC system to support various types of DSL service, and that this increased bandwidth capacity will reduce capacity exhaust problems. Fourth, the CLECs assert that Ameritech Illinois already has the interfaces and systems ready to deal with line card collocation. Fifth, the CLECs assert they do not intend to collocate line cards in a way that leads to stranded capacity or that do not work in Ameritech Illinois' NGDLCs. Finally, the CLECs propose (for the first time on rehearing) that they provide line cards to Ameritech Illinois but obtain access to those cards only on a port-at-a-time basis. The CLECs argue this proposal will allow Ameritech Illinois to use line card ports efficiently.

### ***Staff's Position:{ TC \l "3"}***

Staff recognized that technical problems may exist but did not take a firm position on feasibility.

### ***Commission Analysis and Conclusion{ TC \l "3"}***

The rehearing has made clear that the March 14 Order's unbundling and collocation requirements are not technically feasible, practical, or wise. In ¶ 203 of its *First Report and Order*, the FCC explained that:

legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its own network.

The Order's unbundling and collocation requirements do not pass this test. The record reveals that the components of the Pronto DSL network are interdependent and cannot function if they are separated. Thus, they are not capable of being unbundled such that a CLEC could access any individual element at a physical point (as required by 47 C.F.R. 51.307(a)) or "separate from . . . other network elements" (as required by 47 C.F.R. 51.307(d)) and still have the element provide the same functionality.

For instance, it is not technically feasible to unbundle the RT to SAI and RT to NID copper subloops because there is no recognized access point at the RT; rather, these copper subloops are hard-wired to the backplane of the NGDLC. While the CLECs criticize Ameritech Illinois' decision to use hard-wiring instead of a separate cross-connect field at the RT, the CLECs have no right to determine precisely how Ameritech Illinois deploys new equipment. Also, as Rhythms concedes, ADLU line cards cannot be unbundled because they cannot function in isolation. Mr. James Keown also presented extensive evidence regarding premature exhaust of the Pronto DSL system and stranded capacity problems resulting from unbundling PVPs. The Commission finds this evidence persuasive. CLEC arguments regarding future software deployments that may mitigate exhaust and capacity problems are speculative, as the software has not yet been tested or deployed. The Commission also finds that CLEC proposals to increase the bandwidth in the Pronto DSL architecture do not alleviate these problems, but merely shift them to the OCD. Ameritech Illinois would incur substantial costs in adding additional OCDs, and the CLECs may never use them. Moreover, as Sprint concedes, PVPs and PVCs ride the entire circuit and cannot be unbundled from the attached electronics at either end.

CLEC line card collocation is also technically infeasible. The CLECs agree that ADLU cards not licensed by Alcatel would not work in Alcatel equipment deployed by Ameritech Illinois. Moreover, collocation of compatible cards would lead to premature exhaust of the Pronto DSL architecture and would require extensive and expensive changes to Ameritech Illinois' systems and processes. Such collocation also could lead to premature exhaust of system capacity by stranding capacity that would be available to other customers if there were no line card collocation. We reiterate our concern that what the CLECs seek is not actual collocation but rather a right to co-engineer Ameritech Illinois' Pronto DSL architecture and use their architecture in ways not originally intended, which leads to all of the practical problems noted by Ameritech Illinois.

The Commission also concludes that the Order's broad unbundling and collocation requirements are not necessary to ensure that CLECs have access to new features and functions as they are developed by the equipment manufacturers. The collaborative process established by the FCC in the *Project Pronto Order* provides adequate discussion and enforcement procedures to address CLEC concerns.

Finally, requiring combinations of the listed UNEs would raise the same technical and capacity problems as would unbundling the individual elements.

**ISSUE VIII: WHETHER SETTING THE MONTHLY RECURRING CHARGE FOR THE HFPL UNE AT \$0 IS UNLAWFUL. { TC \l "1" }**

***Ameritech Illinois' Position: { TC \l "3" }***

Ameritech Illinois proposes that the Commission set the monthly recurring price for the HFPL UNE at 50% of the Commission-approved monthly recurring price for unbundled loops (plus the incremental facilities and operations costs caused by sharing the loop). Ameritech Illinois supports this proposal as follows:

*First*, Ameritech Illinois argues that its proposed price is fully consistent with the FCC's TELRIC pricing principles. Under the FCC's TELRIC principles, the cost of a line-shared loop is a *shared* cost that must be allocated between the two services that cause that cost. Ameritech Illinois asserts that because there are two dedicated connections on a single loop when a CLEC leases the HFPL – one for the voice service and one for the data service – those two connections jointly cause the cost of the loop. Thus, it is reasonable (and necessary) to divide the cost of the loop between those two uses. Because the CLECs have not presented evidence that the market places greater value on the low frequency portion of the loop than on the high frequency portion, common sense and basic economic principles dictate that loop costs should be allocated equally between the two uses.

*Second*, Ameritech Illinois argues that this price provides a significant discount to CLECs in comparison to the price they would have to pay for an entire loop. This, in turn, would encourage CLECs to enter the residential DSL market. Before line sharing was available, CLECs wishing to use Ameritech Illinois' facilities to provide xDSL service had to purchase an entire loop from Ameritech Illinois. With line sharing, under Ameritech Illinois' proposal, CLECs can purchase the high frequency portion of that loop at a substantial discount – 50% off the current loop price. Ameritech Illinois further asserts that because this price is positive (*i.e.*, non-zero) it will encourage CLECs to deploy their own facilities, including their own loops, where it is economic to do so.

*Third*, Ameritech Illinois argues that its proposal recognizes that, because CLECs are receiving dedicated use of the high frequency portion of the loop, they should pay for that use. Ameritech Illinois asserts that it is patently unreasonable to require a company to sell any product or service at a zero price, as the CLECs are proposing in this proceeding. Adopting the CLECs' \$0 price, would be tantamount to requiring Ameritech Illinois to "give away" the HFPL product. Such a result would not be competitively neutral, as it would place other broadband service technologies that are not priced at zero – such as cable modem facilities or wireless facilities – at a decided competitive disadvantage.

Ameritech Illinois argues that the Commission should reject the CLECs' proposal of a \$0 monthly recurring charge for the HFPL for the following additional reasons:

*First*, Ameritech Illinois argues that the \$0 monthly recurring HFPL price would effect a taking of Ameritech Illinois' property without just compensation — indeed, without any compensation — which is unconstitutional. Moreover, Ameritech Illinois asserts, TELRIC requires the establishment of “just and reasonable rates.” The CLECs' \$0 price violates TELRIC and would lead to an unlawful taking by compelling Ameritech Illinois to provide the HFPL UNE to CLECs at no charge, which plainly is not “just and reasonable compensation.”

*Second*, Ameritech Illinois argues that the CLECs' proposal conflicts with the legal requirements of Section 252(d)(1) of the Act. Ameritech Illinois cites Section 252(d)(1)'s requirement that UNE prices *shall* be “based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the network element” and “may include a reasonable profit.” In other words, Ameritech Illinois asserts, determining what charge applies to the CLECs for the purchase of the HFPL UNE depends on the cost of the UNE, not on what charge an end user pays for the voice service. Thus, in arguing that a 50% HFPL price will allow Ameritech Illinois to double recover its loop costs because Ameritech Illinois purportedly recovers the costs of the entire loop through its retail rates, the CLECs disregard the statutory mandate that retail rates cannot be considered in setting UNE prices.

*Third*, assuming the issue were relevant, Ameritech Illinois asserts there is no evidence that it is recovering the entire cost of the loop in its retail rates. To the contrary, Ameritech Illinois asserts that it is likely not recovering the entire cost of the loop because (1) Ameritech Illinois has not been subject to rate-of-return regulation since 1994, and, therefore, has no assurance that it will recover the entire cost of the loop in retail rates; (2) the existing retail rates were based on the assumption that Ameritech Illinois would be guaranteed its service franchise, an assumption that no longer holds true in today's market of competitive access; (3) much of the loop costs are related to capital investments that must be recovered over a period of years, and therefore consideration of current revenues is insufficient to determine whether Ameritech Illinois will fully recover the costs of unbundled loops; (4) CLECs target high-use customers, and, as these customers are lost to the CLECs, their disproportionate contribution to Ameritech Illinois' overall recovery of its loop costs is lost; and (5) competition will preclude it from over-recovering its loop costs.

*Fourth*, Ameritech Illinois argues that a \$0 price would be discriminatory and distort the competitive market for advanced services by favoring CLECs that provide DSL service using the HFPL UNE. Ameritech Illinois asserts that providers of advanced services over other technological platforms pay a positive price for the facilities they use, and that these providers are competitively disadvantaged if providers using the HFPL UNE pay nothing for the facility they use. The CLECs' proposal would incent against the use of other technologies, and would therefore not promote efficient competition. It also would discriminate against voice CLECs who may want to become providers of the HFPL UNE and against carriers that build their own facilities to provide service.

*Fifth*, Ameritech Illinois asserts that a \$0 price would discourage facilities-based competition by CLECs, as well as continued investment in facilities by Ameritech Illinois.

Finally, Ameritech Illinois points out that several state commissions have rejected a \$0 price for the HFPL UNE.

***CLECs' Position:{ TC \l "3"}***

The CLECs did not submit additional testimony on this issue in the rehearing phase of this docket. Ameritech Illinois assumes the CLECs' position on this issue remains the same as espoused in the initial phase of the docket.

***Staff's Position:{ TC \l "3"}***

Staff did not file extensive testimony on this issue on rehearing. However, in the initial phase of this docket, Staff urged the Commission to attribute 0% of joint and common loop costs to the HFPL.

Specifically, Staff claimed that: (1) Ameritech Illinois does not incur any additional incremental joint and common costs as a result of a competitor's use of the HFPL; (2) Ameritech Illinois has in the past allocated 100% of such costs to voice, and, accordingly has allocated 0% to the HFPL; (3) Ameritech Illinois' assertion that it fails to recover loop costs from the voice portion of the loop is highly debatable, and (4) Ameritech Illinois has not undertaken at any point in this proceeding to insure against over-recovery. Staff notes that it would find Ameritech Illinois' position more worthy of consideration if, to the extent that it over-recovered its costs, it were prepared to refund overpayments to end-users. Staff also pointed out that other state commissions have recognized that a 0% allocation is proper.

***Commission Analysis and Conclusion:{ TC \l "3"}***

For the reasons advanced by Ameritech Illinois, we are persuaded on rehearing to adopt Ameritech Illinois' proposed HFPL monthly recurring charge of 50% of the Commission-approved monthly recurring unbundled loop price. This price is fully consistent with the FCC's TELRIC principles and is reasonable given that the cost of the loop is shared by two services.

Under TELRIC standards, the price of the loop is a *shared* cost that must be allocated between the two services that cause the cost. The HFPL is a dedicated service that uses the loop and, therefore, it causes the loop cost along with any other dedicated service that uses the same loop. As pointed out by Ameritech Illinois, the TELRIC methodology only establishes the cost of the *entire* loop, as cost causation cannot be established between the HFPL and the voice portion. The *First Report and Order* requires an allocation of the shared loop cost, and the only logical way to do so is to split the cost equally between the two services using the loop. Indeed, the record establishes there are two dedicated services on a shared line, and there is no meaningful evidence that more or less than 50% of the loop cost should be allocated to either service. The Commission finds no rationale for allocating none of the shared cost to the high frequency portion of the loop and the entire cost to the low frequency portion of the loop. Moreover, the provision of line sharing causes additional network and operational costs. The price of the HFPL UNE should include the actual incremental facilities and operations costs caused by sharing the loop.

Ameritech Illinois' proposed price also encourages CLECs to enter the residential market and provides a significant discount in comparison to the price CLECs would have to pay for an entire loop, yet unlike the CLECs' proposal, Ameritech Illinois' proposal does not require Ameritech Illinois to give away the HFPL product. The CLECs' proposed zero price conflicts with the legal requirements of Section 252(d)(1), and would give data CLECs an unfair and artificial competitive advantage over other advanced service technologies.

Perhaps more important to our decision, Section 252(d) states that UNE prices *shall* be “based on the cost (*determined without reference to a rate-of-return or other rate based proceeding*) of providing the ...network element” and “may include a reasonable profit.” (emphasis added). The Commission recognizes that Section 252(d) of the Act (as well as the FCC's TELRIC methodology) requires a complete separation between UNE pricing and retail pricing. Indeed, Section 252(d) mandates that the price of an UNE be determined without reference to a rate-of-return or other rate-based proceedings.

Accordingly, the Commission must reject the CLECs' argument that a 50% HFPL UNE price results in double recovery or windfall profits. Whether those costs are currently being recovered by retail voice services is irrelevant in setting the price of UNEs. Moreover, even if double recovery were legally relevant, there is no evidence that Ameritech Illinois is recovering the entire cost of the loop in retail rates. Indeed, Ameritech Illinois has not been subject to rate of return regulation since 1994, as it has been subject to price cap regulation since that time. Because Ameritech Illinois is not subject to rate of return regulation, its rates are no longer designed to automatically recover the company's costs, as Staff and the CLECs assume in this case. Accordingly, Ameritech Illinois' retail rates cannot properly be used to support the conclusion that Ameritech Illinois recovers 100% of its cost through voice service.

Notably, in its Order approving the SBC/Ameritech merger, the FCC necessarily found that any potential for double recovery was irrelevant when it established a surrogate line sharing discount of 50% of the cost of the entire unbundled loop for unaffiliated CLECs when line sharing was not available.<sup>4</sup> The FCC acknowledged that if an SBC ILEC charged unaffiliated CLECs the same amount for a loop as it charged its affiliated CLEC, pro-competitive pricing for xDSL service would result. The FCC found that charging 50% of the price of an entire unbundled loop would

spur deployment of advanced services by SBC/Ameritech, as well as other carriers, while ensuring that these other carriers receive treatment from an SBC/Ameritech incumbent LEC comparable to that provided to the SBC/Ameritech separate affiliate.<sup>5</sup>

In so concluding, the FCC necessarily found that any potential for “double recovery” of such costs through retail rates was irrelevant.

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<sup>4</sup> *SBC/Ameritech Merger Order*, ¶ 467; Appendix C (Conditions Appendix), ¶ 14.

<sup>5</sup> *SBC/Ameritech Merger Order*, ¶ 370.

In any event, even if the Commission has concerns about double recovery (which it does not), the solution would not be to set a zero price for the monthly recurring HFPL charge. Indeed, to do so would be unreasonable and unlawful given the FCC's directive (not to mention this Commission's prior conclusions in Dockets No. 96-0486/0569) that all UNEs should contribute to the recovery of shared and common costs. The Commission therefore must set the HFPL price at some positive amount.

Moreover, sound policy dictates that Ameritech Illinois charge a positive price for the HFPL UNE. We reject the CLECs' argument that a positive price would not be discriminatory toward CLECs. Data CLECs are protected from the possibility of discriminatory behavior by the fact that Ameritech Illinois does not provide DSL service. CLECs will receive the HFPL UNE at the same price and on the same terms and conditions as Ameritech Illinois' data affiliate. Rather, it is a zero price that would be discriminatory – discriminatory *in favor* of data CLECs. Pricing the HFPL at zero would artificially favor one advanced services technology competitor (DSL providers) over other advanced services technology competitors (such as cable modem, direct broadcast, satellite DBS and fixed wireless providers). Notably, in other proceedings, advanced service competitors such as AT&T have recognized that a zero price for HFPL is both anti-competitive and unjustified when viewed in light of the entire telecommunications market place. Specifically, a zero price would permit data CLECs to bear no cost for one of the most important assets they utilize in providing their service, while other advanced service providers are required to pay for the assets they utilize in providing service. Staff agrees that this arrangement would not promote efficient competition.

In summary, the Commission finds on rehearing that Ameritech Illinois' proposed charge for the HFPL UNE is based on a reasonable approach for setting the price for this new unbundled network element, and is therefore adopted.

#### **ISSUE IX: WHETHER AMERITECH ILLINOIS MUST ALLOW CLECS TO HAVE DIRECT ACCESS TO ITS BACK-OFFICE SYSTEMS.**{ TC \l "1" }

##### ***Ameritech Illinois' Position:***{ TC \l "3" }

Ameritech Illinois argues that the Commission should reject on rehearing the CLECs' proposal for direct access to Ameritech Illinois' back office systems for the following reasons:

*First*, Ameritech Illinois argues that the real issue is what type of access Ameritech Illinois must allow to its back office systems, not whether those systems constitute OSS. Ameritech Illinois asserts that even if back office systems are considered OSS, that says nothing about whether access to those systems should be provided through direct, unmediated access, or via gateways. Ameritech Illinois contends that the FCC has never ordered ILECs to provide CLECs with direct access to their back office systems. Ameritech Illinois argues the FCC has required only that (1) ILECs must provide access to the *information* in those systems (*UNE Remand Order*, ¶¶ 426, 428, 430-31), and (2) the access to that information need only be through *electronic gateways*—direct, unmediated access is not required. *First Report and Order*, ¶ 527; *UNE Remand Order*, ¶ 429; *Line Sharing Order*, ¶ 107. Ameritech Illinois points out that the FCC has endorsed the use of gateways as the vehicle by which CLECs should access information

in an ILEC's systems. In fact, the FCC approved of these gateways as part of SWBT's 271 applications in Texas, Kansas and Oklahoma.

*Second*, Ameritech Illinois argues that CLECs are entitled under the *First Report and Order* and the *UNE Remand Order* only to certain types of *information*. Specifically, CLECs are entitled to any pre-ordering (loop qualification) information that is available to any Ameritech Illinois employee, and any ordering, provisioning, maintenance and repair, and billing information that is available to Ameritech Illinois' retail arm. Ameritech Illinois argues that Ameritech Illinois' gateways already provide this information to CLECs.

*Third*, Ameritech Illinois asserts that direct access to its back office systems will allow CLECs to have unfettered access to information that bears no relationship whatsoever to a CLEC's ability to line share or the five OSS functions. Ameritech Illinois argues that much of this information is confidential to end-users, other CLECs, and Ameritech Illinois. For example, back office systems contain unlisted telephone numbers, security alarm information, customer credit information, and commercially sensitive information of CLECs and Ameritech Illinois. Ameritech Illinois asserts that wholesale and retail customers provide this sensitive information to Ameritech Illinois with the understanding that no one outside Ameritech Illinois will access the information. Ameritech Illinois argues that disclosure of the confidential information in its back office systems would not only pose a security risk to end-users, it would allow CLECs to unlawfully use information for marketing and other improper purposes. Ameritech Illinois argues that the Hearing Examiners' Proposed Order on Rehearing in Docket No. 00-0592 recognized as much, and that such access violates § 222 of the Act.

*Fourth*, Ameritech Illinois argues that, if CLECs are permitted to directly access Ameritech Illinois' back office systems, Ameritech Illinois would have to make numerous enhancements to those systems in order to prevent CLECs from viewing confidential information to which they are not legally entitled. These enhancements, however, would be costly, time consuming, and repetitive of the capabilities already built into electronic interfaces, gateways, and GUIs.

*Finally*, Ameritech Illinois argues there is no demonstrable benefit to allowing CLECs direct access to back office systems. Ameritech Illinois contends that direct access would not provide CLECs with any more loop qualification information than the CLECs otherwise receive via Ameritech Illinois' interfaces, gateways, and GUIs. Ameritech Illinois notes that the CLECs have audited its databases, yet still have not identified any loop qualification information that they need to provision service that is not already provided by Ameritech Illinois. Ameritech Illinois also argues that its electronic interfaces, gateways, and GUIs provide CLECs with loop qualification information much more quickly than it could be obtained with direct access. Ameritech Illinois adds that CLECs likely would be unable to decipher the information in its back office systems, absent extensive, ongoing training on each system. Ameritech Illinois adds that direct access to its back office systems could cause the systems to fail because they were designed to store information, not to process direct queries by Ameritech Illinois and CLEC retail representatives.

***CLECs' Position:{ TC \l "3"}***

The CLECs argue that Ameritech Illinois must provide them with direct access as well as gateway access to information in its records, back end systems, and databases. The CLECs argue that the test of what information Ameritech Illinois must provide is not whether its retail operations have access to data, but whether the information is available to any of its employees. They assert that Ameritech Illinois cannot argue that CLECs have not identified any specific data that it is not providing, because CLECs do not know how much useful information exists and where it is located.

The CLECs assert that Ameritech Illinois has offered no evidence that its back office systems would fail if subjected to access by multiple CLECs. Further, they claim that there is no evidence that CLEC employees pose any greater security risk associated with access to the information than do Ameritech Illinois' own employees. The CLECs also assert that the federal statutory and FCC rules concerning Customer Proprietary Network Information (CPNI) are not implicated by granting CLECs direct access to the information in these databases because most of the information is technical in nature and does not constitute CPNI as contemplated by federal law.

***Staff's Position:***{ TC \l "3"}

Although Staff did not file testimony on this issue on rehearing, in Docket No. 00-0592, Staff agreed with Ameritech Illinois that CLECs should not be given direct access to back office systems.

***Commission Analysis and Conclusion:***{ TC \l "3"}

Upon reconsidering the relevant FCC pronouncements, we do not believe that direct access is compelled by the FCC. The FCC has had the opportunity to order ILECs to permit direct, unmediated access to their back office systems, but it has chosen not to do so. Instead, the FCC merely ordered that ILEC's make available the information necessary to support OSS functions, information that Ameritech Illinois undisputedly makes available through its gateways. Indeed, in the *UNE Remand Order*, the FCC stated:<sup>6</sup>

...the pre-ordering function includes access to loop qualification **information**...Loop qualification **information** identifies the physical attributes of the loop plant...

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[T]he incumbent **LEC** must provide access to the underlying **loop qualification information** contained in its engineering records, plant records, and other back office systems...

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[T]o the extent that ILEC employees have access to the information in an electronic format, **that** same format should be made available to new entrants **via an electronic interface**.

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<sup>6</sup> See *UNE Remand Order* at paras. 426, 428, 429, 430-431 (emphasis added).

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the relevant inquiry is... whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's **personnel**.

This reading of the FCC's pronouncements is consistent with the recently issued Hearing Examiners' Proposed Order on Rehearing in ICC Docket No. 00-0592. There, the Illinois Hearing Examiners recognized the distinction between access to information contained in back office systems and direct access to the back office systems themselves. Relying on the *UNE Remand Order*, the Hearing Examiners found that CLECs have no legal right to directly access Ameritech Illinois' back office systems; rather, CLECs are entitled only to the information contained in those systems.<sup>7</sup> Ameritech Illinois' agreement to provide the 45 line-sharing data elements requested by the CLECs in the various POR collaboratives satisfies the requirements of the *UNE Remand Order*. The CLECs point to nothing in the *UNE Remand Order* mandating direct access to Ameritech Illinois' back office systems, because there is no such requirement.

That being said, there are several other reasons why we reject the CLECs' request for direct access to Ameritech Illinois' back office systems.

*First*, the FCC explicitly "urge[d] requesting carriers and incumbent LECs to engage in a collaborative process at the regional level to develop solutions" to OSS functionality issues with respect to provisioning of the HFPL UNE. *Line Sharing Order*, ¶ 128. The FCC expected such issues to be resolved when "incumbent and competitive LECs collaborate to establish OSS interfaces, regularized processes, and business practices for ordering, provisioning, billing, testing, maintenance, and repair responsibilities." *Id.* Allowing CLECs direct access to Ameritech Illinois' back office systems serves only to interfere with those collaborative efforts and risks conflict with the outcome of that process.

*Second*, Ameritech Illinois has produced extensive evidence on rehearing demonstrating that permitting direct access to its back office systems is unwise because it would open a Pandora's Box of security, redundancy, and cost concerns. For the reasons stated by Ameritech Illinois, the Commission agrees that direct access will allow CLECs to have unfettered access to confidential information that bears no relationship to a CLEC's ability to utilize the HFPL UNE or the five OSS functions — and CLECs simply are not legally entitled to access such information. Moreover, disclosure of the confidential information in Ameritech Illinois' back office systems would pose a security risk to end-users, and would allow CLECs to unlawfully use that information for marketing or other improper purposes. It would be pointless to require Ameritech Illinois to build "firewalls" or other enhancements to protect this confidential information. Doing so would be costly and time consuming for Ameritech Illinois, and these costly enhancements would merely be repetitive of the function already performed by OSS interfaces, gateways, and GUIs already utilized by CLECs.

*Third*, the CLECs have failed to show any benefit that may flow from direct access. The CLECs' proposals would not afford access to any more information than the CLECs are

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<sup>7</sup> Administrative Law Judges' Proposed Order on Rehearing, *Joint Submission of Amended Plan of Record for Operations Support Systems* ("OSS") at 12 (July 3, 2001).

otherwise legally entitled and able to receive via Ameritech Illinois' interfaces, gateways, and GUIs. The Commission also notes that during the initial phase of this docket, and again on rehearing, the CLECs have not identified any specific piece of loop qualification information in those systems necessary to the OSS functions that they are not already receiving from Ameritech Illinois.<sup>8</sup> Additionally, as explained by Ameritech Illinois, obtaining information via direct access will be slower than gateway access. And, the information in the back office systems will be more difficult to use than information obtained via gateways. The only conceivable benefit of direct access is for CLECs to use the information obtainable thereby for marketing or other improper purposes. We will not permit this to occur.

*Finally*, putting aside the lack of any benefit resulting from direct access, we note that such access could cause Ameritech Illinois' systems to slow down or fail.

For these reasons, we reverse our decision requiring direct access to Ameritech Illinois' back office systems and adopt Ameritech Illinois' proposed tariff language on this issue.

### **ISSUE XIII: WHETHER SETTING THE NONRECURRING CHARGE FOR MANUAL LOOP QUALIFICATION AT \$0 IS UNLAWFUL. { TC \l "1" }**

#### ***Ameritech Illinois' Position:* { TC \l "3" }**

In the initial phase of this docket, Ameritech Illinois proposed a per minute nonrecurring charge for manual loop qualification. On rehearing, Ameritech Illinois is now proposing an average, flat-rated cost per occurrence. Ameritech Illinois bases its proposed cost on the forward-looking time it takes for a Drafter to perform the necessary work steps, and the hourly rate of the Drafter. Ameritech points out that Staff agrees that its newly proposed average cost has several advantages over a per-minute charge.

Ameritech Illinois also points out that the CLECs have not submitted testimony on this issue on rehearing or otherwise demonstrated how the new proposed cost is unreasonable, nor have they proposed any charge that they believe is more reasonable.

Ameritech Illinois argues that the Commission should reverse its conclusion that Ameritech Illinois should not be allowed to charge for manual loop qualification. Ameritech Illinois first argues that denying recovery for manual loop qualification would be an unconstitutional taking of its property.

Ameritech Illinois next argues the Commission incorrectly found that manual loop qualification charges are inappropriate because loop information should have been accumulated in an Ameritech Illinois database long before now, and thus retrievable via the mechanized process. Ameritech Illinois asserts this belief is simply not true. Ameritech Illinois argues that it is not required to provide loop make-up information via a mechanized process for all of its loops,

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<sup>8</sup> Sprint's request for "market-wide" information is insufficient grounds for requiring direct access.

and that the FCC found in ¶ 429 of the *UNE Remand Order* that ILECs are not required to provide loop make-up information in a mechanized format if it is not available.

Ameritech Illinois also argues there is no evidence that its databases contain loop qualification information on every loop and, even if they did, that would not mean the mechanized loop qualification process would successfully return loop information to the requesting CLEC in every instance. Ameritech Illinois argues it submitted evidence on rehearing demonstrating that in some instances, the mechanized loop qualification process is unable to return loop information to the requesting CLECs even though the information is actually in Ameritech Illinois' systems.

For these same reasons, Ameritech Illinois urges the Commission to reject the CLECs' assertion (made during the initial phase of this docket) that the need for a manual loop qualification is the result of Ameritech Illinois' failure to properly maintain its own database or choosing not to follow its own guidelines and directions, and therefore, that this information should be provided at the cost associated with the production of this information via the mechanized OSS. Ameritech Illinois adds that this argument is baseless because Ameritech Illinois had no legal obligation or business reason to collect and mechanize this information before the FCC issued its *Line Sharing Order* creating the new HFPL UNE. Ameritech Illinois further asserts that it is beyond question that it must develop loop qualification information manually for many of its loops and incurs real costs in doing so, which it is entitled to recover.

***CLECs' Position:{ TC \l "3"}***

Although the CLECs presented no additional testimony on rehearing addressing Ameritech Illinois' new proposed cost, they argued in the initial phase of this docket that Ameritech Illinois failed to provide cost support for its manual loop qualification charge and, therefore, the Commission should not approve the charge. The CLECs also asserted that because xDSL services have been available for years, most of the basic loop qualification information should have been captured in Ameritech Illinois' databases some time ago. Thus, the CLECs argue, the forward-looking cost analysis should include data at the fully mechanized processing cost, and not at a manual cost.

***Staff's Position:{ TC \l "3"}***

Staff believes that the Commission correctly decided in its initial Order that Ameritech Illinois should not be allowed to recover costs for manual loop qualification. However, Staff recommends that if the Commission chooses to reconsider its position, it should adopt the manual loop qualification cost proposed by Ameritech Illinois on rehearing. Staff argues this cost is an improvement over the per minute charge proposed by Ameritech Illinois in the initial phase of this docket. Staff asserts that basing the cost on a drafting clerk's labor rate, rather than an engineer's labor rate (as Ameritech Illinois had previously done), is more appropriate because an engineer's expertise is not required to perform manual loop qualifications. Staff also argues that recovering the cost of manual loop qualification on a flat rate rather than a per minute basis is superior because the actual amount that a CLEC would have to pay for manual loop qualification will be known and will therefore not result in a "to be determined" price.

***Commission Analysis and Conclusion:***{ TC \l "3"}

The Commission adopts the nonrecurring cost for manual loop qualification proposed by Ameritech Illinois on rehearing. We find that denying Ameritech Illinois recovery of the costs it will actually incur to perform manual loop qualification would amount to an unconstitutional taking of Ameritech Illinois' property. Moreover, Ameritech Illinois' new proposed cost is a fair estimate of Ameritech Illinois' forward-looking manual loop qualification costs. As Staff agrees, this cost is an improvement over the per minute charge Ameritech Illinois proposed in the initial phase of this docket. The CLECs have not addressed Ameritech Illinois' new proposed cost, nor have they proposed any charge that they believe is more reasonable.

Staff raises the concern that Ameritech Illinois' current proposed cost *may* be based on excessive work time estimates. However, as Staff admits there is no evidence to support this belief, and in fact, the CLECs have not presented any evidence to rebut Ameritech Illinois' time estimates. We find that Ameritech Illinois has provided adequate support for this cost.

Finally, upon reconsideration, we also reject the CLECs' argument (made in the initial phase of this docket) that they should only be charged the price for mechanized loop qualification because xDSL services have been available for years and, therefore, most of the basic loop qualification information should have been captured in Ameritech Illinois' databases some time ago. There is no record support for this assertion. Among other reasons, the FCC specifically found that ILECs are not required to provide loop make-up information in a mechanized format if it is not available. *UNE Remand Order* ¶ 129. In fact, the Hearing Examiners in Docket No. 00-0592 recognized that Ameritech Illinois may return loop qualification information "either via an electronic interface . . . or manually." We agree.

Additionally, as explained by Ameritech Illinois, it had no legal obligation or business reason to collect and mechanize loop qualification information before the FCC issued its *Line Sharing Order* creating the new HFPL UNE. Indeed, because the HFPL UNE did not exist prior to the FCC's *Line Sharing Order*, Ameritech Illinois simply had no reason to develop an automated database associated with a non-existent UNE.

More importantly, there is no evidence that Ameritech Illinois' electronic databases contain loop qualification information on every loop, and requiring Ameritech Illinois to create new databases to support the CLECs' provisioning of service would be unlawful. Indeed, the FCC has held ILECs have no obligation to construct new databases on behalf of requesting carriers. *UNE Remand Order*, ¶429. Finally, even if Ameritech Illinois' database did contain loop qualification information on every loop, that would not mean that the mechanized loop qualification process would successfully return loop information to the requesting CLEC in every instance. Ameritech Illinois demonstrated that in some instances, the mechanized loop qualification process is unable to return loop information to the requesting CLECs even though the information is actually in Ameritech Illinois' systems.

For the foregoing reasons, we adopt Ameritech Illinois' proposed cost for manual loop qualification.

**ISSUE XIV: WHETHER SETTING THE MONTHLY RECURRING CHARGE FOR OSS MODIFICATIONS AT \$0 IS UNLAWFUL.**{ TC \1 "1" }

***Ameritech Illinois' Position:***{ TC \1 "3" }

Ameritech Illinois argues that the FCC has held that ILECs are entitled to recover their line sharing-related OSS costs from CLECs and may do so through recurring charges over a reasonable period of time. *Line Sharing Order*, ¶ 144. Ameritech Illinois argues that its proposed rate for OSS modification is reasonable and represents the costs that actually will be incurred by SBC/Ameritech to modify its OSS systems to support line sharing. Ameritech Illinois points out that it will only charge the monthly OSS modification charge until it recovers the costs of the software upgrade and related activities required to modify its OSS to support line sharing, and thus, there is simply no chance that Ameritech Illinois will over-recover the cost of such OSS modifications.

Ameritech Illinois explains that the rate was developed based on the vendor costs of implementing the OSS modification and on a product management demand forecast of the number of shared lines that will be provisioned over the next three years for the entire SBC/Ameritech serving area. This information was then used to compute the monthly cost per line on a present value basis. Ameritech Illinois asserts that no party has presented evidence that Ameritech Illinois is not incurring these costs or that these costs are not reasonable.

Ameritech Illinois then explains that recovering its OSS costs over a three-year period is appropriate for the following reasons: (1) given the rapidly-evolving nature of the broadband market, a longer recovery period would subject Ameritech Illinois to the risk of its OSS systems becoming obsolete and not recovering the cost of its upgrade; (2) Ameritech Illinois points out that Ameritech Illinois has to pay for the entire cost of the software upgrade *upfront*, and thus it is not reasonable to require it to carry this cost on behalf of CLECs for longer than three years; (3) ADSL services are premium high-speed data services with a market price of \$30 to \$50 per month, and thus the OSS modification charge proposed by Ameritech Illinois will not constitute a barrier to entry into the advanced services market because the CLECs will have sufficient revenue from their ADSL offerings to pay it.

Next, Ameritech Illinois argues that CLEC and Staff concerns about Ameritech Illinois' demand projections lack merit. Ameritech Illinois argues it appropriately based those projections on a 1999 Morgan Stanley Dean Witter report. While the CLECs asserted in the initial phase of this docket that Ameritech Illinois should have based the projections on an xDSL forecast included in SBC's October 1999 investor briefing, Ameritech Illinois maintains that that forecast is far too high because (1) it includes the xDSL lines SBC expects to serve *outside* the SBC 13-state region, not just the xDSL lines within the SBC 13-state region, and (2) it includes *all* xDSL lines, not just line shared xDSL lines.

Ameritech Illinois also argues that the vendor cost of the software upgrade is appropriate to use as a basis for the development of the OSS Modification charge. Ameritech Illinois

explains that the vendor price was negotiated by the SBC procurement organization and represents the cost that SBC must incur on behalf of its incumbent local exchange carriers, including Ameritech Illinois, to implement the FCC's *Line Sharing Order*. Ameritech Illinois states that it has presented extensive documentation to support the vendor cost and that the record contains no evidence that the cost is not reasonable.

Finally, Ameritech Illinois argues that the CLECs' and Staff's position that CLECs should pay nothing for OSS-related modifications should be rejected because it is contrary to the FCC's holding that ILECs are entitled to recover the cost of OSS modifications. Although the CLECs did not present evidence on this issue on rehearing, Ameritech Illinois points out that they previously argued that they should not pay for OSS modifications because Ameritech Illinois had to make the modifications for its affiliate, AADS. Ameritech Illinois contends this argument misses the point for at least two reasons. *First*, the *Line Sharing Order* specifically allows ILECs to recover the cost of OSS modification charges regardless of whether they were incurred to enable an affiliated CLEC, as well as unaffiliated CLECs, to gain access to the HFPL. *Second*, Ameritech Illinois incurred OSS modification costs to enable *all* CLECs to submit HFPL orders. Finally, Ameritech Illinois reiterates its arguments under Issue 9 that a zero rate results in an unlawful taking of property without just compensation.

#### ***CLECs' Position: { TC \l "3" }***

Although the CLECs did not address this issue in rehearing, in the original phase of this docket they argued that the Commission should adopt a zero rate for OSS modifications.

*First*, the CLECs asserted that because Ameritech Illinois intends to provide retail ADSL service in Illinois in a line-shared mode via its data subsidiary AADS, Ameritech Illinois would incur all of the same OSS costs to accommodate its affiliate's retail plans even if there were no line sharing by unaffiliated competitors such as Rhythms. Thus, the CLECs argue, there are *no* incremental, forward-looking OSS costs attributable to line sharing by unaffiliated competitors.

*Second*, the CLECs argued that Ameritech Illinois has generally failed to meet the test for OSS modification recovery claims contained in paragraph 106 of *Line Sharing Order*. They assert that before Ameritech Illinois may recover those costs, it must provide a detailed evidentiary basis on which interested parties and this Commission could determine the extent to which any OSS upgrades or modifications benefit Ameritech Illinois' own operations, or an affiliate's, as opposed to being solely for provisioning CLECs with the line-shared loop. The CLECs assert that Ameritech Illinois has not provided the detailed information required to address the FCC's requirement.

*Third*, the CLECs argued that Ameritech Illinois has not explained why the xDSL demand (the denominator of its calculation) assumed in its cost analysis is lower than the volumes SBC claims it has captured and will capture through its own affiliate alone.

*Fourth*, the CLECs argued that it is unclear whether OSS upgrade costs meet the TELRIC standard of being efficient, forward-looking economic costs.

*Fifth*, the CLECs argued that the three-year recovery period is too short and, as a result, causes rates to be much higher than they reasonably need to be.

For these reasons, the CLECs argued that the Commission should reject Ameritech Illinois' proposed OSS modification charge at this time and direct Ameritech Illinois to file any claimed OSS implementation costs in a subsequent all-party docket with the level of particularity and type of documentation that the FCC and the Commission requires.

***Staff's Position:***{ TC \l "3"}

Staff did not file extensive testimony on rehearing on this issue, but proposes a zero charge.

*First*, Staff claimed in the initial phase of this docket that the line counts used by Ameritech Illinois in developing its rate probably understate the actual number of DSL lines to be provided by the company, which has the effect of inflating the per line rate for OSS modification because it is developed by dividing the total cost for OSS modification by the total number of lines. *Second*, Staff claimed that the exact nature of the upgrade is not clear, and the cost of the upgrade may contain charges to Ameritech Illinois by its vendor, Telcordia, which are not the minimum required upgrade components. *Third*, Staff stated that the cost of this upgrade was of concern. *Fourth*, Staff argued that the recovery period should occur over 5 years rather than 3 years.

Accordingly, Staff recommends an OSS modification charge of \$0. Despite its recommendation that no costs be recovered, Staff acknowledges that Ameritech Illinois actually does incur costs as a result of OSS modification. Staff, however, believes Ameritech Illinois' proposed prices are not well supported in this record.

***Commission Analysis and Conclusion:***{ TC \l "3"}

The Commission is persuaded on rehearing that Ameritech Illinois' recurring OSS modification charge should be adopted. CLECs must pay for OSS upgrades necessary to accommodate line sharing. The FCC has held that Ameritech Illinois and other ILECs are entitled to recover their line sharing-related OSS costs from CLECs. In particular, the FCC stated in paragraph 144 of its *Line Sharing Order*:

We find that incumbent LECs should recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element.

The FCC also clearly approved of Ameritech Illinois and other ILECs recovering these costs through recurring charges over a reasonable period of time. In the FCC's words:

[T]he states may require incumbent LECs in an arbitrated agreement to recover such nonrecurring costs such as these incremental OSS modification costs through recurring charges over a reasonable period of time,

We find that Ameritech Illinois' proposed rate for OSS modification is reasonable and represents the costs that actually will be incurred by SBC/Ameritech Illinois to modify its OSS systems to support line sharing. No party has presented evidence that Ameritech Illinois is not incurring these costs, and we find that recovery over a three-year period is reasonable.

Staff admits that Ameritech Illinois incurs costs as a result of OSS modification. Nevertheless, Staff concludes that a charge of \$0 is appropriate because it believes Ameritech Illinois' costs are "not well supported in this record." We disagree. Given that the *Line Sharing Order* gives ILECs the right to recover the cost of OSS modifications when incurred, we cannot impose a zero price as Staff recommends. In fact, given that Ameritech Illinois actually incurs these costs, a zero rate would result in an unconstitutional taking of Ameritech Illinois' property. As for the question of whether Ameritech Illinois' proposed costs are supported, we also disagree with Staff. The record establishes that the OSS modification rate was developed based on the vendor costs of implementing the OSS modification and on a product management demand forecast of the number of shared lines that will be provisioned over the next three years for the entire SBC/Ameritech serving area. This information was then used to compute the monthly cost per line on a present value basis.

We also do not share Staff's concerns about the total cost of the software upgrade. As explained by Ameritech Illinois, the dollar amount that forms the basis of the OSS modification charge was the vendor price that was negotiated by the SBC procurement organization and represents the cost that SBC must incur on behalf of its incumbent local exchange carriers, including Ameritech Illinois, to implement the FCC's *Line Sharing Order*. This cost reflects a complicated upgrade to a network of support systems. Significantly, the vendor's customer base over which it can recoup its software development consists *only* of incumbent local exchange carriers in the U.S. The record establishes that Ameritech Illinois' proposed OSS modification charge is reasonable, and no party has presented any evidence to the contrary.

We also reject Staff's proposal that a five-year recovery period be used instead of a three-year recovery period. The record reveals several reasons why a three-year recovery period is more reasonable than a five-year recovery period. *First*, the longer period of time over which Ameritech Illinois spreads the recovery of these OSS modification costs, the more risk Ameritech Illinois faces that the OSS systems will become obsolete and Ameritech Illinois will not recover the costs of the software upgrade. We do not believe Ameritech Illinois should be exposed to such risk. *Second*, Ameritech Illinois has to pay for the entire cost of the software upgrade *upfront*, and it is not reasonable to require Ameritech Illinois to carry this cost on behalf of CLECs for longer than three years. *Third*, given the monthly revenue potential for CLECs, the OSS modification charge proposed by Ameritech Illinois will not constitute a barrier to entry into the advanced services market.

The CLECs argue we should reject Ameritech Illinois' proposed charge for OSS modification because SBC will incur the costs as a result of its merger related commitments to the FCC. We disagree. This recommendation is contrary to the FCC's unequivocal finding that Ameritech Illinois and other ILECs "*should* recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element." *Line Sharing Order*, ¶144. The *Line Sharing*

*Order* specifically allows ILEC to recover the cost of OSS modification charges *regardless* of whether they were incurred to enable an affiliated CLEC, as well as unaffiliated CLECs, to gain access to the HFPL. Clearly, Ameritech Illinois did not incur OSS modification costs solely for its affiliated CLEC, AADS, to submit HFPL orders. Rather, these OSS modifications were necessary to enable *all* CLECs to submit HFPL orders. Without these modifications, *no* CLEC could order the HFPL.

We also find that none of Ameritech Illinois' OSS modification costs benefit Ameritech Illinois. Indeed, Ameritech Illinois does not provide DSL service and, therefore, does not benefit from the OSS modifications. It is irrelevant that AADS will benefit from the OSS modifications. Indeed, neither paragraph 106, nor any other paragraph of the *Line Sharing Order*, differentiates between OSS modification costs attributable to affiliated CLECs as opposed to unaffiliated CLECs. Rather, the paragraph differentiates between OSS that benefit the *ILEC*, as opposed to those that benefit CLECs generally. In short, the *Line Sharing Order* allows ILECs to recover the cost of OSS modification charges regardless of whether they were incurred to enable affiliated CLECs to gain access to the HFPL.

The CLECs also raise concerns that the xDSL demand assumed in its cost analysis is lower than the forecast contained in its investor briefing. We do not share this concern. The evidence establishes that the forecast in the investor briefing was too high for projecting the DSL customers within the 13-state SBC territory for home run copper loops. The investor briefing forecast includes all potential xDSL customers, line shared or otherwise, and therefore is too high to reflect the demand for line-shared xDSL lines in the SBC 13-state region.<sup>9</sup>

For the foregoing reasons, we now adopt Ameritech Illinois' OSS modification charge. The FCC has specifically held that CLECs are entitled to recover the cost of OSS modifications, and the record clearly establishes that Ameritech Illinois is incurring such costs. Accordingly, a zero price has no factual or legal basis. Ameritech Illinois' proposed charge, on the other hand, is fully supported and is adopted by the Commission.

## **CONCLUSION AND ORDERING PARAGRAPHS{ TC \I "1"}**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds the following:

1. Illinois Bell Telephone Company d/b/a Ameritech Illinois is engaged in the business of providing telecommunications services to the public in the State of Illinois and is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

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<sup>9</sup> Although the CLECs assert otherwise, Ameritech Illinois has fully explained the basis for its demand projections used in this proceeding. Ameritech Illinois Ex. 4.0 (Smallwood) at 8-9; Ex. 4.1 (Smallwood) at 8-9.

2. The Commission has jurisdiction over Illinois Bell Telephone Company and the subject matter of this proceeding;

3. The findings of fact and conclusions of law set forth in the prefatory portion of this Order should be adopted as findings of fact and conclusions of law, and these findings of fact and conclusions of law supersede and replace any findings of fact or conclusions of law on the same matters in our March 14, 2001 Order in this docket;

4. Illinois Bell Telephone Company's proposed HFPL UNE tariff is just and reasonable, and should be approved and allowed to go into effect.

IT IS THEREFORE ORDERED that Illinois Bell Telephone Company's proposed HFPL UNE tariff hereby is approved, to go into effect immediately upon Illinois Bell Telephone Company's filing of a conformed and corrected version of that tariff consistent with the prefatory portion of this Order.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

(SIGNED)

Chairman

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