

ATTACHMENT A

Exception 1:

Issue II – Alternative if the Proposed Order’s conclusion is retained.

As explained in its Brief on Rehearing and Exceptions Brief on Rehearing, Ameritech Illinois does not agree with the Proposed Order’s conclusion that the Broadband Service is subject to any unbundling or tariffing requirements under governing law. However, if the Commission elects to follow the Proposed Order’s recommendation, the following changes should be made to (i) more fully explain Staff’s alternative proposal, (ii) remove references to the non-final Texas arbitration decision, and (iii) more fully explain the rationale for the decision in Section II.D of the Proposed Order.

By proposing this alternative language, Ameritech Illinois is not in any way endorsing the factual or legal conclusions in the Proposed Order, and has not attempted to revise everything that it believes is a misstatement of law or fact.

D. Commission Analysis and Conclusion

The Commission has reviewed the evidence and arguments of the parties and has concluded that, while it unquestionably has the authority to and appropriately did, on the record before it in the original proceeding, order Ameritech to unbundle Project Pronto by providing requesting carriers access to the enumerated piece parts of the system referenced in that Order, that decision should now be modified. That said, ~~We~~ remain convinced that, unless and until requesting carriers have meaningful access to the Project Pronto architecture for the use of line cards that will provision the various types of services they wish to provide, they will indeed be impaired in providing those services. Further, we reiterate that all of the requisite circumstances set forth in Section 51.319(c)(5) for the unbundling of packet switching functionality are present in Illinois. We reject Ameritech’s notion that these situations must be viewed on an RT by RT basis, which would completely stymie, through protracted litigation and regulation, the use of the facilities by requesting carriers. We reiterate our earlier finding that Ameritech’s proffered alternative methods of providing service are illusory.

SBC’s Broadband Service is not the answer, for a number of reasons. First and foremost, it establishes SBC as the gatekeeper of services that may be provided across Project Pronto by limiting the services to those it wishes to enable, a situation as far from competition as we can imagine. Second, the Broadband Service is subject to modification or withdrawal at Ameritech’s whim, once the period associated with the merger commitments expires. Third, the Broadband Service is also subject to price and term manipulation, which, if recent news accounts of the behavior of other ILECs are true, would suggest that takers of such a service would do so at their own peril in terms of both price and service.

Ameritech's suggestion that CLEC's could participate in the broadband market through cable, satellite or wireless simply begs the question of its obligation to provide requesting carriers access to its network under relevant state and federal statutes and is rejected, as is Ameritech's doomsday "cost study," which the Commission finds was simply a teleological endeavor designed to produce the highest possible costs of compliance imaginable, untempered by anything remotely resembling a dose of reality.

DSLAM collocation fails again because of the same problems associated with lack of collocation space at RTs, timeliness and poor economics. The only "new" evidence the Commission finds persuasive on this issue cuts against Ameritech. Sprint's witness estimated, ~~in un rebutted testimony~~, that each RT-DSLAM collocation would cost \$130,000. Given the projected 2100 Pronto RTs in Illinois, this option is simply not feasible. Thus, the impair standard is satisfied for each of the six UNEs described above.

Nonetheless, ~~W~~we are concerned that our prior order would, in all likelihood have delayed CLEC use of the various network elements, assuming Ameritech Illinois deployed Project Pronto DSL facilities at all in the face of such requirements (which Ameritech Illinois has repeatedly said it would not do). Even if Ameritech Illinois did deploy Project Pronto DSL facilities in the face of such requirement, it as Ameritech would need to, ~~under the guise of making the~~ network and OSS modifications necessary to support the delivery of elements, which inevitably would take longer than providing the Broadband Service it has already proposed. We also take into account the evidence demonstrating that the piece-parts of the Project Pronto DSL architecture that we previously said should be "unbundled" cannot, in fact, be provided separately from one another, as they function as an integrated whole and a CLEC could not lease one "unbundled" piece without obtaining a full end-to-end packet switching functionality. We further rely on the evidence that allowing CLECs to own and collocate ADLU line cards in Ameritech Illinois' NGDLC equipment not only would raise significant administrative and operational difficulties, but also would violate the 1996 Act's standard for collocation, as such line cards would not actually be used for interconnection or access to unbundled network elements and because CLECs are not allowed to pick their collocation space on an ILEC's premises, yet that is exactly what would occur with line card "collocation." Finally, we note that the record on rehearing indicates that although they have asked us to require unbundling of the Project Pronto DSL architecture into piece-parts, the CLECs seem to have the strongest interest in obtaining end-to-end access to that architecture rather than using any single part of it (even if that were possible). No CLEC has presented evidence explaining how, or whether, it would ever use any of the individual elements discussed in the March 14, 2001 Order instead of using an end-to-end offering.

Accordingly, even though we believe that unbundling requirements like those described in the March 14, 2001 Order may satisfy the impair test, we exercise the authority given by FCC Rule 317(b)(3) to consider other factors as well, and ultimately conclude that a better way to promote both the rapid introduction of competition and the rapid deployment of advanced services infrastructure, and thus achieve the goals of the

1996 Act, is to limit the scope of the unbundling requirement in this case, much as the FCC elected to limit the scope of its unbundling requirement with respect to packet switching. Taking this path is consistent with the FCC's holding that a finding of impairment does not automatically require unbundling, as impairment is a "minimum" prerequisite for unbundling but not the only factor to consider. UNE Remand Order, ¶ 106. Under FCC Rule 317(b)(3), for example, we may also consider whether a proposed unbundling requirement would "promote[] the rapid introduction of competition," "promote[] facilities-based competition, investment, and innovation," and "promote[] reduced regulation." The evidence on rehearing indicates that a decision not to require unbundling of multiple piece-parts of the Project Pronto DSL architecture would better serve these goals than requiring such unbundling, and that a much less expansive unbundling requirement is all that is appropriate in light of the 1996 Act and the FCC's rules. ~~we waited until a requesting CLEC brought an enforcement action compelling delivery.~~ To that end, in this order on rehearing, ~~we~~ we accept Staff's alternative proposal as described herein. Specifically, we and order Ameritech to file, for intrastate service in Illinois, a tariff identical in all respects, including pricing, delivery intervals and opportunity for the installation of new line cards and services, to the tariff for an end-to-end HFPL "NGDLC UNE" that is identical to the Broadband Service already offered by SBC's ILECs in other states. In addition, we order Ameritech Illinois to amend that tariff as and when the Pronto DSL equipment is modified, altered, and/or upgraded in such a fashion as to provide an opportunity for use of different line cards and different features, functions, and capabilities, to the extent such use is feasible, subject to appropriate rates, terms, and conditions. Such rates, terms, and conditions may account for factors including the actual demand for the new capability; the effect of the new capability on network capacity, quality of service, and cost; the need to develop new systems or modify existing systems for such an offering; technical feasibility or practicality; and other relevant considerations. ordered by the arbitrators in Texas. Ameritech Illinois' NGDLC UNE tariff shall include an Illinois-specific rate for the NGDLC UNE that shall function as the interim rate until a final rate can be reviewed and approved in a future proceeding. This solution moots ~~all of Ameritech's arguments relating to~~ the following issues: line card ownership; line card incompatibility; access to sub-loops; PVP exhaust and stranded capacity.

Issue II – Alternative to be used if the Commission agrees with Ameritech Illinois' arguments against unbundling the Broadband Service.

Ameritech Illinois proposes the following language to entirely replace the "Commission Analysis and Conclusion" in Section II.D of the Proposed Order. All of the proposed language is new.

D. Commission Analysis and Conclusion

The Commission agrees with Ameritech Illinois that the Pronto DSL facilities are packet switching facilities that provide packet switching functionality and that they cannot be ordered to be unbundled, either as individual elements or as an end-to-end "NGDLC UNE-P," 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."¹

(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

(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.

First, 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

¹ 47 C.F.R. 51.319(c)(5) (emphasis added).

not require packet switching to be unbundled in another part of the State (say, Evanston).

Second, 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.

Third, 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 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 whether the ILEC permits DSLAM collocation; 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 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 allow subloop access via the ECS.

Fourth, only CLECs and Ameritech Illinois' separate data affiliate will use the Pronto DSL facilities. Ameritech Illinois would not use the Pronto DSL facilities for any retail services that it provides, and thus would 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. The Commission also 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 impaired by a denial of unbundled access to those facilities except in very limited circumstances that do not exist here. UNE Remand Order, ¶ 303. The Commission cannot revise or alter this conclusion. IUB II, 525 U.S. at 378 n.6.

The Commission also concludes that the Order errs 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., 205 F.3d at 422. For the reasons advanced by Ameritech Illinois, the Commission finds that collocation of ADLU cards does not comport with federal law. 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. 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 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.” March 14, 2001 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 Corp., 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 Corp.

Issue II: Revision to descriptions of CLEC and Staff positions

These revisions would apply to Sections II.B and II.C of the Proposed Order.

B. CLECs

1. General Policy Considerations

The CLECs allege that SBC/Ameritech has sought to make this case much more complicated than it needs to be. They claim that it# has raised irrelevant policy arguments, invoked selective and out-of-context quotations from FCC orders, conjured up technical difficulties, and otherwise sought to confuse the issues. To put matters in context, they argue, it may help to return to first principles -- and, in particular, to focus on the key statutory provisions.

The CLECs state that Aa although the Federal Telecommunications Act of 1996 is a lengthy and complex statute, there is no doubt about its central objective: to create the conditions that would enable competition in local telecommunications services. At the heart of the statutory scheme is a set of obligations that apply uniquely to ILECs. 47 U.S.C. § 251(c). One critical requirement -- and the one that is pivotal here -- is the requirement that ILECs “provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technical feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory” 47 U.S.C. § 251(c)(3). In determining whether particular elements should be made available on an unbundled basis, regulators “shall consider, at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.” 47 U.S.C. § 251(d)(2)(B).

The CLECs assert that That this is what this case is about. It is about elements of SBC/Ameritech's network (especially the local loop), the desire of multiple requesting carriers to be able to provide DSL services (and combinations of voice and DSL services) in competition with SBC/Ameritech, and the inability of these requesting carriers to provide the services they wish to offer unless SBC/Ameritech cooperates in providing access to Project Pronto network elements.

The CLECs state that Tt the path to implementation of the statutory principles has not been straight, or smooth, or short. Litigation, reconsiderations and clarifications of prior orders, and various proceedings evaluating the application of existing rules to new facts and circumstances have all engendered delays and confusion. Still, the basic thrust of the Act remains clear, as does the FCC's commitment to making UNE-based competition work.

The FCC's First Report and Order took major strides forward in a host of areas. Most relevant for present purposes, that order identified the various elements of the ILECs' networks, elucidated the FCC's understanding of each of the statutory

provisions, and applied those provisions as elucidated to each element of the ILECs' networks, including the local loop. For example, the FCC had no difficulty in determining that "it is technically feasible for incumbent LECs to provide access to unbundled local loops." First Report and Order, at ¶ 377. It also determined that "such access is critical to encouraging market entry." *Id.*; see also *Id.* at ¶ 378 (further explanation of value to competitors and to consumers of requiring loop unbundling). The FCC also determined that competing carriers are free to use unbundled loops to provide high-bit-rate services such as ADSL, (*Id.* at ¶¶ 381-382), and that the loop element should be defined in functional terms, and therefore includes integrated digital loop carrier technology or similar remote concentration devices. *Id.* at ¶¶ 383-385. It is important to note that, from the outset, the FCC made plain its understanding that "section 251(c)(3) requires incumbent LECs to provide requesting carriers with all of the functionalities of a particular element, so that requesting carriers can provide any telecommunications services that can be offered by means of the element." *Id.* at ¶ 292 (emphasis added).

The Supreme Court then, for the most part, affirmed the First Report and Order but found it necessary to instruct the FCC to revise its application of the "impair" standard of section 251(d)(2)(B). *AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721, 1999 WL 24568 (1999) (cited hereinafter as *Iowa Utilities Board*). This ultimately led to the UNE Remand Order, where the FCC affirmed the requirement for unbundling of the loop (including, specifically, digital loop carrier systems and their attached electronics), and obligated ILECs to provide unbundled access to subloops, or portions of the loop that are accessible at terminals in the ILECs' outside plant, at any accessible point. In doing so, the FCC reiterated the principle that loops and subloops, as all network elements, are not limited to particular services and technologies. The FCC also limited the circumstances under which local circuit switching, UNE Remand Order, at ¶ 253, and packet switching, *Id.* at ¶ 306, would be unbundled, and exempted certain items (such as operators services and directory assistance) altogether.

The CLECs contend that Much confusion has been engendered by the FCC's decision not to require the provision of unbundled packet switching, except in limited circumstances. The CLECs assert that The primary discussion of packet switching occurred in the context of stand-alone, central office-based, packet switches of the sort that at that time were being widely deployed by Covad, Rhythms, Northpoint, and many others, connected to all-copper loops. See *Id.* at ¶ 307. Although the FCC found that the lack of access to packet switches would in fact "impair" requesting carriers from competing, the FCC nonetheless refrained from establishing a generalized requirement for unbundling of packet switching. The CLECs claim that the FCC# did so because this result was advocated by two leading "DLECs," Northpoint and Rhythms, and because of its belief that the advanced services marketplace was nascent, that CLECs and cable companies were leading the ILECs in deploying advanced services, and (in the context then under consideration) that ILECs did not possess significant economies of scale compared to requesting carriers. See *Id.* at ¶¶ 306-308. The CLECs state that The order also determined that packet switching would be unbundled in certain circumstances where a requesting carrier is unable to install its own DSLAM in a remote

terminal or obtain spare copper loops necessary to offer the same quality of advanced services. Id. at ¶ 313.

The CLECs argue that The main confusion caused by the UNE Remand Order results from SBC/Ameritech's attempt to expand a minor exemption in a way that undermines a broader and more important rule. Specifically, the CLECs assert, SBC/Ameritech has attempted to extend an exemption for stand-alone packet switching into a license to decline to provide access to the full features, functions, and capabilities of the connection between central office and customer premises. The CLECs contend that The network elements that are relevant to the Project Pronto debate are not packet switches but loops and subloops, which the FCC found to be the "most time-consuming and expensive network element[s] to duplicate on a pervasive scale." Id. at ¶ 211. Alternatively, to the extent that the UNE Remand Order's treatment of packet switching is relevant at all, the CLECs state that it is the exception to the exemption -- for packet switching at the RT -- that governs. (As discussed below, The CLECs argue that the criteria which compel the provision of unbundled packet switching are fully satisfied in the Project Pronto architecture.)

The CLECs state that Subsequently, in the Line Sharing Order, the FCC made plain its intention to assist companies that wish to use unbundled network elements to compete with ILECs in the provision of advanced services. There, the FCC created a new element that is clearly a "loop obligation", requiring ILECs to provide requesting carriers with line sharing, or access to the "high-frequency portion of the loop" on lines where the incumbent provides the voice service. The CLECs assert that The spirit and intent of the line sharing obligation is, and has always been, to provide CLECs access to an ILEC's local loop in order to spare consumers from the extra, needless costs of leasing or building separate lines. Moreover, it is clear from the Line Sharing Order that the FCC intended that its rules would be applied in a manner that would encourage competition and encompass new technologies and technological innovation to the fullest extent. Thus, the CLECs argue that contrary to SBC/Ameritech's claim that regulation of line sharing is unnecessary for advanced service deployment under 706 of the Act, the FCC explicitly recognized that the line sharing element is fully consistent with the FCC's duty to promote the rapid deployment of advanced services to all Americans as set forth in section 706 of the 1996 Act. Id. at ¶ 54.

The CLECs state that bBecause the ILECs once again seized on ambiguities to thwart the FCC's pro-competitive intent, the FCC thereafter issued the Line Sharing Reconsideration Order, clarifying that the incumbent LECs' line sharing obligation extends to the entire loop, "even where the incumbent has deployed fiber in the loop." To be sure, the FCC's 1999 Line Sharing Order spoke in terms of access to copper loop facilities. Even there, however, the FCC did not intend that for a CLEC to be restricted to obtaining access to an upgraded loop at the remote terminal. To the contrary, the FCC clarified in the Line Sharing Reconsideration Order that a CLEC "must have the option to access [a fiber-fed] loop at either [the remote terminal or the central office], not the one that the incumbent chooses as a result of network upgrades entirely under its own control." Line Sharing Reconsideration Order, at ¶ 11. Critically, the FCC held that

“it would be inconsistent with the intent of the Line Sharing Order and the statutory goals behind sections 706 and 251 of the 1996 Act [sic] to permit increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the provision of xDSL services.” Id. at ¶ 13.

As the FCC has repeatedly recognized, granting CLECs unbundled access to the local loop is paramount in the effort to foster local competition. Nothing about the architecture of Project Pronto alters the basic functionality of a loop, the CLECs argue: to provide transmission functionality needed for a customer to send and receive telecommunications signals between his location and his chosen service provider’s network. As with all network elements, the local loop is defined by its functionality and is not limited to particular services or technologies. The CLECs contend that tThe Project Pronto loop architecture now being installed by SBC/Ameritech provides exactly what the traditional loop has always provided: transmission functionality for telecommunications signals between a customer’s premises and the serving ILEC’s central office. Likewise, the CLECs argue, the implementation of Project Pronto loop architecture does not change any of the fundamental legal and policy principles that underscore the FCC’s other rules relating to the provision of network elements, including line sharing and subloops.

Thus, consistent with the FCC’s decision in the UNE Remand Order -- as well as in the Line Sharing Order and Line Sharing Reconsideration Order --- the CLECs state that the Commission should reiterate that CLECs seeking to provide line sharing over the Project Pronto architecture are entitled to unbundled access to the “entire” loop (see Tariff Order, at 25, Option f.), as well as all of the subloop elements used to support the provision of transmission functionality between the customers’ premises and SBC/Ameritech’s central office. As the Commission has already recognized, such network elements include:

- a. Lit Fiber Subloops between the RT and the OCD in the CO consisting of one or more PVPs (“permanent virtual paths”) and/or one or more PVCs (“permanent virtual circuits”) at the option of the CLEC;
- b. Copper Subloops consisting of the following segments:
 - i. the copper subloop from the RT to the NID at the customer premises;
 - ii. the copper subloop from the RT to the SAI (“serving area interface”);
 - iii. the copper subloop from the SAI to the NID at the customer premises.

- c. ADLU line cards owned by the CLEC and collocated in the NGDLC equipment in the RT;
- d. ADLU line cards owned by the ILEC in the NGDLC equipment in the RT;
- e. A port on the OCD in the CO; and
- f. Any combination thereof, including a line-shared xDSL loop from the OCD port to the NID.

Tariff Order, at 25.

The CLECs contend that Rrequesting carriers need access to all of these “piece-parts” of ILEC networks, or to whichever combination of sub-elements best comports with their own assets and business plans. This, they argue, is the only approach that will fulfill the provisions and policies of the 1996 Act, as discussed above. It is the only approach that fulfills the directives of the FCC’s various local competition orders. It is the only approach that will best ensure that Illinois consumer receive the benefits of robust competition in high-speed data services (and in combinations of voice and data services). In short, the CLECs maintain, the ICC’s prior rulings are solidly grounded in the law, and they represent the right public policy as well.

2. CLECs’ Position on Packet Switching Issues

The CLEC’s first argue that Ameritech has failed to produce any new evidence and has not identified any errors of fact or law in the original order from which they conclude that Ameritech has failed to satisfy the standard for rehearing. The CLEC’s urge the Commission to reaffirm its original disposition of this issue for this reason alone.

In terms of arguments relating to the packet switching issue, as a threshold matter the CLECs assert that it is important to note that they are not asking for unbundled packet switching in this proceeding. Rather, the Joint CLECs are seeking unbundled access to line sharing over hybrid-copper loops, either on an end-to-end basis or via the unbundled elements set forth in the Tariff Order. As noted in Section III.A., and as recognized by this Commission (Tariff Order, at 24-25), the recent release of the FCC’s Line Sharing Reconsideration Order has already settled this matter in favor of the Joint CLECs. In that Order, the FCC held that:

[T]he requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Our use of the work “copper” in section 51.319(h)(1) was not intended to limit an incumbent LEC’s obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services. As noted above, incumbent

LECs are required to unbundle the high frequency portion of the local loop where the incumbent LECs voice customer is served by DLC facilities

* * *

In the absence of this clarification, a competitive LEC might undertake to collocate a DSLAM in an incumbent's central office to provide line-shared xDSL services to customers, only to be told by the incumbent that it was migrating those customers to fiber-fed facilities and the competitor would now have to collocate another DSLAM at a remote terminal in order to continue providing line-shared services to those same customers. If our conclusion in the Line Sharing Order that incumbents must provide access to the high frequency portion of the loop at the remote terminal as well as the central office is to have any meaning, then competitive LECs must have the option to access the loop at either location, not the one that the incumbent chooses as a result of network upgrades entirely at its own control Line Sharing Reconsideration Order, at ¶¶ 10-11.

Indeed, the FCC issued its Line Sharing Reconsideration Order to ensure that "increased deployment of fiber-based networks by incumbent LECs [do not] unduly inhibit the competitive provision of xDSL services. *Id.* at ¶ 13. Accordingly, as this Commission recognized, SBC/Ameritech clearly now has the obligation to permit access to line sharing even over the Pronto architecture, and cannot attempt to rely on its policy argument that line sharing is only required over copper loops. *Tariff Order*, at 24-25.

Even if the Commission finds that the Project Pronto architecture deployed by SBC/Ameritech contains packet switching, the FCC requires ILECs to unbundle packet switching where the following conditions are satisfied:

- (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 the 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 at 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 § 51.319(b); and

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

The CLECs argue that Eexamination of the record evidence reveals that, contrary to SBC/Ameritech's assertions; these criteria have been satisfied when SBC/Ameritech deploys Project Pronto in Illinois. This Commission has already analyzed the four packet switching criteria and found that the "evidence demonstrates that all four criteria are satisfied and it is permissible to make the OCD . . . available as a UNE." See Rhythms/Covad Arb. Rehearing Award, at 32. For the reasons set forth below, the CLECs assert that the same analysis applies to the ADLU card. The CLECs argue that Eeven under the standards of the UNE Remand Order, the unbundling of SBC/Ameritech's "packet switching" components must be required in all circumstances where SBC/Ameritech has deployed DSL services over Project Pronto. This is exactly the determination reached by the Texas Arbitrator after reviewing a virtually identical fact pattern. Texas Arbitration Award, at 75-80. According to the CLECs, Paragraph 313 of the UNE Remand Order simply provides no basis to deny CLECs access to Project Pronto UNEs.

The CLECs state that the first FCC criterion -- that an ILEC actually deploy a DLC system or introduce fiber into the distribution plant -- is obviously met. There is no question that SBC/Ameritech is deploying NGDLC carriers throughout its Illinois network. Based on SBC's filings, the FCC characterized Project Pronto as relying in "large part upon the increased use of Digital Loop Carrier (DLC) systems to reduce overall costs." FCC Waiver Order, at ¶ 4. SBC/Ameritech's witnesses testified that the Company's Project Pronto efforts will result in the deployment of NGDLCs to reduce loop length and network condition limitations that will enable SBC/Ameritech to offer DSL services to over 20% more customers than it could previously reach in its Illinois service territory. Rehearing Tr. (Boyer), at 949:1 - 950:12. Thus, the FCC's first criterion of the packet switching rule has been satisfied.

The second FCC prerequisite to the unbundling of "packet switching capability" is the lack of spare copper facilities that are "capable of supporting the xDSL services the requesting carrier seeks to offer, "and that permit the CLECs to offer "the same level of quality for advanced services" as that offered by the ILEC (or its data affiliate). UNE Remand Order, at ¶ 313. SBC/Ameritech argues that the second FCC prerequisite for requiring unbundled access to packet switching, (i.e., that "no spare copper loops" are available) will not be met because all-copper loops will often be available to the CLECs. The CLECs argue that SBC/Ameritech is wrong.

The CLECs assert that~~As noted above~~, SBC/Ameritech's "all-copper" loop alternative is neither ubiquitous nor permanent. SBC/Ameritech has acknowledged that the purpose of Project Pronto is to overcome loop length issues that result from the traditional copper loop network. SBC/Ameritech Boyer Rehearing Exh. 4.0 at 5:23-6:6. With Project Pronto, loop lengths are shortened to 12,000 feet or less, Rehearing Tr. (Boyer), at 947-950, 954, which allows SBC to offer broadband xDSL services to 20 million additional customers. See FCC Waiver Order ¶ 4. In contrast, the CLECs argue

that they are permanently foreclosed from providing DSL services to these customers using SBC/Ameritech's all-copper loop alternative because of excessive loop lengths or other network conditions. Rehearing Tr. (Boyer), at 936-40. Similarly, the CLECs contend that in new areas of growth where only Project Pronto is deployed, there is no guarantee that CLECs will be able to access "all-copper" loops. Also, there is no assurance that all-copper loops will be preserved and maintained indefinitely. Rehearing Tr. (Boyer), at 998-1000; (Ireland) at 473.

In addition, the CLECs claim that the mere availability of an all-copper loop -- instead of the upgraded loops that are available to SBC/Ameritech and its affiliate -- does not discharge SBC/Ameritech's unbundling obligations associated with its Project Pronto architecture. As noted above, the physical characteristics of spare copper will almost never enable a competitive LEC to match the service capabilities that SBC/Ameritech (and its affiliate) are able to offer over its upgraded loop architecture. AT&T/WorldCom Starkey Rehearing Exh. 1.0, at 18:449-465. Thus, the CLECs contend that the mere availability of spare copper will not discharge SBC/Ameritech's unbundling obligation, because competitive LECs will not be able to use those facilities to "support[] xDSL services the requesting carrier seeks to offer," i.e., at least the same services that the ILEC and its affiliate can make available to the same customer. See 47 C.F.R. § 51.317(c)(5)(ii).

The FCC's third criterion provides that an "incumbent will be relieved of [its] unbundling [packet switching] obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM. UNE Remand Order, at ¶ 313; see also 47 C.F.R. § 51.317(c)(5)(iii). The FCC also notes that ILECs "may not unreasonably limit the deployment of alternative technologies when requesting carriers seek to collocate their own DSLAMs in the remote terminal." UNE Remand Order, at ¶ 313.

The CLECs argue that the record evidence in this proceeding demonstrates that SBC/Ameritech cannot satisfy this criterion. The FCC has found that the ADLU card is "an indispensable component for providing ADSL service through the manufacturer's NGDLC system." FCC Waiver Order, at ¶ 14, and n.34. SBC/Ameritech concedes that it does not permit requesting carriers to physically or virtually collocate line cards, which serve as the functional equivalent of a DSLAM, although it is technically feasible to do so. Rehearing Tr. (Keown) at 2033:7-2034:21.

Moreover, the CLECs claim that uncontroverted evidence indicates that SBC/Ameritech's decision to hardwire its equipment at the RT precludes any reasonable CLEC access to subloops at the RT even though vendors manufacture RTs with cross-connect functions that allow access to subloops. As a result, CLECs are forced to pay for a work-around or to build adjacent collocation space. As a result, a CLEC may have to pay per remote terminal for access to the subloop.

Finally, even if one does not consider the virtual collocation of line cards, the CLECs argue that collocation of DSLAM equipment is fraught with problems and

inefficiencies, as detailed above. Indeed, both the FCC and this Commission have already found that CLEC collocation of DSLAMs is problematic. The FCC has indicated: “[a]ll indications are that fiber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at remote terminal is likely to be costly, time consuming, and often unavailable.” Line Sharing Reconsideration Order, at ¶ 13. Similarly, this Commission has found that RT collocation “is limited by space constraints, is quite expensive (and may be uneconomic in many or most RT locations), and takes considerable time to deploy. Tariff Order, at 23. See also Rhythms/Covad Arb. Rehearing Award, at 32 (“Further, the high cost of collocation and crowded conditions in RTs often make collocation unavailable”). Accordingly, the CLECs assert that Ameritech/SBC’s remote terminal alternatives cannot satisfy the third condition of the FCC’s UNE Remand Order.

SBC/Ameritech argues that it does not meet the fourth criterion for unbundled “packet switching” -- that the “incumbent LEC has deployed packet switching capability for its own use.” In particular, SBC/Ameritech claims that this condition does not apply to Project Pronto because the packet switching will not be for SBC/Ameritech’s use but “only for CLECs’ use.”

This Commission has already addressed the absurdity of this position and has determined that Project Pronto is being deployed for SBC/Ameritech’s own use: “[t]here is substantial evidence on the record that SBC, Ameritech IL’s parent is deploying Project Pronto for its own financial benefit, both in terms of cost savings and deployment of the advanced services market.” Rhythms/Covad Arb. Rehearing Award, at 32. The CLECs argue that the record evidence in this proceeding calls for a similar determination. Substantial un rebutted evidence in this case demonstrates that SBC is deploying Project Pronto solely for its own benefit and explicitly because it believes that it can achieve substantial cost savings and profits by doing so. For example, SBC has described Project Pronto as “an unprecedented, \$6 billion initiative . . . to transform the company . . . into the largest single provider of advanced broadband services in America,” and it has told investors it expects Project Pronto to generate \$3.5 billion in new annual revenues by 2004. SBC Chairman Edward Whitacre has boasted that, once Project Pronto is completed, “only SBC will have all the pieces” needed to provide the range of services that consumers want and expect. Nowhere in SBC’s announcement of Project Pronto did it claim or imply that the project was undertaken “only for CLECs’ use,” as SBC/Ameritech’s revision of history now claims.

SBC/Ameritech may be relying on the fact that xDSL services will not be provided by SBC/Ameritech but by its data affiliate. Clearly, SBC/Ameritech proposes to use Project Pronto even if only to provide service to its new affiliate. The CLECs contend that aAny such argument that the fourth condition of the FCC’s unbundling criteria remains unsatisfied because xDSL services will not be provided by SBC/Ameritech but by its affiliate is meritless, however. SBC/Ameritech’s argument would necessarily rest on precisely the conduct ruled unlawful by the D.C. Circuit in ASCENT -- the use of an affiliate to avoid section 251(c) obligations. As the ASCENT court made clear, data affiliates of incumbent LECs are subject to all obligations of

section 251(c)(3) of the Act. Similarly, the FCC recently concluded, in light of the ASCENT decision, that an ILEC's 251(c) obligations extend to its affiliate, whether it continues to exist as a separate entity or whether it is integrated into the ILEC.

If the Commission determines that any of the criteria from FCC Rule 51.319(c)(5) are not satisfied, it still has the authority from federal and state law to order -- and it should order -- the unbundling of "packet switching" components in the NGDLC Project Pronto architecture. As set forth above, the FCC rules permit state commissions to order additional unbundling. "A state commission must comply with the standards set forth in this § 51.317 when considering whether to require the unbundling of additional network elements." 47 C.F.R. § 51.317(b)(4). Additional unbundling by state commissions is sanctioned by the FCC.

The FCC gave specific direction in the UNE Remand Order about unbundling "packet switching" elements if CLECs to prove that lack of access to such elements impairs their ability to offer advanced services.

We note, however, that (CLECs) are free to demonstrate to a state commission that lack of access to the incumbent's frame relay network element (a form of packet switching) impairs their ability to provide the services they seek to offer. A state commission is empowered to require incumbent LECs to unbundle specific network elements used to provide frame relay service, consistent with the principles set forth in this order. UNE Remand Order, at ¶ 312.

Here, using the authority granted by the FCC, the CLECs contend that the Commission specifically can and should declare the packet switching elements of Project Pronto to be network elements that must be offered to CLECs on a non-discriminatory, unbundled basis. Using this federal authority this Commission can order additional unbundling under the Illinois Public Utilities Act § 13-505.6. The Commission should apply the impair standards from FCC Rule 51.317(b)(2). Joint CLECs argue that they are impaired without access to the Project Pronto network elements, including the so-called "packet switching" elements because (1) the Broadband Offering is a service offering that can be withdrawn at any time and is not subject to state commission oversight; (2) collocation of DSLAMs is costly, timely and inefficient; and (3) the existing copper loop network will not allow Joint CLECs to deploy advanced services on a ubiquitous and nondiscriminatory basis. If the Commission does not find that the UNE Remand Order criteria are satisfied, then using the impair analysis set forth by Joint CLECs the Commission should determine that CLECs are impaired without access to the "packet switching" network elements in Project Pronto.

Finally, Joint CLECs note that Illinois Public Act 92-0022 became effective on July 1, 2001, which is after the Commission issued its March 14, 2001 Order in this docket. CLECs argue that the amendment is a significant change to the Telecommunications Article of the Illinois Public Utilities Act. Many of these changes are applicable to this case, including Sections 13-501(b) (interim tariffs), 13-517

(provision of advanced telecommunications services), and perhaps most importantly, 13-801 (ILEC obligations). The relevant portion of Section 13-801(a) provides:

This Section provides additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission. . . .

An incumbent local exchange carrier shall provide a requesting telecommunications carrier with interconnection, collocation, network elements, and access to operations support systems on just, reasonable, and nondiscriminatory rates, terms, and conditions to enable the provision of any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange and exchange access. The Commission shall require the incumbent local exchange carrier to provide interconnection, collocation, and network elements in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings. As used in this Section, to the extent that interconnection, collocation, or network elements have been deployed for or by the incumbent local exchange carrier or one of its wireline local exchange affiliates in any jurisdiction, it shall be presumed that such is technically feasible in Illinois.

Joint CLECs maintain that these changes to Illinois telecommunications law give the Commission additional authority to identify UNEs, regardless of the “packet switching” exception made by the FCC. Specifically, Section 13-801 sets forth various ILEC obligations that are not inconsistent with the federal Telecommunications Act of 1996 and are not preempted by FCC orders. These ILEC obligations include the duties to provide collocation and network elements to the “fullest extent possible to implement the maximum development of competitive telecommunications services offerings.” Sec. 13-801(a). The ILEC must combine “any sequence of network elements that it ordinarily combines for itself.” Sec. 13-801(d)(3). The ILEC must allow virtual collocation of any equipment, for access to network elements. Sec. 13-801(c). Joint CLECs also point out that economic feasibility for the ILEC is not a statutory factor. Finally, Joint CLECs argue that their state law rights are independent of their federal rights and that their state law rights under Section 13-801 are in addition to their state law rights under Section 13-505.6.

3. CLECs' Position on the Impair Test

All parties in this proceeding agree that the Project Pronto network elements at issue in this case are not proprietary. SBC/Ameritech Mr. Boyer admitted that its Project Pronto network elements are not “proprietary in nature.” Rehearing Tr. (Boyer), at 965:4-7. The Joint CLECs have argued throughout this proceeding that Project Pronto elements are not proprietary. Rhythms' Watson Rehearing, Exh. 2.0, at 15-16. Accordingly, the Joint CLECs claim that they need only establish, and the Commission need only determine, whether Project Pronto meets the “impair” standard and must be unbundled pursuant to the “impair” standard. Based on the testimony and substantial evidence submitted, in addition to the extensive cross-examination conducted during the seven days of hearing, the CLECs argue that it is clear that denying CLECs access to Project Pronto would impair CLECs' ability to provide competitive advanced services.

The CLECs assert that the “impair” standard as included in TA 96 and implemented in the FCC's rules requires ILECs to give unbundled access to a network element if lack of access “would merely limit a carrier's ability to provide the service it seeks to offer.” Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, at ¶ 46 (rel. Nov. 5, 1999) (cited hereinafter as “UNE Remand Order”). More specifically, the FCC adopted a “materiality component” that provides for unbundling when there is a substantive difference between a CLEC utilizing a UNE or some alternative to offer a telecommunications service. UNE Remand Order at ¶ 51. In other words, if lack of access to Project Pronto network elements would materially diminish the value of xDSL services that CLECs could offer, their ability to provide such services is “impaired.” UNE Remand Order at ¶ 51. In making a “materiality” determination, the following factors must be considered: cost, timeliness, quality of available alternatives, ubiquity, and operational factors. UNE Remand Order at ¶¶ 62-100. The Joint CLECs assert that they have submitted substantial evidence both in this proceeding and the case below demonstrating that under each of these factors is satisfied; thus, SBC/Ameritech is required to unbundle Project Pronto.

All of the UNEs sought by the Joint CLECs In undertaking an “impair” analysis of the Project Pronto UNEs, the Commission must consider the following factors: cost, timeliness, quality of available alternatives, ubiquity, and operational factors. UNE Remand Order at ¶¶ 62-100.

In terms of cost, cost assessments include considering costs associated with alternatives, including the forward-looking costs of self-provisioning or purchasing, and fixed and sunk costs involved in self-provisioning. UNE Remand Order; ¶¶ 72-88. While Ameritech claims that CLECs will not be impaired without access to Project Pronto as UNES, Ameritech witness Mr. Boyer admitted that he did not consider the economics of whether CLECs would be impaired without access to Project Pronto UNEs. Rehearing Tr. (Boyer) at 968:8-22-969:1.

According to the CLECs, the economic effect on them is essential to determining whether CLECs will be impaired. SBC is investing six billion dollars in Project Pronto over three years. Rhythms' Ireland Rehearing Cross, Exh. 1. In its plans to deploy Project Pronto in Illinois, SBC/Ameritech estimates it would have covered "101 wire center[s], each with a new Optical Concentration Device ("OCD"), deployed 2,100 Next Generation Digital Loop Carrier systems (NGDLCs), each with a price tag of approximately \$200,000, and resulted in a capital investment of \$519 million dollars. Ameritech's Keown Rehearing Exh. 10.0, at 4-5. Only an ILEC such as SBC/Ameritech would have the financial resources and savings to make such an investment in infrastructure. The CLECs claim that ~~T~~he only available alternative for CLECs, if access to the Project Pronto architecture were denied, would be self-provisioning. Carriers providing advanced services provider simply do not have the financial resources to pour six billion dollars into developing advanced services network.

Sprint provided testimony about the cost of collocating DSLAMs at all of the remote terminals deployed by SBC/Ameritech in Illinois. Sprint witness, Mr. Burt, testified that Sprint has spent at least \$130,000 and months in attempting to collocate just one DSLAM at a remote terminal in Kansas. Sprint Rehearing Ex. 3.0 (Burt), at 23. Sprint now estimates that it will spend \$133,519 to gain access to the loops from that one RT in Kansas. (Ameritech Rehearing Burt Cross Exh. 2, at 2). Using the number of RTs in Illinois, Sprint alone would have to spend an estimated \$260 million to obtain access to the same loop architecture which SBC/Ameritech can access. Sprint Rehearing Ex. 3.0 (Burt), at 23.

Given the costs that Sprint has incurred to collocate at one RT and SBC/Ameritech's own estimates that a CLEC can expect to gain less than one customer per serving area interface (SAI), SBC/Ameritech's economist, Dr. Aron, was asked if such an investment would be a good investment for a CLEC to make. She responded, "that it would not be reasonable tom make that investment, no." Rehearing Tr. (Aron), at 1624-1625.

The CLECs argue that ~~E~~ven if a small percentage of SBC's vast resources were available to CLECs, they do not have the same expansive network in place as SBC/Ameritech and therefore do not ability to deploy their networks and services quickly and ubiquitously. Rhythms Rehearing Testimony 3.0 (Murray), at 47-48. The only reason that SBC can deploy loop facilities designed to bring DSL capability to at least 80% of the customers in its 13-state region for the relatively small sum of \$6 billion is that the company already has in place ubiquitous distribution plant, supporting structure such as poles and conduit and numerous other facilities, including upgradeable Digital Loop Carrier ("DLC") RTs, that were built to provide narrowband telecommunications services to its monopoly basic exchange customers. Rhythms Rehearing Testimony 3.0 (Murray), at 48.

The CLECs state that ~~I~~n terms of timeliness, beyond the sheer cost of building comparable facilities to offer advanced services, the substantial delays involved in a massive self-provisioning effort would preclude CLECs' ability to compete effectively.

The FCC indicated that it was concerned about such delays in its impair analysis. UNE Remand Order, at ¶¶ 89, 91. The FCC directed that state Commissions should consider time lags associated with using alternatives in performing impair analyses. In light of the rapidly changing advanced services market, the FCC found that “any delay” a competitive LEC experiences in provisioning service for the advanced services market can impair its ability to deliver services.” UNE Remand Order ¶ 91. Moreover, the FCC concluded that incumbent LECs should not be able to delay entry by denying access to UNEs and “‘lock-up’ customers in advance of competitive entry.” UNE Remand Order, ¶ 91 (footnotes omitted). The CLECs claim that this is precisely what has happened. In recent reports to the press and investors, SBC states that it has reached 1 million DSL lines in its 13 state region. That figure is many times over all CLECs providing DSL service combined. Accordingly, the CLECs state that the time lag associated with self-provisioning is not a viable alternative to obtaining Project Pronto as UNEs.

In pre-filed testimony, Sprint witness Burt testified that it has taken Sprint 6-8 months to attempt to collocate a DSLAM at a SBC/Ameritech RT. Sprint Rehearing Ex. 3.0 (Burt), at 23. The evidence presented at the hearing now indicates that it has taken Sprint at least a year to turn up service at the particular RT because, after being rejected by SBC/Ameritech for collocation in the RT because Sprint’s DSLAM did not fit in the RT and rejected for adjacent collocation next to the RT because collocation space still was available in the RT (Rehearing Tr. (Welch), at 1515-1516), Sprint was forced to begin the process of acquiring an easement from a nearby property owner in early August 2000. . (Ameritech Rehearing Burt Cross Exh. 2, at 1). Sprint expects the construction of the engineered control splice so it can obtain access to the loops served by that RT to be finished in October, 2001. (Id.). Thus, it will take Sprint, in the one example where placing a DSLAM in the loop plant has been attempted, over a year to turn up service.

The CLECs argue that this type of timeline clearly harms CLECs in getting to the market to provide advanced services and demonstrates impairment. In fact, Mr. Ireland testified that a one year delay in rolling out Project Pronto would be very harmful to SBC/Ameritech in the marketplace. The CLECs claim that He acknowledged that a year delay for a CLEC in implementing a particular technology also would be a serious competitive harm for that CLEC. (Rehearing Tr. (Ireland), at 448-449). In sum, without unbundling Project Pronto, Joint CLECs argue that they clearly are impaired from a timing perspective.

In terms of ubiquity, the FCC’s impair analysis includes ubiquity as a factor when state Commissions determine whether a CLEC is impaired without access to UNEs. Specifically, the FCC directed that Commissions should consider the extent to which a competitive carrier can provide ubiquitous service using alternative facilities, given the fact that the ability to provide service may be impaired where lack of access to a UNE “materially restricts the number or geographic scope of the customers” a competitive carrier can serve. UNE Remand Order ¶ 97. Because without access to Project Pronto, data CLECs allege that they cannot provide ubiquitous xDSL services the inability to use the Project Pronto platform “materially restricts the number or geographic

scope of the customers” a competitive carrier can serve. UNE Remand Order at ¶ 97. The provisioning of xDSL over home run copper is distance sensitive, and generally cannot be supported on copper loops over 18,000 feet. The CLECs allege that Project Pronto extends the reach of xDSL by connecting copper subloops of no more than 12,000 feet (from the RT to the customer premises) to fiber subloops between the central office and the RT. The hybrid copper/fiber architecture of Project Pronto makes xDSL available to nearly twice as many SBC customers as would have been served on home run copper. Rhythms’ Watson Rehearing Ex. 2.0P, at 19 (citing Rhythms Texas Exh. 63A (030629 to 030680), at Bates 030630). If denied access to Project Pronto, data CLECs argue that they will only be able to provide xDSL via line sharing to customers located within 18,000 feet of a central office. Rhythms’ Watson Rehearing Ex. 2.0P, at 19.

Furthermore, the CLECs argue that even for loops below 18,000 feet, DSL performance on all copper loops can be inferior to DSL performance on Project Pronto loops, because Project Pronto limits the copper segment distance to 12,000 feet, thereby obtaining higher data throughput rates. Id. In addition, the CLECs argue that there is a significant risk of throughput degradation for DSL services on all-copper loops after Project Pronto is deployed, because the generation of a strong DSL signal in the field at the RT can create significant levels of cross-talk. Id.; See also, Sprint Rehearing Ex. 5.0 (Dunbar), at 38). SBC/Ameritech supplied a document titled “Additional Noise Margin Ratio,” which SBC claims addresses and resolves this issue. However, the Joint CLECs do not believe SBC’s claim. The CLECs argue that, As is shown in Exhibit DW-4 in Rhythms’ Rehearing Ex. 2.1 (Watson), the T1E1.4 working group of ANSI Committee T-1 indicates that ADSL deployed in remote terminals is not spectrally compatible with existing home run copper based ADSL services. The CLECs claim that SBC-Ameritech’s implementation of the additional noise margin ratio approach will not resolve the problems identified in Exhibit DW-4. Rhythms’ Rehearing Ex. 2.1 (Watson), at 17.

In terms of network operations, the FCC concluded that “material operational or technical differences in functionality that arise from use of alternative technologies may also impair a requesting carrier’s ability to provide its desired services.” UNE Remand Order, ¶ 99. The CLECs argue that the evidence in this case amply demonstrates that unbundling Project Pronto is technically feasible. In fact, SBC/Ameritech ordered its employees charged with developing UNEs to “roll out a product offering to the CLEC community that could be offered over the architecture.” Rehearing Tr. (Boyer), at 863:4-6. When SBC first asked the FCC for a waiver from its Merger Conditions that would allow SBC to own the line cards in the NGDLC and the OCD, SBC provided a sample appendix to be added to CLEC interconnection agreements that offered Project Pronto as UNEs. Rhythms’ Watson Rehearing Ex. 2.0, at 3; Letter from Paul K. Mancini, SBC Vice-President and Assistant General Counsel, to Lawrence Strickling, Common Carrier Bureau Chief, February 18, 1999. Moreover, the CLECs claim that SBC has also acknowledged its obligation to unbundle its Project Pronto architecture. Rhythms’ Watson Rehearing, Ex. 2.0P, at 3 (citing Rhythms Texas Exh. 65A, (030306 to 030327), at Bates 030310). Rhythms’ Watson Rehearing Ex. 2.0P, at 3. (citing

Rhythms Texas Exh. 65A, (030306 to 030327), at Bates 030310. It was only in April 2000, that Ameritech relabeled the Project Pronto offering from UNEs to an end-to-end service offering after SBC/Ameritech's "legal folks" and "higher ups" suddenly decided the issue while Mr. Boyer, SBC's project manager for Project Pronto, was on vacation. Rehearing Tr. (Boyer), at 887: 14-18. The CLECS assert that, regardless of the name, the evidence in this case (discussed in detail below) demonstrates that it is technically feasible for SBC/Ameritech to provide the network elements of Project Pronto as UNEs. Rehearing Tr. (Boyer), at 894:12-895:1; 904:10-17.

C. Staff

1. Staff's Position on Packet Switching Issues

The FCC has spoken to the issue of packet switching, which is at issue here. Packet switching is defined as the function of routing data units based on addresses or information contained in the packets. UNE Remand Order, ¶¶302, 304. Packet switching is required to be unbundled only in very limited circumstances. UNE Remand Order, ¶¶306, 313. The FCC declined to require general unbundling of packet switching based upon evidence that CLECs are aggressively deploying the infrastructure necessary to provide packet switching. UNE Remand Order, ¶¶306-7. The limited exception to this rule occurs where conditioned copper loops are unavailable, thereby preventing CLECs from deploying the D-SLAM devices necessary to provide xDSL service. UNE Remand Order, ¶313. Significantly, the FCC suggests that CLECs aggrieved by this conclusion may seek relief from state public utility commissions. UNE Remand Order, ¶312.

Ameritech appears to argue that Project Pronto is essentially a packet switching network, which is not subject to federal unbundling requirements, and which should not, accordingly, be unbundled. Staff argues that ~~T~~this argument, however, is ill taken. First, the FCC, while declining in the UNE Remand Order to require that packet switching be unbundled except in limited circumstances, UNE Remand Order, ¶¶302, 304, 306, 313, nonetheless found that state Commissions are authorized to order the unbundling of packet switching technologies. UNE Remand Order, ¶ 312. In addition, the FCC found that:

[I]f a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching [Accordingly], incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal.

UNE Remand Order, ¶ 313

Staff asserts that there appear to be real questions regarding whether (a) there will in all cases be space available for CLECs to collocate – virtually or otherwise – DSLAMs at RTs, or whether such collocation is otherwise possible; and (b) whether spare copper loops will be available. In addition, there is little question that Ameritech intends to deploy Project Pronto for its own use. Accordingly, Staff argues, the packet switching exemption does not provide Ameritech with a compelling argument against unbundling.

Indeed, arbitrators at the Texas PUC have recently found that the same Project Pronto architecture at issue here is not exempt from unbundling by virtue of the packet switching exception. See Arbitration Award, Petition of IP Communications / Petition of Covad Communications and Rhythm Links, Inc., Texas PUC Docket Nos. 22168 / 22469 (hereafter “Texas Award”). There, the arbitrators specifically found that the Project Pronto architecture is designed to, and in fact does, replace copper facilities, depriving CLECs of means to serve customers other than the Project Pronto network. Texas Award at 76-7. In so finding, the arbitrators rejected SBC “overlay network” argument. Id. Next, the arbitrators determined that CLECs will be impaired in their ability to compete based upon the virtual certainty that spare copper facilities will not exist everywhere. Id. at 77. Third, the arbitrators found that SBC does not allow CLECs to collocate DSLAMs at RTs on the same terms and conditions that it affords itself, in part because it does not permit CLECs to own and collocate their own line cards. Id. at 72, 77-8. Finally, the arbitrators rejected out of hand SBC’s assertion that Project Pronto was not deployed for SBC’s own use. Id. at 78. Accordingly, Staff contends, Ameritech cannot successfully rely upon the fact that the FCC has declined to unbundle packet switching in general.

Staff concludes that the unbundling of Project Pronto remains a sound pro-competitive policy that does not violate federal law. Staff Ex. 1.0 at 2 et seq. Moreover, Staff asserts that such unbundling can be accomplished without reducing Ameritech’s incentives to invest in network upgrades. Id. at 11 et seq. As the testimony and record of each of the four proceedings reflects, for meaningful competition to develop, competitors must have an effective means to compete with the incumbent. Staff Ex. 1.0 at 3. Staff contends that unbundled access to Project Pronto is crucial for CLECs to compete with Ameritech in high-speed data services. Id. at 3-4.

2. Staff Position on Impair Standard

Section 251(d) of the Act, 47 U.S.C. §251(d), charges the Federal Communications Commission (hereafter “FCC”) with “establish[ing] regulations to implement the requirements of this section.” Specifically, Section 251(d) requires the FCC, in determining what unbundled network elements must be made available under section 251(c)(3), to “consider, at a minimum, whether (A) access to such network elements as are proprietary in nature is necessary; and (B) whether the failure to provide access to such network elements would impair the ability of the

telecommunications carrier seeking access to provide the service that it seeks to offer.” 47 U.S.C. §251(d)(2).

The Third Report and Order and Fourth Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, FCC No. 98-238 (November 5, 1999)(hereafter “UNE Remand Order”) provides specific guidelines for interpretation of Section 251(d) and determining whether individual network elements must be unbundled. Lack of access to an element on an unbundled basis “impairs” the ability of a CLEC to provide a service it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent’s network, including self-provisioning, or purchasing an alternative from a third party supplier, lack of access to the element “materially diminishes” the CLEC’s ability to provide the service it seeks to offer. UNE Remand Order, ¶51. The “impair” standard applies to non-proprietary elements. UNE Remand Order, ¶31. To determine whether the lack of access to an element materially diminishes a CLEC’s ability to provide a service to the point that such ability is impaired, the FCC considers the following factors:

- 1) All forward-looking costs that CLECS would incur using alternative elements. UNE Remand Order, ¶¶72, 74. If the use of an alternative element would impose substantial sunk or fixed costs upon a CLEC, this factor militates in favor of unbundling. See UNE Remand Order, ¶¶75-80. In considering costs, it is proper to consider which customer classes the CLEC seeks to serve. UNE Remand Order, ¶¶81-83.
- 2) The time necessary to obtain or provision alternative elements, or more accurately, the delays associated with self-provisioning elements, as opposed to obtaining them as unbundled elements from ILECs. UNE Remand Order, ¶¶89-90, 95. If such delays exceed six months to one year, this factor supports unbundling. UNE Remand Order, ¶91.
- 3) The quality of alternative elements available. UNE Remand Order, ¶96. If the use of alternative elements compels a CLEC to provide service that is diminished in quality, this argues in favor of unbundling. Id.
- 4) The ability of CLECs to provide service on a ubiquitous basis using alternative elements. UNE Remand Order, ¶¶97-98. If the use of an alternative element materially restricts the number or geographic location of customers that a CLEC can serve, this supports unbundling of the element. Id.
- 5) Material operational or technical differences in functionality that arise from interconnecting alternative elements may also impair a CLEC’s ability to provide service, which will, if found, support unbundling. UNE Remand Order, ¶99.

In addition to the “impair” standards, the FCC determined that other factors might be considered in determining whether a network element should be unbundled. UNE Remand Order, ¶101. This authority, the FCC concluded, is based upon the language of Section 252(d)(2) which requires consideration, “at a minimum,” the necessity of an element, or the impairment that lack of access to an element would cause. See 47 U.S.C. §252(d)(2). Other factors that may be considered, in addition to the “impair” standard, when analyzing whether an element should be offered on an unbundled basis, are the following:

- 1) Whether requiring the element to be offered on an unbundled basis will encourage the rapid introduction of competition into all markets. UNE Remand Order, ¶107.
- 2) Whether requiring the element to be offered on an unbundled basis will promote facilities-based competition, investment and innovation. UNE Remand Order, ¶110.
- 3) Whether requiring the element to be offered on an unbundled basis will reduce regulatory obligations. UNE Remand Order, ¶113.
- 4) Whether requiring the element to be offered on an unbundled basis will provide uniformity and predictability which will enable new entrants to develop national and regional business plans, and attract capital. UNE Remand Order, ¶114.
- 5) Whether requiring the element to be offered on an unbundled basis will be practical to administer and apply. UNE Remand Order, ¶115

Staff argues that a Although Ameritech consistently argues that Project Pronto is an overlay network and does not replace existing facilities, the numerous proceedings have made clear that alternatives to the unbundling of Project Pronto are, in reality, often no alternatives at all. Staff Ex. 1.0 at 3. For example, Ameritech contends that a CLEC that wants to provide data services in an area served by Project Pronto could collocate at the remote terminal (“RT”) and purchase dark fiber from Ameritech (if available) or purchase fiber capacity from a third party. Id. However, Staff asserts that operational and administrative obstacles, particularly the lack of space in RTs, often would make collocation at the RT impossible. Id. Even where RT collocation is possible, the number of customers served by a single RT often makes leasing collocation space an excessively costly alternative on a per-customer basis. Id. at 3-4. Staff believes it is not a feasible alternative, technically or economically, to require a CLEC to collocate at each and every RT, many of which might terminate only a few hundred sub-loops. Id. The FCC recognizes this fact in its Line Sharing Reconsideration Order when it states that:

[F]iber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at remote terminals is likely to be costly, time

consuming, and often unavailable. We provide this clarification because we find that it would be inconsistent with the intent of the Line Sharing Order and the statutory goals behind sections 706 and 251 of the 1996 Act to permit the increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the competitive provision of xDSL services.

Third Further Notice Of Proposed Rulemaking, CC Docket No. 98-147; Sixth Further Notice Of Proposed Rulemaking; CC Docket No. 96-98; FCC No. 01-26 (Line Sharing Reconsideration Order), ¶ 13.

Ameritech proposes, as a second alternative to CLEC use of the Project Pronto network is for a CLEC to resort to spare all-copper loops. Staff Ex. 1.0 at 4. However, in areas where Ameritech initially served communities by an “old” fiber-fed DLC architecture, spare copper loops connecting the RT with the CO are typically unavailable. Id. In addition, Staff argues that many of the copper loops being replaced by Project Pronto are probably incapable of delivering advanced services because of their considerable lengths. Id. Where all-copper loops are capable of delivering advanced services, it is likely that the copper loop would require loop conditioning, which is an additional expense not incurred by Ameritech or a CLEC having unbundled access to Project Pronto. Id.

Further, In finding that competitors should have unbundled access to Project Pronto, this Commission previously determined that the federally mandated line sharing requirement applies to all loops, not just loops consisting entirely of copper facilities. Staff claims that Tthis is wholly consistent with federal policies, as the FCC has clearly stated that:

[T]he requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Our use of the word “copper” in section 51.319(h)(1) was not intended to limit an incumbent LEC’s obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services.

Line Sharing Reconsideration Order, ¶10.

In a typical line sharing environment (using central office-based DSLAMs and all-copper loops), CLECs can offer all desired variations of xDSL services that can coexist on a single line with voice services, since CLECs are able to install their own equipment at the CO, enabling them to deploy the types of xDSL services they desire. Staff Ex. 1.0 at 6. In a Project Pronto environment, the equipment used to provide the various types of xDSL services is placed at the remote terminal, instead of the central office. Id. Line cards that plug into Next Generation Digital Loop Carrier (NGDLC) systems at the RT perform the functions that a D-SLAM and a splitter perform at a central office. Id. If CLECs cannot specify the types of line cards deployed at the

remote terminal, they do not have the same options as they would in a typical line sharing situation. Id. at 7.

In light of this, Staff states that the Commission should conclude that CLECs will be significantly impaired in their ability to provide broadband service if the Project Pronto architecture is not unbundled. It is evident that the collocation of DSLAMs (where possible, and where spare copper loops exist) is certain to increase a CLEC's fixed and variable costs of providing service. See UNE Remand Order, ¶¶ 72-83. Likewise, the provisioning of alternatives (i.e., collocation of DSLAMs and obtaining – where possible – conditioned loops) is not a process calculated to facilitate deployment within six months to one year, see UNE Remand Order, ¶ 91, especially in light of the fact that Ameritech is permitted a 105 business day interval for provisioning collocation. See, generally, Order, ICC Docket No. 99-0615. Similarly, a CLEC that must collocate costly DSLAMs in all or most of two thousand-odd RTs – assuming that space is available to do so – will have an extraordinarily difficult time providing ubiquitous service. See UNE Remand Order, ¶¶ 97-98. In addition, Staff contends that the unbundling requirement is virtually certain to materially advance the introduction of competition into all markets, see UNE Remand Order, ¶ 107, and will foster innovation as CLECs employ the functionalities of a variety of ADLU line cards to provide different, variegated products and services. See UNE Remand Order, ¶ 110. Likewise, requiring Ameritech to offer Project Pronto on an unbundled basis will provide uniformity and predictability that will enable new entrants to develop national and regional business plans, and attract capital. See UNE Remand Order, ¶114.

In sum, Staff maintains that competitors will be impaired significantly in their efforts to compete with Ameritech if they do not have unbundled access to Project Pronto. The very fact that SBC viewed the existing alternatives as insufficient in order to provide ubiquitous DSL coverage is itself a strong argument for unbundling Project Pronto.

3. Staff's Alternative Proposal

Should the Commission determine that unbundling of Project Pronto, and specifically line card collocation, is infeasible – which the Staff does not recommend – it is nonetheless possible to require Ameritech to offer Project Pronto in the form of an end-to-end unbundled product – a sort of “NGDLC UNE-P”. Staff states that this is vital, since unbundling and some form line card collocation ensures that competitors have the ability to innovate and determine their own competitive offerings, rather than solely relying upon Ameritech's potential deployment schedule. Competitors are allowed to “push the envelope” when it comes to deploying new and differentiated service offerings to their customers. With line card collocation, the incumbent no longer acts as the gatekeeper to the set of advanced services that will be offered to residential and business customers. Instead, each competitor can use the inherent features and capabilities of the NGDLC even where Ameritech itself is either not ready, or decides not to employ the additional capabilities. Staff claims that in their respective testimony, Ameritech witnesses Drs. Aron, Levin and Crandall ignore the benefits of innovation the

Commission's requirements will produce. Staff claims that increased innovation and a greater variety of services are the main benefits associated with unbundling and therefore competition. Nobody disagrees that unbundling has the potential to, and in most cases indeed does, increase the incumbent's costs. However, such unbundling is done on a regular basis because the perceived benefits with unbundling are assumed to be greater than the additional costs as a result of unbundling. Ameritech's three economists put the emphasis on the additional costs and the potential reduced investment incentives for Ameritech, while, Staff claims, completely ignoring the benefits of increased competition and innovation. While this position can be considered rational behavior on Ameritech's part, it should not be forgotten that the Commission's task is to look at both sides of the equation. That is, it has the responsibility to weigh any potential incremental costs to unbundling against the potential benefits associated with increased innovation and competition. It is Staff's opinion that the potential benefits of increased innovation in this fast-changing technological environment outweigh the additional costs associated with unbundling. This is especially true with Staff's proposal to order an end-to-end NGDLC UNE-platform in lieu of the Commission's earlier unbundling requirements. Project Pronto is a multi-year undertaking that will shape SBC's network infrastructure for some time to come. Consumers will benefit from new and innovative services if CLECs have the ability to participate in shaping the technological future.

As noted infra, Staff maintains that sound policy dictates that the Commission should act to afford competitive carriers the ability to use the inherent features, functions and capabilities of the NGDLC system as soon as they become available. To accomplish this, CLECs need not own line cards once they are placed into the RT instead, it can be achieved when CLECs can determine the type of line cards to be placed into the NGDLC channel bank. It is crucial that competitive carriers are able to specify a particular line card, but a CLEC need not necessarily maintain ownership of the card after it has been plugged into a slot of a channel bank.

In this rehearing, as in the past, Ameritech asserts that a line card collocation requirement will impose significant additional costs upon it. See, generally, Ameritech Ex. 1.0, 4.0, This is the first time that either SBC or Ameritech gives any specifics as to what those cost might actually be, see, generally, Ameritech Ex. No. 10.0, despite the fact that, Staff alleges, the line card collocation issue was contested during three proceedings before this Commission, as well as during the negotiations with the FCC that led to the Project Pronto Waiver Order.

Staff asserts that Ameritech's claim that it did not know what kind of unbundling requirements it would be subject to until the Commission entered the Order in the instant proceeding seems disingenuous. The issue of line card collocation came up as early as the spring of 2000, when SBC negotiated a waiver from merger conditions that prohibited SBC from owning advanced services equipment. Subsequent to the negotiations at the FCC, Ameritech had no fewer than three opportunities before this Commission to support, with some estimate of actual costs, its claims that CLEC

ownership of line cards presents a major additional expense. It did not take advantage of any.

Staff is skeptical of Ameritech's underlying assumptions for calculating the specific additional capital costs and expenses a line card collocation requirement would necessitate. However, Staff does not dispute the fact that some extra cost will be incurred when Ameritech needs to upgrade its OSS systems to inventory different line cards owned by different CLECs. It appears, however, that Ameritech overstates the additional costs it would incur as a result of a line card collocation requirement.

An example of Ameritech's "worst-case scenario" assumptions is the assumption, for the purposes of its cost studies, that each CLEC would have only one customer per service area interface ("SAI") and thus would "waste" 3 of the 4 ports on the line card, or 75% of the port capacity. Ameritech calculates such inefficient port use to be an additional capital cost of \$23,169,643 when 50% of the planned 2090 RTs in Illinois have collocated line cards of five different CLECs. This assumes, of course, that CLECs will go to the trouble and expense of collocating a line card in an SAI to serve only one customer – an assumption which is at best questionable.

If, however, one uses the cost figures provided by Ameritech and assumes that CLECs on average use 3 out of the 4 line card ports, the "waste" associated with the transaction is reduced to one-third of Ameritech's calculated amount, \$7,723,214. This assumption is considerably more realistic than Ameritech's "worst case" assumption, since it assumes, among other things, that CLECs will not behave irrationally.

This is just one example of Ameritech's use of "worst-case" assumptions, and [Staff alleges](#), it shows how easily the additional costs of line card collocation can be, and perhaps are being, inflated.

This notwithstanding, in the event the Commission decides that it wants to avoid any uncertainty regarding the additional costs of line card collocation, Staff recommends ordering Ameritech to tariff a complete ADSL capable UNE platform, traversing from the CO to the end user premises, using the Project Pronto architecture. Such a tariffed "NGDLC UNE platform" offering would consist of SBC's current broadband service. Compared to SBC's current broadband service, however, this tariff would ensure that Ameritech cannot unilaterally change or modify the terms and conditions of its offering.

Such a platform approach is one of the methods considered by the FCC in its Line Sharing Reconsideration Order. The FCC stated that "such a platform could be defined to include the loop (both feeder and distribution portions, whether copper or fiber), attached electronics, line-card/DSLAM functionality, ATM switching or its equivalent, and transport." Line Sharing Reconsideration Order, n. 135. The Texas Commission also ordered SBC to unbundle Project Pronto as an end-to-end UNE in a recent Arbitration Award. See Texas Award at 69 et seq.

Such a NGDLC UNE platform will achieve the same goals as a line card collocation requirement. This platform, combined with the requirement that Ameritech offer a modified platform when new line cards become available, ensures there will be sufficient demand for new line cards, and will also give CLECs an incentive to express to the licensed manufacturers of such line cards their preferences for line card features. Such manufacturers, recognizing that CLECs are the actual customers, will have a real incentive to incorporate innovative features and functionalities into new line cards. This is essentially the same scenario as with line card collocation, yet additional costs stemming from multiple owners of line cards at the RT would be avoided, as would administrative problems associated with inventorying of cards.

The NGDLC UNE-P would remove all uncertainty concerning Ameritech's claims that such unbundled access would prevent it from economically deploying Project Pronto in Illinois. All of the claimed extra costs of line card collocation stem from the fact that an individual CLEC owns a specific card, and thus the card cannot be shared among other CLECs. Arguments such as these are no longer valid when Ameritech owns the line card.

To ensure CLECs have the ability to specify alternative line cards, [Staff states that](#) the Commission should require Ameritech to offer a new version of the NGDLC UNE platform as soon as either Alcatel or a licensed manufacturer issues a new line card. For example, the parties appear to agree that, as matters stand currently, only the ADLU card from Alcatel operates in conjunction with the Litespan NGDLC system. However, it is Staff's understanding that Alcatel is currently developing a second line card for the Litespan system. The line card, which will support G.SHDSL, should be made available for any CLEC that requests it, including Ameritech's advanced services affiliate, in a new NGDLC UNE platform offering.

In addition to recognizing, and allowing for, new line card developments, Staff recommends that the Commission order Ameritech to offer a modified NGDLC UNE-P at such time as the vendor of Ameritech's NGDLC system is able to incorporate the capability to provide multiple Permanent Virtual Paths ("PVPs") per channel bank into the system. Ameritech witness Boyer describes a scenario in which a CLEC would reserve all of the DSL capacity in a RT site. Ameritech Ex. 4.0 at 34-37. While Staff is not at all convinced that this is remotely likely, it nonetheless recommends that the Commission not require Ameritech to offer a NGDLC UNE-P with a PVP option until the software in the NGDLC system allows for the "unchaining" of PVPs. When such "unchaining" becomes technically feasible, Ameritech can no longer argue that offering a PVP to a CLEC would reduce the RT's ADSL capacity by one-third. [Id.](#) at 34. Currently, the software of the Litespan 2000 system allows for only one dedicated PVP per channel bank assembly. [Id.](#)

In addition to eliminating the need for collocation of line cards, the NGDLC UNE platform also eliminates Ameritech's concerns regarding some of the Commission's earlier specific unbundling requirements. Specifically, the Commission would not need to decide whether the copper sub-loop from the RT to the NID and the copper sub-loop

from the RT to the serving area interface SAI”) are technically feasible sub-loops. Ameritech Ex. 4.0 at 39.

In filing its direct testimony to this proceeding, Ameritech did not propose these specific UNE offerings. Rather, Ameritech proposed two distinct broadband wholesale offerings over its Project Pronto architecture. The first offering is an end-to-end service that provides only a data path from the end user’s premises to the CLECs collocation cage. This service can be optionally offered over a line sharing arrangement when the end user customer also receives voice services from Ameritech. The second offering is an end-to-end service that provides the aforementioned data path as well as a voice path to the collocation cage.

Although Ameritech did introduce its broadband service offering in this proceeding, and provided cost support for the offering, it nonetheless has not proposed final rates or illustrative tariffs for the offering. In fact, it appears Ameritech is not recommending that this offering be ordered through the rehearing process.

Exception 2:

Issue VIII – The Monthly Recurring Charge for the HFPL UNE.

Ameritech Illinois proposes the following language to entirely replace the “Commission Analysis and Conclusion” in Section VIII.D of the Proposed Order. All of the proposed language is new.

D. Commission Analysis and Conclusion

The Commission is 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 violates the Takings Clause and TELRIC standards, and would give data CLECs an unfair and artificial competitive advantage over other advanced service technologies, and therefore is rejected.

We reject the CLECs’ argument that Ameritech has failed to demonstrate that its retail rates do not recover all of its loop costs. 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. For this reason, the Commission rejects the CLECs' argument that a 50% HFPL UNE price results in double recovery or windfall profits. Whether loop costs are currently being recovered by retail voice services is irrelevant in setting the price of UNEs.

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.² 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.³

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

Even if double recovery were legally relevant (which it is not), the evidence suggests that Ameritech Illinois is not recovering the entire cost of the loop in retail rates. *First*, 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, and therefore has no assurance that it will recover the entire cost of the loop—including all shared and common costs—in retail rates. *Second*, the existing retail rates were set under the assumption that Ameritech Illinois would serve all the demand for those services. This assumption no longer holds true today, as Ameritech Illinois' retail products now face competition from CLECs. *Third*, 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 all of the costs of unbundled loops. *Fourth*, CLECs target high use customers that contribute more to the recovery of total loop costs and, as these customers are lost to the CLECs, their contribution to Ameritech Illinois' overall recovery of its loop costs is lost. *Fifth*, competition will preclude Ameritech Illinois from over-recovering its loop costs. Am. Ill. Ex. 3.0 (Carnall) at 20-21

² *SBC/Ameritech Merger Order*, ¶ 467; Appendix C (Conditions Appendix), ¶ 14.

³ *SBC/Ameritech Merger Order*, ¶ 370.

In any event, even if the Commission had concerns about double recovery (which we do not), we still could not set the monthly recurring HFPL UNE charge at zero. 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. A zero price also would violate the Takings Clause. The Commission therefore must set the HFPL price at some positive amount.

We also reject the CLECs' argument that a positive price would 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. Contrary to the CLECs' claims, we find that a zero price would be 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), and would incent against the use of other technologies. In addition to discriminating against other advanced services providers and technologies, a zero price 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.

Notably, in other proceedings, advanced service competitors such as AT&T have recognized that a zero price for the HFPL UNE 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. Therefore, the monthly recurring charge for the HFPL UNE shall be set at 50% of the Commission-approved monthly recurring unbundled loop price.

Exception 3:

Issue XIII – The Nonrecurring Charge for Manual Loop Qualification

Ameritech Illinois proposes the following language to entirely replace the “Commission Analysis and Conclusion” in Section XIII.D of the Proposed Order. All of the proposed language is new.

D. Commission Analysis and Conclusion

The Commission adopts the nonrecurring cost for manual loop qualification proposed by Ameritech Illinois on rehearing. In the initial phase of this docket, Ameritech Illinois proposed a per minute nonrecurring charge for manual loop qualification. However, on rehearing, Ameritech Illinois is now proposing an average, flat-rated cost per occurrence. We agree with Staff that this newly proposed average cost has several advantages over the per-minute charge previously proposed, and we are persuaded to change our previous conclusion that the manual loop qualification charge should be zero.

The record establishes that Ameritech Illinois does perform manual loop qualifications, and incurs actual costs in doing so. Neither the CLECs nor Staff denies that Ameritech Illinois performs such work. In fact, Staff believes that “Ameritech’s proposed rate for manual loop configuration is reasonable,” but nevertheless recommends that we deny Ameritech Illinois any recovery of those costs. Such denial, however, would amount to an unconstitutional taking of Ameritech Illinois’ property, and would violate TELRIC principles. Aside from Staff’s request that we deny recovery of manual loop qualification costs, we agree with Staff that Ameritech Illinois’ new proposed cost is a fair estimate of Ameritech Illinois’ forward-looking manual loop qualification costs. The CLECs have not addressed Ameritech Illinois’ new proposed cost, nor have they proposed any charge that is more reasonable.

We reject the CLECs’ argument (made in the initial phase of this docket) that they should not pay for manual 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, in Docket No. 00-0592, we recognized that Ameritech Illinois may return loop qualification information “either via an electronic interface . . . or manually.”

More importantly, there is no evidence that Ameritech Illinois' electronic databases contain loop qualification information on every loop,⁴ and requiring Ameritech Illinois to create new databases to support the CLECs' provisioning of service would be unlawful. Indeed, the FCC has held that 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. In such situations, Ameritech Illinois must be permitted to recover the cost of the manual loop qualifications.

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

⁴ 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.

Exception 4:

Issue XIV – The Monthly Recurring Charge for OSS Modifications

Ameritech Illinois proposes the following language to entirely replace the “Commission Analysis and Conclusion” in Section XIV.D of the Proposed Order. All of the proposed language is new.

D. Commission Analysis and Conclusion

The Commission is persuaded on rehearing that Ameritech Illinois’ recurring OSS modification charge should be adopted. In the initial phase of this docket, Staff and this Commission acknowledged that Ameritech Illinois incurs costs as a result of OSS modifications. Accordingly, imposing a zero price, as the CLECs propose, would violate the Takings Clause and TELRIC principles.

A zero charge also would violate the FCC’s holding that Ameritech Illinois and other ILECs are entitled to recover their line sharing-related OSS modification 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.

Line Sharing Order, ¶144. 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.

Id.

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, and we find that recovery over a three-year period is reasonable. More specifically, 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. No party has presented evidence that Ameritech Illinois is not incurring these costs, or that Ameritech Illinois’ proposed costs are not reasonable.

The CLECs argue that the Commission should reject Ameritech Illinois' proposed charge for OSS modifications, and adopt a zero charge, because SBC will incur the costs as a result of its merger related commitments to the FCC. We disagree. Again, a zero charge 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 modifications regardless of whether they were incurred to enable affiliated CLECs to gain access to the HFPL.

Although the argument appears to have been abandoned on rehearing, in the initial phase of this docket, the CLECs raised concerns that the xDSL demand assumed in Ameritech Illinois' 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 demand for line shared xDSL lines in SBC's 13-state region, because it includes the xDSL lines SBC expects to serve *outside* the SBC 13-state region, and also includes *all* xDSL lines, not just line-shared xDSL lines.

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.