

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS BELL TELEPHONE COMPANY)	
)	Docket No. 01-0614
Filing to Implement Tariff Provisions Related to)	
Section 13-801 of the Public Utilities Act)	

INITIAL BRIEF OF AMERITECH ILLINOIS

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INITIAL BRIEF OF AMERITECH ILLINOIS

Illinois Bell Telephone Company (“Ameritech Illinois” or the “Company”) hereby submits its Initial Brief in this proceeding.

I. SUMMARY OF POSITION

A. INTRODUCTION AND BACKGROUND

In this proceeding, Ameritech Illinois is proposing amendments to its wholesale tariff, the purpose of which are to establish terms and conditions that comply fully with Section 13-801 of the Illinois Public Utilities Act (the "Act"). Section 13-801, which was added to the Act as part of House Bill 2900, sets forth various requirements related to Ameritech Illinois' duties with respect to competitive local exchange carriers ("CLECs").

Ameritech Illinois initially filed proposed tariff amendments on July 2, 2001, the first business day following the effectiveness of Section 13-801. In order to provide CLECs with the opportunity to take immediate advantage of new offerings contained in the tariff, including new unbundled network element ("UNE") combinations, the Company advised the Commission that it would be willing to put the tariff into effect on less than 45 days notice, during the pendency of a tariff investigation.¹ At the request of the Commission Staff, the Company withdrew and

¹ Ameritech Illinois also offered to enter into an Illinois Legislative Amendment to existing interconnection agreements which incorporates by reference the terms of the compliance tariff amendments, as they may be modified from time to time by changes accepted or approved by the Commission. By its terms, an executed

refiled the amended tariff sheets on two occasions in order to extend the effective date of those tariff sheets and provide Staff with more time to review the tariff amendments. After the Company withdrew and refiled the tariff amendments for the second time, on September 13, 2001, under Advice No. 7555, the Commission entered an order suspending the effectiveness of the tariff sheets and initiated this proceeding. (Am. Ill. Ex. 1.0, p. 4).

The Company also filed an Interim Compliance Tariff, which became effective September 18, 2001, to enable Ameritech Illinois to immediately begin accepting and processing orders for the new UNE combinations identified in the Draft of the Proposed Ameritech Illinois 271 Amendment (the "Draft I2A") found in Schedule SJA-4 filed by the Company in Docket No. 00-0700, pending completion by the Commission of its review and approval of permanent 13-801 compliance tariffs. The Draft I2A Combinations are specific loop/port and loop/dedicated transport combinations that directly comply with Section 13-801(d)(3) and are responsive to CLECs' stated desire for "products" that allegedly further enable them serve residential and business markets. The Interim Compliance Tariff also (i) includes with the Company's Unbundled Local Switching with Shared Transport ("ULS-ST") offering a capability for the transmission of intraLATA toll calls originating from a purchasing carrier's retail end users who are being provided local exchange service using ULS-ST, where the purchasing carrier is also the presubscribed intraLATA toll carrier; and (ii) implements interim tariff terms and conditions reflecting the Company's obligation to permit CLECs to reconfigure qualifying special access circuits to UNE-loop transport combinations in a manner consistent with the Supplemental Order Clarification issued by the Federal Communications Commission ("FCC") in CC Docket No. 96-98. (Am. Ill. Ex. 1.0, p. 5).

Legislative Amendment would become effective five days after filing with the Commission unless otherwise directed by the Commission. To date, no CLEC has entered into the Legislative Amendment. (Am. Ill. Ex. 1.0,

To comply with Section 13-801 on a permanent basis, the Company proposed new and amended tariff sheets which cover the following subject matters: (i) General Terms and Conditions; (ii) Unbundled Network Elements and Number Portability/General; (iii) Unbundled Loops and HFLP; (iv) Preexisting and Ordinarily Combined UNE-P; (v) Enhanced Extended Loops; (vi) Unbundled Local Switching and Special Transport; (vii) Resale Local Exchange service; (viii) End Office Integration; and (ix) Collocation Services (including cross connect services). (Am. Ill. Ex. 1.0, p. 7).

Prior to the initial status hearing, the Company circulated to the parties a revised version of the permanent compliance tariff amendments (as filed on September 13, 2001), which took into account comments received from Staff and CLECs during the discussions which occurred prior to the initiation of this proceeding. Clean and redlined versions of the revised proposed tariff amendments are contained Attachments 1.1 and 1.2, respectively, to Ameritech Illinois Exhibit 1.0. During the course of the proceeding, Ameritech Illinois agreed to make additional revisions in response to comments made in testimony presented by the Commission Staff and other parties. These additional revisions (with the revision highlighted in bold faced, italicized type) are included in Attachment 1 to this Brief.

B. THE COMPANY'S PROPOSED TARIFF AMENDMENT SHOULD BE APPROVED

The extensive evidence presented by the Company demonstrates that its proposed tariff amendments are reasonable and fully comply with the provisions of Section 13-801 in a manner consistent with the General Assembly's goals of promoting consumer welfare and encouraging new investment and job creation in the State of Illinois. Accordingly, the Company's tariff proposals should be approved. The Company's positions regarding the major issues in this proceeding are summarized below.

1. Combinations, UNE Platform And EELs

Section 13-801(d) states that, upon request, Ameritech Illinois “shall combine any sequence of unbundled network elements that it ordinarily combines for itself, including but not limited to, unbundled network elements identified” in the Draft I2A. Pursuant to that Section, the Company has revised its tariffs to state that, upon request, the Company will perform the work necessary to provide CLECs with 12 new UNE-P combinations which go beyond those listed in the Draft I2A and encompass all residential and business basic dialtone lines, ISDN lines, centrex lines, and paid telephone lines. (Am. Ill. Ex. 1.0, p. 7; Am. Ill. Ex. 2.0, p. 19; Tr. 229-31). In addition, the Company has proposed a new tariff section under which it will perform the work necessary to provide eight types of enhanced extended link (“EEL”) combinations of unbundled local loops and unbundled dedicated transport, designed to enable CLECs with a single collocation arrangement to dramatically increase the number of potential local exchange service customers they can serve on a LATA-wide basis. (Am. Ill. Ex. 2.0, pp. 14- 22). The 20 new UNE-P combinations being offered by the Company more than satisfy the demands made by CLECs for new combinations allegedly needed to fully compete in the residential and small business markets (Am. Ill. Ex. 2.0, pp. 19-22) and more than satisfy any appropriate requirements of Section 13-801(d)(3).

Furthermore, in accordance with Section 13-801(d)(4), the Company has also revised its UNE-P tariff to expressly provide that a CLEC may use the UNE-P without its “provision or use of any other facilities or functionality.” The Company has also revised the terms and conditions of the tariff related to the provision of unbundled local switching with shared transport (the ULS-ST component of the UNE-P) to provide CLECs utilizing the platform with the capability for transmitting intraLATA toll calls originating from the purchasing carrier’s retail end users who

are being provided local exchange service using the ULS-ST. The Company has also revised its tariffs to conform with the requirements of Sections 13-801(d)(5) and (6) with respect to the ordering and provisioning of UNE-P.

In contrast to Ameritech Illinois, witnesses for Novacon and the CLEC Coalition² made proposals in this proceeding that exceed any reasonable interpretation of the requirements of Section 13-801. In particular, these parties believe that Ameritech Illinois should be required to provide any and all new combinations of network elements, whether or not those elements meet the “necessary” and “impair” test for unbundling, or whether such network elements are “ordinarily combined.” Moreover, the CLECs and Staff offer proposals which would enable CLECs to simply point to any retail service offered by Ameritech Illinois and demand that the Company provide the CLEC with all the network elements used to provide that service. The CLEC and Staff proposals, if adopted, would undermine the statutory objectives of promoting facility-based competition and investment in technology and jobs in Illinois. As Governor Ryan stated:

Some have expressed fears that House Bill 2900 may encourage new telecom operations to simply buy technology and services from existing companies and resell them, without making their own investments in technology and jobs in our State. I believe the Illinois Commerce Commission should be vigilant in its enforcement of the Act to ensure substantial investment by all telecommunication companies desiring to do business in our State. If entering companies are led to believe that they can prosper simply by "picking off" prime services from other carriers, perhaps at or below cost, then Illinois will have deprived itself of rational telecom regulation and discouraged, rather than encouraged, investment in technology and jobs in this State.³

² Parties represented by the CLEC Coalition are: AT&T Communications of Illinois, Inc.; WorldCom, Inc.; Datanet Systems, LLC; Trucomm Corporation; the Illinois Public Telecommunications Association; the Pace Coalition; and Z-Tel Communications, Inc.

³ Letter from Governor George H. Ryan to the Honorable Members of the Illinois House of Representatives, 92nd General Assembly, June 28, 2001, p. 2. (Hereafter “Ryan Letter”).
(<http://www.legis.state.il.us/legisnet/legisnet92/hbgroups/hb/920HB2900gms.html>).

As will be discussed, the effect of adopting the CLEC and Staff proposals in this case would be to eliminate the incentives of CLECs to invest in their own facilities and undermine the competitive goals of the Illinois Public Utilities Act.

Furthermore, the CLEC parties have entirely disregarded the General Assembly's intent, as expressed in Section 13-801(a), that the provisions of Section 13-801 should not be construed and applied in a manner inconsistent with the Federal Telecommunications Act of 1996 (the "1996 Act") or the orders and regulations of the Federal Communications Commission ("FCC") which implement the 1996 Act. Thus, for example, the CLEC Coalition proposes that (i) the Commission order the Company to unbundle and combine network elements which do not meet the "necessary" and "impair" standards which the FCC has directed state commissions to consider in accordance with Section 251(d)(2) of the 1996 Act; (ii) the Commission impose upon Ameritech Illinois an obligation to provide voice and data CLECs in a line splitting arrangement with a Company-owned splitter, in direct contravention of the FCC's Line Sharing Order as well as orders of this Commission which recognize that the splitter is not an unbundled network element that Ameritech Illinois can be required to provide to CLECs; and (iii) the Company be required to include in its EEL tariff a "shared usage" provision that would permit UNEs and access service to share the same physical facilities, in direct contravention of the FCC's prohibition on "commingling" (i.e., combining loop transport combinations with tariffed access services). For the reasons discussed in this Brief, these and other proposals made by CLECs to impose requirements which are inconsistent with the 1996 Act and the FCC's rules should be rejected because they are inconsistent with Section 13-801(a) and are preempted by federal law.

2. Unbundled Local Switching With Shared Transport

Ameritech Illinois amended its “unbundled local switching with shared transport” (“ULS-ST”) tariff to implement Section 13-801(d). The tariff now allows a CLEC to use ULS-ST to provide intraLATA toll service without the need for the CLEC to provide any of its own “facilities or functionalities”. Staff generally supports Ameritech Illinois’ revisions to the ULS-ST tariff, but objects to the application of switched access rates when Ameritech Illinois terminates an intraLATA toll call originated by a CLEC using ULS-ST. This objection is misplaced because Ameritech Illinois has always been permitted to charge its normal switched access rates for this service and Section 13-801(j) preserves the general prohibition on the substitution of UNEs for access services. The CLEC Coalition proposes language which either mischaracterizes the requirements of Section 13-801(d) or attempts to impose requirements which are completely outside the scope of Section 13-801. Those proposals should be rejected.

3. Bona Fide Request – Ordinarily Combined

Although Ameritech Illinois believes that its proposed tariff lists all of the UNE combinations which Section 801(d)(3) satisfies the Company recognizes that additional “ordinarily combined”. UNE combinations may become unavailable in the future. Ameritech Illinois has developed a modified, expedited bona fide request process to accommodate CLEC requests for new “ordinarily combined” UNEs. The Bona Fide Request – Ordinarily Combined (“BFR-OC”) process takes just ninety (90) days from the date of a CLEC request to produce a delivery date for the new UNE combination. Within ten (10) days after a complete request, Ameritech Illinois would provide notice of whether it is obligated under the law to provide the requested new UNE combination. This prompt notification permits a CLEC to immediately contest Ameritech Illinois’ decision, if it so desires. At the thirty (30) day interval, the CLEC is provided additional preliminary information. The CLEC will instruct Ameritech Illinois if it

wishes to proceed with the process and Ameritech Illinois will within sixty (60) days produce a firm delivery date and a firm price quotation.

Neither Staff nor CLEC Coalition take this interval seriously. Staff, for its part, asserts that Ameritech Illinois should be able to compress this ninety (90) day process into just two (2) days. The CLEC Coalition throws out a figure of fourteen (14) days. Both numbers are woefully inadequate. The critical flaw in analysis of Staff and CLEC Coalition is their assumption that if Ameritech Illinois “ordinarily combines” certain UNEs as part of a retail service, it takes no additional work to offer the same UNE combinations to wholesale customers. That assumption is wrong. Ameritech Illinois, in essence, has two separate operations; retail and wholesale. These operations have different ordering systems, different billing systems, and different personnel, and Ameritech Illinois cannot order, provision and bill CLECs through its retail systems. Rather, it must update and change its wholesale systems in order to accommodate new UNE combinations on the wholesale side of its business. It is painfully ironic that Staff and CLEC Coalition argue here that there should be transparency between Ameritech Illinois’ wholesale and retail operations, since these operations were separated in order to accommodate the CLEC industry.

The CLEC Coalition proposes an alternative process which it calls a “request for additional combinations” (“RAC”) process that is unrealistic and punitive. The intervals it establishes are unreasonably short and could not possibly be met by Ameritech Illinois or any other carrier. In addition to the fourteen (14) day interval discussed above, the RAC proposal would require Ameritech Illinois to begin provisioning the requested UNE on the wholesale side within an additional ten (10) business days. There is simply no way to deploy a product that rapidly, especially one which requires the support of complex and interrelated ordering, billing,

and provisioning systems. Moreover, the RAC proposal would permit rates for UNE combinations to be developed under the expedited dispute resolution process in Section 13-515 rather than through the established procedures for rate making in Section 9-201. A final example of the unreasonable nature of the RAC process is the CLEC Coalition's proposal to categorize as a per se impediment to competition under Section 13-514 any failure to meet the draconian timelines under the RAC process.

4. Provisioning Intervals

Ameritech Illinois' tariff as unbundled in this proceeding include terms and conditions related to intervals for the provisioning of HFPL and loops which have been approved by the Commission and conform with requirements of Section 13-801(d)(5). For the reasons to be discussed, Staff and the CLEC proposals to reduce previously approved intervals should be rejected. In addition, the evidence supports an increase in the provisioning interval for HFPL with the conditioning from three (3) to ten (10) days, as permitted by Section 13-801(d)(5).

5. Collocation and Cross-Connects

In accordance with Section 13-801(c), Ameritech Illinois has revised its Collocation tariff to identify the specific types of equipment that may be collocated and clearly provided for "physical and virtual collocation" of "any type of necessary equipment". Staff and CLECs' proposal to eliminate the word "necessary" should be rejected. The "necessary standard included in the language of the currently effective collocation tariff approved in Docket No. 99-0615 and is consistent with the black letter requirement of Section 251(c)(6) of the Act, which expressly limits the scope of the collocation requirement to "equipment necessary for interconnection or access to unbundled network elements". 47 U.S.C. § 251(c)(6). The Company's Collocation

tariff also contains appropriate revisions to reflect the cross-connection requirements set forth in Section 13-801(c).

6. Single Point Of Interconnection

Ameritech Illinois' proposed tariff fully implements a CLEC's right to choose a single point of interconnection architecture under Section 13-801(b)(1)(B). Obviously, where there is a single point of interconnection close to the CLEC's switch, Ameritech Illinois provides more transport and the CLEC provides less transport. In recognition of the increased transport and switching costs which Ameritech Illinois must bear in a single point of interconnection architecture, its tariff establishes an equitable mechanism to apportion these costs between Ameritech Illinois and the CLEC. Staff and Focal complain that any charge would deprive a CLEC of its right to use a single point of interconnection. They are wrong. The right to do some act (in this case, establish a single point of interconnection) does not carry with it the right not to pay anything to perform that act, particularly in this case where Section 13-801(g) authorizes Ameritech Illinois to establish cost based rates for interconnection. As to Staff's complaint that Ameritech Illinois' proposal is not reciprocal, Ameritech Illinois explains that it is entirely willing to have its proposal operate reciprocally between it and CLECs.

7. Schedule Of Rates

Ameritech Illinois' proposed tariff fully implements the "Schedule of Rates" process in Section 13-801(i) by establishing a process for CLECs to obtain from Ameritech Illinois a Schedule of Rates listing each of the rate elements that pertains to a proposed order identified by the CLEC. The tariff describes for CLECs how to submit a request and what information to include in a request for such information. Staff attempts to make the "Schedule of Rates" requirement of Section 13-801(i) into something it is not. The sole purpose of Section 13-801(i)

is to provide a schedule of rate elements for the specific services identified by a CLEC. Staff's proposal would improperly transform Section 13-801(i) into an obligation of Ameritech Illinois to identify for CLECs any UNEs or other component that is used in its retail services or in the retail services of an affiliate.

8. Affiliate Obligations

Staff and CLEC Coalition propose to saddle Ameritech Illinois with obligations that flow from Ameritech Illinois' relationship with its affiliates that offer local exchange services in Illinois -- primarily AADS. In particular, these parties propose that Ameritech Illinois be required to combine UNEs that are ordinarily combined by its affiliates and that Ameritech Illinois provide schedule of rate information for services provided by its affiliate. These proposals are precluded by Section 13-801(a) which by its express terms states that Section 13-801 only creates additional obligations for carriers regulated under an alternative regulation plan -- i.e., Ameritech Illinois. Thus, there can be no new obligations on Ameritech Illinois' affiliates under Section 13-801 and there can be no new obligations on Ameritech Illinois as a result of its relationship with those affiliates.

9. General Terms And Conditions

Ameritech Illinois made two changes to the General Terms and Conditions section of the UNE/Number Portability tariff. These changes state that Ameritech Illinois intends its tariff to comply with Section 13-801 and reserves any legal remedies it may have with respect to that law. Neither Staff nor CLEC Coalition objected to these changes. However, those parties did propose changes of their own, some of which deleted pre-existing language in the tariff and some of which attempted to add obligations unrelated to Section 13-801. For example, the CLEC Coalition proposes language to address this Commission's order in the special construction

investigation in Docket No. 99-0593. Ameritech Illinois, however, has already made its compliance filing in Docket No. 99-0593, so the proposal is pointless. CLEC Coalition also proposed that Ameritech Illinois build out its network pursuant to “non-binding” forecasts of CLECs. Nothing in Section 13-801 remotely refers to or requires Ameritech Illinois to build capacity for CLECs without charge. The proposal that Ameritech Illinois expend its capital and assume all the investment risk based on unsubstantiated, overly optimistic forecasts is unreasonable on its face.

II. AMERITECH ILLINOIS’ PROPOSED TARIFF COMPLIES WITH THE PROVISIONS OF SECTION 13-801(d) RELATED TO COMBINATIONS OF UNBUNDLED NETWORK ELEMENTS

A. INTRODUCTION

Section 13-801(d) contains a number of provisions related to combinations of unbundled network elements (“UNEs”). First, Section 13-801(d)(1) requires Ameritech Illinois to provide UNEs “in a manner that allows requesting telecommunications carriers to combine those network elements to provide telecommunications service.” Second, Section 13-801(d)(2) provides that Ameritech Illinois “shall not separate network elements that are currently combined, except at the explicit direction of the requesting carrier.” These provisions are consistent with the combination requirements of the Federal Telecommunications Act of 1996 (the “1996 Act”) and the FCC’s rules implementing those requirements (47 C.F.R. § 51.315(a), (b)). As will be discussed, Ameritech Illinois already complies with these requirements through its currently effective tariffs, and has proposed language for the UNE platform tariff related to Section 13-801(d)(2).

Third, Section 13-801(d)(3) states that, upon request, Ameritech Illinois “shall combine any sequence of unbundled network elements that it ordinarily combines for itself, including but

not limited to, unbundled network elements” identified in the Draft I2A. This requirement for new UNE combinations goes beyond the Company’s obligations under the 1996 Act.⁴ Section 13-801(d)(3) further provides that the Commission shall resolve any dispute between Ameritech Illinois and a requesting carrier as to whether a combination of UNEs meets the “ordinarily combined” criteria. As will be discussed, Ameritech Illinois complies with Section 13-801(d)(3) through its currently effective “Interim Compliance Tariff,” (Ill.C.C. Tariff 20, Part 19, Section 22), and through its proposed amendments to its currently effective UNE-P tariff and a proposed tariff providing for EELs.

Fourth, Section 13-801(d)(4) states that a “telecommunications carrier may use a network elements platform consisting solely of combined network elements of the incumbent local exchange carrier to provide end to end telecommunications service for the provision of existing and new local exchange, interexchange that includes local, local toll, and intraLATA toll, and exchange access telecommunications services within the LATA to its end users or payphone service providers without the requesting telecommunications carrier’s provision or use of any other facilities or functionalities.” This section requires Ameritech Illinois to provide an unbundled network elements platform, to enable a CLEC to provide end-to-end telecommunications services, including local, intraLATA toll, and exchange access, to the CLEC’s end user customer or payphone service providers, within the LATA. Sections 13-801(d)(5) and (6) identify certain requirements applicable to the ordering and provisioning of the

⁴ On July 18, 2000, the Eighth Circuit Court of Appeals reaffirmed its earlier vacatur of those portions of the FCC’s rules requiring ILECs to provide new UNE combinations. Iowa Utils. Bd. v. FCC, 219 F3d 744, 758-59 (8th Cir. 2000), cert. granted (Jan. 22, 2001). An appeal of the Eighth Circuit’s decision is currently pending before the United States Supreme Court. Ameritech Illinois has appealed the Order dated October 16, 2001, in Docket 98-0396, challenging, inter alia, the Commission’s conclusions that ILECs can be required under federal and state law to provide new combinations of “ordinarily combined” UNEs. As indicated in the tariff which it filed in this proceeding, Ameritech Illinois filed the tariff under compulsion of the PUA, including as amended by Public Act 92-0222, and specifically reserves any and all rights and remedies it may have relating to possible challenges to Section 13-801 and the tariff under state and federal law, including federal preemption law.

UNE-P. As will be discussed, Ameritech Illinois has revised its currently effective UNE-P and Unbundled Local Switching-Shared Transport (“ULS-ST”) tariffs to comply with Sections 13-801(d)(4), (5), and (6).

B. AMERITECH ILLINOIS’ CURRENTLY EFFECTIVE TARIFFS COMPLY WITH SECTION 13-801(d)(1)

Consistent with Section 251(c)(3) of the 1996 Act, Section 13-801(d)(1) requires that unbundled network elements be provided in a manner which allows a requesting CLEC to combine such elements itself in order to provide a telecommunications service. Under the Company’s currently effective tariff, CLECs are provided with a variety of options to enable them to combine UNEs for themselves. These options include the physical collocation options provided in Ill.C.C. No. 20, Part 23, Section 4. (Am. Ill. Ex. 2.0, p. 9; Am. Ill. Ex. 2.1, p. 4; Am. Ill. Ex. 2.2, p. 24).

Staff witness Graves argued that, in order to comply with Section 13-801(d)(1), Ameritech Illinois should be required to add language to its UNE-P tariff providing for a “secured frame option.” This refers to an optional provision contained in the Draft I2A, which provides a CLEC with a secured frame room in an Ameritech Illinois central office, where the CLEC could cross connect UNEs. (Am. Ill. Ex. 2.1, p. 4). In support of his proposal, Mr. Graves incorrectly asserted that “Ameritech has required CLECs to obtain collocation in order to combine elements.” (Staff Ex. 1.0, p. 12). In fact, Ameritech Illinois offers CLECs methods of access to UNEs, other than collocation, for the purpose of combining them. (Am. Ill. Ex. 2.1, p. 4). Contract language describing the additional methods generally offered to CLECs was presented as evidence in Docket 00-0700 and is included in a number of interconnection agreements which have been approved by the Commission. (Am. Ill. Ex. 2.1, p. 4). A CLEC

may also issue a Bona Fide Request (“BFR”) for other technically feasible methods of accessing UNEs. (Am. Ill. Ex. 2.1, pp. 4-6).

It would be inappropriate to require Ameritech Illinois to tariff the “secured frame option.” That option is only one of a number of technically feasible non-collocation arrangements by which a CLEC may obtain access to Ameritech Illinois’ UNEs for purposes of combining them. This type of arrangement is appropriately the subject of interconnection agreement negotiations, not a generally applicable tariff, because the terms and conditions of the arrangement best suited to a particular CLEC will vary based on the CLEC’s demand forecast, the types and quantities of UNEs to be combined and the central offices involved. (Am. Ill. Ex. 2.1, p. 5).

Moreover, in crafting his proposed tariff language, Mr. Graves selectively extracted and modified certain terms and conditions from the Draft I2A related to the “secured frame” option without regard to the fact that the option was part of a set of interrelated provisions and was intended to become available only under certain conditions. Specifically, under the terms of the Draft I2A, the “secured frame” option could be requested by a CLEC only in the event that Ameritech Illinois exercised its option, after the first two (2) years, to cease combining UNEs for CLECs to serve business customers in Ameritech Illinois central offices with four (4) or more collocators. In that event, as one of the several quid-pro-quos contained in the Draft I2A, Ameritech Illinois offered to make the secured frame option available at no additional charge to the CLEC. Mr. Graves’ tariff proposal, however, would require a general offering of the secured frame option without the related conditions described above, and at no charge, thereby enabling (and possibly encouraging) CLECs to request UNE combining arrangements from Ameritech Illinois with absolutely no liability for any of the costs caused incurred by Ameritech to provide

the arrangement. (Am. Ill. Ex. 2.1, pp. 6-7).⁵ Mr. Graves' proposal in this regard, for which Staff offered no justification, is unreasonable, particularly in light of the fact that Ameritech Illinois' tariff now contains provisions for new UNE-P combinations, in addition to provisions that enable a CLEC to obtain collocation for the purpose of accessing Ameritech Illinois' UNEs and combining those UNEs. (Am. Ill. Ex. 2.1, p. 7).

Mr. Graves also argued that "Section 13-801(d)(1) must be read in conjunction with 13-801(d)(4), which entitles CLECs to use a UNE platform, and asserted that "any tariff that requires collocation would violate 13-801(d)(4)." (Staff Ex. 1.1, p. 8). As Mr. Graves acknowledged, however, the Company's proposed tariff expressly states that a CLEC is not required to collocate in order to take advantage of the preexisting (i.e., currently combined) and ordinarily combined (i.e., new) UNE-P combinations offered under Section 15 of the proposed tariff in accordance with Section 13-801(d)(4). (Tr. 795-97; Am. Ill. Ex. 2.2, p. 24).

For all the reasons discussed, Ameritech Illinois is in compliance with Section 13-801(d)(1), and Staff's proposed "secured frame" tariff language should be rejected.

C. AMERITECH ILLINOIS' PROPOSED TARIFFS COMPLY WITH SECTION 13-801(d)(2)

Ameritech Illinois' currently effective existing UNE-P tariff provides that it will not separate unbundled network elements that are currently combined as such combinations are made available to CLECs as an existing UNE-P (Ill.C.C. No. 20, Part 19, Section 15, 1st Revised Sheet No. 1). Furthermore, the Company has added language to the proposed tariff with regard to pre-existing UNE-P which states as follows:

⁵ The costs to provide the secured frame option in a central office would vary based on a number of factors (e.g., central office layout, quantities of UNEs forecasted to be combined by the CLEC etc.) Typical costs would be expected to include engineering and labor, hardware, pro-rated floor space consumption, space modifications, if necessary, cabling, etc. (Id.).

Once an order has been received by a telecommunications carrier, the Company shall not separate unbundled network elements that are currently combined, except where necessary to provide the unbundled network elements or services requested or otherwise at the explicit direction of the requesting carrier.

(Ill.C.C. No. 20, Part 19, Section 15, 2nd Revised Sheet No. 7). Accordingly, both the Company's currently effective and proposed tariffs comply with Section 13-801(d)(2).

Although Mr. Graves acknowledged that the proposed tariff language quoted above "appears to fulfill" the requirements of Section 13-801(d)(2) and FCC Rule 51.315(b), he nonetheless recommended that the language be modified by striking the words "Once an order has been received by a telecommunications carrier." (Staff Ex. 1.0, pp. 15-16). Mr. Graves asserted his proposal that it is intended to protect CLECs "from the ILEC disassembling UNEs before the CLEC orders them." (Staff Ex. 1.0, p. 15). Contrary to Mr. Graves' suggestion, however, Section 13-801(d)(2) cannot reasonably be construed as a blanket requirement that Ameritech Illinois leave every combination it has ever assembled in its network permanently "nailed-up" on the speculation that a CLEC might someday request that same combination. Such a requirement would preclude the use of spare network components to meet customer (including CLEC) requests on a day to day basis and interfere with efficient inventory, operations, maintenance and repair of the network. (Am. Ill. Ex. 2.1, p. 9). Accordingly, Mr. Graves' proposal should be rejected. We also could use the job the Commission's TELRIC methodology as it relates to fill factors does not contemplate this type of behavior on Ameritech's part."

Mr. Graves also proposed that the tariff language added in accordance with Section 13-801(d)(2) be moved from the UNE-P tariff to the "general terms and conditions" section of the Company's UNE tariff. (Ill.C.C. No. 20, Part 19, Section 1). (Staff Ex. 1.0, p. 15). The Company does not believe that this is necessary because Ameritech Illinois' proposed tariff

language correctly states its obligation to not separate UNEs. That language is not intended to relate solely to the specific types of UNE-P combinations listed in the UNE-P tariff. (Ill.C.C. No. 20, Part 19, Section 15). (Am. Ill. Ex. 1.0, p. 11).

D. AMERITECH ILLINOIS' PROPOSED UNE-P AND EEL TARIFFS COMPLY WITH SECTION 13-801(d)(3)

The Company's UNE-P tariff (Ill.C.C. No. 20, Part 19, Section 15) ("Section 15") allows CLECs to "migrate," or "convert," an existing end user's working service to UNE-P as a preexisting (i.e., currently combined) combination of unbundled network elements. (Am. Ill. Ex. 2.0, p. 11). The network elements that comprise the UNE-P are the unbundled local loop and unbundled local switching with shared transport, which are contiguously interconnected to provide circuit-switched voice service and are used by Ameritech Illinois to provide retail voice service to its own end users. (*Id.*)⁶ To comply with Section 13-801(d)(3), Section 15 has been revised to state that, upon request, the Company will also perform work necessary to provide the following twelve new combinations of unbundled loops and ULS ports:

- 2-Wire Basic Analog Loop with Basic Line Port
- 2-Wire P.B.X. Ground Start Analog Loop with Ground Start Port
- 2-Wire Basic Analog Loop with Analog DID Port
- 2-Wire Basic Analog Loop with Centrex Basic Line Port
- 2-Wire Electronic Key Line Analog Loop with Centrex EKL Line Port
- 2-Wire 160kbps (ISDN-BRI) Digital Loop with ISDN direct line port
- 2-Wire 160kbps (ISDN-BRI) Digital Loop with Centrex ISDN Line Port
- 4-Wire Digital Loop with Digital Trunking Trunk Port
- 4-Wire Digital Loop with ISDN Prime Trunk Port
- 4-Wire Digital Loop with ULS DS1 Trunk Port
- 2-Wire Analog COPTS Coin Loop with COPTS-Coin Line Port
- 2-Wire Analog COPTS Coin Loop with Basic COPTS Line Port

⁶ Through August 2001, CLECs were serving approximately 200,000 end user lines via UNE-P. (*Id.*).

The combinations listed above include, but are not limited to, the new UNE-P combinations listed in the Draft I2A and the currently effective Interim Compliance Tariff. (Part 19, Section 15, 2nd Revised Sheet No. 2). (Am. Ill. Ex. 2.0, p. 12).⁷

In addition to the new UNE-P combinations listed in Section 15, the Company has proposed a new tariff Section under which the Company will perform the work necessary to provide the eight types of enhanced extended link combinations listed in the Draft I2A and the Interim Compliance Tariff. (Ill.C.C. No. 20, Part 19, Section 20 (“Section 20”). An EEL is a new combination of unbundled local loops and unbundled dedicated transport, with appropriate multiplexing, which enables a CLEC with a collocation arrangement to serve customers in another Ameritech Illinois central office within the LATA. The EELs offered in both the effective Interim Compliance Tariff and proposed Section 20 enable CLECs to gain access to the following variety of specified loop-transport combinations to provide local exchange service:

- 2-Wire Analog Loop to DS1 or DS3 dedicated transport facilities
- 4-Wire Analog Loop to DS1 or DS3 dedicated transport facilities
- 2-Wire Digital Loop to DS1 or DS3 dedicated transport facilities
- 4-Wire Digital Loop (DS1 Loop) to DS1 or DS3 dedicated transport facilities.

(Am. Ill. Ex. 2.0, pp. 13-14, 16). CLECs with a limited collocated presence can dramatically increase the number of potential customers it can serve by using the EEL to transport unbundled local loops, from other central offices within the LATA, back to its collocation arrangement.

(Am. Ill. Ex. 2.0, pp. 13-14).⁸

⁷ The Draft I2A, and the Interim Compliance Tariff, list the following new UNE-P combinations: 2-Wire Basic Analog Loop Combined with Basic Line Port; 2-Wire 160 kbps (ISDN-BRI) Digital Loop Combined with ISDN Direct Port; and 4-Wire Digital Loop Combined with Digital Trunk Port. (Am. Ill. Ex. 2.0, p. 16).

⁸ Under the EEL configuration, the unbundled loop extends to an end user’s premises from the serving central office main distributing frame (“MDF”). (Id.; Am. Ill. Ex. 2.0, Sch. SJA-2). The CLEC is not required to be collocated in that serving central office. The unbundled loops are combined (via multiplexing) with unbundled dedicated transport, which carries the traffic from the Ameritech Illinois end office where the unbundled loop serving the CLEC’s end user customer terminates, to another Ameritech Illinois central office in which the CLEC is collocated. The unbundled dedicated transport is then terminated to the CLEC’s collocation. (Id.).

As stated in Sections 15 and 20, Ameritech Illinois believes that the 20 types of UNE-P and EEL combinations listed in those Sections more than satisfy any appropriate requirements of Section 13-801(d)(3). In this regard, Section 13-801(d)(3) does not impose on Ameritech Illinois an “open-ended” requirement to combine every sequence of UNEs requested by a CLEC. Rather, that Section explicitly limits any obligation to any sequence of UNEs that Ameritech Illinois “ordinarily combines for itself including but not limited to” the UNEs identified in the Draft I2A. Thus, the list of UNE combinations included in proposed Sections 15 and 20 takes into account the limiting phrase “ordinarily combined” as well as the specific Draft I2A combinations. Specifically, Ameritech Illinois believes that the phrase at most should only be construed to refer to UNEs that are “ordinarily combined” to provide services offered to residential and small business customers on a widespread or mass market basis. (Am. Ill. Ex. 2.0, p. 17; Am. Ill. Ex. 2.2, p. 5; Am. Ill. Ex. 8.0, pp. 29-30). This interpretation is appropriate for a number of reasons.

First, the interpretation is consistent with the common-sense English meaning of “ordinarily” as “commonly” or “frequently,” as applied in the context of telephony. (Am. Ill. Ex. 2.0, p. 17; Am. Ill. Ex. 2.2, p. 5; Am. Ill. Ex. 8.0, pp. 29-30). As Mr. Alexander testified, for years, two broad categories of telecommunications services have been recognized – “POTS” and “specials.” It is reasonable to consider “POTS” (i.e., plain old telephone service) as common or ordinary. Because of the mass-market nature of POTS, its elements (i.e., loop, dial tone, switching, etc.) can be ordinarily provisioned and combined without the need for special design or customization work. The widespread use and demand for POTS means that the very same components that provided dial-tone to customer “A” on Monday can almost always be re-used (assuming the contiguous assembly of components was left intact) to provide service to customer

“B” on Tuesday. In addition, POTS services, by far, are the most commonly requested services provisioned by Ameritech Illinois. On the other hand, “specials” are designed services that provide a customized transmission path to the end user, using various circuit enhancing electronics and/or loop conditioning. Such services are not generally considered “mass-market” products. (Am. Ill. Ex. 2.0, p. 20).

Second, the interpretation is consistent with the understanding of the term “ordinarily combined” as articulated in the Order in Docket No. 98-0396, where the Commission, citing Section 13-801(d)(3), concluded that Ameritech Illinois should be required to provide CLECs with UNEs which the Company “ordinarily combines for itself or for the use of its end users.” The Commission determined that the purpose of requiring Ameritech Illinois to provide “such combinations is to promote mass market competition for residential and small business customers.” Order, Docket 98-0396 at 93 (emphasis added). The Commission further concluded that “this approach was recently adopted by the legislature in PA92-22, which imposes the exact unbundling requirement (‘combined any sequence of unbundled elements that it ordinarily combines for itself’) that is imposed here.” (Id.).

Third, the Company’s interpretation of the term “ordinarily combined” takes into consideration the objectives of the PUA which, as discussed in Section II(E), infra., emphasize the maximization of consumer welfare, investment and job creation in Illinois through the promotion of facilities-based competition. As Dr. Aron, an expert in economics and the telecommunications industry, testified that facilities-based competition provides (i) the opportunity for the CLEC to shed its dependence on the ILEC; (ii) network redundancy that can contribute to the public health and welfare, especially during emergencies; (iii) the greatest opportunity for innovation of both services and operations; and (iv) the greatest opportunity to

move from a regulated environment at the wholesale/network level to a market-based competitive environment. (Am. Ill. Ex. 8.1, p. 5). An unduly expensive interpretation of requirements of Section 13-801(d)(3) would relieve CLECs of the need and the incentive to make investments in their own facilities, operations and expertise, thereby resulting in a less diverse network with attendant negative impacts on consumer welfare and public safety. (Id., pp. 6, 29).

Fourth, an interpretation of the term “ordinarily combined” which focuses on the market for voice grade services to residential and small business customers is supported by the General Assembly’s classification of all retail telecommunications services provided by Ameritech Illinois to business end users as competitive (220 ILCS 5/13-502.5) and Governor Ryan’s observation that one goal of H.B. 2900 is “to encourage competition in other residential market, and to declare the business market competition.” (Ryan Letter, p. 2). In this regard, Dr. Aron presented an analysis demonstrating the market for high speed, dedicated point-to-point service in Illinois is highly competitive, as evidenced, in part, by the extensive fiber backbone facilities controlled by competitive carriers in the Chicago LATA. (See Section II(F), infra.).

The combinations listed in the proposed tariff more than fully satisfy any appropriate requirements of Section 13-801(d)(3). Indeed, the 12 types of new UNE-P combinations listed in Section 15 go beyond those listed in the Draft I2A and encompass virtually all residential and business basic dial tone lines, ISDN lines, Centrex lines, and pay telephone lines. (Am. Ill. Ex. 1.0, p. 7; Am. Ill. Ex. 2.0, p. 19; Tr. 229-31). These combinations also go well beyond the “plain old telephone service” (i.e., “POTS”) ordinarily requested by customers, and more than satisfy the demands made by CLECs for new UNE combinations allegedly needed to further compete in the residential and small business markets. (Am. Ill. Ex. 2.0, pp. 19-22). Moreover, the eight

EEL combinations listed in Section 20 enable CLECs with a single collocation arrangement to dramatically increase the number of potential local exchange service customers they can serve in a LATA. (Am. Ill. Ex. 2.0, pp. 14, 22).⁹

Although Ameritech Illinois believes that its proposed tariffs identify all of the new UNE combinations covered by Section 13-801(d)(3), those tariffs do not preclude a CLEC from requesting that the Company combine other sequences of UNEs which the CLEC believes meet a valid “ordinarily combined” standard. As markets and technology continue to evolve, it is possible that other new UNE combinations could be offered. (Am. Ill. Ex. 3.0, p. 10). Accordingly, the Company has proposed the adoption of a “BFR-O” process (which is an expedited version of the Company’s standard BFR process) for use by CLECs in making requests for UNE combinations which the CLEC believes it is entitled to under Section 13-801(d)(3), but which are not already specifically identified in the Company’s tariffs. The Company’s proposed BFR-O process is described in Section IV of this Brief.

E. THE CLEC COALITION AND STAFF INTERPRET THE REQUIREMENTS OF SECTION 13-801(d)(3) IN A MANNER CONTRARY TO THE PLAIN LANGUAGE AND INTENT OF THE STATUTE

For the reasons discussed above, Ameritech Illinois’ tariff proposal reflects an interpretation of the term “ordinarily combined” which is more than reasonable and satisfies the goals of H.B. 2900. In contrast to Ameritech Illinois’ approach, CLEC Coalition witness Gillan made no attempt to give any operational meaning to the phrase “ordinarily combined.” Instead, Mr. Gillan argued that Section 13-801(d)(3) imposes upon Ameritech Illinois an obligation to

⁹ The list of new UNE combinations set forth in Sections 15 and 20 do not include new UNE combinations for the provision of “private line” services or “point-to-point” data circuits. (Am. Ill. Ex. 2.0, p. 19). In accordance with Section 13-801(j), Section 13-801 should not be construed to require Ameritech Illinois to substitute UNEs or “combinations” of UNEs for exchange private line services. 220 ILCS 5/13-801(j). Moreover, such combinations are not used to provide mass-market residential and small business services and, therefore, are not “ordinarily combined” UNEs within the meaning of Section 13-801(d)(3). Issues related to the appropriate treatment of “point-to-point” data circuits are further discussed in Section II(F), below.

“offer any sequence of network elements that it combines itself both now and in the future.” (Jt. CLEC Ex. 1, p. 12). Thus, Mr. Gillan would have the Commission read the term “ordinarily combined” out of the statute, and require the Company to provide any combination that a CLEC desires.

Mr. Gillan also disregarded the fact that the combining requirement of Section 13-801(d)(3) expressly applies to “unbundled network elements.” Thus, Mr. Gillan would require the Company to provide any and all combinations of network elements, whether or not those elements are UNEs that meet the “necessary” and “impair” tests for the provision of unbundled network elements. As discussed in Section VI(B), below (addressing the CLEC Coalition’s line splitting proposal), Mr. Gillan’s suggestion that the Commission disregard the “necessary” and “impair” tests is also contrary to Section 13-801(a), which requires that the provisions of Section 13-801 should be construed in a manner which is not inconsistent with the 1996 Act or preempted by orders of the FCC. After the United States Supreme Court re-emphasized the Congressionally-imposed obligation encompassed in Section 251(d)(2) of the 1996 Act, the FCC expressly prohibited state commissions from requiring the unbundling of network elements without first applying the “necessary” and “impair” standards established by Section 251(d)(2) of the 1996 Act. 47 CFR § 51.317(d)(4).

Unlike Mr. Gillan, Staff witness Zolnierrek recognized that the requirement to provide combinations under Section 13-801(d)(3) applies only to “unbundled network elements.” (Staff Ex. 2.0, pp. 14-16; Tr. 776). Dr. Zolnierrek, however, proposed that the term “ordinarily combined” be interpreted to include any combination of UNEs requested by a CLEC, with only two extremely limited exceptions: (i) a combination of UNEs which has never occurred; and (ii) a combination of UNEs which has occurred only once and will never occur again. (Staff Ex. 2.0,

pp. 21-22; Tr. 754-55). As Dr. Aron correctly noted, “events such as these are so rare as to render meaningless the term ‘ordinarily combines’ as a limiting factor in this proceeding.” (Am. Ill. Ex. 8.0, p. 26).

Furthermore, Mr. Gillan and Dr. Zolnierек both proposed tariff provisions which would eliminate a CLEC’s need to even identify the UNEs it desires to have combined. Specifically, Dr. Zolnierек proposed tariff language which would entitle CLECs to “request rates for UNE combinations by specifying the retail service being provided by Ameritech rather than the exact combination and configuration of elements used to provide such service.” (Staff Ex. 2.0, p. 27). Similarly, Mr. Gillan proposed tariff language which would allow a CLEC to simply “identify[] a retail service offered by Ameritech with a request that Ameritech identify its sequence of network elements comprising that service.” (Jt. CLEC Ex. 1, Sch. JPG-1, Original Sheet No. 3.3). These proposals would enable CLECs to simply point to a retail service offered by Ameritech Illinois and demand that the Company provide the CLEC with all of the network elements (whether they are UNEs or not) used to provide that service. Thus, the Staff and CLEC Coalition proposals go far beyond the requirements of Section 13-801(d)(3) which does not require Ameritech Illinois to provide every “combination of elements used to provide a retail offering by the Company.” Moreover, not every retail service offered by Ameritech Illinois uses UNEs (or solely UNEs), and, therefore, not every conceivable service can be reduced to a “parts list” solely consisting of UNEs. (Am. Ill. Ex. 8.1, p. 3, n. 7; Am. Ill. Ex. 2.1, pp. 51-53).

The proposals of Staff and the CLEC are tantamount to requiring that Ameritech Illinois provide to CLECs resale of all services at TELRIC prices. (Am. Ill. Ex. 2.1, p. 31). Thus, the proposals contradict Section 13-801(f), which requires that Ameritech Illinois offer all retail intraLATA telecommunications services for resale at "wholesale rates," which are to be based on

the "retail rates charged to the end users for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs avoided by the local exchange carrier." 220 ILCS 5/13-801(f). The rates which the Commission has established for UNEs, by applying the TELRIC cost model, typically reflect a much deeper "discount" than wholesale rates established on the basis of the formula prescribed by Section 13-801(f). If the General Assembly had intended Section 13-801(d)(3) to be applied in the manner proposed by Mr. Gillan and Dr. Zolnierek, there would be no significance to the resale requirements of Section 13-801(f). This is because under the Staff approach, and particularly the CLEC approach (where every network element is subject to provision under the TELRIC cost standard), CLECs would be able to obtain the equivalent of resale service priced at TELRIC rates for every conceivable service, not just those available over the UNE-P. (Am. Ill. Ex. 2.1, p. 32).

The CLEC Coalition and Staff proposals are also inconsistent with Section 13-801(a), which indicates that any requirement to provide interconnection, collocation or network elements should be geared to implementing the "maximum development of competitive telecommunications services offerings." 220 ILCS 5/13-801(a). This Section should not be interpreted, as Mr. Gillan suggested (Jt. CLEC Ex. 1, p. 12), as providing a CLEC carte blanche to obtain whatever it demands from an incumbent. As Dr. Aron explained, the term "competition" refers to a market process that maximizes consumer welfare, in the form of innovation, diversity of offerings and pricing, not a process whose main effect is simply to help some carriers and hurt others or to simply maximize the number of nominal rivals. (Am. Ill. Ex. 8.0, pp. 11-12). Dr. Aron further testified that maximum competition in telecommunications services offerings results when carriers do not wholly depend on the incumbent to provide the

underlying network infrastructure for their services. (Id.). In this regard, innovation, one of the primary consumer benefits of competition, is more substantial when CLECs provide their own network and make investment in network infrastructure and personnel. (Am. Ill. Ex. 8.0, p. 17). Conversely, the greater the opportunity for CLECs to rely solely on Ameritech Illinois' network, with no necessary commitment or investment, the weaker the CLECs' incentives to invest in facilities and the harder it is for those CLECs that have invested in facilities to compete. (Id., p. 15).

By applying Section 13-801(d)(3) in the manner proposed by the CLEC Coalition and Staff, the result would be to virtually eliminate any need or incentive for CLECs to invest in any of their own facilities, thereby undermining the goal of maximizing competition in a manner which promotes consumer welfare. As Dr. Aron observed, CLECs would be able to rely on Ameritech Illinois for the entire network function, end-to-end, for any services provided by the Company and at UNE/TELRIC rates rather than wholesale (i.e., resale) prices. CLECs would become nothing more than marketing operations, employing sales personnel or telemarketers who may be located in another state, with no need to (i) invest in infrastructure in Illinois or (ii) train or employ network engineers or technicians in any meaningful numbers. (Am. Ill. Ex. 8.0, p. 6). As Dr. Aron concluded:

At some point the pretense that these CLECs are anything other than resellers of Ameritech Illinois services must be obvious to any impartial observer. When an ILEC creates a new telecommunications service and is forced to supply a parts list to CLECs who can say "me too," with no investment, no network facilities, no collocation, and no innovators or trained engineers or technicians, one has to wonder if the whole system has gone off its rails. This is competition only as total service resale is competition, but it should not be confused with the development of a robust, redundant, and modern telecommunications network in Illinois or with "maximum" competition for telecommunications services that promotes consumer welfare. The harm that this proposal creates extends to the entire investment climate in telecommunications assets in Illinois. After all, the facilities-based CLECs will be in competition with UNE-P resellers that use the ILEC's capital investment at forward looking, cost-based rates.

Smart investors could be expected to shift their facilities investment dollars to other states, as CLECs can be expected to focus their facilities budgets (if any) on other states.

(Am. Ill. Ex. 8.0, p. 28).

Such a result would be directly at odds with the Illinois legislature's commitment to infrastructure investment, job creation and consumer welfare, as articulated in Sections 13-102(f) and 13-103(c) of the PUA. 220 ILCS 5/13-102(f), 13-103(c). In signing H.B. 2900 into law, Governor Ryan urged the Commission to apply the new law in a manner consistent with that commitment:

Some have expressed fears that House Bill 2900 may encourage new telecom operations to simply buy technology and services from existing companies and resell them, without making their own investments in technology and jobs in our State. I believe the Illinois Commerce Commission should be vigilant in its enforcement of the Act to ensure substantial investment by all telecommunication companies desiring to do business in our State. If entering companies are led to believe that they can prosper simply by "picking off" prime services from other carriers, perhaps at or below cost, then Illinois will have deprived itself of rational telecom regulation and discouraged, rather than encouraged, investment in technology and jobs in this State.

(Am. Ill. Ex. 2.1, pp. 32-33; Ryan Letter, p. 2). The fears expressed by Governor Ryan would be fully realized under the Staff and CLEC Coalition proposals to impose on Ameritech Illinois an essentially unlimited obligation to combine any network element without requiring any actual activity by the CLEC other than to issue an order. In accordance with Governor Ryan's admonition that the Commission be "vigilant in its enforcement of the Act to ensure substantial investment by all telecommunication companies desiring to do business in our State," the Staff and CLEC Coalition approaches should be rejected.

F. THE CLEC COALITION AND STAFF ARGUMENTS REGARDING THE TREATMENT OF COMBINATIONS USED FOR "POINT-TO-POINT" DATA SERVICE ARE UNSUPPORTED AND MISCONSTRUE THE COMPANY'S POSITIONS

During this proceeding, issues were raised concerning the extent of Ameritech Illinois' obligations under Section 13-801, to provide new and existing combinations of loop and

dedicated transport UNEs used to provide private lines, or “point-to-point” data service. It is Ameritech Illinois’ position that any such obligations are governed solely by federal law, and not by Section 13-801. Ameritech Illinois’ position in this regard is supported by Section 13-801(j), which expressly states that nothing in H.B. 2900 should be construed to require the substitution of a “combination of network elements” for “special access services.” 220 ILCS 5/13-801(j).

As a preliminary matter, “special access” and “private lines” are functionally identical means of providing dedicated transmission services (Am. Ill. Ex. 2.0, p. 20; Am. Ill. Ex. 9.0, p. 5), as recognized in Section 790.10 of the Commission’s interconnection rules, which includes the following definition:

Special access or private line means a transmission path that connects customer-designated premises directly through a local exchange carrier’s hub or hubs where bridging or multiplexing functions are performed, or to connect a customer-designated premises and a serving office, and includes all exchange access not utilizing the local exchange carrier’s end office switches.

83 Ill. Admin. Code § 790.10. (Am. Ill. Ex. 2.1, p. 60).¹⁰ For purposes of Section 13-801(j), there is no basis for treating “private lines” any differently than special access based upon the difference between the service name or label. (Am. Ill. Ex. 2.0, p. 20; Am. Ill. Ex. 2.1, pp. 60-61; Am. Ill. Ex. 9.0, p. 5). This interpretation of Section 13-801(j) is supported by the testimony of Mr. David Gebhardt, who, acting as a technical expert on behalf of the Company, was extensively involved in the legislative process which led to the enactment of H.B. 2900. (Am. Ill. Ex. 9.0, p. 5).

The FCC specified the circumstances in which CLECs may request and use currently combined unbundled loop-transport combinations from ILECs in its Supplemental Order in CC Docket No. 96-98 (FCC 99-370, released November 24, 1999) and its Supplemental Order

¹⁰ The synonymous definition of “special access” and “private line” was recently affirmed by the Administrative Law Judge’s Proposed Order issued in Docket 99-0511. (Am. Ill. Ex. 2.1, p. 61).

Clarification in that same docket (FCC 00-183, released June 2, 2000). In the Supplemental Order, the FCC held that a requesting carrier may convert a pre-existing loop/transport combination to UNEs only if the carrier uses such combination to provide a significant amount of local exchange service to the customer in question. In the Supplemental Order Clarification (¶ 22), the Commission elaborated on and clarified this test, setting forth three alternative options by which a carrier would be deemed to be providing a “significant amount of local exchange service.” Ameritech Illinois will apply the criteria used and process established by the FCC’s Supplemental Order Clarification to CLEC’s requests to convert private line circuits to combinations of UNEs.

Novacon witness Walker suggested that because Ameritech Illinois provides “point-to-point” circuits, the network elements which comprise those circuits must be combined by the Company at the request of CLECs pursuant to Section 13-801(d)(3). (Novacon Ex. 1, p. 10; Novacon Ex. 2, p. 6). As stated above, Section 13-801(j) provides that the requirements of 13-801 in its entirety (including 13-801(d)) are inapplicable to loop-transport UNE combinations used to provide special access and private line service. Moreover, assuming *arguendo* that Section 13-801(j) does not exempt private line service from the requirements of 13-801, Ameritech Illinois would not be required to provide such new combinations pursuant to Section 13-801(d)(3). Private line service is not a service provided to residential and small business customers on a widespread mass market basis. It follows, therefore, that combinations of UNEs used to provide point-to-point data circuits are not “ordinarily combined” within the meaning of Section 13-801(d)(3). Mr. Walker’s analysis, like that of the CLEC Coalition’s, gave no weight to the limiting term “ordinarily combined” and, if adopted, would impose an open-ended, never-ending obligation on Ameritech Illinois to provide any combination of network elements

requested by a CLEC. For the reasons previously discussed, such an interpretation is inconsistent with the plain language and intent of Section 13-801.

In support of his position, Mr. Walker cited an order of the Michigan Public Service Commission (“MPSC”) dated January 4, 2001 in Case U-12320, the MPSC’s review of Ameritech Michigan’s § 271 Checklist Compliance. (Novacon Ex. 2, pp. 6-7). Mr. Walker overlooked the fact that on March 19, 2001, the MPSC issued an Order on Rehearing which approved the same new UNE-P and EELs combinations as contained in the Draft I2A, and found that “Ameritech Michigan’s combinations proposal complies with the scope of the product offering that today is required by Section 271 of the FTA.” (Am. Ill. Ex. 2.2, p. 30). Accordingly, the MPSC’s decision does not support Novacon’s position. Rather, it provides additional support for Ameritech Illinois’ position that its proposed tariffs, which include, but are not limited to, the Draft I2A combinations and include the same new UNE-P and EEL combinations as those addressed in that MPSC Order, are reasonable and should be approved. Furthermore, the Mi2A and the Draft I2A contain substantially the same UNE-P and EEL combinations as SWBT offers in its approved Section 271 agreements in Texas, Kansas, Oklahoma, Missouri and Arkansas. These UNE combination provisions were found to satisfy Section 271 by each of these state PSCs and by the FCC. (Id.).

Mr. Walker also argued that if “point-to-point direct access is characterized as special access,” Novacon’s “ability to compete” would be “impaired.” (Novacon Ex. 1, p. 14). This argument is without merit. Novacon is free to order UNEs needed to create point-to-point data circuits and combine those UNEs for itself or, as permitted by the FCC’s orders, to convert an existing “private line” circuit to an existing combination of UNEs in accordance with the terms of its interconnection agreement (provided, of course, that the facilities that make up the circuit

qualify as UNEs and meet the FCC's criteria for such conversion). (Am. Ill. Ex. 2.1, p. 65).

Moreover, Novacon has several other options to serve its end users. First, Novacon may provide its own facilities or obtain them from third parties. Novacon may also configure its network to take advantage of Ameritech Illinois' collocation offerings and combine Ameritech Illinois' UNEs itself. Thus, there is absolutely no basis for Mr. Walker's assertion that Ameritech Illinois is using its "local monopoly bottleneck control to deny Novacon access to UNEs in a manner that impairs its ability to compete." (Am. Ill. Ex. 2.1, p. 65). Ameritech Illinois is instead fully meeting its legal obligations under the Act, Illinois law, and its interconnection agreements.

CLEC witness Gillan also took issue with the Company's position that combinations of UNEs used to provide point-to-point data service are not "ordinarily combined" for purposes of Section 13-801(d)(3). In support of his position, Mr. Gillan argued that Ameritech Illinois has increased its special access circuit count by an average of 500,000 lines per year and that "such activity" is "ordinary by any conceivable definition." (Joint CLEC Ex. 2, p. 11). Dr. Zolnierек made a similar argument. (Staff Ex. 2.1, p. 24). These arguments miss the boat entirely. The figures cited by Mr. Gillan and Dr. Zolnierек refer to special access service "channels," or digital 64 Kbps equivalents, not "lines." As Mr. Gillan and Dr. Zolnierек recognized, Section 13-801(j) makes it clear that nothing in Section 13-801 (including 13-801(d)(3)) should be construed as requiring the Company to substitute UNEs or combinations of UNEs for special access circuits. Accordingly, the figures cited by Mr. Gillan and Dr. Zolnierек are irrelevant to the issue being addressed by their testimonies, i.e., whether the UNE combinations which comprise private line services (which Mr. Gillan distinguished from special access circuits) are "ordinarily combined" for purposes of Section 13-801(d)(3). (Am. Ill. Ex. 2.2, pp. 7-8).

Mr. Gillan further asserted that there is “nothing in 13-801(d)(3) – or for that matter in (d)(1) or (2), which along with (d)(3) collectively define Ameritech’s obligations with respect to combining network elements – that limits network elements to ‘voice grade, mass market’ services.” (Jt. CLEC Ex. 2, p. 11). In making this argument, Mr. Gillan confused the issue of what new UNE combinations Ameritech Illinois may be required to combine on behalf of CLECs under Section 13-801(d)(3), with the issue of what UNEs or existing combinations of UNEs the CLEC may have access to (and/or combine on their own if they wish to). The term “ordinarily combines,” and the Company’s understanding of that term, is only applicable to the issue of whether and in what circumstances Ameritech Illinois must, under Section 13-801(d)(3), do the work of combining UNEs on behalf of a CLEC. For the reasons previously provided by Ameritech Illinois, the Company is not required by Section 13-801 to perform the work to combine UNEs used to provide the DS1, DS3 and higher speed data circuits referred to by Mr. Gillan and Mr. Walker. (Am. Ill. Ex. 2.2, p. 6).

Ameritech Illinois has not, however, stated that it would limit the UNEs it makes available to CLECs to those UNEs used to provide “voice grade, mass market” services; nor has the Company included such language in its proposed tariffs. A CLEC is free to order loop and dedicated transport UNEs and combine those UNEs for itself, and use them in any manner permitted by law. Moreover, as discussed above, a CLEC may order the conversion of an existing UNE loop/dedicated transport combination in accordance with the criteria and process established by the FCC’s Supplemental Order Clarification.

Finally, the positions of Novacon and the CLEC Coalition regarding “point-to-point” data circuits are inconsistent with the highly competitive nature of the market for high-speed facilities and dedicated transport services in Illinois. Dr. Aron presented evidence that, based on data

from 1998, Ameritech Illinois holds only 6% of the retail market share in the Chicago special access market and that, with respect to underlying facilities, Ameritech Illinois' competitors controlled almost half of that market. (Am. Ill. Ex. 8.1, p. 9). Furthermore, based on a 1999 analysis of high-capacity costs and revenues, Dr. Aron found that CLECs with existing backbone fiber facilities would be able to profitably build point-to-point spurs to nearly three-quarters of Ameritech Illinois' actual customer locations in the Chicago LATA, accounting for over 90 percent of Ameritech Illinois' high capacity service revenues. (Am. Ill. Ex. 8.1, p. 10; Tr. 153-55).

Accordingly, requiring Ameritech Illinois to provide high-speed, dedicated "point-to-point" UNE combinations at TELRIC rates is not necessary to promote competition. As Dr. Aron also testified, such a requirement would not be in the public's interest because it would devalue the competitive fiber capacity already in place, and require such CLECs who made the investment in such facilities to compete with CLECs that could in turn purchase the service from Ameritech Illinois at TELRIC based prices. (Am. Ill. Ex. 8.1, pp. 10-11). Such a requirement would, therefore, eliminate the incentive for CLECs to build their own facilities and for competitive transport providers to expand and enhance their existing networks, and effectively penalize and devalue those CLECs that have already made those investments in Illinois.

Accordingly, adoption of the CLEC position with respect to "point-to-point" data circuits would be contrary to the legislative objectives of promoting infrastructure investment, job creation and consumer welfare, as well as Governor Ryan's admonition that the Commission be "vigilant" in applying H.B. 2900 in a way that will encourage, rather than discourage, investment in technology and jobs in Illinois. (Am. Ill. Ex. 2.1, pp. 32-33).

G. AMERITECH ILLINOIS' PROPOSED TARIFFS COMPLY WITH SECTION 13-801(d)(4)

Section 13-801(d)(4) provides that a CLEC should be able to use the unbundled network elements platform to provide end-to-end telecommunications service for the provision of existing telecommunications service to its end-users or payphone providers on a LATA-wide basis without the requesting CLEC's provision or use of any other facilities or functionalities. The Company has proposed revisions to its tariffs which directly comply with Section 13-801(d)(4).

First, as previously discussed, the Company's UNE-P tariff (Section 15) has been modified to make available to CLECs twelve new as well as pre-existing UNE-P combinations. The Company has also included language which expressly states that "[a] telecommunications carrier may use a UNE-P in accordance with and as contemplated by this tariff and by the tariffs for the component UNEs that comprise a UNE-P, without the requesting telecommunications carrier's provision or use of any other facilities or functionality." (Ill.C.C. 20, Part 19, Section 15, 4th Revised Sheet No. 1; Am. Ill. Ex. 1.0, Attach. 1.2, p. 18; Am. Ill. Ex. 2.0, p. 10). The tariff further provides that collocation is not required for access to pre-existing and ordinarily combined UNE-P. (Section 15, 2nd Revised Sheet No. 4; Am. Ill. Ex. 1.0, Attach. 1.2, p. 24).

Second, the Company has also proposed revisions to Ill.C.C. 20, Part 19, Section 21 ("Section 21") which contains terms and conditions related to the provision of unbundled local switching with shared transport (the ULS-ST component of the UNE-P). Specifically, Section 21 has been revised to make it clear that the Company will include with ULS-ST the capability for the transmission of intraLATA toll calls originating from the purchasing carrier's retail end-user customers who are being provided local exchange service using ULS-ST. Issues related to the terms and conditions of ULS-ST, including the use of ULS-ST for intraLATA toll, are discussed more fully in Section V of this Brief.

H. THE COMPANY'S PROPOSED UNE-P TARIFF COMPLIES WITH THE REQUIREMENTS OF SECTIONS 13-801(d)(5) AND (6)

The Company revised the terms and conditions for the ordering and provisioning of a pre-existing UNE-P to comply with the requirements of Sections 13-801(d)(5) and (6). These revisions are included on 2nd Revised Sheet No. 7 of Section 15. (Am. Ill. Ex. 1.0, Attach. 1.2, pp. 29-30).

First, consistent with the second sentence of Section 13-801(d)(5), the Company added language stating that the “service installation for each specific Pre-Existing and Ordinarily Combined UNE-P combination will be provided at parity with the comparable Company’s retail service.” (Am. Ill. Ex. 1.0, Attach. 1.2, p. 29; Am. Ill. Ex. 2.0, p. 26).

Second, in accordance with the first sentence of Section 13-801(d)(6), the Company has included the following language:

When a telecommunications carrier places an order for a Pre-Existing UNE-P that does not require field work outside of the central office, for an end user that has existing local exchange telecommunications service provided by the Company, unless otherwise agreed by the Company and the requesting telecommunications carrier, the Company shall provide the requesting telecommunications carrier with the ordered Pre-Existing UNE-P within 3 business days for at least 95% of the orders for each requesting telecommunications carrier for each month.

(Am. Ill. Ex. 1.0, Attach. 1.2, p. 29; Am. Ill. Ex. 2.0, p. 25).

Third, In accordance with the last paragraph of Section 13-801(d)(6), the Company has included language which states as follows:

Unless the telecommunications carrier directs the Company otherwise (for example the telecommunications carrier submits an order with a due date beyond three days after the date of submission) or a contrary agreement, entered into after June 30, 2001, between the Company and the telecommunications carrier that provides otherwise, as of 12:01 a.m. on the third business day after placing an order for a Pre-Existing UNE-P, the requesting telecommunications carrier shall be the presubscribed primary local exchange carrier for that end user line and shall be entitled to receive, or to direct the disposition of, all revenues for all local exchange and access services that utilize the unbundled network elements in that Pre-Existing UNE-P, unless it is established that the end user of the

existing local exchange service did not authorize the requesting telecommunications carrier to make the request.

(Am. Ill. Ex. 1.0, Attach. 1.2, p. 29; Am. Ill. Ex. 2.0, p. 26).

Staff witness Omoniyi proposed that the reference to “local exchange and access services” in the above quoted tariff language be deleted on the grounds that it improperly imposes a limitation on a CLEC’s right under Section 13-801(d)(6) to receive, or direct the disposition of, revenues associated with “all services utilizing the network elements of the platform.” (Staff Ex. 3, p. 14).¹¹ The Company’s proposed language is, however, appropriate because it recognizes that the word “services,” as used in Section 13-801(d)(6), must be interpreted to mean telecommunications services. Ameritech Illinois or another provider (e.g., a reseller) may provide non-telecommunications services to the end user which have nothing to do with the UNE-Platform. For example, an end user may purchase voice mail service, inside wire maintenance, or yellow pages advertising from a variety of providers. Another example would be interLATA toll service, which Ameritech Illinois does not currently provide at all. These services are not part of the UNE-P or associated with a particular network element. Furthermore, Ameritech Illinois has no control over any of the end user’s choices to purchase optional, non-telecommunications services and cannot control or direct payments that the end user makes for these services to the CLEC. Accordingly, the Company’s proposed tariff language appropriately clarifies that Ameritech Illinois’ obligation with respect to a CLEC’s right to receive or direct the disposition of revenues for “services”¹² utilizing an existing UNE-P must be limited to revenues from “local exchange and access” services. (Am. Ill. Ex. 2.1, pp. 20-21).

¹¹ CLEC witness Gillan made a similar proposal, but presented no supporting testimony.

¹² The Company offers ULS-ST in a manner that the CLEC can use to also provide intraLATA toll service. Thus, if the CLEC using ULS-ST pursuant to Ameritech Illinois’ proposed tariffs is the end user’s local exchange and intraLATA toll provider, the CLEC would bill the end user for intraLATA toll calls, and Ameritech Illinois would

Mr. Omoniyi also proposed to remove the word “preexisting” from the Company’s proposed tariff language, thereby expanding its application to newly combined UNE platforms. (Staff Ex. 3, pp. 14-15). This proposal should be rejected. When Ameritech Illinois provides to the CLEC a new UNE-P combination (i.e., a combination that is not preexisting and being used to serve a customer at the time of the CLEC’s order), the Company would not be (nor would have been) billing the CLEC’s end user for any “services.” Accordingly, the requirement that a CLEC be entitled to receive or direct the disposition of revenues from services utilizing the platform has no applicability to a new UNE-P combination. (Am. Ill. Ex. 2.1, p. 22).

Fourth, in accordance with the second sentence of Section 13-801(d)(6), the Company has included the following sentence:

When a telecommunications carrier places an order for pre-existing network elements platform that does not require field work outside of the central office, for an end user that has existing local exchange telecommunications service provided by the Company, unless otherwise agreed by the Company and the requesting telecommunications carrier, the Company shall provide the ordered Pre-Existing UNE-P without any unnecessary disruption to the end user’s services.

(Am. Ill. Ex. 1.0, Attach. 1.2, p. 29; Am. Ill. Ex. 2.0, p. 27). CLEC witness Gillan argued that the inclusion of the word “unnecessary” in the above-quoted tariff language improperly “dilutes” the requirement of Section 13-801(d)(6) that CLECs be permitted to migrate to a preexisting UNE-P without disruption to the end user. As Mr. Alexander testified, although Ameritech Illinois has implemented procedures to prevent disruptions from occurring during a UNE-P migration, a momentary, imperceptible, disruption of service can sometimes occur when translations are input. (Am. Ill. Ex. 2.0, p. 27). The inclusion of the word “unnecessary” in the proposed tariff implements a realistic and reasonable standard and should be approved. (Id.; Am. Ill. Ex. 2.0, p. 27).

bill the CLEC for the ULS-ST. Thus, the CLEC would be entitled to the revenue from that service. (Am. Ill. Ex.

I. AMERITECH ILLINOIS' PROPOSED TARIFF GOVERNING THE CONVERSION OF SPECIAL ACCESS SERVICE TO UNES IS REASONABLE AND SHOULD BE APPROVED

As previously discussed, Section 13-801(j) expressly provides that nothing in Section 13-801 should be construed as requiring the conversion of special access services to UNEs. Accordingly, whatever obligations Ameritech Illinois has to convert existing special access services to UNE combinations under federal law are unaffected by Section 13-801. The circumstances in which a CLEC may request reconfiguration of special access to a combination of UNEs are governed by the FCC's Supplemental Order, FCC 99-370, released November 24, 1999, and Supplemental Order Clarification, FCC 00-183, released June 2, 2000 in CC Docket No. 96-98. Specifically, a CLEC may request a conversion of an existing special access service to an unbundled loop and unbundled dedicated transport combination when the CLEC can accurately certify that it uses that special access service arrangement to provide a significant amount of local exchange service to its end-user customer pursuant to the criteria set forth in the Supplemental Order Clarification. (Am. Ill. Ex. 2.0, p. 30).

As Mr. Alexander explained, Ameritech Illinois does not believe that a tariff is a prerequisite for accepting of a CLEC's request to convert qualifying special access services to UNE loop-transport arrangements. The Company has posted instructions on its website for CLECs for submitting such requests and has notified CLECs of the procedures via an Accessible Letter. (Am. Ill. Ex. 2.0, pp. 30-31). Nonetheless, terms and conditions relating to such requests were included in the currently effective Interim Compliance Tariff at Staff's request to remove any ambiguity with regard to the offerings available to CLECs. (Id.). Staff also suggested that the Company develop a proposed "permanent" tariff for the reconfiguration of qualifying special access services to UNE loop-transport combinations to become effective at the same time that

the Section 13-801 compliance tariffs become effective. (Am. Ill. Ex. 2.0, p. 31). In accordance with Staff's suggestion, the Company developed a proposed tariff designated as Ill.C.C. No. 20, Section 19, Part 19 ("Section 19") which incorporates the criteria required by the FCC's Supplemental Order Clarification for reconfiguring special access arrangements to UNE loop-unbundled dedicated transport combinations. (Am. Ill. Ex. 1.0, Attach. 1.2, pp. 34-46; Am. Ill. Ex. 2.0, p. 31).

CLEC Coalition witness Gillan and Staff witness Zolnierrek recommended the deletion, in its entirety, of Section 19. (Jt. CLEC Ex. 1.0, p. 16, Sch. JPG-1, Section 19; Staff Ex. 1.0, p. 28, n. 21). These witnesses suggested that their proposed EEL tariff provisions, which they would expand to include "existing," as well as new, EEL combinations, subsumes the language necessary to address the special access conversion issue.

The Staff and CLEC Coalition approach should be rejected. The Company's tariff dealing with the conversion of existing special access service arrangements to UNE combinations should not be confused with the statement in Section 13-801(d)(3) that Ameritech Illinois must offer the new combinations (in this case EELs) contained in the Draft I2A. (Am. Ill. Ex. 2.1, p. 23). Ameritech Illinois' obligation to convert a qualifying special access circuits to UNE loop-transport combinations is pursuant to the FCC's Supplemental Order Clarification, and the Company's proposed tariff reflects that requirement. On the other hand, the Company's proposed tariff for new EELs stems from the reference to the Draft I2A in Section 13-801(d)(3) of the PUA. These are expressly different offerings, and the distinction between these tariffs should not be eliminated. (Id.). The Staff and CLEC proposals with respect to the EEL tariff are addressed in more detail in Section IV of this Brief.

III. THE PROPOSALS OF STAFF AND INTERVENORS TO MODIFY THE COMPANY'S PROPOSED UNE-P TARIFF SHOULD BE REJECTED

As discussed in Section II, the Company's proposed UNE-P tariff (Section 15) is reasonable, includes appropriate revisions to comply with Section 13-801(d) of the Act and should be approved. Staff and the CLEC Coalition each offered modifications to the Company's proposed UNE-P tariff. For the reasons discussed below, the Staff and CLEC Coalition proposals would impose requirements that go beyond the scope of Section 13-801 and should be rejected.

A. STAFF'S PROPOSED UNE-P TARIFF

Staff's proposed UNE-P tariff contains a list of combinations preceded by language which states that the Combined Platform Offering ("CPO," which is another acronym for the UNE-P) will "provide CLECs with combinations of Network Elements used to provide the end user service. This may include but is not limited to the following loop/ULS-ST port combinations . . ." (Staff Ex. 1.0, Attach. 2, p. 3). To the extent that this language would require the Company to provide CLECs with new UNE-P combinations which are not among the 12 listed in the Company's proposed UNE-P tariff, it goes beyond the requirements of Section 13-801(d)(3) for the reasons discussed in Sections II(E) and (F) of this Brief. Neither Staff nor CLECs identified even a single UNE-P combination, beyond the 12 listed in the Company's proposed Section 15, which the Company purportedly "ordinarily combines" for itself or its end users or which they seek to have provided pursuant to Section 13-801(d)(3). (Am. Ill. Ex. 2.1, pp. 12-13).

Furthermore, as Mr. Alexander explained, although Staff's proposed list of UNE-P combinations appears to include most of the combinations listed in the Company's proposed Section 15, it also contains a number of errors. For example, one type of combination on Staff's

list “mis-matches” a 2-wire analog loop with a Digital Trunk Port (emphasis added). Furthermore, Staff lists a combination of a 4-wire analog interface loop with a Digital Trunking Port (emphasis added). Not only are those hypothetical combinations not “ordinarily combined”, they are technically infeasible, in that the combination of such “mis-matched” elements would not provide a properly working service. (Am. Ill. Ex. 2.1, pp. 11-12). Staff’s list also includes a 2-wire digital 144 kbps (IDSL) loop. While an IDSL loop may be used by a CLEC to provide stand-alone IDSL transmission, it is not combined with a switch port and, therefore, is not required or appropriate as part of a UNE-P combination. On the other hand, Staff’s list appears to have omitted a 2-wire analog loop-Centrex Basic line port combination which is included in the Company’s list. (Id.). The Company’s list of 12 UNE-P combinations is technically correct, easy to interpret and provides all of the appropriate new combinations that it appears Staff intended to list.

Staff’s proposed UNE-P tariff, as modified by Mr. Graves in his rebuttal testimony, defines “ordinarily combined” to mean “that the requested combination is of a type ordinarily used or functionally similar to that used by the Company, its affiliates or the Company’s end users where the Company provides local service.” (Staff Ex. 1.0, Attach. 2, p. 2; Staff Ex. 1.1, p. 19). This definition was unsupported by Staff’s testimony and inappropriately expands the scope of the requirements of Section 13-801(d)(3) in two respects. First, Section 13-801(d)(3) does not require the Company to provide new combinations of UNEs which are “functionally similar” to those that are “ordinarily combined.” Second, Section 13-801(d)(3) applies to Ameritech Illinois, not its affiliates. As discussed in Section X, there is no basis for defining “ordinarily combined” in a manner which would require Ameritech Illinois to provide CLECs with any combinations of UNEs used by an affiliate of the Company.

Staff's proposed UNE-P tariff also included a requirement that Ameritech Illinois provide non-telecommunications services, including voice mail, inside wire maintenance, customer premises equipment and calling card services, on a stand-alone basis with the provision of preexisting UNE-P. (Staff Ex. 1.0, Attach. 1, p. 2). There is nothing in Section 13-801, however, which requires Ameritech Illinois to provide CLECs with these non-regulated, non-telecommunications services, each of which is competitive and available from companies other than Ameritech Illinois. (Am. Ill. Ex. 2.1, p. 15). In his Rebuttal Testimony, Mr. Graves agreed that the Commission should not adopt such a requirement in this proceeding. (Staff Ex. 1.1, p. 20).

Finally, Staff's proposed UNE-P tariff contains (i) language requiring the Company to provide a "secured frame option" and (ii) modifications to the language proposed by the Company to comply with the requirements of Section 13-801(d)(6) with respect to a CLEC's rights to receive, or direct the disposition of, revenues from services provided to end users served by a preexisting UNE-P. For the reasons discussed in Sections II(B) and (H) of this Brief, respectively, these aspects of Staff's proposed UNE-P tariff should be rejected.

B. CLEC COALITION'S PROPOSED UNE-P TARIFF

The CLEC Coalition's proposal inappropriately eliminates the distinction between new, or "ordinarily combined," and preexisting, or currently combined, UNE-P combinations. (Jt. CLEC Ex. 1, p. 12, Sch. JPG-1, Section 15). It is necessary to maintain such a distinction for several reasons. First, the distinction between "new" and "preexisting" UNE-P reflects Ameritech Illinois' obligations to not separate UNEs that are currently physically combined pursuant to Section 13-801(d)(2) and 47 C.F.R. 51.315(b). Second, as discussed in Section II(H), above, the UNE-P tariff proposed by the Company contains terms and conditions for

preexisting UNE-P combinations which comply with certain provisions of Section 13-801(d)(6) which are uniquely applicable to CLEC orders for a preexisting UNE platform to “migrate” an existing customer from Ameritech Illinois to the CLEC (i.e., a UNE-P “conversion” or “migration”), as opposed to requests for a new UNE-P combination to provide a second line or to serve a new customer.¹³

Third, the distinction between preexisting and new combinations properly reflects the fact that, when a CLEC requests a new combination, Ameritech Illinois must do all the work to provision the UNEs (loop, local switching, shared transport) and to combine those UNEs. For example, with new UNE-P, Ameritech Illinois must perform functions (such as central office switch translations, dial tone activation, central office wiring, and in some instances field dispatch work) which are not necessary to fulfill an order for a preexisting combination (i.e., a migration). (Am. Ill. Ex. 2.0, p. 31). Accordingly, the Company’s tariff applies the non-recurring charges in a manner that recovers the costs of providing new UNE-P combinations and reflects the work required for Ameritech Illinois to provide a new combination versus a conversion or migration to UNE-P (Id.). In particular, the Company’s proposed UNE-P tariff makes it clear that the line and port connection charges, which are applicable to the individual unbundled loop and ULS-ST network elements, will be assessed in connection with a request for a new combination of those network elements. (Am. Ill. Ex. 1.0, Attach. 1.2, p. 32 (Section 15, 2nd Rev. Sheet No. 9)).

¹³ These provisions include the requirements that (i) orders for preexisting UNE-P that do not require field work outside of the central office be provided within 3 business days for at least 95% of the orders for each requesting CLEC each month and without unnecessary interruption to the end user’s services and (ii) as of 12:01 a.m. on the third business day after placing an order for a preexisting UNE-P combination, the requesting CLEC shall be the presubscribed local exchange carrier for that end user line and entitled to receive, or direct the disposition of, the revenues for services that utilize the unbundled network elements in the platform. 220 ILCS 5/13-801(d)(6).

In this regard, the CLEC Coalition has proposed revisions to the Rate Application Section of the Company's proposed UNE-P tariff, eliminating the distinction between preexisting and new UNE-P combinations. The obvious intent of the CLEC Coalition's proposal in this regard is to unlawfully deprive the Company of its ability to assess Commission-approved non-recurring line and port connection charges (which would otherwise be applicable to stand-alone orders for an unbundled loop and a ULS-ST port) in situations where Ameritech Illinois is requested by a CLEC not only to provide those unbundled network elements but also to perform the work of combining those elements to create a new UNE Platform. (Joint CLEC Ex. No. 1, Sch. JPG-1, Section 15, 2nd Revised Sheet No. 19). The CLEC Coalition presented no testimony to support this proposal, and it should be rejected.¹⁴ If a CLEC were to request a UNE loop and ULS-ST and combine those UNEs itself, there can be no dispute that Ameritech Illinois would be allowed to assess the Commission-approved line and port connection charges associated with each of the two UNEs. The CLEC Coalition has identified no basis for denying Ameritech Illinois the ability to assess those charges when the Company is required to not only provide the UNE loop and switching elements, but to also perform the work of combining those UNEs.¹⁵

¹⁴ It is Ameritech Illinois' understanding that a second phase of this docket will be initiated to consider the issue of the appropriate rate elements applicable to new combinations and that a status hearing to discuss a schedule for that phase is set for January 15, 2002. On January 7, 2002, the Administrative Law Judge issued a ruling to exclude portions of Mr. Alexander's testimony which are directly responsive to the proposals made by Mr. Gillan and Staff witness Zolnerek to preclude the applicability to new UNE-P and EEL combinations of the NRC which are applicable to individual UNEs which make up those combinations. The Company believes that its testimony in this regard should properly be included in the record in accordance with the statements made by the ALJ at the hearing held on December 14, 2001. (Tr. 943). The Company hereby requests a clarification of the basis for, and effect of, the January 7, 2002 ruling as it may affect the scope of the issues in Phase II so that it may determine whether there is a need to file a petition for interlocutory review with the Commission.

¹⁵ The CLEC Coalition's position is not supported by the Order in Docket 98-0396, issued on October 16, 2001. That Order (p. 42) directed the Company to "tariff a single change record work only charge to apply to UNE Platform migration 'as is' orders and to orders for new customers and additional lines served via the UNE Platform." This language appears at the conclusion of that section of the Order which addressed Ameritech Illinois' assumption that two ordering systems are needed to process platform orders. (Order, pp. 39-42). Thus, the intent of the language directing the Company to file a "single change record work only charge" was to preclude the application multiple ordering charges to orders for existing and new UNE-P combinations. That language should not be interpreted to preclude Ameritech Illinois from applying to a new UNE-P combination

The CLEC Coalition's proposed modifications to the Company's UNE-P tariff should also be rejected because they would impose open-ended obligations which go far beyond the requirements of state and federal law. For example, the CLEC Coalition proposed to eliminate language specifying the criteria under which a CLEC may request an existing UNE-P combination (as opposed to a new combination). (Jt. CLEC Ex. 1.0, Sch. JPG-1, Section 15, Orig. Sheet 1.1). Although Mr. Gillan presented no testimony in support of these proposed deletions, they are apparently intended, at least in part, to facilitate his proposal that Ameritech Illinois be required to provide the splitter as a "functionality" with the UNE-P. Mr. Gillan's proposal in this regard goes beyond the requirements of Section 13-801, is preempted by federal law and should be rejected for the reasons discussed in Section II(E) of this Brief. Accordingly, the CLEC's proposed revisions to Sheet 1.1 of Section 15 also should be rejected.

As another example, the CLEC Coalition proposed adding language stating that "[a] platform may also be combined with a carrier's own equipment, equipment of a third party, or any other unbundled network element combination." (Jt. CLEC Ex. 1.0, Sch. JPG-1, Section 15, Orig. Sheet No. 1). This open-ended language would expand Ameritech Illinois' obligations under Section 13-801 to essentially combine anything for CLECs, including UNE-Ps with EELs. Once again, Mr. Gillan presented no testimony in support this proposal, which is unsupported by any reasonable interpretation of Section 13-801. (Am. Ill. Ex. 2.1, p. 45).

The CLEC Coalition also proposed that Ameritech Illinois be required to "combine any sequence of network elements that it ordinarily combines for itself or any successor, assign or affiliate of SBC, including but not limited to" the 12 combinations listed in the Company's proposed Section 15. (Jt. CLEC Ex. 1.0, Sch. JPG-1, Section 15, 2nd Rev. Sheet 2). As

other NRCs, such as line and port connection charges, which would be applicable to the stand-alone orders for the network elements which comprise a UNE platform.

previously discussed, however, Section 13-801(d)(3) does not refer to any sequence of “network elements”; rather it applies to any sequence of unbundled network elements that the Company ordinarily combines for itself. Furthermore, there is no requirement under Section 13-801 that Ameritech Illinois combine any sequences of network elements, bundled or unbundled, that are combined for an "affiliate of SBC."¹⁶ The changes proposed by the CLEC Coalition to 2nd Revised Sheet No. 2 also make reference to use of Mr. Gillan's proposed request for additional combinations (RAC) process for requesting combinations of network elements other than those specifically listed on 2nd Revised Sheet No. 2. For the reasons discussed in Section IX of this Brief, Mr. Gillan's proposed RAC process should be rejected.

The CLEC Coalition also proposed to add a sentence to the tariff stating “that the UNE-P may be used to provide service to any residential or business customer, anywhere within the operating territory of Ameritech Illinois under the terms and conditions of this tariff, without regard to the number of lines served by such customer or any other limitation.” (Jt. CLEC Ex. 1.0, Sch. JPG-1, Section 15, 2nd Rev. Sheet No. 3). This language is inappropriate because the FCC's rules contain a limited exception to an ILEC's obligation to provide unbundled local switching to customers locations with four or more lines in the top 50 MSAs. (Am. Ill. Ex. 2.1, p. 48). The CLEC Coalition's language is, therefore, inconsistent with Section 13-801(a) of the PUA, which expresses the Illinois legislature's intent that Section 13-801 not be interpreted and applied in a manner which is inconsistent with the 1996 Act and the FCC regulations implementing the 1996 Act.¹⁷

¹⁶ Of course, Ameritech Illinois is obligated to treat CLECs and its affiliates on a non-discriminatory basis. Any UNEs or UNE combinations available to an Ameritech affiliate are also available to CLECs under the same terms and conditions.

¹⁷ This issue is discussed in more detail in Section V(E)(3) of this Brief. As discussed there, Ameritech Illinois' ability to exercise its rights in this regard is subject to the provisions of the Order in Docket No. 98-0555 approving the SBC/Ameritech merger.

The CLEC Coalition also proposed to delete language which makes it clear that the terms and conditions offered by the Company for “ordinarily combined” UNE-P as required by Section 13-801(d)(3) shall no longer be offered by the Company in the event that Section 13-801(d)(3) is repealed, expires, or otherwise no longer effective as enacted. (Jt. CLEC Ex. 1.0, Sch. JPG-1, Section 15, 2nd Rev. Sheet No. 3). The CLEC Coalition proposal should be rejected. To the extent that Section 15 includes a requirement that the Company combine unbundled network elements on behalf of a CLEC, such tariff provision is included as a direct result of the enactment of Section 13-801(d)(3). As previously discussed, that section imposes new obligations upon Ameritech Illinois beyond those imposed by federal law. Accordingly, the terms and conditions related to new combinations should expire upon the repeal or expiration of Section 13-801(d)(3). (Am. Ill. Ex. 2.1, p. 49).

The CLEC Coalition also proposed to add language stating that “requesting carriers shall be able to access and utilize any technically feasible feature, function or capability associated with any UNE combinations.” (Jt. CLEC Ex. 1.0, Sch. JPG-1, Section 15, 2nd Rev. Sheet No. 6). Once again, this language was unsupported by any testimony. The language represents an apparent attempt to blur the distinction between unbundled local switching (ULS) port features and other capabilities or services. Ameritech Illinois’ ULS offering includes all vertical features resident in the switch. The CLEC Coalition has misconstrued Ameritech Illinois’ obligation to provide ULS as an expanded obligation to provide additional services. The Company should not be required to unbundled or provide non-telecommunications services, non-UNEs or certain Advanced Intelligent Network (“AIN”)-based service offerings. AIN service software developed by Ameritech is proprietary and is deployed on Ameritech’s AIN platforms, not its switches. Consequently, Ameritech’s Privacy ManagerSM software, for example, has never been classified

as a local switching feature or function. (Am. Ill. Ex. 2.1, p. 51). Privacy ManagerSM software, and other types of AIN-based services, qualify for “proprietary” treatment under Section 251(d)(2) of the Act and are appropriately excluded as a matter of federal law from any unbundling obligation, including as part of UNE-P. (UNE Remand Order, ¶¶ 402, 409, 419, 420). As previously discussed, Section 13-801(a) indicates that the Commission should construe and apply the requirements of Section 13-801 in a manner which is not inconsistent with the 1996 Act or the FCC’s Rules implementing the 1996 Act. Thus, to the extent that the CLEC Coalition is recommending that Ameritech be required to provide proprietary AIN-based services as part of its obligation to provide the UNE-P, that recommendation must be rejected. (Am. Ill. Ex. 1.0, p. 52).

Finally, the portion of the CLEC Coalition’s proposed language which states that “UNE-P feature combinations can be ordered either ‘as-is’ or ‘as-specified’” should be rejected as inappropriately vague. Specifically, it is unclear what is meant by a “UNE-P feature combination”; in fact there is no such thing. (Am. Ill. Ex. 1.0, p. 53). Furthermore, when Ameritech Illinois provides the ULS UNE (e.g., as part of UNE-P), the CLEC obtains access to all of the vertical features resident in the switch and it should be the CLEC’s choice, and responsibility, to designate which features it wants to activate on the end user’s line. In this regard, the CLEC Coalition appears to have confused resale with UNE-P, because with resale a CLEC may purchase, at a wholesale discount, the same features or “feature packages” that Ameritech provides its retail end users. However, with ULS (and UNE-P) there is no such thing as a “feature package” as the CLEC has access to all of the features in the switch and can determine precisely what features it chooses to provide to each customer. (Am. Ill. Ex. 2.1, p. 53).

IV. THE MODIFICATIONS TO THE COMPANY'S PROPOSED EEL TARIFF PROPOSED BY STAFF AND THE CLEC COALITION SHOULD BE REJECTED

As previously discussed, Section 20 of the proposed tariff complies with Section 13-801(d)(3) by making available new combinations of loops and dedicated transport (EELs) that enable a CLEC to extend its “reach” from its collocation arrangements to provide service to end users in other Ameritech Illinois central offices in the LATA. (Am. Ill. Ex. 2.0, p. 28). The terms and conditions of the proposed EEL offering, as set forth in Section 20, are substantially the same as those provided under the Draft I2A. As Mr. Alexander discussed, this is appropriate because the eight EEL combinations are being offered pursuant to Section 13-801(d)(3), which requires the Company to offer the combinations in the Draft I2A. The related terms and conditions are inherent in the product design of the EEL combinations described in the I2A. (Am. Ill. Ex. 2.0, p. 28).

Staff and the CLEC Coalition both proposed EEL tariffs. As in the case of their UNE-P tariff proposals, however, the EEL tariff proposals of Staff and the CLEC Coalition reflect provisions which are inappropriate and go far beyond the requirements of Section 13-801.

A. STAFF'S EEL PROPOSALS

1. Staff's Proposal To Modify The Definition of EEL To Include “Existing” EELs Should Be Rejected

Staff proposes to redefine the term EEL, as set forth in the Company's proposed tariff, by eliminating the word “new,” thereby effectively defining an EEL to mean either an “existing” or “new” combination of unbundled loops and unbundled dedicated transport. (Staff Ex. 2.0, Attach. 1, Section 20, 2nd Revised Sheet No. 5). In addition, Staff defines an “ordinarily combined EEL” to include new or existing combinations of such UNEs used to provide service to end-users customers of Ameritech Illinois, its affiliates or another carrier. (Id.). Staff's

proposed definitions inappropriately expand the scope of the EEL tariff. The purpose of the EEL tariff is to implement Section 13-801(d)(3) (which relates to new combinations) to the extent that it requires the Company to offer the new EEL combinations identified in the Draft I2A which the CLEC may use to provide local exchange service its own end user customer.

In support of Staff's proposal, Dr. Zolnierek argued that the Company's proposal to define EELs as "new combinations" is a device to enable Ameritech Illinois to take apart existing combinations of network elements only to charge CLECs to reassemble them. (Staff Ex. 2.1, pp. 19, 31). Dr. Zolnierek, however, offered no evidence to support this accusation and failed to provide any logical explanation as to how the Company's proposed tariff would enable it to engage in such a scheme. As previously discussed, Ameritech Illinois' currently effective and proposed tariffs contain provisions which comply with the requirement of state and federal law that an ILEC not separate UNEs that are currently combined. With regard to an EEL, for example, once physically assembled per a CLEC's request, an EEL would not be disassembled unless a CLEC requested the entire combination to be disconnected, or that specific loops (or transport UNEs) be disconnected from the EEL. (Am. Ill. Ex. 2.2, p. 17).

Furthermore, Dr. Zolnierek's testimony misses the rationale for defining the EEL as a "new" combination. When a loop-dedicated transport combination is not currently, physically combined, then it is, by definition, new, and work must be performed to create the combination. The purpose of the Company's proposed EEL tariff is to provide an offering under which the Company will perform that work to combine the unbundled loop and dedicated transport UNEs identified in the Draft I2A and incorporated by reference in Section 13-801(d)(3).

Referring to Section 19 of the Company's proposed tariff, Dr. Zolnierek further asserted that, while Ameritech Illinois "appears to have provided a single exception to the preexisting

designation for combinations converted from Special Access arrangements for ordinary combinations, . . . no mention is made of combinations converted from other arrangements.” (Staff Ex. 2.1, p. 19). It is not, however, the purpose of Section 13-801(d)(3) (pursuant to which the EEL tariff was filed) to deal with the tariffing of “conversions” of existing services to UNEs. Section 13-801(d)(3) requires Ameritech Illinois to “combine” certain UNEs, thereby creating “new” UNE combinations; it does not deal with conversions at all. As Mr. Alexander further explained, the only reason that “conversions” of special access to UNEs are being addressed in this proceeding is because Ameritech Illinois relented, based on discussions with Staff, and included in its Interim Compliance Tariff, terms and conditions dealing with converting special access to UNE loop-transport combinations in order to avoid ambiguity.

For the same reasons, the Company developed a proposed permanent tariff (Section 19) dealing with special access to UNE conversions. The purpose of that proposed tariff is to set forth the FCC’s conversion criteria in the Supplemental Order Clarification. This tariff is not a matter of Section 13-801 compliance; to the contrary, Section 13-801(j) expressly states that Section 13-801 does not require the conversion of special access arrangements or private lines to combinations of UNEs. 220 ILCS 5/13-801(j).

Dr. Zolnierek also argued that “ordinary combinations used to serve an Ameritech customer appear to be treated as new combinations once that customer is ‘won’ by a competitor.” (Staff Ex. 2.1, pp. 19-20). This argument does not make sense. In both Sections 15 (preexisting and ordinarily combined UNE-P) and Section 20 (EELs), of the Company’s proposed tariff, the term “ordinarily combined” is used to describe new, as opposed to preexisting, combinations of UNEs. The reason for this nomenclature is simple: the term “ordinarily combines” is the term used in Section 13-801(d)(3) in the context of those combinations of UNEs which Ameritech

Illinois is required to assemble at the request of a CLEC. Stated another way, the term “ordinarily combines,” as used in the PUA, is a term used specifically in connection with the requirement to create “new” combinations, as opposed to providing “preexisting” (or currently physically combined) combinations of UNEs. Furthermore, from a practical perspective, an end user “won” by a CLEC using an EEL arrangement would need to have its loop moved (e.g., from Ameritech Illinois’ switch) to the CLEC’s EEL arrangement to be transported to the CLEC’s switch. Dr. Zolnierек did not explain why this is not appropriately considered a “new” combination. (Am. Ill. Ex. 2.2, p. 19).

Finally, Dr. Zolnierек asserted that “Ameritech could, under its proposed language, refuse to provide an ordinary combination of unbundled network elements to a requesting carrier where that carrier used the combination to provide, for example, local point-to-point data services.” (Staff Ex. 2.1, p. 20). Dr. Zolnierек’s assertion, however, confuses the issue of what constitutes an “ordinary combination” of UNEs for purposes of Section 13-801(d)(3), which addresses the requirement to provide new combinations (a requirement covered, in part, by the Company’s proposed EEL tariff), with the distinct issue of whether, and in what circumstances, the Company is required to provide a CLEC with an existing combination of UNEs (i.e., where the elements are already physically combined). For the reasons discussed in Section II(F), UNEs used to provide “point-to-point” data services are not “ordinarily combined” within the meaning of Section 13-801(d)(3) and, therefore, are not UNEs which the Company has an obligation to combine on behalf of CLECs. A CLEC, however, may request conversion of “point-to-point” data service (i.e., “private line”) to an existing combination of UNEs which make up the circuit used to provide that service if the service is comprised of UNEs and such request meets the FCC’s local usage criteria set forth in the Supplemental Order Clarification.

2. Operator Services And Directory Assistance

Staff's proposed EEL tariff would require Ameritech Illinois to provide operator services and directory assistance ("OS/DA") as UNEs in conjunction with EELs. (Staff Ex. 2.0, p. 16). This aspect of Staff's proposal should be rejected because OS/DA are services that are provided in conjunction with switched services. (Am. Ill. Ex. 2.1, p. 25). An EEL, by its very definition, does not include switching, and would be used by the CLEC to transport traffic to its switch, not to Ameritech Illinois' switch. (Id.). Ameritech Illinois' OS/DA can be requested by the CLEC in conjunction with UNE-P, where Ameritech Illinois is providing the unbundled switching function and thus the routing required to deliver traffic to Ameritech's OS/DA platforms. (Id.).¹⁸

3. New Combinations Available Under The Tariff

Staff's proposed tariff would require the Company to provide EELs which "include, but are not limited to," the eight EEL combinations identified in the Draft I2A and used in the Company's and Staff's proposed tariffs. (Staff Ex. 2.0, p. 14). To the extent that this language is intended to suggest that Ameritech Illinois is required to provide new combinations of loop-dedicated transport UNEs other than those listed in the Draft I2A, it should be rejected. Contrary to Dr. Zolnierек's suggestion (Staff Ex. 2.1, p. 18), Section 13-801(d)(3) does not support Staff's position. That Section provides that "ordinarily combined" combinations of UNEs which the Company must make available to CLECs include, but are not limited to, those combinations listed in Draft I2A. As previously discussed, the 12 types of UNE-P combinations listed in the Company's proposed UNE-P tariff (Section 15) include, but are not limited to, the combinations of unbundled loops and ports with unbundled shared transport identified in the Draft I2A. Thus, the Company's tariffs comply with Section 13-801(d)(3). That section does not, as Dr. Zolnierек

¹⁸ Of course, a CLEC that provides its own switch can provide OS/DA itself, or make arrangements to obtain OS/DA from Ameritech Illinois or select another provider. (Id.).

incorrectly suggested, state that Ameritech Illinois is required to provide “EEL combinations including, but not limited to, the EEL combinations listed in the Draft I2A.”

Staff’s proposed EEL tariff also includes language which suggests that a request made by a CLEC for a combination of UNEs which is not specifically listed in the tariff can be rejected only in the event that (i) “neither the Company nor its affiliates provide services using such combination of unbundled network elements” or (ii) the combination is a “limited combination of elements created in order to provide service to a customer under a unique and non-recurring set of circumstances.” As discussed in Section II(E), above, Staff’s proposal would effectively read the limiting phrase “ordinarily combined” out of Section 13-801(d)(3) and impose on Ameritech Illinois an obligation to combine unbundled network elements which goes far beyond the scope of that Section.

Staff’s proposed EEL tariff also requires that, in the event Ameritech Illinois believes that a requested EEL is not “ordinarily combined,” the Company should be required to “send” the request to the Bona Fide Request (“BFR”) process. (Staff Ex. 2.1, p. 16). As Dr. Zolnierek acknowledged, however, if a request for a new combination does not meet the “ordinarily combined” criteria set forth in Section 13-801(d)(3), Ameritech Illinois is under no obligation to provide such a combination. (Tr. 759). Accordingly, there is no basis for a requirement that Ameritech Illinois “send” such a request to the BFR process. (Am. Ill. Ex. 2.1, p. 35).

4. Staff’s Proposed Modification To The Local Traffic Test

Staff appropriately included in its proposed EEL tariff language indicating that a “telecommunications carrier may only request the EEL for the provision of interexchange access service when the carrier can certify, and does so in writing, that the telecommunications carrier uses that EEL arrangement to provide a significant amount of local exchange service to its end

user customer pursuant to the criteria set forth” in the FCC’s Supplemental Order Clarification. (Staff Ex. 2.0, p. 15). Staff, however, also proposed language indicating that the FCC’s criteria requiring a “significant amount of local exchange service” should not apply to “advanced services or information services (e.g., interstate special access xDSL service).” (Id.). Staff’s proposed limitation on the applicability of the FCC’s local traffic, which expressly rests on the CLEC’s provision of local voice traffic (Supplemental Order Clarification, ¶ 22) -- test was unsupported by any testimony and should be rejected. Most xDSL traffic is Internet-bound. (Am. Ill. Ex. 2.1, p. 36). The FCC has determined that Internet-bound traffic is interstate traffic. [Cite.] Such data traffic cannot be construed to be “local” or “voice” in nature; nor should it be exempted from the condition in the I2A and in the Supplemental Order Clarification that UNE loop-transport combinations be used in accordance with the local exchange service criteria required by the FCC’s Supplemental Order Clarification. (Am. Ill. Ex. 2.1, pp. 36-37). Staff’s proposal should be rejected because it would be inconsistent with the FCC’s rules.

5. Staff’s Proposed Rate Provisions

As previously discussed, an EEL is a new combination of unbundled network elements consisting of certain unbundled loops and certain unbundled dedicated transport. If a CLEC were to purchase these UNEs separately and perform the combining functions itself, the CLEC would purchase (i) the unbundled loops out of Ill.C.C. No. 20, Part 19, Section 2, Unbundled Loops and HFPL, and pay the recurring and non-recurring charges specified in that Section and (ii) purchase the unbundled dedicated transport out of Ill.C.C. No. 20, Part 19, Section 12, Unbundled Interoffice Transport, and pay the recurring and non-recurring charges specified in that Section. Accordingly, Ameritech Illinois included in its EEL tariff a pricing provision which makes it clear that “[a]ll recurring and non-recurring charges as defined in Part 19, Section

2, Unbundled Loops and HFPL, and Part 19, Section 12, Unbundled Interoffice Transport, apply to each of the unbundled network elements [i.e., loops and dedicated transport] comprising the EEL.” (Am. III. Ex. 1.0, Attach. 1.2, p. 53). In addition, the tariff provides that “the appropriate cross-connect charges shall apply as defined in Part 19, Section 12, Unbundled Interoffice Transport.”

Staff proposed language limiting the non-recurring charge for “ordinarily combined EELs” to \$1.02, and providing that “no other non-recurring charges, including fees associated with termination or reconnection” should apply. The effect of Staff’s proposal would be to eliminate the Company’s ability to recover its costs by applying the non-recurring charges which would otherwise apply under the Company’s effective tariffs to orders for unbundled loops and dedicated transport UNEs even though when ordered in combination the Company is required to perform additional work to combine those UNEs to create an EEL.

In support of this proposal, Dr. Zolnierек quoted the Commission’s Order in Docket 98-0396 as having adopted a non-recurring rate of \$1.02 for the “conversion of an existing special access ‘as is’ to Unbundled Network Elements which make up the Enhanced Extended Link (EEL).” (Staff Ex. 2.0, p. 23). The language quoted by Dr. Zolnierек does not, however, appear in the Order in Docket No. 98-0396. Dr. Zolnierек further asserted that the Order in Docket 98-0396 prescribed a uniform rate for both UNE-P migrations and "new UNE-P." (Staff Ex. 2.0, pp. 23-24). In fact, what the Order (p. 42) states is that "we also require Ameritech to tariff a single change record work only charge to apply to UNE-Platform migration "as is" orders and to orders for new customers and additional lines served via the UNE-Platform." As previously discussed the clear intent of this language was to preclude the application of multiple ordering charges to new and existing UNE-P combinations. The Order should not be construed as

limiting the non-recurring charge applicable to new EEL combinations to \$1.02. In provisioning a new EEL combination, Ameritech Illinois should be entitled to assess the non-recurring charges that apply to each of the UNEs which are requested as part of the EEL. There was no finding (or evidence to support such a finding) in Docket 98-0396 that Ameritech Illinois should not be entitled to assess such charges.

B. THE CLEC COALITION'S POSITION

In his Rebuttal Testimony, CLEC Coalition witness Gillan proposed that the Commission adopt, as the EEL tariff, Staff's proposed tariff, with the modifications shown in Schedule JPG-2. To the extent that Mr. Gillan's proposal replicates those portions of the Staff's proposal to which the Company objects, it should be rejected for the reasons discussed above. Mr. Gillan's proposed modifications to the Staff's proposal are discussed below.

Under the CLEC Coalition's proposal, the EEL tariff would contain language, consistent with that proposed by Staff and the Company, indicating that a telecommunications carrier may only request an EEL for the provision of interexchange access service when the carrier can certify, and does so in writing, that the telecommunications carrier using that EEL arrangement to provide a significant amount of local exchange service to its end user customer pursuant to the criteria set forth by the FCC in its Supplemental Order Clarification, as may be clarified or modified in subsequent FCC orders. Unlike the Staff and Company proposals, however, Mr. Gillan's proposed tariff specifies this provision as "interim" and subject to the "clarification that (in Illinois) advanced services and information access services are not to be considered special access." (Jt. CLEC Ex. 2.0, p. 2, Sch. JPG-2, Orig. Sheet No. 6). Mr. Gillan further proposed that the Commission establish a separate proceeding to address the applicability of the local use test to EELs.

Mr. Gillan's proposals should be rejected. Mr. Gillan presented no evidence or argument which would support a determination by the Commission that it has the jurisdiction to impose requirements upon Ameritech Illinois which supercede the criteria established by the FCC's Supplemental Order Clarification – particularly where the traffic is interstate in nature (e.g., internet traffic, interstate toll) and thus clearly subject to the FCC's exclusive jurisdiction. The FCC has forbidden interexchange access only use of loop-transport UNE combinations (and other UNEs) at least until it has completed implementation of access charge reform.

Supplemental Order Clarification, ¶ 7. Accordingly, the FCC has limited the use of such loop-transport UNE combinations to instances where the CLEC will provide at least a “significant amount of local exchange service” to its end user. Supplemental Order Clarification, ¶ 22.

Moreover, the FCC made clear that “completed implementation of access charge reform” would not occur until, at the earliest, the FCC compiled an adequate record and resolved the relevant legal and policy issues in its 4th FNPRM (Supplemental Order Clarification, ¶¶ 7-8). Only the FCC can determine when its task is complete and whether, when that occurs, it could then require so-called EELs to be provided as a UNE or allow them to be used solely for interexchange access service. The FCC has made no such pronouncement. (Am. Ill. Ex. 2.2, p. 11). The FCC also made it clear that its restrictions on the use of loop-transport combinations is supported by a number of considerations in addition to the concern regarding access charges. Supplemental Order Clarification, ¶ 8. For example, the FCC expressed concern that “[a]n immediate transition to unbundled network element-based special access could undercut the market position of many facilities based competitive access providers.” Id., ¶ 18. Accordingly, it would be premature for this Commission to initiate a proceeding to address this issue, and the

incorporation of the FCC's local usage test into the EELs tariff should not be characterized as an "interim" provision.¹⁹

Mr. Gillan also proposed to eliminate from Staff's and the Company's proposed EEL tariffs language that would limit the availability of DS1 loops to "circuit switched telephone exchange service." This limitation, however, is an integral condition of the EEL combinations listed in the Draft I2A and, therefore, comports with Section 13-801(d)(3)'s directive to provide the combinations listed in the I2A. (Am. Ill. Ex. 2.2, p. 13). Mr. Gillan's proposal to remove that language should be rejected.

The CLEC Coalition proposed to insert language indicating that the eight types of EELs provided in the Draft I2A "are standardized examples" of the types of UNE loop-transport combinations provided by Ameritech Illinois to its retail customers. This language is misleading because it erroneously implies that retail customers typically request from Ameritech Illinois those "standardized" UNE loop-transport combinations, including high capacity transport such as DS-3 (a DS-3 provides 672 voicegrade equivalent circuits). (Am. Ill. Ex. 2.1, p. 56). The EELs listed in Ameritech Illinois' proposed compliance tariff are included not because they are typically requested by Ameritech Illinois' own retail customers; rather, they were included because they are combinations listed in the Draft I2A and, therefore, expressly incorporated by reference in Section 13-801(d)(3).

The Commission should also reject the CLEC Coalition proposal to include language enabling a CLEC to terminate an EEL anywhere in the LATA, and not only at the CLEC's

¹⁹ Contrary to Mr. Gillan's assertion (Jt. CLEC Ex. 2, pp. 23-24), there is nothing in the Order in Docket 98-0396 which indicates that the Commission intended to remove or override the FCC's limitation on the use of EELs to instances where the CLEC will provide at least a "significant amount of local exchange service" to its end user. (Am. Ill. Ex. 2.2, pp. 11-12). In fact, the Commission declined to adopt replacement language proposed by AT&T/MCI in their Joint Brief on Exceptions (pp. 2-3) which would have expressly adopted the AT&T/MCI position that Ameritech Illinois should be required to make EELs generally available as UNEs without regard to the local use limitations imposed by the FCC. (Id.).

collocation. (Jt. CLEC Ex. 2, p. 25). Mr. Gillan's proposal is directly contrary to the language of the Draft I2A and Section 13-801(d)(3), which incorporates by reference the UNE combinations listed in the I2A. Under the I2A, an EEL is defined as a combination of an unbundled local loop and unbundled dedicated transport, with the transport side terminating at a CLEC's collocation arrangement. (Am. Ill. Ex. 2.1, p. 56; Am. Ill. Ex. 2.2, pp. 12-13). This definition is consistent with the purpose of the EEL, which is to enable a CLEC with a single collocation arrangement to increase the number of potential customers it can serve by using the EEL to transport unbundled local loop from distant central offices within the LATA back to its collocation arrangement. (*Id.*). There is no basis for Mr. Gillan's proposal to redefine the EEL and the unbundled dedicated transport component of the EEL by permitting its termination at all "other" locations. To the extent a CLEC requests an EEL pursuant to the Company's proposed tariff, it could also order an entrance facility from its collocation arrangement to its own switch location. (Am. Ill. Ex. 2.1, p. 57).

The CLEC Coalition also proposed to include in the EEL tariff a "shared usage" provision that would permit the UNEs and access services to share the same physical facilities. (Jt. CLEC Ex. 2, p. 26, Sch. JPG-2, Sheet 7). This proposal is yet another attempt to expand Ameritech Illinois' obligations beyond those imposed by Section 13-801 in a manner directly contrary to the 1996 Act and the FCC's rules. The FCC has expressly rejected the type of "co-mingling" recommended by the CLEC Coalition. In the Supplemental Order Clarification (¶ 28), the FCC stated:

We further reject the suggestion that we eliminate the prohibition on "co-mingling" (i.e. combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that

removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services. (Footnote omitted.)²⁰

(Am. Ill. Ex. 2.1, p. 42). Mr. Gillan also proposed what appears to be a “ratcheting” price proposal to go along with his “commingling” proposal. (Jt. CLEC Ex. 2, Sch. JPG-2, Sheet 7). Thus, not only does Mr. Gillan request the Commission to violate the FCC’s rules prohibiting commingling, he seeks a “UNE-price break” on a CLEC’s unused special access services. This proposal is unsupported by any evidence.

Finally, Mr. Gillan proposed to include a specific reference to the CLEC Coalition’s proposed Request for Additional Combinations (“RAC”) process. For the reasons discussed in Section IX(B) of this Brief, the proposed RAC process should be rejected, and, therefore, a reference to that process should not be included in the EEL tariff.

V. AMERITECH’S ILLINOIS’ PROPOSED ULS-ST TARIFF IMPLEMENTS SECTION 13-801 IN A JUST AND REASONABLE MANNER

The disagreement between Ameritech Illinois and Staff on the ULS-ST tariff appears to be rather narrow. Depending on how one interprets the testimony, there are as few as one, but no more than four, issues upon which Ameritech and Staff presently disagree. The matter stands quite differently between Ameritech Illinois and the CLEC Coalition, where there are no fewer than 11 issues of disagreement. The source of this disagreement between Ameritech Illinois and the CLEC Coalition is the CLEC Coalition’s insistence that Section 13-801 has done away with any limitation on the way in which CLECs may use ULS-ST, either alone or as a component of the UNE Platform. This fundamentally misguided interpretation colors all of the CLEC Coalition’s arguments on the ULS-ST tariff and, as demonstrated below, creates a flawed CLEC Coalition proposal which must be rejected.

²⁰ FCC Public Notice; Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Services, CC Docket No. 96-98, Released January 24, 2001.

A. AMERITECH ILLINOIS HAS REVISED ITS TARIFF SO THAT CLECS CAN USE ULS-ST TO PROVIDE INTRALATA SERVICE

ULS-ST is the acronym Ameritech Illinois uses for its Unbundled Local Switching with Shared Transport unbundled network element (“UNE”) product offering. Because the Shared Transport UNE cannot be provided separately from Unbundled Local Switching, ULS-ST always includes both Unbundled Local Switching (“ULS”) capability and Shared Transport (“ST”) capability. The ULS component provides unbundled access to the local switching capability through a line-side and/or trunk-side port, which provides access to all features, functions, and capabilities of the end office switch. This ULS capability is provided separate from the local loop on a per port basis.

The Shared Transport component provides the interoffice trunk network portion of the ULS-ST product, including end office and tandem trunk ports, tandem switching, interoffice facilities between Ameritech Illinois’ switches, and central office routing tables. In short, Shared Transport refers to all local transmission facilities connecting Ameritech Illinois’ switches to one another that can be shared by more than one LEC, including Ameritech Illinois. This includes transmission facilities between Ameritech Illinois’ end office switches, between Ameritech Illinois’ end office switch and Ameritech Illinois’ tandem switch, and between Ameritech Illinois’ tandem switches, as described in the FCC’s Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-238 (rel. November 5, 1999) (the “UNE Remand Order”), the Third Reconsideration Order in CC Docket 96-98, ¶ 54 (rel. Aug. 19, 1997) (the “Shared Transport Order”), and FCC Rule 319(d)(1)(iii) (47C.F.R. § 51.319(d)(1)(iii)).

Ameritech Illinois first filed its ULS-ST tariff in 2000 and has offered the service since that time. That tariff is the subject of a separate investigation in Docket No. 00-0700. The

purpose of the present proceeding is not to examine all terms and conditions surrounding the ULS-ST offering as is being done in Docket No. 00-0700. Rather, it is to make those limited changes necessary to the ULS-ST tariff to implement Section 13-801 and to leave the remaining portion of the ULS-ST tariff in place, pending the result in Docket No. 00-0700.

ULS-ST is one of the components of the UNE Platform. Section 13-801(d)(4) allows a CLEC to use the UNE Platform on a LATA-wide basis. The Company has therefore revised its ULS-ST tariff to permit CLECs to use the UNE Platform a LATA-wide basis. Ill. C.C. No. 20 Part 19, Section 21. (Am. Ill. Ex. 1.0, Attach. 1.2, pp. 56-68). In particular, the tariff allows a CLEC to route its intraLATA toll traffic from the originating end office to the terminating end office without leaving Ameritech Illinois' network and without the need for a CLEC to provide any of its own "facilities or functionalities". There is no dispute that Ameritech Illinois has properly amended its tariff to permit this type of LATA-wide use of ULS-ST.

B. NORMAL SWITCHED ACCESS RATES FOR LOCAL SWITCHING APPLY WHEN AN INTRALATA TOLL CALL ORIGINATES ON ULS-ST AND TERMINATES TO AN AMERITECH ILLINOIS END USER

Ameritech Illinois has always been permitted to charge its normal switched access rate for local switching when another carrier terminates toll traffic to an Ameritech Illinois end user. In this proceeding, however, both Staff and the CLEC Coalition argue that Ameritech Illinois must forego this charge when it terminates a toll call originated by a CLEC using the UNE Platform. Since Ameritech Illinois has properly charged this rate for years, the Staff/CLEC Coalition position would only be sustainable if there is something about Section 13-801 that mandates this result. There is not. There is no express directive in Section 13-801 that Ameritech not charge its standard switched access rates in this situation and nowhere in the testimony do Staff or CLEC Coalition argue that there is express language to this effect. Rather,

both Staff and the CLEC Coalition rely on contorted interpretations of Section 13-801(d)(4) to support their argument that Ameritech Illinois' standard switched access charges no longer apply. Both of these arguments fail.

1. Staff's Reliance On "Facilities Or Functionalities" Language Is Misplaced

Staff witness Graves argues that Ameritech Illinois cannot charge its standard access rates for local switching because Section 13-801(d)(4) states that a CLEC need not use any of its own "facilities or functionalities" when using the UNE Platform. (Staff Ex. 1.1, pp. 23-24; Tr. p. 840-41). This argument completely misses the mark. Ameritech Illinois is not asking a CLEC to use any of its own "facilities or functionalities" when it uses the UNE Platform to originate or terminate traffic. To the contrary, Ameritech Illinois readily acknowledges that a CLEC may originate a toll call using the UNE Platform and may terminate that call to an Ameritech end user without using any of the CLEC's own transport, trunking, or other network components. Staff witness Graves on cross-examination agreed that CLECs do not use their own "facilities or functionalities" when they ask Ameritech Illinois to terminate intraLATA toll calls to an Ameritech end user. (Tr. 841-43). Staff's "facilities or functionalities" argument is a red-herring and does nothing to support Staff's contention that Section 13-801(d)(4) prevents Ameritech Illinois from charging its normal switched access rates. In fact, there is no statutory basis whatsoever for Staff's position.

As Ameritech Illinois witness Gebhardt explained, Staff's position is also internally inconsistent and potentially discriminatory since it would allow Ameritech Illinois to charge its full switched access rates to interexchange carriers and to facilities-based CLECs that did not use the UNE-Platform, but would require Ameritech Illinois to charge lower reciprocal corporation rates to CLECs that use the UNE Platform. (Am. Ill. Ex. 9.0, p. 4). There is no principled

reason why Ameritech Illinois should charge different rates to terminate toll calls from these different carriers, as Staff's proposal would require.

In short, there is no legal basis or policy reason to diverge from the current practice of charging switched access rates for the termination of all toll calls.

2. CLEC Coalition Incorrectly Argues That Terminating Switching Is Part Of The UNE Platform

The CLEC Coalition argues that Ameritech Illinois' terminating switched access rates for local switching do not apply because the function of terminating local switching somehow becomes part of the "UNE Platform" under Section 13-801(d)(4). (Jt. CLEC Ex. 1, p. 19). This is wrong. First, there is no express language in Section 13-801 which says that the UNE Platform includes the distant local switching used to terminate toll calls. Second, Section 13-801 nowhere defines a UNE Platform at all, let alone a UNE Platform that is as broad and inclusive as the CLEC Coalition contends. Third, the CLEC Coalition's creative interpretation is strictly at odds with prevailing precedent. The FCC has consistently defined a "UNE Platform" to include only unbundled local loops, switches, and transport. For example, in the FCC's UNE Remand Order, the FCC stated at paragraph 12 that "only recently have incumbent LECs provided access to combinations of unbundled loops, switches, and transport elements, often referred to as the platform". In the FCC's Line Sharing Order, the FCC reaffirmed that "the platform refers to combinations of loop, switching, and transport unbundled network elements used to provide circuit-switch voice service".²¹

Similarly, the Illinois Commerce Commission in Docket No. 95-0458 adopted Staff's proposal that Ameritech Illinois make available a "platform" consisting of three components including the loop, the local switch platform (i.e. local switching) and interoffice transport.

(Docket No. 95-0458, issued June 26, 1996, pp. 58 and 63).²² The three components of the UNE Platform identified by the Commission – loop, local switching, and interoffice transport—are the same as those included in the FCC definition of UNE Platform, and do not include the distant local switching used to terminate a toll call. Given the clear FCC and Commission precedent, there is no basis to conclude that Section 13-801(d)(4) – which is totally silent on the matter – transforms the terminating switch into a part of the UNE Platform and thereby requires Ameritech Illinois to forego its normal switched access charges.

The CLEC Coalition’s argument is also premised on the unsupported assertion that terminating switching (as opposed to originating switching) is an unbundled network element in the first place. It is not. In the originating context, a local switch port is dedicated to a single loop which is customarily purchased by a CLEC on an unbundled basis. In other words, the CLEC purchasing the originating local switching capability controls all traffic that originates or terminates through that switch port. In contrast, in the situation described by the CLEC Coalition, the CLEC does not purchase the local switching UNE on the terminating switch. Rather, Ameritech Illinois continues to provide local switching services to its end user and the CLEC merely uses the local switching on a transitory basis if and only if its customer originates a call to be terminated to that particular Ameritech end user. Local switching used in that context has never been determined to be an unbundled network element.

²¹ Deployment of Wireline Services Offering Advanced Telecommunication Capability, CC Docket No. 98-147, Third Report and Order, (Rel. December 9, 1999), n. 161.

²² As described in that Order, “The local portion of the network is the transmission path from the network interface at an end user’s premises to a distribution frame, digital signal cross connect panel, or a similar demarcation point at the end office. The unbundled LSP [local switch platform] is all services and functionalities that are provided by a switch or end office. These services include: telephone number and directory listing; dialtone; announcements; access to operators, usage and interexchange carriers; originating and terminating switching; custom calling features (call forwarding, call waiting, etc.); and CLASS features (call-ID, call return, etc.). The third basic pieces of the local exchange network is interoffice transport.” (Docket No. 95-0458, p. 58).

CLEC Coalition witness Gillan argues that because a CLEC is permitted to use the UNE Platform to provide “end to end telecommunications services” Ameritech Illinois cannot charge normal switched access rates for termination of toll traffic. The CLEC Coalition’s argument is circular. A CLEC is undoubtedly permitted to use the UNE Platform to provide “end to end service.” However, this is merely a description of how the UNE Platform may be used; it is not language that defines or otherwise expands what is included within the definition of a UNE Platform. Moreover, the CLEC Coalition argues for what would essentially be a discriminatory result. Under its interpretation, only those CLECs that use the UNE Platform would be permitted to buy terminating switched access from Ameritech Illinois at UNE-based rates. Those CLECs that choose to compete on a facilities basis would continue to pay the normal switched access rate for the same service.

C. CLECs MAY NOT USE ULS-ST TO PROVIDE INTRALATA TRANSPORT TO OTHER TOLL CARRIERS

This is a narrow issue that involves the proper application of the new legislation to ULS-ST when the CLEC’s end user selects a carrier other than the CLEC as its intraLATA toll provider. There is no dispute that under the PUA ULS-ST can now be used by a CLEC to provide intraLATA toll services to its end user. Accordingly, if the CLEC wishes to be the pre-subscribed provider of the intraLATA toll service to its end user served by the UNE Platform, Ameritech Illinois will route the intraLATA toll call on the Company network using the same routing tables and network facilities as interLATA toll calls originated from the same end office by the Company’s retail end user customers. (Am. Ill. Ex. 3.0, pp. 5-7). The ULS-ST in this scenario includes the local loop, local switching and shared transport to the terminating end office. This is illustrated in figure 1, below. Alternatively, if the CLEC's end user has presubscribed its intraLATA toll traffic to a different interexchange carrier (“IXC”), Ameritech

Illinois will route that end user's intraLATA toll traffic to the network of that IXC. (Am. Ill. Ex. 3.0, pp. 5-7; Am. Ill. Ex. 3.1, pp. 8-9). In this case, the ULS-ST includes the local loop, local switching and shared transport to the IXC's point of presence. This scenario is illustrated in figure 2 below. There does not appear to be any dispute between these parties regarding these scenarios.

Figure 1 – CLEC provides intraLATA toll and carries the call to the terminating end office over UNE-P

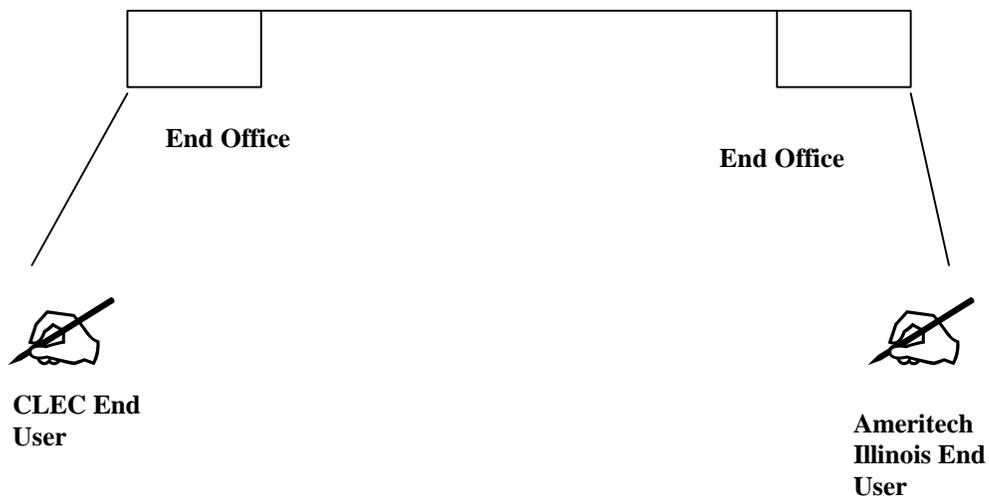
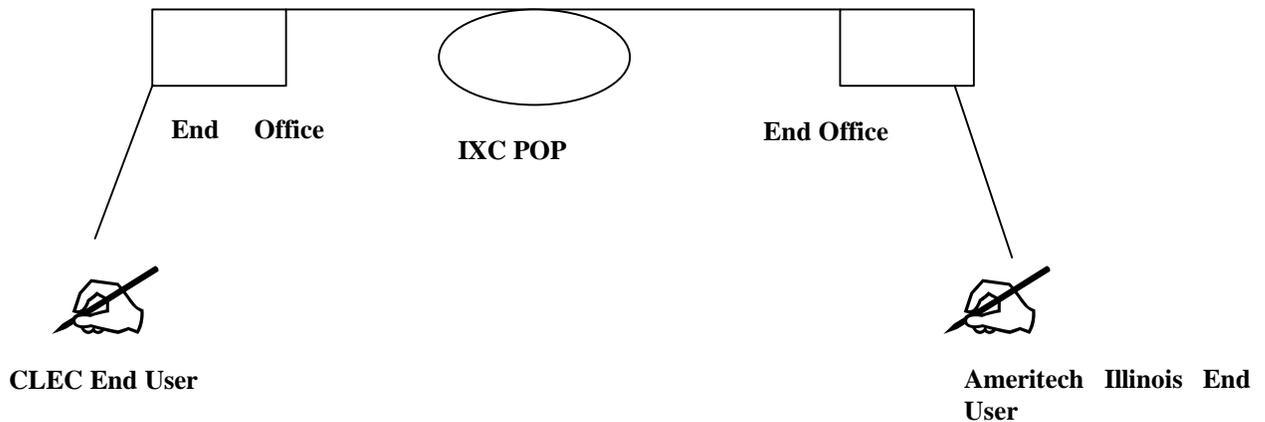


Figure 2 – CLEC End User selects an IXC to provide intraLATA toll. UNE-P carries the call to the IXC POP



Ameritech Illinois’ proposed tariff includes the following clarification:

This intraLATA toll capability is only available when the carrier purchasing ULS-ST is also the pre-subscribed intraLATA toll carrier for the retail end-user customer being served by the ULS-ST.

Ill.C.C. Tariff 20, Part 19, Section 21, Sheet 1.1. Under this language, when a CLEC’s end user served by the UNE Platform presubscribes its intraLATA toll traffic to a IXC other than the CLEC, ULS-ST can be used to route the toll traffic to the IXC’s point of presence, but ULS-ST cannot be used to provide intraLATA transport that the IXC would otherwise provide to itself. In other words, Section 13-801(d)(4) does not allow a CLEC to use ULS-ST as a means to route an IXC’s intraLATA toll traffic all the way to the terminating end office using Ameritech Illinois’ intraLATA interexchange facilities. (Am. Ill. Ex. 3.0, pp. 5-7). This would be an improper use of ULS-ST for the simple reason that Section 13-801(d)(4) only permits the CLEC to use the UNE Platform to provide service to the CLEC’s own “end user or payphone service providers”. (220 ILCS 5/13-801(d)(4)). If intraLATA toll traffic is routed across the LATA on the UNE Platform for the benefit of a third party IXC, the CLEC would not be using the UNE Platform to provide service to its end user – it would be using the UNE Platform to provide

service to an IXC. This would violate the plain language of Section 13-801(d)(4) and Ameritech Illinois' proposed tariff correctly reflects this limitation.

Of course, nothing prevents a CLEC end user from presubscribing to a third party IXC for intraLATA toll services. In those instances, the traffic would be routed to the third party IXC over switched access facilities established by the third party IXC between its POP and Ameritech Illinois' switch. (See figure 2, above).

Ameritech Illinois raised this issue in its Direct and Rebuttal testimony (Am. Ill. Ex. 3.0, pp. 5-7; Am. Ill. Ex. 3.1, pp. 8-9). Staff did not address this issue and therefore it appears that Staff does not dispute Ameritech Illinois' proposed application of its ULS-ST tariff. The one minor issue Staff did raise was a suggestion by Staff witness Graves to change a sentence in the ULS-ST tariff at Ill.C.C. No. 20, Part 19, Section 21, Sheet 6 to read as follows: "All interexchange services will be routed in the manner specified by the requesting carrier." (ICC Staff Ex. 1.0, pp. 22-23). Ameritech Illinois witness Silver testified that Ameritech Illinois can agree to this language if it is modified as follows: "The requesting carrier may specify whether its interexchange services are to be routed over Ameritech Illinois' intraLATA interexchange facilities or over another designated interexchange network". (Am. Ill. Ex. 3.1, p. 7.). Apart from this language change, Staff has no comments on (and apparently no objection to) Ameritech Illinois' position on this issue.

The CLEC Coalition argues that Ameritech Illinois' position is "baseless" and has "no legal justification." (Jt. CLEC Ex. 2, p. 14). The CLEC Coalition is completely mistaken. Section 13-801(d)(4) authorizes a CLEC to purchase a UNE Platform and to use it to provide a variety of services, but all of the services provided by the CLEC using the UNE Platform must be provided to the CLEC's "end users or payphone service providers." A CLEC is simply not

entitled to use the UNE Platform to provide service to anyone else. It is not surprising that CLEC witness Gillan completely overlooks this express limitation on the use of the UNE Platform in Section 13-801(d)(4). After all, Mr. Gillan neglected to include this crucial part of the statute language in his original tariff proposals (Jt. CLEC Ex. 1, Schedule JPG-1, Part 19, Section 15, Sheets 1 and 3) and only during the hearing did he submit a revised attachment to his testimony which acknowledged that these limiting words existed. (Tr. 550-51). Equally important, Ameritech Illinois' interpretation merely implements the FCC rule that UNEs cannot be used to substitute for access services. (Am. Ill. Ex. 3.1, pp. 6-8; Section 13-801(j)).

In short, Ameritech Illinois has proposed that ULS-ST can be used to provide intraLATA toll services, subject to the minor clarification that CLECs cannot use ULS-ST in a way that requires Ameritech Illinois to provide intraLATA toll transport to third party IXC's at UNE rates. This modest limitation is entirely reasonable and should be approved.

D. STAFF'S PROPOSED CHANGES TO THE ULS-ST TARIFF ARE ACCEPTABLE, WITH SLIGHT MODIFICATIONS

Staff witness Graves says that the Ameritech Illinois proposed changes to its ULS-ST tariff "appear justifiable" with slight modification. (Staff Ex. 1.0, p. 21). Staff suggests four minor modifications, which are discussed in order.

First, Staff proposes that Ameritech Illinois delete the words "ULS-ST is only available to a requesting telecommunications carrier for the provision of local exchange service" and replace it with the words "ULS-ST is available to a requesting telecommunications carrier for the provision of local exchange, interexchange that includes local, local toll, and intraLATA toll, and exchange access telecommunication services within the LATA to its end users or payphone service providers." (Staff Ex. 1.0, p. 21). As Mr. Silver explained, this change is acceptable to Ameritech Illinois. (Am. Ill. Ex. 3.1, p. 5).

Second, Staff proposes that ULS-ST features include “access to routing tables to accomplish routing of local exchange, interexchange that includes local, local toll, and intraLATA toll, and exchange access telecommunications service”. (Staff Ex. 1.0, p. 22). As Mr. Silver explained, as long as the word “existing” is inserted before the phrase “routing tables” in Staff’s proposed language, Ameritech Illinois accepts this change. (Am. Ill. Ex. 3.1, pp. 5-6). This would clarify that this language deals with access to existing routing tables and would avoid a potential argument that the language requires Ameritech Illinois to provide customized routing tables. The Ameritech Illinois routing tables are used by all customers (retail and UNE based) and Ameritech Illinois maintains the routing tables and makes modifications to those tables, such as allowing new NPA NXXs to be properly routed. (Am. Ill. Ex. 3.1, p. 5). Any changes to those tables affect all carriers. (Am. Ill. Ex. 3.1, p. 6).

Third, Staff proposes to include in Ameritech Illinois’ ULS-ST tariff a sentence from Section 5.2.1 of the UNE Appendix of the Texas T2A Agreement. (Staff Ex. 1.0, p. 22). Ameritech Illinois has no objection to this Staff request, provided that the entire Section 5.2.1 from that T2A Agreement is included , as follows:

Ameritech will provide the local switching element so that the dialing plan associated with the port will be equal to the dialing plan established in the office for Ameritech’s own customers. When the established dialing plan calls for ten digit dialing, it will apply equally to unbundled local switching purchased by CLEC.

(Am. Ill. Ex. 3.1, p. 6).

Fourth, Staff proposed to add the language discussed in Section V.C. above. Ameritech Illinois has fully responded to that proposal and will not re-address it here.

E. ULS-ST ISSUES RAISED BY THE CLEC COALITION SHOULD BE REJECTED

The tariff language proposed by CLEC Coalition witness Gillan proposes

at least ten other changes to Ameritech Illinois' ULS-ST tariff. Each of these issues is discussed below. These changes go well beyond any straight forward application of Section 13-801. (See Joint CLEC Ex. 1.1, commenting on Ill. C.C. No. 20, Part 19, Section 21). Instead, the CLEC Coalition tries to use this docket as an opportunity to make fundamental changes which are unrelated to Section 13-801, e.g., by proposing to change the FCC's well-established definition of Shared Transport; to radically change the "transiting" arrangements; and to restructure reciprocal compensation arrangements that currently apply under Ameritech Illinois' ULS-ST tariff. The Commission should reject these CLEC Coalition proposals.

1. Improper Characterization Of Section 13-801

There is no reason to insert into Ameritech Illinois' ULS-ST tariff verbatim quotations from the Illinois Public Utilities Act. The statute speaks for itself. The tariff need not mimic the statute – it should operationalize the statutory requirements through the creation of practical business rules. To merely parrot the statute in Ameritech Illinois' tariff, as the CLEC Coalition attempts to do, is at best redundant. At worst, it creates the dangerous possibility of discrepancies between the statute and the tariff which lead to unintended legal consequences. If the Commission were to require the ULS-ST tariff to recite language from the PUA (and it should not), then it is mandatory that the language be an accurate and complete recitation of the statute. Language proposed by the CLEC Coalition fails to comply with this simple standard.

In Ill. C.C. 20, Part 19, Section 21, Sheet 1, the CLEC Coalition proposes to delete most of Ameritech Illinois' language and to insert the following clause:

Unbundled network elements are available to Telecommunications carriers for use in the provision of any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange, interexchange that includes local, local toll, and exchange access telecommunication services without the use of any other facilities or functionalities.

(Jt. CLEC Ex. 1.0, Schedule JPG-1). This is not an accurate quotation of any provision of Section 13-801. Instead, it is an amalgam of concepts which appear in Section 13-801(a) and 13-801(d)(4). The language is an erroneous statement of the law because it fails to include the clear limitation in Section 13-801(d)(4) that the UNE Platform can only be used by a CLEC to provide services to its own “end users or payphone service providers.” The proposed language must be rejected.

The CLEC Coalition commits a similar error on Sheet 1.2, Part 19, Section 21, where it appears to quote verbatim from Section 13-801(d)(4), but again leaves out the crucial phrase “to its end users or pay telephone service providers”. (Jt. CLEC Ex. 1.0, Schedule JPG-1). The CLEC Coalition’s attempt to rewrite the Ameritech ULS-ST tariff in this manner must be rejected.²³

2. Shared Transport Definition

In at least three places in the ULS-ST tariff, CLEC Coalition witness Gillan attempts to rewrite the long-established FCC definition of Shared Transport. (Jt. CLEC Ex. 1, Schedule JPG-1, Part 19, Section 21, Sheet 1(2nd Para.); Sheet 5 (1st Para. & 2nd Para.)). In particular, he attempts to expand the definition of Shared Transport to include facilities that do not even belong to Ameritech – i.e., the interoffice facilities between Ameritech Illinois’ switches and the switches of other carriers. These facilities are excluded from the definition of Shared Transport under the FCC’s Shared Transport Order in Docket No. 96-98. The definition of Shared Transport in that order includes transport within Ameritech Illinois’ network, namely “all transmission facilities connecting an incumbent LECs switches, that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches”.

(Shared Transport Order, para. 2). See also, 47 C.F.R. Section 51.319(d)(1)(iii). It does not include facilities between Ameritech Illinois' network and the network of other Carriers because Ameritech Illinois does not own or control all of those interconnecting facilities. Section 13-801 has not changed the FCC's long established definition of Shared Transport and the CLEC Coalition position should be rejected.

Also, in Part 19, Section 21, Sheet 5, the CLEC Coalition proposes to delete the words "voice grade" in the following sentence in Ameritech Illinois' tariff that describes what Shared Transport is used to provide: "Shared Transport is provided for the delivery of telecommunications carrier switched voice grade traffic on the Company's interoffice trunk network." Ameritech Illinois acknowledges that some non-voice grade switched traffic such as ISDN-BRI is carried over Shared Transport. The following change fully addresses the CLEC Coalition's concern: "Shared Transport is provided for the delivery of telecommunications carrier public switched transport network ("PSTN") traffic on the Company's interoffice trunk network." (Am. Ill. Ex. 3.1, pp. 18-19).

3. Local Switching

Ameritech Illinois' tariff, Part 19, Section 21, Sheet 1 includes a limitation authorized by federal law:

ULS-ST is not available when unbundled local switching is not required to an end user of the carrier by law to be provided, including due to the applicability of 47 C.F.R. Section 51.319(c).

The CLEC Coalition objects. The dispute concerns the circumstances under which Ameritech Illinois will no longer offer unbundled local switching (and, in turn, ULS-ST, since ULS-ST cannot be offered without unbundled local switching) for a limited class of end user customers.

²³ At the hearing, Joint CLEC witness Gillan attempted to revise portions of his proposed tariff by reinserting the statutory phrase "to its end users or pay telephone service providers", but for some inexplicable reason did not

The FCC in its UNE Remand Order has specifically found that an ILEC need not provide ULS to serve customers with four or more lines in certain areas in the top fifty MSAs where the ILEC has also provided access to the enhanced extended link (“EEL”) UNE.²⁴ Thus, the FCC’s rules permit Ameritech Illinois to stop offering unbundled local switching in certain circumstances, so long as Ameritech Illinois has made the EEL available in that area. This “switch carve out,” as the FCC describes it,²⁵ is premised on the express finding that as of March 1999, 167 difference competitors had deployed 700 switches throughout the country, 61% of which were deployed in the top 50 MSAs. The FCC specifically found that 4 or more competitive switches had been deployed in 48 of the top 50 MSAs. Based on this finding of significant availability of alternative switching capability, the FCC concluded that CLECs would not be impaired in their ability to serve high volume users where the EEL (and not local switching) is provided by the ILEC. (UNE Remand Order, Para. 297). Ameritech Illinois’ tariff language accurately reflects this state of the law as it relates to local switching and Section 13-801 has not changed that law. 47 C.F.R. Section 51.319 (c)(2).

The CLEC Coalition argues that because Section 13-502.5 of the PUA effectively classifies Ameritech Illinois’ retail business services to customers with 5 or more lines as competitive, the UNE Platform should continue to be made available to those customers regardless of any FCC rule. (Jt. CLEC Ex. 2, pp. 20-22). The argument is wrong. The FCC has

make those changes to the ULS-ST portion of the tariff.

²⁴ UNE Remand Order, para. 278; 47 C.F.R. Section 51.319(c)(2) provides: “Notwithstanding the incumbent LEC’s general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides nondiscriminatory access to combinations of unbundled loops and transport (also known as the “Enhanced Extended Link”) throughout Density Zone 1, and the incumbent LEC’s local circuit switches are located in:

- (i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, and
- (ii) In Density Zone 1, as defined in § 69.123 of this chapter on January 1, 1999.

found that competitive local switching services are freely available in the top 50 MSAs. When CLEC-provided local switching is combined with ILEC-provided EELs, the CLECs are able to serve business customers on a fully competitive basis without regard to the availability or the unavailability of the UNE Platform. The “switch carve out” exists precisely because local switching to customers with four lines and above is freely available to CLECs and, therefore, ILEC unbundled local switching is not needed to permit competition. The FCC’s finding is bolstered by Mr. Wardin’s market data. Mr. Wardin testified that approximately twenty-seven percent (27%) of the business access lines in Illinois are provided by CLECs – not Ameritech Illinois – and that less than one percent (1%) of those lines are provided using the UNE platform. (Am. Ill. Ex. 1.1, Sch. 1). In other words, CLECs have effectively won approximately twenty-seven percent (27%) of business customers in Illinois without using unbundled local switching.

The FCC’s identification of ULS as an unbundled network element – subject to the “switch carve out” – has not been challenged by the recent amendments to the Public Utilities Act or by any action of the Illinois Commerce Commission. Nor could it be. Section 261(c) requires that any state commission regulation that establishes access and interconnection obligations of a LEC must be “consistent” with the requirements of Section 251. The FCC’s UNE Remand Order at para. 154 acknowledges that a state commission can impose additional unbundling obligations, as long as they meet the requirements of Section 251 and the national policy framework of the UNE Remand Order. Therefore, while a state commission can create totally new unbundled network elements, it cannot overrule the FCC’s determination on the scope of unbundling obligations of an existing UNE that the FCC has already established under the “necessary” and “impair” standards of Section 251. Any state law or regulation purporting

²⁵ Review of the Section 271 Unbundling Obligations of Incumbent Local Exchange Carriers, C.C. Docket No. 01-339, Notice of Proposed Rulemaking (released December 20, 2001), paras. 55-56. (“Triennial Review NPRM”).

to establish obligations which are inconsistent with the FCC's "switch carve out" would be preempted by federal law. Grier v. American Honda Motor Co., 120 S. Ct. 1913 (2000).

Ameritech Illinois acknowledges that this Commission's order approving the SBC/Ameritech Merger limits Ameritech Illinois' ability to take advantage of the FCC's "switch carve out". (Am. Ill. Ex. 3.1, pp. 15-16). Paragraph 28C of the Merger Order requires that Ameritech Illinois continue to offer Shared Transport in Illinois even if the FCC were to rule that Shared Transport should not be unbundled. Since Shared Transport cannot be offered without unbundled local switching, it is Ameritech Illinois' understanding that Paragraph 28C of the Merger Order prevents it from unilaterally withdrawing the ULS-ST offerings in situations where it is no longer obligated to provide ULS on a stand alone basis. Rather, for the three (3) year life of Merger Order condition 28C, Ameritech Illinois would require Commission approval before withdrawing ULS-ST. Accordingly, the Company will not discontinue offering ULS-ST in density Zone 1 of the Chicago MSA until October 10, 2002 without first petitioning the Commission to do so.

4. This Docket Is Not An Opportunity To Change Transiting Arrangements

The CLEC Coalition proposes to alter the current transiting arrangements by requiring Ameritech Illinois to assume financial responsibility for termination charges owed by CLECs to independent telcos, wireless providers and other CLECs. (See Joint CLEC Schedule JPG-1, Part 19, Section 21, Sheet 1.1 (deletion of last sentence); Part 19 Section 21, Sheet 36 (proposing to add: "including calls terminating with interconnected local exchange carriers")). This proposal should be rejected.

In a transiting arrangement, Ameritech Illinois accepts traffic originated by Carrier A and hands it off to Carrier B at a different location. Ameritech Illinois neither originates nor

terminates the call. Under its interconnection tariffs and its interconnection agreements, when Ameritech Illinois acts as a transiting carrier, Carrier B charges reciprocal compensation to Carrier A – not to Ameritech Illinois. Carrier A is getting revenue from the end user customer and must pay Carrier B to terminate the traffic. Ameritech Illinois is not responsible for any reciprocal compensation (i.e., termination) charges because Ameritech Illinois does not originate the call does not collect revenue from the end user customer. (Am. Ill. Ex. 3.0, pp. 8-9).

Nothing in Section 13-801 requires Ameritech Illinois to assume the financial and administrative obligation of paying the terminating carrier for the services used by the CLECs. (Am. Ill. Ex. 3.1, pp. 13-15). The CLEC Coalition is trying to use this proceeding as an excuse to re-open issues that are unrelated to the purpose of this docket. Its transiting proposal should be rejected.

5. Statutory Language

Ameritech Illinois proposed the following language to link the tariff revisions to the requirements of Section 13-801:

Terms and conditions offered by the Company set forth in this Part 19, Section 21 for an intraLATA toll capability with ULS-ST as required at Section 13-801(a) and (d) by amendment to the Illinois Public Utilities Act effective June 30, 2001, shall no longer be offered by the Company in the event that Section 13-801(a) and (d) is repealed, expires or otherwise no longer effective as enacted as on June 30, 2001.

(Ill. C.C. No. 20, Part 19, Section 21, Sheet 1.2). This language acknowledges that the statute permits ULS-ST to be used for intraLATA toll and that if the statute is invalidated or otherwise goes away, the tariff language authorizing the use of ULS-ST for intraLATA toll also goes away. Without this language, a CLEC could argue that even though Ameritech Illinois is no longer required by statute to allow ULS-ST to be used for intraLATA toll service, the tariff language is

still in place and therefore the obligation still applies. This would, of course, create an absurd result. Ameritech Illinois' language is designed to head off any possible confusion of this sort.

6. 911 Language

On Sheet No. 2 of Part 19, Section 21, Ameritech Illinois provided language to confirm that CLECs using ULS-ST must provide Ameritech Illinois with 911-related information so that the CLEC's end users can be included in the 911 data base. In order to address Staff's concerns that Ameritech not unreasonably dictate the "format" and "media" in which that information is transmitted to the Company, Ameritech inserted the following phrase: "in a format and media prescribed by the Company except as may be prohibited or restricted by the Commission." (Am. Ill. Ex. 1.0, Attach. 1.2, p. 62). Unsatisfied with that modification, the CLEC Coalition proposes a requirement that the Commission affirmatively approve Ameritech Illinois' directions concerning the "format" and "media" in which 911 information is transmitted to Ameritech Illinois. (Jt. CLEC Schedule JPG-1, Part 19, Section 21, Sheet 2). If the CLEC Coalition language is adopted, the Commission would have to conduct a proceeding for the sole purpose of reviewing and approving the instructions that Ameritech Illinois provides to CLECs for transmitting 911 information. There is no evidence in the record that there is a problem in this area. The CLEC Coalition proposal is unnecessary, wasteful and inefficient and should be rejected.

7. "Commission Approved" Rates

In several places in the ULS-ST tariff, Ameritech Illinois refers to rates and rate elements that appear in other portions of Ameritech Illinois' tariff. These references are to rates and rate elements that are already in Ameritech Illinois' tariff and are therefore already effective. The CLEC Coalition proposes to insert the words "Commission approved" in front of the word "rate"

wherever it appears throughout the ULS-ST tariff. (See, e.g., Jt. CLEC Ex. 1, Sch. JPG-1, Part 19, Section 21, Sheets 30 and 36). This request should be denied because it serves no purpose. Any Ameritech Illinois rate is ultimately subject to the review of the Commission in one form or another. Moreover, Ameritech Illinois is legally entitled to (and, indeed, must) charge rates included in an effective tariff, whether or not the Commission has approved such rates after formal investigation. If the impact of inserting the words “Commission approved” would be to invalidate certain charges that Ameritech Illinois is currently imposing, then the proposal is misguided and wrong as a matter of law.²⁶ Indeed, the language proposed by the CLEC Coalition could preclude the Company from implementing reductions in rates which the Commission allows to become effective without suspension and without a formal investigation.

8. ULS-ST Usage Rate

Ameritech Illinois has retained within its ULS-ST tariff a “ULS-ST usage rate element”, set at zero. While Ameritech Illinois acknowledges that the Commission made a ruling in Docket No. 96-0486/0596 setting this rate at zero, Ameritech Illinois has appealed that ruling. Ameritech Illinois agrees that the interim rates should remain at zero while that appeal is pending, but it is appropriate to retain language in the tariff describing this rate element so that: 1) the tariff can be promptly updated once the appeal is resolved; and 2) the CLEC industry remains on notice that this rate element may contain a charge in the future. (Am. Ill. Ex. 3.1, p. 19).

9. Separate Shared Transport And Shared Transport-Transit Rates

Ameritech Illinois’ ULS-ST blended transport usage rate is based on situations where Ameritech Illinois is completing the call within its own network as well as situations where Ameritech Illinois is acting as the transiting carrier and handing the call off to a third party

²⁶ 220 ILCS. Section 5/9-201.

carrier for termination²⁷. (Am. Ill. Ex. 3.1, pp. 13-14, 20). Both of these situations are included in a single “blended” rate. Ideally, there would be two different rate structures that applied when Ameritech Illinois terminates the call within its own network (i.e., a Shared Transport charge) and when Ameritech acts only as the transiting carrier and terminates the call to a third party carrier (i.e., a Shared Transport Transit charge). When Ameritech Illinois’ billing system becomes sophisticated enough to accurately bill these situations separately, Ameritech Illinois will establish these separate rate elements in the tariff. Accordingly, Ameritech Illinois’ tariff states that “the Company reserves the right to establish separate rates for ULS-ST blended transport and Shared Transport transit that would be applied prospectively.” (Part 19, Section 21, Sheet 36). The CLEC Coalition objects to this language, without comment. The language is appropriate because it acts as a place holder for future action and it benefits the CLECs by providing clear guidance as to Ameritech Illinois’ future intentions with respect to this service, without prejudging the merits of the issue one way or the other. For these reasons, the Ameritech Illinois language should be retained.

10. ULS-ST Reciprocal Compensation Switching Rate

When a CLEC terminates a local call received by one of its end users served by the UNE Platform, it is entitled to charge a cost-based reciprocal compensation rate. The only cost the CLEC incurs, however, is the charge it pays Ameritech Illinois for the use of ULS-ST. This charge is called the “ULS Usage Rate Associated with ULS-ST”. In recognition of this situation, in 2000 the Ameritech Illinois ULS-ST tariff established a reciprocal, symmetrical compensation rate equal to the “ULS-ST Usage Rate Associated with ULS-ST”:

The ULS-ST reciprocal compensation rate chargeable by the Company for terminating the local traffic originated from a ULS-ST port, as well as reciprocal compensation

²⁷ Of course the blended rate does not include any reciprocal compensation charge for termination on the network of another carrier.

chargeable by the telecommunications carrier for local traffic terminated to its ULS-ST port, will be set at the same rate as ULS-ST Usage Rate Associated with ULS-ST per this Tariff.

(Ill. C.C. No. 20, Part 19, Section 21, Sheet 37; Am. Ill. Ex. 3.1, p. 21). The tariff establishes a symmetrical rate that applies to traffic terminating in both directions.

CLEC Coalition witness Gillan objects to the language because it allegedly limits or restricts the service offering of the CLEC. It does not. The language says nothing about what services the CLEC may offer to its customers using ULS-ST or what rates the CLEC may charge to those customers. Ameritech Illinois' language only addresses intercarrier compensation for local traffic when the terminating CLEC terminates a call using a ULS port.

It would be completely irrational to permit CLECs to establish reciprocal compensation rates higher than those charge to them by Ameritech Illinois, especially if done on the false assumption that CLECs incur additional costs. They do not. (Am. Ill. Ex. 3.1, p. 21). In this case, the Commission knows exactly what it costs a CLEC to terminate a call using the ULS-ST service – it is the rate the CLEC is charged by Ameritech Illinois to use the ULS-ST service. The reciprocal compensation rate should remain at that rate. Moreover, this issue is being addressed by the Commission in Docket No. 00-0700 and need not be dealt with in this proceeding. The CLEC Coalition has failed to produce any reasons why existing practice should change and its objection should be rejected.

VI. THE PROVISIONS OF THE COMPANY'S PROPOSED UNE-P TARIFF RELATED TO LINE SHARING AND LINE SPLITTING ARE CONSISTENT WITH STATE AND FEDERAL LAW AND SHOULD BE APPROVED

The Company's proposed UNE-P tariff contains provisions which comply with state and federal law governing "line sharing" and "line splitting" arrangements. A "line sharing"

arrangement involves the use of a “splitter”²⁸, to enable a data CLEC to gain access to the high frequency portion of the loop (“HFPL”), while the ILEC (e.g., Ameritech Illinois) remains the voice provider. (Am. Ill. Ex. 4.0, p. 14). Line splitting, on the other hand, is an arrangement in which both the voice and the xDSL service are provided over the same local copper loop facility, but where the ILEC is not providing the voice service. Line splitting arrangements can exist where a single CLEC or two CLECs (one CLEC for voice and one CLEC for data) provide voice and data using a single xDSL-capable unbundled loop terminated to a splitter and DSLAM equipment in the collocation area(s). (Am. Ill. Ex. 4.0, p. 12).

A. LINE SPLITTING

In accordance with FCC Orders, Ameritech Illinois supports line splitting where a CLEC obtains separate UNEs (including unbundled loops and unbundled switching), and combines them with its own splitter (or the splitter of the CLEC’s partner) in a collocation arrangement.²⁹ (Am. Ill. Ex. 4.0, p. 12). CLECs who wish to engage in a line splitting arrangement and currently provide voice service via UNE-P, can disaggregate the UNE-P into a separate DSL-capable loop cross-connected to collocation, and a separate switch port cross-connected to collocation. The CLEC can then utilize the CLEC-provided splitter to “split” the voice and data being provided over the same loop and accomplish line splitting. (Id., p. 11).

In this regard, the Company’s proposed revisions to the UNE-P tariff (Ill.C.C. No. 20, Part 19, Section 15) expressly state that the terms and conditions related to the provision of a pre-existing UNE-P do not:

²⁸ A splitter is a passive device that separates the data and voice signals concurrently across the copper loop, directing the voice traffic through copper tie cables to the circuit switched network, while simultaneously directing the data traffic to the packet switched network, also through copper tie cables. The splitter can be either integrated into the CLEC’s Digital Subscriber Line Access Multiplier (“DSLAM”) equipment, or external to the DSLAM. (Am. Ill. Ex. 4.1, pp. 31-32).

²⁹ Texas 271 Order, ¶325; Line Sharing Reconsideration Order, ¶19

. . . preclude any telecommunications carrier from engaging in line splitting by having the company disaggregate the carrier's UNE-P arrangement and having a UNE xDSL capable loop and ULS-ST terminated to that carrier's collocation arrangement (or another telecommunication carrier's collocation arrangement that has authorized such termination).

As this language makes clear, a CLEC may request Ameritech Illinois to cross-connect its "platform" arrangement (although it would no longer technically meet the definition of the UNE-P) to its or any other CLEC's collocation area. Thus, this tariff language complies with the requirement of Section 13-801(c) that

An incumbent local exchange carrier shall also allow and provide for, cross-connects between a noncollocated telecommunications carrier's network elements platform . . . and the facilities of any collocated carrier, consistent with safety and network reliability standards.

(Am. Ill. Ex. 4.0, pp. 12-13).

B. LINE SHARING

Ameritech Illinois' proposed UNE-P tariff properly restricts the availability of the pre-existing UNE-P to situations in which, "at the time of the order, the [requesting CLEC's] end user customer in question is not served by a line sharing arrangement as defined in Part 19, Section 2, Unbundled Loops and HFPL or the technical equivalent, e.g., the loop facility is being used to provide both a voice service and also an xDSL service." (Am. Ill. Ex. 1.0, Attach. 1.1, p. 11; Ill.C.C. No. 20, Part 19, Section 15, 4th Revised Sheet No. 1). The purpose of this provision is to make it clear that the Company is not obligated to migrate an existing line sharing arrangement (i.e., one in which Ameritech Illinois is the voice provider) to a line splitting arrangement (i.e., one in which CLECs provide the voice as well as the data service, with or without an Ameritech Illinois-owned splitter). This restriction is consistent with state and federal law and should be approved.

First, as previously discussed, the term “platform,” as used in Section 13-801(d)(4), should be construed to refer to the UNE-P, which consists of a contiguous assembly of an unbundled local loop and unbundled switch port with shared transport. Because a line sharing arrangement includes a splitter, it does not qualify as a UNE-P and, therefore, is not subject to the requirements of Section 13-801(d)(4).

Second, even if the term “network elements platform” were construed to include combinations of unbundled network elements other than the UNE-P (and the term should not be construed so broadly), Section 13-801(d)(4) cannot lawfully be interpreted to require Ameritech Illinois to provide a CLEC with access to facilities (or combinations of facilities) which do not meet the criteria of an unbundled network element. The FCC and the Commission have both ruled that the “splitter” is not an unbundled network element and Ameritech Illinois is not required to provide a “splitter” to CLECs. (Am. Ill. Ex. 4.0, p. 14; Am. Ill. Ex. 4.1, p. 34). In Docket 00-0312/00-0313 (Consol.), the Commission concluded that “splitters are not elements of Ameritech Illinois’ existing network.” The Commission reaffirmed this ruling in Docket No. 00-0393, where it stated as follows:

The Commission finds that Ameritech Illinois is not required to provide line splitting as proposed by AT&T for the following reasons. Under the Line Splitting Order Ameritech Illinois has been required, and has agreed to provide access to the HFPL over the UNE-P when Ameritech Illinois is not the voice provider, when a requesting carrier provides the splitter, which is the extent of its obligation. Ameritech Illinois is not required to provide splitters under any circumstances and, therefore, cannot be required to provide them to CLECs utilizing the UNE-P. The line splitting proposal would require us to order the unbundling of “splitters” as a new UNE, something the FCC has declined to do to date and for which we can find insufficient evidence to satisfy even the “impair” tests of FCC Rule 317 and Section 251(d)(2) of the Act.

Amendatory Order, Docket No. 00-0343, p. 1 (May 1, 2001). Accordingly, Ameritech Illinois is not required under Section 13-801(d)(4) (or any statutory provision) to provide CLECs with splitters on either a stand-alone basis or as part of a “network elements platform.”

CLEC Coalition witness Gillan proposed to eliminate from the Company's proposed UNE-P tariff the restriction on the migration of line sharing arrangements to line splitting arrangements discussed above. (Sch. JPG-1, Section 15, Original Sheet 1.1). Mr. Gillan further proposed adding language to the tariff which would (i) prohibit Ameritech Illinois from "disconnect[ing] any splitter used in combination with a requested network element platform"; and (ii) require Ameritech Illinois to provision a "network element platform being used in combination with the provision of an xDSL service" (i.e., a line sharing arrangement) "in the same interval, and at the same rates, as a network element platform provisioned without an advance data service" (Sch. JPG-1, Section 15, Original Sheet No. 7.1). Mr. Gillan's proposals are directly contrary to decisions of this Commission and the FCC and are unsupported by Section 13-801.

In support of his proposals, Mr. Gillan focused on the provision of Section 13-801(d)(4) which provides that a CLEC may use a network elements platform to provide telecommunications services within the LATA to its end users or payphone service providers "without the requesting telecommunications carrier's provision or use of any other facilities or functionalities." Mr. Gillan argued that this language "would indicate that the splitter functionality should be provided to platform providers by Ameritech Illinois, which is already providing the splitter functionality whenever it is the voice provider." (Joint CLEC Ex. 1, pp. 14-15).

Mr. Gillan's argument erroneously assumes that the splitter is a functionality that exists in the "network elements platform." As previously discussed, the Commission has already ruled that the ILEC-owned splitter is not an unbundled network element and that Ameritech Illinois cannot be required to provide splitters to CLECs "under any circumstances." In reaching its

decision, the Commission expressly rejected an argument, virtually identical to Mr. Gillan's, that a CLEC would be deprived of its entitlement to all features, functionalities and capabilities of unbundled loops, either alone or as part of the UNE-P, if Ameritech Illinois is not required to provide the splitter:

[W]hen AT&T purchases unbundled loops from Ameritech Illinois (either alone or as part of the UNE-P), AT&T automatically obtains the HFPL as part of the loop . . . As noted above, AT&T is not prohibited from utilizing any of the 'features, functions and capabilities' of the loop, because it can lease a loop and provide its own splitter and, therefore, use both the high and low frequency portion of the loop that it leases from Ameritech Illinois. It is undisputed that AT&T can purchase splitters on its own just as easily as Ameritech Illinois from third party vendors.

Order, Docket 00-0393, p. 51 (March 14, 2001).³⁰ Accordingly, Ameritech Illinois cannot be required to provide a splitter as part of a "network elements platform."

Mr. Gillan suggested that the Commission should disregard its decision in Dockets 00-0312/00-0313 and 00-0396, arguing that Section 13-801 eliminated the "'necessary and impair' limitation on Ameritech's obligation to offer network elements (such as local switching or splitter functionality) that may not be specifically required by FCC rules." (Joint CLEC Ex. 1, pp. 10-11). Mr. Gillan's analysis disregards entirely the first sentence of Section 13-801(a), which states that:

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.

Section 261(c) of the 1996 Act provides that

. . . nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as

³⁰ The Commission's decision in this regard is consistent with the FCC's Line Sharing Order, which also recognizes that CLECs are still afforded the full features, functions and capabilities of a loop (including the capability for CLECs to access the HFPL) even if ILECs do not provide the splitter. ILECs are not obligated to provide splitters for Line Sharing or Line Splitting. See Line Sharing Order, ¶¶ 76, 146 and Texas 271 Order, ¶¶ 327, 328. (Am. Ill. Ex. 4.1, pp. 35-36).

the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

(emphasis added). Thus, the General Assembly made it clear in Section 13-801(a) that it did not intend Section 13-801 to be construed and applied in a manner inconsistent with the Federal Telecommunications Act of 1996 or the FCC's implementing orders and regulations.

Application of the necessary and impair standard is required by Section 251(d)(2) of the 1996 Act. Furthermore, the FCC's regulations expressly require that State commissions comply with the "necessary" and "impair" standards, as set forth in 47 CFR § 51.317 "when considering whether to require the unbundling of additional network elements." 47 CFR 51.317(d)(4). Thus, the Commission cannot lawfully disregard the "necessary" and "impair" standards as suggested by Mr. Gillan. As previously discussed, the Commission has already determined that the splitter does not meet the applicable "impair" test of FCC Rule 51.317 and Section 251(d)(2) of the 1996 Act because CLECs can purchase splitters on their own just as easily as Ameritech Illinois from third party vendors. Amendatory Order, Docket No. 00-0393, p. 1. Mr. Gillan presented no evidence whatsoever to support a change in the Commission's determination in this regard. The only evidence with respect to whether splitters meet the "impair" test was presented by Mr. Welch, who testified that unaffiliated CLECs are right now purchasing and installing their own splitters in their collocation cases and providing splitter functionality themselves in ILEC central offices, proving that they are not impaired in their ability to provide this service. (Am. Ill. Ex. 4.1, p. 32).

Furthermore, any decision to impose upon Ameritech Illinois an obligation to allow one CLEC to provide voice service and another CLEC to provide data service on the same facility while using Ameritech Illinois' splitter would be in direct contravention of the FCC's Line Sharing Order. In that Order, the FCC stated unequivocally that (i) "incumbent carriers are not

required to provide line sharing to requesting carriers that are purchasing a combination of network elements platform” and (ii) “in the event that the customer [of the ILEC and data CLEC in a line sharing arrangement] terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service.” Line Sharing Order, ¶ 72.³¹

In support of his position that Ameritech Illinois should be required to migrate an existing line sharing arrangement to a line splitting arrangement, Mr. Gillan further argued that “[i]t would be inherently discriminatory for Ameritech to provide splitter functionality only where it retains a voice monopoly, but deny the same functionality to UNE-P lines.” (Jt. CLEC Ex. 1.0, p. 15). Once again, Mr. Gillan’s argument is directly contrary to the Order in Docket 00-0393, in which the Commission declined to adopt WorldCom’s position that “Ameritech can and should be required to provide splitters to CLECs using UNE-P if not at all times at least in those situations where Ameritech has already deployed splitters in its network and attached those splitters to loops in its network.” Order, Docket 00-0393, p. 46. (Emphasis added). Moreover, the FCC has made it clear that, by “voluntarily” providing the splitter in a line sharing arrangement, an ILEC such as Ameritech Illinois does not, thereby, incur “an obligation to provide all UNE-P carriers with the same option.” Texas 271 Order, ¶ 329. In support of this statement, the FCC expressly rejected a discrimination argument identical to the one made by Mr. Gillan:

Line sharing and line splitting represent two different scenarios under our rules. With respect to line sharing, we stated in Line Sharing Order that Incumbent LECs have discretion to maintain control over the splitter. With respect to line splitting, as described above, we have not imposed any obligation on incumbent LECs to provide access to their

³¹ Consistent with the Line Sharing Order, Ameritech Illinois has entered into contracts that obligate Ameritech Illinois to either convert the HFPL arrangement into a DSL-capable loop or disconnect the service altogether. Any requirement placed on Ameritech Illinois to do otherwise would place Ameritech Illinois in jeopardy of not complying with its previously negotiated interconnection agreements.

splitters. AT&T presents no evidentiary or conceptual basis for concluding that SWBT's practices in these two different contexts somehow amount to "discrimination" against AT&T.

Id.

Furthermore, Ameritech Illinois would encounter a number of technical and operational difficulties if it were required to provide a splitter for CLEC line splitting when Ameritech Illinois is not the underlying voice provider to the end user. (Am. Ill. Ex. 4.2, p. 6). As Mr. Welch explained, a major concern is the question of which CLEC (if not both) would be the customer of record and the implication of "control" over the loop. (Id.). This issue is further complicated by the implications of the answer to that question as it relates to how Ameritech Illinois handles churn when the end user elects to change either their voice or data provider. Additional concerns are associated with Ameritech Illinois' responsibilities for coordinating with multiple CLECs to handle maintenance/repair for voice-related trouble versus data-related trouble without having any relationship with the end user. Additional operational issues are associated with differences in the ordering and provisioning systems related to (i) migrating an existing retail voice service (with an associated telephone number) to a Line Sharing scenario; and (ii) attempting to migrate UNEs (which may not have any associated telephone number), specifically a DSL-capable loop, to a Line Splitting scenario. (Id., pp. 6-7). It is for reasons such as these that the FCC, in its Line Sharing Order, found that the ILEC should only be obligated to coordinate with a single carrier:

We agree with both incumbent and competitive LECs that the unbundling obligations should be defined to permit only a single competitor to share the line with the incumbent. The record indicates significant support for two-carrier line sharing arrangements, with an incumbent LEC providing analog, circuit-switched voice service and a competitive LEC providing data service. It is clear from the record that the complexities involved with implementing line sharing dramatically increase where more than two service providers share a single loop.³²

³² Line Sharing Order, ¶ 74 (emphasis added).

Mr. Gillan also suggested that CLECs will be competitively harmed unless Ameritech Illinois is required to provide splitters as part of a “network elements platform.” (Am. Ill. Ex. 1.0, p. 15). This suggestion is directly contrary to the Commission’s determination that splitters do not meet the “impair” test and is unsupported by any evidence. To the contrary, as previously indicated, the evidence shows that CLECs have the ability to engage in line splitting without the use of the Ameritech Illinois-owned splitter. Mr. Welch presented unrefuted evidence demonstrating (i) that CLECs wishing to provide both voice and data can do so utilizing Line Splitting; (ii) how one CLEC wishing to provide voice service and a separate CLEC wishing to provide data service can engage in Line Splitting, even if they have separate collocation cages; and (iii) how two separate CLECs can share collocation to engage in Line Splitting. (Am. Ill. Ex. 4.0, p. 12, Attach. 1; Am. Ill. Ex. 4.1, p. 38). As Mr. Welch explained, CLECs desiring to provide DSL services using central office-based DSL-capable copper loops must already have equipment such as DSLAMs collocated in the central office. The DSL technology requires the DSLAM to be located in the central office where the copper loop facility terminates. Line Sharing Order, ¶ 67. Since the data CLEC will already have obtained collocation, that collocation area can be utilized for the CLEC-supplied line splitters. Any two CLECs cooperating to engage in line splitting would merely incorporate the splitter ownership issue into their business arrangement. (Am. Ill. Ex. 4.1, pp. 38-39).

Thus, as the Commission concluded in Docket 00-0393:

There is also no support for AT&T’s assertion that it will be competitively harmed unless Ameritech Illinois is required to provide the splitter. Ameritech Illinois is in no better position than AT&T to purchase and install splitters. If AT&T would take this step, it could provide both voice and data service over the UNE-P loop that it has leased from Ameritech Illinois. Significantly, the record establishes that AT&T can serve customers and compete in a variety of other ways, including through FCC-mandated line sharing, or through partnering with a data CLEC that has its own splitters and DSLAMs, or through

the provision of cable modem and/or cable telephony services. In short, it is just as easy for AT&T to purchase and install, or team with a data CLEC that purchases and installs, its own splitters and combine those splitters with the UNEs that make up the UNE-P, as it is for Ameritech Illinois to perform those tasks. If the FCC thought that AT&T's proposed "line splitting" requirement was necessary to the development of competition, it would have ordered ILECs to provide it. The FCC did not do so and we decline to do so at this time.

(Order, Docket 00-0393, p. 55).

For all the reasons discussed, Mr. Gillan's proposal to require Ameritech Illinois to migrate existing line sharing arrangements to line splitting arrangements using an Ameritech Illinois splitter is contrary to orders of this Commission and the FCC and unsupported by Section 13-801.

VII. THE COMPANY'S PROPOSED TARIFFS COMPLY WITH PROVISIONS OF SECTION 13-801(d)(5) RELATED TO PROVISIONING INTERVALS FOR LOOPS AND HFPL

Section 13-801(d)(5) provides, in part, as follows:

Notwithstanding any other provision of this Article, unless and until the Commission establishes by rule or order a different specific maximum time interval, the maximum time intervals shall not exceed 5 business days for the provision of unbundled loops, both digital and analog, 10 business days for the conditioning of unbundled loops or for existing combinations of network elements for an end user that has existing local exchange telecommunications service, and one business day for the provision of the high frequency portion of the loop (line-sharing) for at least 95% of the requests of each requesting telecommunications carrier for each month.

As discussed below, the Company's tariff sheets, as modified in this proceeding, comply with Section 13-801(d)(5).

A. PROVISIONING INTERVALS FOR THE HIGH FREQUENCY PORTION OF THE LOOP

The tariff sheets proposed by the Company in this proceeding contain the following language related to provisioning intervals for the high frequency portion of the loop ("HFPL"):

The following provisioning intervals will be considered tolled pursuant to the process outlined in the Line Share Turn-Up Test.

The provisioning and installation interval for HFPL, where no conditioning is requested (including outside plant rearrangements that involve moving a working service to an alternate pair as the only possible solution to provide a HFPL), on orders for 1-20 loops per Order or per end user location, regardless of length will be 24 hours, or the provisioning and installation interval applicable to the Company's advanced service affiliates HFPL, whichever is less.

(Am. Ill. Ex. 1.0, Attach. 1.1, p. 10; Ill.C.C. No. 20, Part 19, Section 2, 4th Revised Sheet No.

16). With the exception of the first sentence (related to the "tolling" of the provisioning intervals during the Line Share Turn-Up Test), the above-quoted language is unchanged from the Company's currently effective tariff, which was filed in compliance with the Commission's Order issued on March 14, 2001, in Docket 00-0393. Moreover, while the "tolling" language is new, it is fully consistent with the requirements of the Order in Docket 00-0393.

During this proceeding, issues were raised concerning the following aspects of the Company's tariff language for HFPL provisioning: (i) the impact of the "Line Share Turn-Up Test" on the HFPL provisioning interval; (ii) the provisioning interval applicable to HFPL Orders requiring conditioning; and (iii) provisioning intervals on orders for more than 20 loops per end user location. For the reasons to be discussed, the Company's tariff language, as quoted above, is fully consistent with the requirements of Section 13-801(d)(5) and should be approved without modification. As will also be discussed, the evidence supports a change in the currently effective 3 day interval for the provisioning of HFPL with conditioning to 10 days, as expressly permitted by Section 13-801(d)(5).

1. Impact of the "Line Share Turn-Up Test" on the Provisioning Interval for HFPL

The "Line Share Turn-Up Test" procedure, which was approved by the Commission in Docket 00-0393, is a three day process that must be completed prior to the due date for provisioning of the HFPL. (Am. Ill. Ex. 4.0, pp. 5-6; Am. Ill. Ex. 4.1, p. 5). The Line Share

Turn-Up Test was developed in collaboration with CLECs and has been adopted across SBC's 13-state region to simplify processes for CLECs and SBC's ILEC subsidiaries, including Ameritech Illinois. To perform the Line Share Turn-Up Test, a central office technician uses a test set to verify that there are no load coils on the loop using test equipment. If no load coils are detected, cross-connects are installed and verified for accuracy. If all tests prove successful, the technician will complete his/her work by 5:00 p.m. the day prior to the due date, after which the CLEC is free to perform its own brand of testing. (Am. Ill. Ex. 4.0, p. 5; Am. Ill. Ex. 4.1, p. 5).

As indicated above, Ameritech Illinois added a sentence to its tariff expressly stating that the applicable HFPL provisioning interval will be considered tolled pursuant to the approved "Line Share Turn-Up Test" procedure. The Company's proposed tariff language is consistent with Section 13-801(d)(5), which expressly states that the specific provisioning intervals referenced in that Section are applicable "unless and until" the Commission, by a rule or order, establishes a "different specific maximum time interval." In the Covad/Rhythms Links arbitration proceeding (Docket 00-0312/00-0313), the Commission required that Ameritech Illinois perform "acceptance testing" on every HFPL order at least one day in advance of the date on which a line-shared loop is turned over to the CLEC, and directed that the HFPL provisioning intervals be considered "tolled" during such testing. (Order, Docket 00-0312/00-0313, p. 35; Am. Ill. Ex. 4.0, p. 4). In the HFPL/Line Sharing Service tariff proceeding (Docket 00-0393), the Commission affirmed the provisioning intervals ordered in the Covad/Rhythms Arbitration proceeding, and adopted Ameritech Illinois' proposed Line Share Turn-Up Test procedure, which was specifically developed to meet HFPL "acceptance testing" obligations, such as the one created in the Covad/Rhythms Links arbitration proceeding. (Order, Docket 00-0393, p. 75; Am. Ill. Ex. 4.0, p. 4).

The Company's proposed "tolling" language is also supported by the provision of Section 13-801(d)(5) which states that, in measuring Ameritech Illinois' actual performance, the Commission must "ensure that occurrences beyond the control of the incumbent local exchange carrier that adversely affect the incumbent local exchange carrier's performance are excluded when determining actual performance levels." As the Commission recognized in Docket 00-0312/00-0313 (Order, at 35), the ability to meet a one-day provisioning performance interval for proposed HFPL orders is adversely affected in the circumstances in which acceptance testing is required. Specifically, the Commission acknowledged the "impact that acceptance testing may have on provisioning requirements" and modified the conclusions regarding the provisioning intervals to authorize the provisioning interval to be "tolled." (Order, at 40). In fact, for the reasons discussed by Mr. Welch, it is not technically feasible to perform the required Line Share Turn-Up Test if the provisioning interval is 24 hours, because the Turn-Up Test requires Ameritech Illinois to have its work completed by 5:00 p.m. on the day prior to the due date. Unless tolled, the 24 hour provisioning interval would require Ameritech Illinois to immediately complete the HFPL order upon receipt, which is a technical impossibility. (Am. Ill. Ex. 4.1, p. 4). Thus, Section 13-801(d)(5) authorizes inclusion of the tolling provision in Ameritech Illinois' tariff.

As Mr. Welch also explained, the approved HFPL ordering process does not allow a CLEC to choose whether or not to follow the Turn-Up Test procedures. During the 13-state collaborative process, CLECs demanded that the Turn-Up Test be performed on all HFPL Orders. In order to simplify the provisioning process, and thereby reduce costs where possible, the Turn-Up Test is to be performed for every HFPL Order. (Am. Ill. Ex. 4.1, pp. 6-7). Without the opportunity to properly perform the Turn-Up Test procedure, Ameritech Illinois and the

CLECs would not be able to ensure that the HFPL requests are provisioned correctly before the due date. Setting due date expectations that cannot be achieved would only frustrate CLECs and ultimately the end-user customers. (Am. Ill. Ex. 4.1, p. 7).

Focal Communications witness Meldazis proposed eliminating the “tolling” language from the Company’s proposed tariff. (Focal Ex. 1.0, p. 9).³³ In support of his proposal, Mr. Meldazis argued that this docket “is not an efficient proceeding to litigate provisioning intervals.” As discussed above, however, the Commission has previously ruled that Ameritech Illinois must perform the Turn-Up Test on every HFPL order, and that the 24-hour provisioning interval should be “tolled” when that test is being performed. This fact was undisputed. Accordingly, it is Mr. Meldazis, not the Company, who was attempting to relitigate the issue. Moreover, no witness, including Mr. Meldazis, disputed Mr. Welch’s testimony that it would not be technically feasible to perform the required Line Share Turn-Up Test and provision the HFPL within 24 hours. Accordingly, Mr. Meldazis’ proposal should be rejected.

2. Provisioning Interval for HFPL Orders Requiring Conditioning

Staff witness McClerren proposed to eliminate from the Company’s currently effective tariff language indicating that the 24-hour provisioning interval for HFPL applies only “where no conditioning is requested . . .”³⁴ In support of his proposal, Mr. McClerren asserted that Section 13-801(d)(5) “contains no language regarding consideration of loop conditioning . . .” (Staff Ex. 4.0, pp. 4-5). Mr. McClerren’s assertion is incorrect. Section 13-801(d)(5) expressly authorizes an interval of “10 business days for the conditioning of unbundled loops.” There is no basis for Mr. McClerren’s apparent position that this language should not apply to the provisioning of the

³³ As shown on Schedule JPG-1, CLEC Coalition witness Gillan also proposed to eliminate the “tolling” language from the Company’s tariff. Mr. Gillan, however, presented no testimony in support of that proposal.

high frequency portion of the loop. Loop conditioning refers to the process whereby inhibitors (including load coils, repeaters and excessive bridged tap) that could degrade or prohibit an xDSL service are removed from a copper loop in the outside plant environment. (Am. Ill. Ex. 4.1, p. 16). There is no difference between conditioning a loop for a CLEC to use the HFPL and conditioning a loop for a CLEC to provide xDSL service over a stand-alone loop. In both cases, the loop will receive the same treatment. (Id., p. 17).

Furthermore, as Sprint witness Maples correctly noted, the Commission in Docket 00-0393 approved a 3-day interval for the provision of HFPL with conditioning.³⁵ As previously discussed, the one day interval for HFPL referenced in Section 13-801(d)(5) is subject to the establishment by the Commission of a “different specific maximum time interval.” Accordingly, even if the Commission were to conclude that the language of Section 13-801(d)(5) referring to a 10-day interval for loop conditioning does not apply to conditioning of the high frequency portion of the loop (and it clearly does), the tariff language indicating that the 24-hour interval applies only when “no conditioning is requested” is consistent with the Order in Docket 00-0393 and, therefore, complies with the “unless and until” clause of Section 13-801(d)(5). Accordingly, the proposals of Mr. McClerren and Mr. Gillan to remove that language from the Company’s tariff should be rejected.

Mr. McClerren opined that “the burden is on Ameritech to establish” that conditioning is a “variable” which “should be taken into account for the provisioning of HFPL.” (Staff Ex. 4.0, pp. 4-5). Ameritech Illinois has more than met any burden it may have in this regard. As

³⁴ CLEC Coalition witness Gillan made the same proposal, as indicated by the proposed tariff revisions shown in Schedule JPG-1. As in the case of his proposal to eliminate the “tolling” language, however, Mr. Gillan presented no testimony in support of his proposal.

³⁵ The approved interval of 3 days for the provision of HFPL with conditioning. The Company did not propose any revisions to this tariff sheet as part of the tariff filing initiating this proceeding and, therefore, that tariff sheet is not included in Attachments 1.1 and 1.2 to Mr. Wardin’s Direct Testimony. For the reasons discussed below,

discussed above, Section 13-801(d)(5) and the Order in Docket 00-0393 establish that the maximum interval for the provisioning of HFPL with conditioning should be longer than the maximum interval for the provisioning of HFPL without conditioning. Furthermore, the Company presented extensive evidence demonstrating that the interval for the provisioning of HFPL with conditioning should be increased from 3 days to 10 days, the interval authorized in Section 13-801(d)(5).

As Mr. Welch testified, the conditioning process is labor intensive, time consuming and very detailed. The process requires a minimum of three phases: design, construction and permanent records update. (Am. Ill. Ex. 4.1, pp. 17-22). The work required during each phase, as described by Mr. Welch (Id.), is detailed in Attachment 2 to this brief. As demonstrated by the description in Attachment 2, conditioning copper for digital service is not a quick or easy process and requires a coordinated effort between multiple ILEC departments and often contractors/vendors. (Id., pp. 22-23). While it may be possible to expedite the conditioning of some loops to meet a 3-day interval, there are many circumstances that make it unreasonable to require three-day conditioning. For example, a customer's loop could be of such a length that it would require removing three load coils. In addition, a customer's loop could have excessive bridged tap in multiple locations, showing up at multiple terminals, all of which also would have to be removed.

Regardless of the type of conditioning performed on a loop, conditioning is a long and tedious process that involves many different departments in Ameritech Illinois all working together to ensure the loop is conditioned efficiently. (Am. Ill. Ex. 4.1, p. 23). Depending on the number of locations involved, site conditions and weather conditions, the time required to

however, the Commission should authorize the Company to amend the tariff sheet by increasing the 3 day interval to 10 days.

condition a loop can sometimes be ten days or longer. (Am. Ill. Ex. 4.1, pp. 22-23). To the Company's knowledge, no other state commission in the 13-state SBC region has established a requirement that the ILEC perform conditioning in any time interval shorter than ten days. (Id., p. 24).

Imposition of a provisioning interval of less than ten days for loop conditioning could result in a number of negative impacts. For example, Ameritech Illinois' outside plant engineers would have to expedite work orders (provide a "wet copy") that might not have enough completed information for construction crews to enable them to determine exactly how much work is necessary. Once the "wet copy" is sent to Ameritech Illinois construction crews, they would have to call in contractors to dig pits, place shoring in the pits, pump manholes, etc., doing all of these chores on an "rush" basis, all of which would definitely increase Ameritech Illinois' contractor costs. Numerous Ameritech Illinois construction crews would then have to be dispatched to begin the work of removing load coil or excessive bridged tap at the same time at all the necessary locations, in order to meet the shorter conditioning interval. Finally, there would be a degree of CLEC and/or end user frustration, as there is a distinct possibility that there could be instances where it simply would not be technically feasible for Ameritech Illinois to condition a loop within a three-day time period. (Am. Ill. Ex. 4.1, p. 24).

For all the reasons discussed, the Commission should adopt the 10-day provisioning interval for all loops, including those used in provisioning HFPL orders, where conditioning is requested by the CLEC as authorized by Section 13-801(d)(5). The Commission should authorize Ameritech Illinois to revise its tariff accordingly. (Am. Ill. Ex. 4.1, p. 25).

3. Application of 24 hour HFPL Provisioning Interval to Orders of 1 to 20 Loops Per Order on End User Location

The language of the Company's currently effective tariff, which was filed in compliance with the Order in Docket 00-0393, indicates that the 24-hour interval for HFPL without conditioning applies to orders of 1 to 20 loops per order or end user location. Mr. Gillan, Mr. McClerren, and Mr. Meldazis propose to remove this language so as to require the Company to meet orders for HFPL provisioning within 24 hours without regard to the number of loops per order or end user location. As in the case of his proposal to remove any reference to a longer interval for the provisioning of HFPL with conditioning, Mr. McClerren asserted that Ameritech Illinois has the "burden" of justifying the 1 to 20 loops and per location variables. Again, Ameritech Illinois more than met any "burden" that it may have to support the currently effective tariff.

Initially, it should be emphasized that the provisioning of HFPL orders is not a simple process. The "normal" provisioning process includes the following steps:

-  The LSR (Service Order) is received from the CLEC and entered into Ameritech Illinois' service order system.
-  The Service Order is sent to the Loop Assignment Center, where the loop is checked for DSL-capability. If the loop is DSL-capable the service order flows through. If the loop is not DSL-capable then the system checks for the possibility of a Line and Station Transfer ("LST").
-  The LFACS database will examine the loop to see if the pair assigned to the telephone number is DSL-capable. If there are no spare facilities, Ameritech Illinois will abide by the FMOD policy in the construction of UNEs.
-  Information is entered into LFACS and the order is sent to the SWITCH system for designating the CLECs Connecting Facility Assignment (CFA).
-  The CFA is entered into the SWITCH system, and if the CLEC requests an ILEC splitter port, SWITCH assigns a port.
-  SWITCH also assigns tie cable pairs and delivers all the information to the CO technician through a system called Frame Order Management System (FOMS).
-  The central office technician runs all cross-connections according to the FOMS document.

- ~~SES~~ The CO technician performs a "tone" test to verify the accuracy of the cross-connects on the distribution frame between the splitter and a CLEC data CFA.
- ~~SES~~ Upon successful completion of placing all cross-connections and testing of the HFPL order, the CO technician enters the completion status in the FOMS system.
- ~~SES~~ The FOMS completion triggers the Service Order completion information if no fieldwork is indicated on the order.
- ~~SES~~ In most cases, the CLEC can start testing its loop at 5:00 P.M. on the day prior to the due date.
- ~~SES~~ Once the CLEC has performed its own testing, if the CLEC suspects there is a lack of continuity on the loop then the CLEC calls the Ameritech Illinois' Local Operations Center (LOC). Tests are conducted and the order handled outside of the "normal" repair process.
- ~~SES~~ A LOC technician coordinates with the CLEC until the order is satisfactorily completed, or if conditioning were required it is up to the CLEC to determine the next steps.

(Am. Ill. Ex. 4.1, pp. 4-5).

It is unreasonable to expect that Ameritech Illinois central office personnel, especially those personnel in central offices that are rarely staffed, can provision an unlimited number of HFPL loops at any given time. The circumstances in which Ameritech Illinois receives more than 20 loops at a single time are beyond the Company's control. (Am. Ill. Ex. 4.1, p. 7).

Additionally, in those situations where Line and Station Transfers (LSTs) are required to complete an HFPL order, the difficulty of meeting a 24-hour provisioning interval is significantly increased, especially when multiple loops must be provisioned on a single order. The LST is the process used to move a working service from an existing loop to a spare loop, and is sometimes performed in order to avoid the conditioning process or to avoid digital loop carrier (DLC). For example, an end-user's loop could be served via a DLC system or a copper pair with load coils. If other DSL-capable copper facilities are available over which to provision

the loop, a technician would be dispatched to perform an LST moving the end-users' service off the DLC or loaded pair to the spare, non-loaded xDSL-capable loop. (Am. Ill. Ex. 4.1, p. 8).

It is not technically feasible for an LST to be performed within a 24-Hour provisioning interval, due to the necessary scheduling and coordination of central office and field personnel. Requiring a field technician to be dispatched is far more costly and complex than having a central office technician wire cross-connects. In most cases, the LST procedure can be performed within the three day provisioning interval which corresponds with performance of the Line Share Turn-Up Test, as proposed in the tariff. In the event that a CLEC orders multiple HFPL loops with multiple end-user locations, however, Ameritech Illinois technicians could be faced with performing multiple LSTs at each location. (Am. Ill. Ex. 4.1, p. 9). For these reasons, it is appropriate to recognize longer time intervals for the provisioning of HFPL orders which exceed 20 loops per order or end user location.

B. UNE LOOP PROVISIONING INTERVALS

Section 13-801(d)(5) states that “unless and until the Commission establishes by rule or order a different specific maximum time, the maximum time intervals shall not exceed 5 days for the provision of unbundled loops, both digital and analog . . .” As this language indicates, and as Staff witness McClerren appeared to acknowledge³⁶, intervals for loops different than the 5 day interval expressly identified in Section 13-801(d)(5) are allowed under the “unless or until” clause of that Section if those intervals have previously been established by rule or order of the Commission.

Ameritech Illinois' provisioning Business Rules contain intervals of 3 days for 1 to 10 loops, 7 days for 11 to 20 loops, and 10 days for more than 20 loops. The intervals were

established pursuant to the Commission's Order approving the SBC/Ameritech merger in Docket 98-0555 (the "Merger Order"). Specifically, in Condition 30 of the Merger Order, the Commission directed Ameritech Illinois to implement performance measures and standards that SBC had agreed to implement in Texas, and to participate in further collaborative proceedings with Illinois CLECs to discuss possible changes to those measures. Ameritech Illinois implemented the 122 performance measures required by Condition 30 in August of 2000. The performance measures included provisioning intervals of 3 days for one to 10 UNE loops, 7 days for 11 to 20 loops and 10 days for more than 20 loops. (Am. Ill. Ex. 4.1, p. 12; Am. Ill. Ex. 10.0, pp. 3-4). These intervals were also included in the performance measures agreed to by Ameritech Illinois and CLECs as part of the collaborative process conducted pursuant to the Merger Order (Id.) and remain in effect following the six months review of performance measures completed in September of 2001. (Am. Ill. Ex. 10.0, p. 5).

In his Rebuttal Testimony, Staff witness McClerren noted that the portion of the performance measures tariff (Ill.C.C. No. 20, Part 2, Section 10) which contains the Business Rules for performance measurement number 56 ("PM56") applicable to UNE loops does not set forth any number of days intervals for the provisioning of loops. (Staff Ex. 4.1, pp. 3-4). Mr. McClerren concluded, based upon his observation, that the parties to the collaborative process changed the performance measure for UNE loops provisioning to a "parity based" measure in Illinois, which, according to Mr. McClerren, means that "whatever time interval it took the retail side of Ameritech to perform the function, the wholesale side had to perform the measure in statistically the same manner to avoid remedies." (Id., p. 4).

³⁶ Mr. McClerren proposed tariff language states, in part, that the "service installation interval for each specific UNE loop shall be provided consistent with Section 13-801(d)(5) of the PUA or existing Commission orders." (Staff Ex. 4.0, p. 9).

As Mr. Ehr explained, however, the Illinois collaborative process did not eliminate the standard intervals for loop provisioning of 3, 7, and 10 days. As a result of the collaborative process, the PM56 performance standard was modified to measure performance provided to Ameritech's wholesale customers in comparison to performance provided for Ameritech's retail customers on similar products. Since PM56 measures the percentage of time that UNE Loops are provisioned within "X" days, with "X" days being the standard interval, the parity comparison is to the percentage of time that the corresponding retail product is provisioned within "X" days, with "X" being the corresponding standard interval for the retail product. Accordingly, the standard intervals for UNE loops documented in the Business Rules for PM 56 are an integral part of (i) the performance measure calculations, and (ii) Ameritech's business process for provisioning of UNE loops. (Am. Ill. Ex. 10.0, pp. 6-7).

As Mr. Ehr also explained, the absence of a reference to the 3, 7, and 10 day intervals in the currently effective per tariff sheets applicable to PM 56 was the result of an administrative error.³⁷ (Am. Ill. Ex. 10.0, p. 7). The Company plans to file tariff sheets which reflect the results of the recently completed six month performance measure review. At that time, the Company will include a correction to the tariff sheets setting forth Business Rules for PM 56 to clearly set forth the standard of 3, 7, and 10 day intervals. (Am. Ill. Ex. 10.0, p. 7). Because those intervals have been established pursuant to the Commission Order in Docket 98-0555, they satisfy the requirements of Section 13-801(d)(5) for the reasons previously discussed. Accordingly, no additional revisions to the Company's tariff are needed.

³⁷ Those tariff sheets were part of a group of tariff sheets which were filed on March 7, 2001, for the purpose of updating the tariff to document the implementation of parity comparisons for the product-specific disaggregations of PM 56. In preparing these revised tariff sheets, the numbers of days standard intervals were inadvertently omitted from the sheets applicable to Business Rules for PM 56. (Am. Ill. Ex. 10.0, p. 7).

VIII. THE COMPANY'S COLLOCATION TARIFF, AS REVISED, COMPLIES WITH THE COLLOCATION AND CROSS-CONNECT REQUIREMENTS OF SECTION 13-801(c)

A. COLLOCATION

Ameritech Illinois' currently effective Collocation Tariff (Ill.C.C. No. 20, Part 23) was approved by the Commission in its Order in Docket 99-0615. In this proceeding, the Company is proposing certain changes to paragraph 10a.1, on 4th Revised Sheet No. 1.2 of that tariff, to ensure that it complies with the collocation requirements of Section 13-801(c), which states, in relevant part, that an incumbent local exchange carrier

shall provide for physical or virtual collocation of any type of equipment for interconnection or access to network elements at the premises of the incumbent local exchange carrier on just, reasonable and non-discriminatory rates. The equipment shall include, but is not limited to, optical transmission equipment, multiplexers, remote switching modules, and cross-connects between the facilities or equipment of other collocated carriers. The equipment shall also include microwave transmission facilities on the exterior and interior of the incumbent local exchange carrier's premises used for interconnection to, or for access to network elements of, the incumbent local exchange carrier or a collocated carrier, unless the incumbent local exchange carrier demonstrates to the Commission that it is not practical due to technical reasons or space limitations.

220 ILCS 5/13-801(c).

Paragraph 10a.1, with the proposed revisions identified in legislative style, states as follows:

Requesting Carrier may physically or virtually collocate any type of equipment necessary for interconnection with the Company as required by 47USC§251(c)(2) or access to the Company's unbundled network elements as required by 47USC§251(c)(3) and the rules and regulations of the Federal Communications Commission, and to the extent not inconsistent with the foregoing, the IL PUA and the rules and regulations of the Illinois Commerce Commission. The equipment shall include, but is not limited to, optical transmission equipment, multiplexers, remote switching modules, and microwave transmission facilities used for interconnection to, or for access to the Company's unbundled network elements. Requesting Carrier shall not collocate equipment that is not necessary for either such interconnection or such access to the Company's unbundled network elements except as the company may, on a non-discriminating basis, voluntarily permit.~~47USC§251(c)(2) or access to the Company's unbundled network elements as required by 47USC§251(c)(3).~~ Requesting Carrier shall not collocate equipment that is

~~not necessary for either such interconnection or such access to the Company's unbundled elements.~~

(Am. Ill. Ex. 1.0, Attach. 2, p. 81). As indicated, Paragraph 10.a.1. is being revised to explicitly identify specific types of equipment that may be collocated and to clearly provide for "physical and virtual collocation" of "any type of necessary equipment." These modifications mirror the language of Section 13-801(c), while maintaining the federal standard that the equipment be "necessary" for interconnection or access to network elements. (Am. Ill. Ex. 5.0, p. 4). In accordance with Section 13-801(c), Paragraph 10.a.1. has also been modified to include language regarding microwave transmission facilities used for interconnection or access to Ameritech's unbundled network elements. (Id.) The tariff language also confirms that the Company may voluntarily permit, on a non-discriminatory basis, the collocation of equipment that is not necessary for interconnection or access to UNEs. (Id.). With the proposed modifications, the tariff conforms to the requirements of both state and federal law.

Staff witness Omoniyi proposed that the word "necessary" be removed from the description of the equipment for which Ameritech Illinois is required to provide collocation. In support of his proposal, Mr. Omoniyi argued that the term "necessary" is "difficult or impossible to adequately define." (Staff Ex. 3.0, p. 6). As a result, Mr. Omoniyi contended, inclusion of the word "necessary" could lead to "disputes" with "potential for ensuing litigation." (Id.).³⁸ For the reasons discussed below, Mr. Omoniyi's proposal should be rejected.

Initially, it should be emphasized that the "necessary" standard is already included in the language of the currently effective collocation tariff which the Commission approved in Docket 99-0615. That tariff language is consistent with the black letter requirement of Section 251(c)(6)

³⁸ CLEC witness Gillan also proposed tariff language reflecting removal of the word "necessary" from paragraph 10a.1. (Jt. CLEC Ex. 1, Sch. JPG-1). Unlike Mr. Omoniyi, however, Mr. Gillan presented no testimony in support of his proposal.

of the Act, which expressly limits the scope of the collocation requirement to “equipment necessary for interconnection or access to unbundled network elements.” 47 U.S.C. § 251(c)(6). The word “necessary” is a critical part of this provision, as it confines the CLEC’s right to intrude on ILEC-owned property by establishing a limiting standard on what type of equipment may be collocated. See GTE Service Corp. v. FCC, 205 F.3d 416, 423 (D.C. Cir. 2000). As the FCC recently concluded, Congress used the term “necessary” to balance the need to “promote competition and innovation through the grant of collocation rights” with the need to “protect an incumbent LEC’s property interests against unwarranted intrusion” and prevent an “unnecessary taking of private property”; in other words, the term “necessary” is included in the statute because it “balances public and private interests.” (Deployment of Wireline Services Offering Advanced Telecommunications Capability, Fourth Order and Report, CC Docket No. 98-147, at ¶¶ 20-21 (rel. Aug. 8, 2001) (“Collocation Remand Order”) (emphasis in original); GTE Service, 205 F.3d at 423).

In support of his proposal to remove the word “necessary” from the Company’s approved collocation tariff, Mr. Omoniyi asserted that the word “necessary” does not appear in Section 13-801(c). (Staff Ex. 3.1, p. 3). As previously discussed, however, Section 13-801(a) states that Section 13-801 adopts “requirements contemplated by, but not inconsistent with, Section 261(c)” of the 1996 Act. 220 ILCS 5/13-801(a). Section 261(c) of the 1996 Act, in turn, authorizes only such state regulations as are consistent with the 1996 Act and the FCC’s regulations. Thus, the General Assembly made clear in Section 13-801(a) that it did not intend anything in Section 13-801 to be inconsistent with the 1996 Act. Because the 1996 Act itself establishes the “necessary” requirement for collocation equipment, the General Assembly did not intend Section

13-801(c) to foreclose such a requirement, as doing so would by definition be inconsistent with the 1996 Act.

Moreover, even if Section 13-801(c) were somehow interpreted to remove the “necessary” requirement of Section 251(c)(6) (and it should not be), it would be preempted. As the Supreme Court has explained, where Congress has made a specific “policy judgment” as to how the “law’s congressionally mandated objectives” would “best be promoted,” the states are not at liberty to deviate from those “deliberately imposed” federal prerogatives. Geier, 529 U.S. at 872-73, 881 (conflicts between state and federal law that “prevent or frustrate the accomplishment of a federal objective . . . are ‘nullified’ by the Supremacy Clause”). Based on these principles, the federal district court in Wisconsin recently reversed an Order of the Public Service Commission of Wisconsin that purported to rely on state authority to “go beyond” the 1996 Act and adopt an impermissibly lax interpretation of “necessary”:

Defendants do not deny that the court of appeals rejected the FCC’s definition of necessary that the Public Service Commission used in deciding the collocation issue between Ameritech Wisconsin and MCI. They argue that the GTE decision is essentially irrelevant because the Telecommunications Act authorizes state commissions to impose requirements that go beyond those mandated by the Act. Although defendants are correct that the Act gives this authority to state commissioners, § 252 (b)(4), and that state commissions have the authority to create or enforce their own regulations, §§ 252 (d)(3), 252 (e)(3), 261 (b) and (c), they gloss over the corollary to this proposition, which is that any requirements that state commissions impose must be consistent with the Act. In this instance, the state commission has imposed a requirement upon Ameritech Wisconsin, using a standard that has been held to be improper. Such a requirement cannot be said to be consistent with the Act. Therefore, the state commission’s ruling cannot stand.

Wisconsin Bell, Inc. v. Public Serv. Comm’n of Wisconsin, Opinion and Order, No. 98-C-0011-C, slip. Op. at 21 (W.D. Wisc., Oct. 17, 2001) (emphasis added). If failing to give adequate weight to the “necessary” requirement violates the plain language of the 1996 Act, then ignoring the “necessary” requirement altogether would violate the 1996 Act even more egregiously.

Accordingly, there is no basis for removing the term “necessary” from the definition of the Company’s collocation obligation approved in Docket 99-0615.

There is also no basis for Mr. Omoniyi’s assertion that the term “necessary” is difficult to define. In fact, the FCC has defined the term in great detail, specifically in the context of determining the types of equipment that can be collocated under Section 251(c)(6) of the 1996 Act. The FCC determined:

[W]e now conclude that equipment is ‘necessary’ for interconnection or access to unbundled network elements within the meaning of the Section 251(c)(6) if an inability to deploy that equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements.

Collocation Remand Order, ¶ 21. As Ms. Bates testified, the term “necessary,” as used in paragraph 10a.1 of the Collocation Tariff, should be deemed to incorporate the FCC’s definition. The FCC’s definition of the term “necessary” has been incorporated into the SBC 13-state generic interconnection agreement, the collocation provisions of which are included in the record as Schedule 1 to Ms. Bates’ Rebuttal Testimony. (Am. Ill. Ex. 5.1). The Company does not believe it is necessary to amend the tariff language to expressly include the FCC’s definition. Ameritech Illinois would not, however, object to adding such language to the tariff to address Staff’s concerns about the definition. (Id., p. 4).

Mr. Omoniyi’s suggestion that the word “necessary” should be excluded from the tariff because it could lead to “litigation” is also unfounded. The tariff language which includes the word “necessary” has been in effect since September 16, 2001. (Tr. 695-96). Mr. Omoniyi was unaware of any litigation having been initiated in Illinois since that date over the issue of whether equipment meets the “necessary” standard as it relates to a CLEC’s request to Ameritech Illinois for collocation. (Tr. 696-97). In any event, the potential for litigation

regarding application of the federally mandated “necessary” standard does not lawfully support a decision to disregard that standard.

Mr. Omoniyi also called into question the proposed tariff language indicating that the Company “may, on a non-discriminatory basis, voluntarily permit” collocation of equipment that does not meet the “necessary” standard. (Staff Ex. 3.0, pp. 6-7). Mr. Omoniyi suggested that it would be difficult for Ameritech Illinois to ensure that its “case-by-case decisions regarding the granting of voluntary permissions are non-discriminatory.” (*Id.*, p. 7). The Company disagrees with Mr. Omoniyi’s analysis. As Ms. Bates explained, Ameritech Illinois permits the collocation of such voluntarily allowed equipment according to specific criteria which is publicly available for viewing for all CLECs on SBC/Ameritech’s website. (Am. Ill. Ex. 5.1, p. 7). In addition, the website offers the specific language for non-necessary equipment, which is fully consistent with the FCC’s Fourth Report and Order and appears in Sections 6.7 of the 13-state agreement. (Am. Ill. Ex. 5.1, Sch. 1). While Ameritech Illinois does not believe that it is necessary to do so, the Company would not object to the inclusion of additional tariff language mirroring the language of Section 6.7, which states as follows:

Ancillary Equipment or facilities do not provide telecommunications services and are not “necessary” for interconnection or access to unbundled network elements. **SBC-13STATE** voluntarily allows the Collocator to place in its Physical Collocation space certain ancillary Equipment or facilities solely to support and be used with Equipment that the Collocator has legitimately collocated in the same premises. Solely for this purpose, cross-connect and other simple frames, portable test equipment, equipment racks and bays, and potential other ancillary equipment or facilities may be placed in **SBC-13STATE**’s premises, on a non-discriminatory basis, only if **SBC13-STATE** agrees to such placement.

Mr. Omoniyi also expressed concern that Ameritech Illinois’ proposed tariff does not “specifically provide for the collocation of ‘multifunctional equipment’.” (Staff Ex. 3.0, p. 7). “Multifunctional equipment” is equipment that combines one or more functions necessary for

interconnection or access to unbundled network elements, with one or more additional functions that are not “necessary” for these purposes. Such additional functions include, but are not limited to, switching and enhanced service functions. (Am. Ill. Ex. 5.1, p. 5).

Mr. Omoniyi’s concern is not justified. As he acknowledged, Section 13-801(c) does not specifically identify “multifunctional equipment” in its list of equipment subject to collocation. (Staff Ex. 3.0, p. 8). The FCC, however, has ruled that the “necessary” standard should be applied in a manner which allows for the collocation of multifunctional equipment “if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, are to provide the requesting carrier with ‘equal in quality’ interconnection or ‘nondiscriminatory access’ to one or more unbundled network elements.” Collocation Remand Order, ¶ 21. (Am. Ill. Ex. 5.1, p. 5). Similarly, Mr. Omoniyi states that collocation of multifunctional equipment should be allowed if “its primary purpose and function is for interconnection or access to UNEs.” (Staff Ex. 3.0, p. 8). Mr. Omoniyi’s position appear to be consistent with the FCC’s interpretation of the “necessary” standard in the context of multifunctional equipment. (Am. Ill. Ex. 3.0, p. 6).

Because Ameritech Illinois’ collocation tariff incorporates the FCC’s “necessary” standard, it should be interpreted to allow for collocation of multifunctional equipment in accordance with the FCC’s stated policy which, as indicated above, appears to be consistent with Staff’s position. Nonetheless, in the event that the Commission concludes that the Company’s tariff should be revised to add clarity on this point, Ameritech Illinois would not object to the addition of language narrowing Section 6.6 of the SBC 13-state agreement, which incorporates the FCC’s policy on multifunctional equipment. (Am. Ill. Ex. 5.1, pp. 6-7, Sch. 1).

B. CROSS-CONNECTS

Section 13-801(c) provides that Ameritech Illinois “allow, and provide for, the most reasonably direct and efficient cross connects that are consistent with safety and network reliability standards, between the facilities of collocated carriers.” 220 ILCS 5/13-801(c). The Section further provides that, consistent with safety and reliability standards, Ameritech Illinois “shall also allow, and provide for, cross connects between a non-collocated carrier’s network elements platform, or a non-collocated telecommunications carrier’s transport facilities, and the facilities of any collocated carrier.” *Id.* Ameritech Illinois’ tariffs comply with each of these cross-connects requirements.

1. Direct Cross-Connects Between Facilities Of Collocated Carriers

Ameritech Illinois allows for direct cross-connections between the facilities of collocated carriers under the “Carrier Cross-Connect Service for Interconnection” (“CCCSI”), the terms and conditions of which are contained in Paragraph 5 of Sheet No. 11 of the Company’s Collocation Tariff (Ill.C.C. 20, Part 23, Section 4). The Collocation Tariff, including Paragraph 5, was approved by the Commission in its Order dated August 15, 2000 in Docket 99-0615, and is currently in effect. (Am. Ill. Ex. 5.0, p. 5; Am. Ill. Ex. 5.1, p. 9; Am. Ill. Ex. 1.0, Attach. 1.2, p. 85). In accordance with Section 13-801(c), the Company has added language to Paragraph 5 to make it clear that direct cross-connections between collocated carriers will be provided “using the most reasonably direct and efficient connections that are consistent with safety and network reliability standards.” (*Id.*).

Staff witness Omoniyi objected to the provision of Paragraph 5 which states that if the Requesting Carrier (as opposed to Ameritech Illinois) provides the CCCSI “such CCCSI (i) must, at a minimum, comply in all respects with the Company's technical and engineering requirements and (ii) shall require Requesting Carrier to lease the Company's cable rack and/or

riser space to carry the connecting transport facility.” (Staff Ex. 3.0, pp. 11-12). This provision is contained in the Collocation Tariff which the Company filed, and which the Commission approved, in Docket 99-0615. (Am. Ill. Ex. 5.1, p. 10). The appropriate time for Staff to have raised its concerns would have been in that docket, the entire focus of which was the Company’s collocation tariff, and not this docket, the purpose of which is to determine whether the revisions proposed by the Company to its wholesale tariff adequately comply with the requirements of Section 13-801.

Moreover, the tariff language is fully consistent with the requirements of Section 13-801(c) which, as Mr. Omoniyi correctly noted, “provides that cross-connections should be accomplished ‘consistent with safety and network reliability standards.’” (Staff Ex. 3.0, pp. 11-12). In order to ensure that a direct cross-connection installed by a requesting carrier or its third party vendor meets “safety and reliability standards,” it is essential that the work performed by that carrier or vendor fully comply with the Company’s technical and engineering requirements. (Id., pp. 12-13). These are the same standards with which Ameritech Illinois, or its vendors, must comply in performing work in Ameritech Illinois central offices. (Id., p. 12). Similarly, to ensure safety and reliability, it is essential that cabling in a central office, whether a CLEC’s or the ILEC’s, be installed using racking and/or user space to reach its destination. (Am. Ill. Ex. 5.1, p. 13). Accordingly, the requirement that a requesting carrier or its third party vendor lease cable rack and /or riser space, is also fully consistent with Section 13-801(c).

2. Cross-Connections Between Non-Collocated Carriers And The Facilities Of Collocated Carriers

Ameritech Illinois’ currently effective collocation tariff permits CLECs to connect to Ameritech Illinois-provided services including switched access services and/or special access services under the provisions of Ill.C.C. No. 21, Section 6 and 7, via Ameritech Cross-

Connection Service (“ACCS”). (Ill.C.C. No. 20, Part 23, Section 9, Sheet No. 9.2; Am. Ill. Ex. 1.0, Attach. 1.2, p. 83). As Ms. Bates testified, this tariff language provides for the connection between a non-collocated carrier’s transport and the facilities of any collocated carrier. (Am. Ill. Ex. 5.1, p. 11).

Ameritech Illinois’ proposed tariffs also include a provision responsive to the language of Section 13-801(c) which states that cross-connections be allowed, and provided for, between a “noncollocated telecommunications carrier's network elements platform . . . and the facilities of any collocated carrier.” As Mr. Welch explained, this language should be interpreted as requiring Ameritech Illinois to accept a non-collocated CLEC’s request to disaggregate its UNE-P arrangement (which consists of a combination of a loop and unbundled local switching with shared transport) and cross-connect the switch port to a collocated carrier’s space for Line Splitting. (Am. Ill. Ex. 4.1, p. 31). The reason that a CLEC would request such an arrangement is to partner with a collocated CLEC which has a DSLAM in order to engage in line splitting. (Id.). As previously discussed, in accordance with Section 13-801(c), Ameritech Illinois’ proposed UNE-P tariff contains language which makes it clear that a non-collocated carrier with UNE-P may request Ameritech Illinois to disaggregate the CLEC’s platform arrangement and, provided that the loop is DSL capable, have the UNE xDSL capable loop and ULS-ST terminated to another carrier’s collocation arrangement. (Am. Ill. Ex. 4.0, pp. 12-13; Am. Ill. Ex. 1.0, Attach. 1.2, pp. 18-19 (Section 15, 4th Rev. Sheet No. 1)).

It should be noted that it is not technically possible to comply with the literal language of Section 13-801(c) because it is not possible in a Line Splitting arrangement to cross-connect the UNE elements which make up the platform to another carrier’s collocation arrangement without first disaggregating the platform. (Am. Ill. Ex. 4.0, pp. 12-13). For this reason, the CLEC

Coalition's proposal to adopt tariff language repeating the language of Section 13-801(c) verbatim should be rejected. (Jt. CLEC Ex. 1.0, Sch. JPG-1, Part 23, Section 4, 3rd Rev. Sheet No. 11). As discussed, the Company's proposed tariff is reasonable and complies with the clear intent of Section 13-801(c).

C. MISCELLANEOUS CLEC PROPOSED CHANGES TO THE COLLOCATION TARIFF

Novacon witness Walker proposed that the Collocation Tariff be revised to require cross connections for Dark Fiber Loop and Dark Fiber Transport. (Novacon Ex. 1, pp. 15-16). Mr. Walker, however, provided no support for this proposal. As Ms. Bates pointed out, an ILEC is required under the FCC's rules to provide dark fiber service "only in the limited context of direct connects between collocated carriers." (Am. Ill. Ex. 5.1, p. 15). Mr. Walker's proposed revision should, therefore, be rejected.

As shown in Schedule JPG-1, the CLEC Coalition proposed a number of changes to the previously approved language of the Collocation Tariff, including the following:

- ?? Deleting approved language of the word "only" on Tariff ICC 20, Part 23, Section 4, Sheet 1, General 1.
- ?? Inserting the word "Level 1" and deleting approved language for standards "TR EOP 000063" on Tariff ICC 20, Part 23, Section 4, Sheet 1.1, General 2.
- ?? Inserting the words "commission approved" on Tariff ICC 20, Part 23, Section 4, Sheet 1.1, General 3.
- ?? Deleting approved language for "and the Company's safety standards as shown in 10. below" on Tariff ICC 20, Part 23, Section 4, Sheet 1.1, General 4.
- ?? Inserting the words "NEBS Level 1 standards" and deleting "requirements in 10. Below" on Tariff ICC 20, Part 23, Section 4, Sheet 1.1, General 5.
- ?? Inserting the word "Level 1" and deleting approved language for standards "TR EOP 000063" on Tariff ICC 20, Part 23, Section 4, Sheet 1.1, General 6.
- ?? Inserting the word "Level 1" and deleting approved language for standards "TR EOP 000063" on Tariff ICC 20, Part 23, Section 4, Sheet 1.1, General 7.

?? Inserting “RAC” “described in Section 1” and deleting approved language “BFR” on Tariff ICC 20, Part 23, Section 4, Sheet 9.2, C.2.

The CLEC Coalition presented no testimony supporting these proposed tariff revisions. Moreover, all of the tariff language which the CLEC Coalition seeks to modify is language contained in the Company’s currently effective tariff, approved in Docket 99-0615. In essence, the CLECs are attempting a take a second crack at tariff language that was addressed in a previous tariff proceeding and which is beyond the scope of Section 13-801(c). Accordingly, the CLEC Coalition’s proposals should be rejected.

IX. THE COMMISSION SHOULD ADOPT AMERITECH ILLINOIS’ PROPOSAL TO ACCOMMODATE REQUESTS FOR NEW ORDINARILY COMBINED UNES

A. AMERITECH ILLINOIS’ MODIFIED BFR PROCESS GIVES CLECS AN EFFICIENT WAY TO REQUEST NEW ORDINARILY COMBINED UNES

Ameritech Illinois has identified all “ordinarily combined” unbundled network elements required by Section 801(d)(3) and has included those UNE combinations in its tariff at Ill. C.C. No. 20, Part 19, Sections 15 and 20. At least in the short term, there should be no need for CLECs to request other alleged “ordinarily combined” UNES since, by definition, all such combinations will be available by tariff. Ameritech Illinois acknowledges, however, that technology will continue to evolve, that new technology will be deployed in the Ameritech Illinois network, and that Ameritech Illinois will develop new services which use that new technology. (Am. Ill. Ex. 3.0, p. 10). As this evolution occurs, it is reasonable to expect that CLECs will request new “ordinarily combined” UNE combinations and that Ameritech Illinois will need to accommodate those requests as they arise.

The process to accommodate such requests should provide for expedited determination of whether Ameritech Illinois believes that the requested service is an “ordinarily combined” UNE

within the meaning of Section 801(d)(3) so that a party can promptly dispute that determination, if necessary. (Am. Ill. Ex. 3.1, p. 29; Joint CLEC Ex. 2, p. 6; Staff Ex. 2.0, p. 16 and Tr. 749). In addition, the process should establish a timeframe for Ameritech Illinois to promptly make the systems changes needed to support the reliable ordering, provisioning and billing of the new “ordinarily combined” UNE and to develop an accurate price for the new “ordinarily combined” UNE. (Am. Ill. Ex. 3.1, pp. 23-35). Ameritech Illinois’ Bona Fide Request (“BFR”) process achieves both of these objectives by providing CLECs with the opportunity to request new ordinarily combined UNE combinations and by providing Ameritech Illinois with minimal, but realistic, time frames to assess the validity of the requests and, where appropriate, to perform the work needed to support the ordering, provisioning and billing of the new UNE combinations. (Am. Ill. Ex. 3.1, p. 24).

Ameritech has developed a modified, expedited BFR process that will apply only to requests for new “ordinarily combined” unbundled network elements. This process is called the “BFR-OC”.³⁹ The BFR-OC process takes no more than 90 calendar days to produce a firm delivery date and a firm price quote for the UNE combination which the CLEC can rely upon. (Am. Ill. Ex. 3.1, p. 28). The BFR-OC process is set forth in Attachment 1. Attachment 1 shows that the CLEC gets a preliminary readout within 10 calendar days of receiving a completed BFR-OC application, when Ameritech Illinois will notify the CLEC whether or not Ameritech Illinois believes that it is required to make available the requested “ordinarily

³⁹ In response to the invitation of Staff witness Zolnierok (Staff Ex. 2.0, n. 16) Ameritech Illinois closely reviewed the BFR process as it applied to ordinarily combined UNEs and determined that it could reduce the time required by 30 days – a reduction of 25%. In addition, Ameritech Illinois determined that it could provide the 10 day response described above. (Am. Ill. Ex. 3.1, pp. 24-29). Thus, during the course of this proceeding Ameritech Illinois has been responsive to input received from the parties. It is important to emphasize, however, that the BFR-OC process applies only to requests for new “ordinarily combined” unbundled network elements. Ameritech Illinois’ standard 120 day BFR process will remain in place for all of the BFR’s that fall outside the scope of Section 801(d)(3).

combined” UNE combination. This early notification will allow the CLEC to more quickly dispute any Ameritech Illinois determination with which it may disagree. The 10 day notification thereby fulfills the desire expressed by Staff and the CLEC Coalition that the CLEC receive an early determination from Ameritech Illinois so that dispute resolution mechanisms can be promptly initiated. (Jt. CLEC Ex. 2, p. 6; Staff Ex. 2.0, p. 16 and Tr. 744).

Within 30 calendar days after receipt of a complete, accurate BFR-OC request, Ameritech Illinois will provide the CLEC with a Phase One readout, i.e., a high level estimate of the rate for the requested UNE combination, together with General Terms and Conditions that apply to the offering. If the CLEC wants to proceed with the development with the new “ordinarily combined” UNE combination, it must instruct Ameritech Illinois to do so in writing within 30 days of the receipt of the Ameritech Illinois Phase One response. (Am. Ill. Ex. 3.1, Attach. 1).

Phase Two begins upon written notification from the CLEC and takes no longer than 60 days. (Am. Ill. Ex. 3.1, p. 28). The end result of the Phase Two analysis is a firm delivery date by which Ameritech Illinois can reliably accept orders for the new UNE combination and accurately provision and bill the service, as well as a firm price quotation.

Ameritech Illinois witness Silver explained that the 90 day interval is an aggressive but realistic time in which to perform all of the work needed to complete the BFR-OC process. This time is required because Ameritech Illinois, in essence, has two separate operations; a retail operation and a wholesale operation. These operations have different ordering systems, different billing systems and different personnel. Even if an offering is available in the retail operation, before it can be offered for the first time on the wholesale side the ordering, provisioning and billing systems that support the wholesale operation will have to be modified to support the new

offering. Thus, even in the simplest case, where there is no question of technical feasibility and no need to involve third party vendors to update the system of the wholesale operation, Ameritech Illinois will have to thoroughly review its interrelated wholesale ordering, provisioning and billing systems to ensure that a new offering can be properly supported. (Am. Ill. Ex. 3.1, p. 25).

Moreover, the wholesale operation has a different local service center and a different local operations center, so even if a component is currently offered on the retail side, new methods and procedures must be developed for the wholesale service centers and local operations centers and the Ameritech personnel who staff these centers must be specifically trained to support the new wholesale offering. (Am. Ill. Ex. 3.1, pp. 25-26).

The intervals of the BFR-OC are reasonable. Ameritech Illinois requires thirty (30) days for Phase One because it must have its Ordering, Network and Billing organizations evaluate the request and determine whether their existing systems can accommodate the new offering. (Am. Ill. Ex. 3.0, pp. 12-13; Am. Ill. Ex. 3.1, pp. 26-27 and Attach. 2). For example, the Ordering group needs to analyze its systems to determine whether the new UNE combination can be ordered through existing interfaces. This analysis will include a high level evaluation of any additional costs that would be associated with processing the request. At the same time, the Network group will be analyzing the request to determine whether the proposed offering is compatible with current equipment. Among the considerations the Network organization will evaluate are the need to change current provisioning processes, whether there need to be updates or changes to the advanced intelligent network (“AIN”) systems, and whether there need to be any SS7 updates or changes.

None of this preliminary analysis can be undertaken casually. It is Ameritech's goal to issue a preliminary analysis as expeditiously as possible, keeping in mind that it must also be as reliable as possible since it will be used by CLECs to make important business decisions. (Am. Ill. Ex. 3.1, p. 27).

Phase Two is a more detailed, more rigorous analysis of the work began in Phase One. The end result of a Phase Two analysis is a firm delivery date together with a firm price quote. Ameritech Illinois must, therefore, clearly determine what each impacted workgroup must do to support the proposed offering and must perform tests to assure that the offering will be reliably supported. During Phase Two, Ameritech Illinois involves additional workgroups to ensure that all affected systems will continue to operate with the new offering. These systems and workgroups include RC MAC ("Recent Change Memory Administration Center"), WFA ("Work Force Administration"), E911 and SS7, among others. (Am. Ill. Ex. 3.0, pp. 13-14; Am. Ill. Ex. 3.1, pp. 25-26 and Attach. 2). This includes a whole host of activities, from making sure that the UNE combination is generating the proper billing records in the system and that such billing records are flowing to the CLECs; to making sure that the electronic systems for ordering, maintenance and repair can accommodate the new UNE combination and that Ameritech Illinois personnel are appropriately trained to handle all aspects for customer support for the new UNE combination. (Am. Ill. Ex. 3.1, pp. 24-26, Attach. 2). This work cannot be done in the implementation phase because Ameritech needs to know whether these steps can actually be accomplished before it makes a firm commitment to the CLEC at the end of Phase Two. However, that the type of complete evaluation that Ameritech Illinois performs in Phase Two inevitably shortens the implementation timeframe which takes place after Phase Two.

Staff and CLEC Coalition assert that it is a simple matter for Ameritech Illinois to respond to a BFR for UNE combinations which it uses to provide service to its retail customers and that 90 days is too long. (Jt. CLEC Ex. 2.0, p. 5; Staff Ex. 2.1, p. 28). However, both Staff and the CLEC Coalition completely fail to address (or even acknowledge) Ameritech Illinois' unrefuted evidence that it simply cannot provision and support a new "ordinarily combined" UNE combination in less than the timeframe set forth in the BFR-OC process. Ameritech Illinois has explained in detail the painstaking process it must go through in order to offer a new "ordinarily combined" UNE combination to CLECs as a wholesale service. Rather than address these facts, Staff and CLEC Coalition ignore them.

It is particularly ironic that Staff and the CLEC Coalition would argue that there should be transparency between Ameritech Illinois' wholesale and retail operations, since these operations were separated in order to accommodate the CLEC industry. The CLEC industry has persistently raised concerns that an ILEC retail operation should not be allowed to take orders for wholesale customers because it would present a potential conflict of interest. The retail operation would, it was alleged, have an incentive to provide inferior service or would misuse the information coming from a wholesale customer in order to sell its own retail services. (Am. Ill. Ex. 3.1, pp. 25-26). In addition, CLECs have aggressively lobbied to have electronic ordering and billing systems that permit them to efficiently handle large numbers of orders. As a result of the very separation the CLEC industry has demanded, there are many complex ordering, billing and provisioning systems that need to be evaluated and updated to support any new wholesale offering regardless of whether the offering is currently available on the retail side or not. The CLEC industry cannot have it both ways.

Staff and the CLEC Coalition also complain that Ameritech Illinois charges \$2,000 to process a BFR-OC request. (Staff Ex. 2.1, p. 29; Jt. CLEC, 2, p. 5). Although the \$2,000 charge is a de minimus charge which does not cover Ameritech Illinois' cost (Am. Ill. Ex. 3.1, p. 28), Ameritech Illinois has decided that it need not charge the \$2,000 upfront charge in the context of BFR-OC request if it will address the concerns of Staff and the CLEC Coalition. In this proceeding, it makes sense to eliminate the upfront charging issue so that the Commission can focus on the merits of the BFR-OC process.

Finally, it would be a mistake to believe (as Staff apparently does) that the BFR-OC process somehow plays a crucial role in identifying the UNEs which are "ordinarily combined" under Section 13-801(d)(3). It does not. The identification of UNEs which Ameritech Illinois "ordinarily combines" for itself under Section 801(d)(3) has already been performed by Ameritech Illinois and is under review by the Commission in this proceeding. The BFR-OC acts only as a mechanism to capture new "ordinarily combined" UNEs as networks and markets evolve. When viewed in this light, it is clear that the Ameritech Illinois' BFR-OC process can fairly and effectively operate to make available new "ordinarily combined" UNEs consistent with Section 13-801(d)(3).

B. THE CLEC COALITION'S RAC PROCESS IS UNREALISTIC AND PUNITIVE

The CLEC Coalition rejects Ameritech Illinois' BFR-OC process and instead proposes a "request for additional combinations" ("RAC") process that is unrealistic and punitive. (Jt. CLEC Ex. 1, p. 7; Jt. CLEC Ex. 2, pp. 4-6, Sch. JPG-1). The proposal must be rejected for the following reasons.

First, the RAC process would give Ameritech Illinois just 14 days to complete the complex tasks that, as explained above, require 90 days to complete accurately. There is no

evidence in the record which suggests that Ameritech Illinois or any other carrier could perform a complete product development process within 14 days. In fact, the 14 days appears to be a figure pulled out of thin air. It is unsupported by any evaluation of the work Ameritech Illinois must perform. The undisputed evidence in that record shows that it will take Ameritech Illinois 90 days to build a process to support the ordering, provisioning, billing, maintenance and repair of new wholesale offerings, and there is simply no way for the required work to be condensed into 14 day interval. (Am. Ill. Ex. 3.1, p 31).

Second, there is absolutely no evidence in the record to support the assertion that Ameritech Illinois can begin providing the new “ordinarily combined” UNE within an additional 10 business days. To the contrary, Ameritech Illinois’ evidence demonstrates that offering a new “ordinarily combined” UNE combination on the wholesale side of the house requires extensive product development effort, discussed above. (Am. Ill. Ex. 3.1, pp. 25-26). Since it will be impossible to meet a 10 day interval, any such requirement would only invite failure and disappointed expectations of CLECs and their end users.

Third, the CLEC Coalition proposal would allow a CLEC to request a new “ordinarily combined” UNE combination merely by identifying a retail service offered by Ameritech Illinois. (Jt. CLEC Ex. 1, Sch. JPG-1). As discussed more fully in Section X above, the proposal fundamentally misapprehends the law. Section 13-801(d)(3) requires an incumbent local exchange carrier to combine any sequence of unbundled network elements that it ordinarily combines for itself. It does not require the incumbent local exchange carrier to combine all components that make up retail services nor does it create any obligation on Ameritech Illinois to identify “ordinarily combined” network elements based upon its retail services. Rather, the law

requires a CLEC to make a request and to identify the specific “sequence” of unbundled network elements it desires to have combined.⁴⁰

The CLEC Coalition also fundamentally misapprehends the facts. Its RAC proposal assumes that each and every Ameritech Illinois retail service is composed only of unbundled network elements which Ameritech “ordinarily combines” for itself. This is undeniably false. Retail services consist of a variety of other components, including; 1) “network elements” that do not qualify as UNEs; 2) unbundled network elements that Ameritech Illinois does not “ordinarily combine” for itself; 3) non- telecommunications offerings such as voicemail; and 4) proprietary components which need not be shared with CLECs such as advanced intelligent network (“AIN”) capabilities. (Am. Ill. Ex. 3.1, p. 32). The mere identification of an Ameritech Illinois retail service will not, as the CLEC Coalition assumes, lead to the identification of an “ordinarily combined” UNE combination that will provide that retail service.

Fourth, the RAC proposal requires Ameritech Illinois to provide “the information requested”. There is no definition or limitation on what this term means. Such an open ended term could create unlimited mischief and illustrates yet another deficiency of the RAC proposal.

Fifth, the RAC proposal includes substantive provisions which would limit Ameritech Illinois’ ability to charge for UNE combinations. In particular, the proposal would prevent Ameritech Illinois from recovering any charge for physically combining unbundled network elements. This rate issue has no relationship to the mechanism for requesting new “ordinarily

⁴⁰ There is an alternative reading of the RAC proposal which presents different, but equally serious problems. The RAC proposal would allow a CLEC to issue a request “identifying a retail service offered by Ameritech with a request that Ameritech identify the sequence of network elements comprising that service”. If the CLEC Coalition intends by this language to require Ameritech Illinois to identify all network elements (rather than “unbundled” network elements), that proposal must be rejected. Ameritech Illinois has absolutely no obligation under Section 801(d)(3) with respect to network elements that are not unbundled network elements. If it is the intent of the CLEC Coalition to require Ameritech Illinois to catalogue the network components which go into each and every one of Ameritech Illinois’ retail services, it is clear that such a procedure would serve only as a

combined” UNEs and its inclusion in the RAC proposal is further proof that the entire proposal should be rejected.

Sixth, under the RAC process, if Ameritech Illinois rejects a request because it does not ordinarily combine for itself a requested sequence of UNEs, it must nonetheless perform all of the work to provide rates and provisioning intervals within 14 days.⁴¹ It would be extremely wasteful and inefficient to impose this requirement. In cases where Ameritech Illinois objects on the grounds that it does not “ordinarily combine” UNEs for itself, no work should be required until a Commission determination is made that a new UNE combination must be made available.

Seventh, the RAC proposal would allow a CLEC to use Section 13-515 of the PUA to establish Ameritech Illinois’ rates for UNEs⁴². The expedited enforcement procedures of Section 13-515 are completely inappropriate to establish rates for UNE combinations that are required under Section 801(d)(3). Since all “ordinarily combined” UNEs that Ameritech Illinois provides to CLECs will be placed in Ameritech Illinois tariffs, those rates can and should be set through established rate setting mechanisms under Section 9-201 of the PUA.

Eighth, the Commission must also reject the proposal to make any Ameritech Illinois failure to abide by the RAC process a per se violation of Section 13-514. Such a determination would be an improper declaratory ruling as to the applicability of Section 13-514 since it would establish a rule of law without any consideration of the facts of the particular dispute (which, of course, does not even exist). Furthermore, the CLEC Coalition offered no evidence or support for the idea that “failure to provide all requested information” (an impermissibly vague standard)

means to conduct pointless fishing expeditions and could not lead to the identification of unbundled network elements that Ameritech Illinois “ordinarily combines” for itself.

⁴¹ As discussed above, there is absolutely no way Ameritech Illinois can provide this information within 14 days. It will require 90 days.

⁴² The proposal states that “a requesting carrier may also challenge the application of Ameritech Illinois’ proposed rates to a RAC under Section 13-515 of the Illinois PUA”.

would in all circumstances be a per se impediment to the development of competition. This improper proposal further illustrates that the overall deficiency of the RAC process.

Finally, the CLEC Coalition proposes to delete the BFR language included in Ill. C.C. Tariff No. 20 Section 1, Sheet No. 3 in its entirety. The CLEC Coalition has lost sight of the fact that the BFR language in Section 1 is applicable to all requests for new UNEs and customized functionalities, not merely new “ordinarily combined” UNE combinations. For example, Ameritech Illinois may receive BFR’s asking for a mass PIC change or for specially designed 911 trunks. (Am. Ill. Ex. 3.1, p. 31). Under this proposal, there would be no BFR tariff provision to handle these types of requests. Ameritech Illinois’ BFR language has been present in its tariff since 1998 and nothing in Section 13-801 mandates that it be removed.

C. THE COMMISSION SHOULD REJECT STAFF’S POSITION

Unlike Ameritech Illinois (which put forth the BFR-OC process) and the CLEC Coalition (which put forth the RAC process) Staff has no formal proposal on the process that should govern requests for new “ordinarily combined” UNE combinations. However, in its discussion of the Schedule of Rates issue (which is addressed in a separate section of this brief), Dr. Zolnierek makes the following proposals: 1) that a CLEC can request rates for UNE combinations merely by specifying the retail service being provided by Ameritech; 2) that Ameritech Illinois is obligated to provide rates for UNE combinations that are used by Ameritech Illinois’ affiliates (and not Ameritech Illinois itself) to provide retail offerings; and 3) that Ameritech Illinois provide rate quotations within two days. Staff’s proposal is that Ameritech Illinois need only provide the rates under this process and need not provide the UNE combination which the CLEC is requesting. (Staff Ex. 2.0, pp. 22, 25-28; Tr. 741).

These Staff concepts are contained in Staff's proposal which implements the Schedule of Rates provision of the Act, Section 13-801(i). Section 13-801(i) however, is a relatively narrow provision requiring Ameritech Illinois to provide rates for existing services and cannot be expanded to create the obligations Staff proposes. The purpose of Section 13-801(i) is to give CLECs a mechanism to enlist Ameritech Illinois' help in interpreting tariffs and the rate elements that apply to services CLECs want to order from Ameritech Illinois. Section 13-801(i) deals only with existing services and pertains only to "proposed orders" of services that CLECs request of Ameritech Illinois. In other words, if the CLEC identifies a "proposed order" of services that it wants to buy from Ameritech Illinois, Ameritech Illinois will provide a Schedule of Rates that applies to that proposed order. There is no mechanism in Section 13-801(i) that permits a CLEC to identify an Ameritech Illinois "retail" service or that obligates Ameritech Illinois to provide a Schedule of Rates for the various components of a retail service. Thus, Staff's reliance of Section 13-801(i) is misplaced and its proposal should be rejected for that reason alone.

Staff's proposal should also be rejected because, as discussed above, nothing in Section 13-801(d)(3) permits a CLEC to request a new "ordinarily combined" UNE combination merely by pointing to an Ameritech Illinois retail service. Ameritech Illinois' retail services are made up of components other than "ordinarily combined" UNEs, including network elements that do not qualify as "unbundled" network elements; unbundled network elements that Ameritech Illinois does not "ordinarily combine" itself; non-telecommunication services such as voicemail; and proprietary components which need not be shared with CLECs such as proprietary AIN software. Staff fails to take this into consideration.

Moreover, under Staff's proposal Ameritech Illinois must provide a Schedule of Rates of "all applicable charges associated with the proposed order". There is no "proposed order", however, when a CLEC merely points to an Ameritech Illinois retail service. It is clear that the CLEC is not "ordering" the Ameritech retail service; but it is entirely unclear what the CLEC is "ordering" within the terms of Staff's proposal. Staff's proposal is confusing and nonsensical and should be rejected.

Staff's proposal should also be rejected for attempting to create an Ameritech Illinois obligation regarding its affiliates. In Staff's view, Ameritech Illinois should provide a Schedule of Rates for a retail service provided by an affiliate of Ameritech Illinois. As discussed in the following section, this exceeds Ameritech Illinois' obligations under Section 13-801. It also impermissibly mingles the operations of two separate companies which must operate independently under the law. As Mr. Wardin described in his testimony, there are very stringent conditions that require Ameritech Illinois and Ameritech Advanced Data Services of Illinois, Inc. ("AADS") to operate independently. The AADS certification in Illinois Docket No. 94-0308 requires that AADS "operate independently from Ameritech Illinois in the furnishing of enhanced services and customer premises equipment, with its own books of account, separate officers, and separate operating, marketing, and installation and maintenance personnel". Similarly, the FCC's order approving the merger of Ameritech Corporation and SBC, FCC Docket No. 98-141, Memorandum Opinion and Order (Rel. Oct. 8, 1999) ("Merger Order"), requires AADS to operate independently from Ameritech Illinois and to observe a modified form of the same separation requirements that Ameritech Illinois' long distance affiliate must follow under Section 272 of the Telecommunications Act. (Am. Ill. Ex. 1.1, pp. 8-9).

X. AFFILIATES OF AMERITECH ILLINOIS ARE NOT SUBJECT TO SECTION 13-801

Staff argues that Ameritech Illinois has Section 13-801 obligations with respect to its affiliate such as AADS. In particular, Staff proposes that Ameritech Illinois should be required to: 1) provide a Schedule of Rates for retail services provided by its affiliate; and 2) combine Ameritech Illinois unbundled network elements that are “ordinarily combined” by its affiliates, but not by Ameritech Illinois⁴³. (Staff Ex. 2.0, pp. 21, 22, 26; Tr. 750). Staff is wrong as a matter of law and the result Staff seeks would be wrong as a matter of policy.

First, Section 13-801(a) expressly provides that the affiliates of Ameritech Illinois are not subject to any additional obligations under Section 13-801. Section 13-801(a) provides, in relevant part, that

A telecommunication carrier not subject to regulation under an alternative regulation plan pursuant to Section 13-506.1 of this Act shall not be subject to the provisions of this Section, to the extent that Section imposes requirements or obligations upon the telecommunications carrier that exceed or are more stringent than those obligations imposed by Section 251 of the federal Telecommunications Act of 1996 and regulations promulgated thereunder.

Thus, a telecommunication carrier that is not subject to an alternative regulation plan (and Ameritech Illinois is the only carrier in the state subject to such a plan) is not subject to Section 13-801, except to the extent that 13-801 imposes obligations that are identical to Section 251 and FCC regulations. Put more simply, Section 13-801 provides additional obligations only for Ameritech Illinois and for no other carrier. This unequivocal language makes it abundantly clear

⁴³ On cross examination, Staff witness Zolnieriek clarified that Staff is not proposing that Ameritech Illinois combine UNEs that are present in the network of its affiliate but not within Ameritech Illinois’ own network. (Tr. 747-748). Staff did not provide any examples of how its proposal would apply in the real world, but it appears that it would operate as follows. Assume that Ameritech Illinois offered within its network two UNEs X and Y, but never combined those two UNEs in its own network. If affiliate AADS were to buy UNEs X and Y and were to combine them within its network (just as any CLEC could do), under Staff’s proposal this would trigger an obligation for Ameritech Illinois to combine UNEs X and Y in the Ameritech Illinois network, even though Ameritech Illinois had never done so in the past.

that AADS and other Ameritech Illinois affiliates who may also be certificated carriers within the State of Illinois are not subject to any additional obligations as a result of Section 13-801. Since there can be no new obligations on AADS under Section 13-801, there can be no new obligations placed on Ameritech Illinois as a result of its relationship with AADS.

Ameritech Illinois acknowledges that the definition of “incumbent local exchange carrier” in Section 13-202.5 includes the ILEC’s “successors, assigns, and affiliates,” but this definition does not trump the Section 801 limitation. In other words, regardless of the definition of “incumbent local exchange carrier,” Section 801(a) clearly establishes that 13-801(a) creates no additional obligations for affiliates.

Second, Ameritech Illinois and its affiliates are separate legal entities and, as matter of corporation law, are responsible only for their own actions – not for the actions of their affiliates. Main Bank of Chicago v. Baker, 86 Ill. 2d 188, 427 N.E. 2d 94 (1981).

Third, Section 13-801(d)(3) cannot be read to require Ameritech Illinois to combine UNEs that are combined by another entity or that Ameritech Illinois combines for an entity other than itself. The statute provides that an incumbent local exchange carrier shall combine any sequence of unbundled network elements that it ordinarily combines for itself...” (emphasis added). This language creates an obligation for Ameritech Illinois to combine network elements only where they are “ordinarily combined” by Ameritech Illinois (and no other entity). Thus, Staff’s argument that Ameritech Illinois should combine UNEs ordinarily combined by its affiliates must be rejected. The language also makes it clear that the obligation to combine UNEs only applies where Ameritech Illinois ordinarily combines such UNEs for itself. The word “itself” plainly refers to Ameritech Illinois and only to Ameritech Illinois -- not to any other entities. The statute does not, for example, require Ameritech Illinois to combine UNEs

that it ordinarily combines “for itself and its affiliates”. Thus, the CLEC Coalition’s argument that Ameritech Illinois should combine UNEs that it ordinarily combines for its affiliates must also be rejected. (Tr. 556-58; Jt. CLEC Ex. 1, Sch. JPG-1). The CLEC Coalition’s concern should be cared for, however, by Ameritech Illinois’ acknowledgement that if it combines unbundled network elements for an affiliate it would also be required to combine those unbundled network elements on a nondiscriminatory basis for other CLECs.

Fourth, Staff’s proposal would unfairly deprive AADS of its ability to compete in the marketplace for data services. Like any other CLEC, AADS will win or lose in the marketplace based upon its ability to innovate and to operate efficiently. This includes its ability to efficiently use UNEs which it purchases from Ameritech Illinois on the same terms as other CLECs. Staff’s proposal would require AADS to forfeit any innovation and efficiency which it may achieve through combining these UNEs by requiring Ameritech Illinois to make the fruits of AADS’ efforts available to all CLECs. In other words, as soon as AADS creates some unique or efficient way to combine UNEs, Ameritech Illinois must then combine those UNEs in the same way for the benefit of other CLECs. This proposal would pervert the very competition between AADS and other data CLECs which this Commission is attempting to encourage.

The CLEC Coalition does not go nearly as far as Staff. Instead, it proposes only that Ameritech Illinois combine UNEs for CLECs that it ordinarily combines for its affiliates. (Tr. 556-58; Jt. CLEC Ex. 1, Sch. JPG-1). For the reasons discussed above, even the proposal goes too far.

XI. THE COMMISSION SHOULD ADOPT AMERITECH ILLINOIS' PROPOSAL TO IMPLEMENT THE SINGLE POINT OF INTERCONNECTION PROVISIONS OF SECTION 13-801(b)(1)

A. AMERITECH ILLINOIS' SINGLE POINT OF INTERCONNECTION PROPOSAL IS EQUITABLE AND SHOULD BE ADOPTED

Section 13-801(b)(1) gives a CLEC the right to choose a single point of interconnection in a LATA (“the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA”) and Ameritech Illinois’ proposed tariff clearly recognizes this right.⁴⁴ A CLEC may elect to interconnect with Ameritech Illinois’ network using a single point of interconnection (“POI”) or using multiple points of interconnection. When a single point of interconnection used, Ameritech Illinois proposes to charge the CLEC for some of the additional costs that are incurred.

There is ample statutory authority for Ameritech Illinois to recover its increased cost of interconnection through a single point of interconnection architecture. Section 13-801(g) provides, in relevant part, that: “Interconnection, collocation, network elements, and operation support systems shall be provided by the incumbent local exchange carrier to the requesting telecommunications carriers at cost based rates.” An ILEC’s ability to charge for interconnection is further supported by Section 13-801(b), which provides that: “An incumbent local exchange carrier shall provide for the facilities and equipment of any requesting telecommunications carrier’s interconnection with the incumbent local exchange carrier’s network on just, reasonable, and nondiscriminatory rates terms and conditions.”

Ameritech Illinois witness Mindell explained that it is expensive for carriers to interconnect their networks (Am. Ill. Ex. 6.0, p. 7) and Staff witness Dr. Zolnierrek acknowledged

⁴⁴ Ill. C.C. No. 20, Part 23 Section 2, at para. 4.2.I states “Carrier may choose to exchange traffic at a single POI for the entire LATA, or may establish multiple POIs in the LATA, subject to the following rules regarding sharing facility obligations”.

that additional costs inevitably occur when carriers interconnect their networks. (Staff Ex. 2.1, p. 6; Tr. 709-10). Ameritech Illinois proposes that the increased costs incurred by Ameritech Illinois that result from a single point of interconnection architecture be shared equitably between Ameritech Illinois and the CLEC. In particular, Ameritech Illinois' tariff would permit it to bill transport and switching charges for the use of its network when the CLEC's choice of a single point of interconnection architecture required Ameritech Illinois to transport a call more than 15 miles. There are three important limitations which drastically minimize these potential charges and which result in the sharing of these charges between Ameritech Illinois and the CLEC.

First, as Mr. Mindell explains (Am. Ill. Ex. 6.1, p. 7), no additional charges apply for calls which are completed within the local calling area of the end office or tandem that serves the POI. Generally, end offices within 15 miles of the end office or tandem that serves the POI are considered to be within this "no additional charge" zone. In the Chicago LATA, 52% of the subscribers lines in the LATA work from end offices within 15 miles of the LaGrange tandem. Similarly, 48% of the subscribers lines in the LATA work from end offices within 15 miles of the Wabash tandem. (Am. Ill. Ex. 6.1, p. 7). So, in cases where a somewhat centralized single point of interconnection is chosen, (e.g., the LaGrange or Wabash tandem) a CLEC will be able to reach nearly half of the subscriber lines in the LATA without any additional charge.

Second, Ameritech Illinois deducts the mileage for a local interoffice call (approximately 15 miles) from the transport where the transport charge would apply. So, for example, if an Ameritech Illinois customer in Aurora calls his next door neighbor served by a CLEC, and if Ameritech Illinois must transport that local call 30 miles to downtown Chicago to hand it off to a CLEC with a single POI in Chicago, Ameritech Illinois would not charge the CLEC the full 30

miles of transport. Instead, Ameritech Illinois would deduct 15 miles and only charge the CLEC for the remaining 15 miles, on the theory that Ameritech Illinois is always willing to transport a local call 15 miles without additional charge to the CLEC. (Am. Ill. Ex. 7.0, p. 11).

The third way in which the costs of establishing a single point of interconnection are minimized and shared is that Ameritech Illinois will provide the transport and switching service on a “pay only for what you use” basis. In other words, there is no requirement that a CLEC actually build out additional points of interconnection and incur the expense of dedicated facilities to do so. Rather, a CLEC can rely on the Ameritech Illinois network and use it only when and if it has traffic to exchange with Ameritech Illinois. Charges would be on a per minute of use basis at prevailing switched access rates. In this sense, Ameritech Illinois is not asking the CLECs to share any of the risk of establishing and maintaining an extensive network of additional interconnection facilities. Ameritech Illinois will bear the cost of doing so, but in return will charge the CLEC when and if the CLEC uses those facilities. Because, regardless of the choice of POIs, the CLEC has the same need for trunking.

The new language proposed by Ameritech Illinois to implement the single POI proposal is contained in Ill. C.C. No. 20, Part 23, Section 2, Para. 4.2.I. Paragraph 4.2. I. consists of four paragraphs. The first paragraph contains general language which is discussed in more detail below. The second paragraph deals with calls that originate and terminate to end users physically located in the local exchange where the POI is located, and therefore no additional charges apply with that scenario. Similarly, the third paragraph discusses the situation where a call is originated by or terminated to an Ameritech end user that is located in the local exchange where the POI is located, and no additional charges apply in this scenario.

Additional charges would only arise from application of the fourth paragraph, which applies when an Ameritech Illinois end user and the single POI are located in different local exchanges. In that instance, Ameritech Illinois asks the CLEC to pay for interexchange switching and transport provided by Ameritech Illinois at the intrastate switched access exchange rate, less the mileage for a local call in Illinois. Two examples illustrate the application of this language.

First is the example of a call from an Ameritech Illinois customer in Aurora that calls his neighbor in Aurora that is served by a CLEC. The CLEC has a single switch in the Chicago LATA and single point of interconnection which is located in downtown Chicago. This example is illustrated in Am. Ill. Ex. 6.0, p. 11. Ameritech incurs approximately 30 miles of additional transport since it is required to transport the call from Aurora to Chicago, rather than simply handing off the call in Aurora for completion in Aurora. Under the application of Ameritech Illinois' proposed tariff, the CLEC would be charged for 15 miles of transport (30 miles minus 15 miles for local call). Of course, there is absolutely no requirement that the CLEC establish dedicated facilities to Aurora or to anywhere else. The CLEC can use Ameritech Illinois' transport from Aurora to Chicago on an "as needed" basis and will pay only on a minute of use basis.

The second example involves a foreign exchange ("FX") call in between Aurora and Chicago. An Ameritech Illinois end user in Aurora calls an Aurora telephone number that has been assigned by a CLEC to a CLEC customer who is physically located near the CLEC switch in downtown Chicago. The purpose of the FX number is to enable an Ameritech Illinois customer located in Aurora to call the CLEC customer in Chicago without incurring toll charges. Since the point of interconnection is 30 miles away, however, the costs incurred by Ameritech

Illinois are the same costs it incurs when it provides toll service from Aurora to Chicago. Under Ameritech Illinois' proposed tariff, Ameritech would charge the CLEC 15 miles of transport, (30 miles minus 15 miles local call). This example is illustrated in Am. Ill. Ex. 6.0, p. 11.

Dr. Aron's expert economic testimony supports Ameritech Illinois' position that CLECs should pay for the interconnection-related services they use. In Dr. Aron's view, when CLECs are not required to pay for the services they use it leads to inefficient network deployment by CLECs and discourages efficient investment by both CLECs and Ameritech Illinois. (Am. Ill. Ex. 8.0, pp. 32-34). In other words, if CLECs can use the Ameritech Illinois network without charge, then the CLECs have little incentive to invest in their own transport facilities and POIs because they don't need to. Society is deprived of CLECs that create innovative, redundant networks. Ameritech Illinois has little incentive to invest because it is not being compensated for the services it provides. Moreover, if one CLEC is using this free service, its competitors would find it difficult to compete unless they too exploited that free service. (Am. Ill. Ex. 8.0, p. 34). In this way, investment incentives disappear.

Dr. Aron also strongly warned against the inefficient deployment of resources that is caused when a competitor is able to avoid paying the costs of the goods and services that it consumes to produce a competitor product. (Am. Ill. Ex. 8.0, pp. 33, 35-36). In particular, she pointed out that when a competition is able to obtain an input free of charge, the inevitable incentive will be to use too much of that input and too little of other inputs than is socially optimal. (Am. Ill. Ex. 8.0, p. 33). Dr. Aron expressed great faith in the ability of competitive markets to efficiently allocate resources to the overall benefit of society, but express skepticism

about the market's ability to work if regulatory policy insulates CLECs from appropriate pricing signals that would promote efficient network deployment decisions. (Am. Ill. Ex. 8.1, p. 14).⁴⁵

There is a convergence between what the statute itself provides and what economic policy recommends with regard to a single POI architecture. The statute expressly gives CLECs the option to establish a single point of interconnection, but goes on to require that interconnection must be at cost-based rates. Sound economic policy also requires that CLECs be asked to pay for the additional costs of interconnection caused by their decision to interconnect at a single point. This confluence of statutory language and policy is captured in Ameritech Illinois' tariff proposal and that tariff proposal should be approved by the Commission.

B. PROPOSALS OF STAFF AND FOCAL SHOULD BE REJECTED

1. Staff's Proposal

Despite the fact that Section 13-801(b)(1)(B) contains no language requiring Ameritech to bear the burden of the additional costs created by a single point of interconnection architecture, Dr. Zolnierek proposes that Ameritech Illinois bear all of the transport costs that occur on Ameritech Illinois' side of the POI that are associated with a single POI architecture and that the CLECs bear none of those costs. (Staff Ex. 2.0, pp. 11-12). This position should be rejected for at least four reasons.

First, there is no statutory language which supports the outcome argued for by Staff. In fact, Sections 13-801(g) and 13-801(b) both require that interconnection be provided at cost based rates.

⁴⁵ As Dr. Aron explained in detail "In a market economy, firms decide how many switches to use and where to locate them based on the relative costs of transport and switching. If transport uses fewer and less costly resources than switching, then efficient firms use relatively more transport and relatively less switching when providing service. The profit-maximizing decisions of such a firm tend to result in the most efficient use of society's resources and the greatest social welfare.

Second, Staff inexplicably sets aside the well established principle that a carrier should pay for the costs which it causes. As Dr. Aron explained, a CLEC will only make the proper economic, socially efficient choice of designing a network and trading off between transport and switching when it is forced to pay for those inputs. (Am. Ill. Ex. 8.0, p. 35). Protecting CLECs from paying for transport services which it uses is detrimental to the public interest because it encourages inefficient network deployment and discourages investment. (Am. Ill. Ex. 8.0, pp. 32-34). Staff offers no credible economic theory to support its view that Ameritech Illinois should provide free service to CLECs.

Third, Staff takes the position that the CLEC using a single POI architecture “shares” the cost of that interconnection arrangement by providing its own facilities up to the point of interconnection. (Tr. 714). This argument is specious because the CLEC in fact incurs no additional costs by providing facilities on its own side of a single point of interconnect. In fact, it saves costs. Rather than establishing multiple POIs throughout the LATA and providing transport to connect those multiple POIs with its own switch, a CLEC avoids all of that expense and shifts that cost to Ameritech Illinois. It is Ameritech Illinois that must provide transport throughout the LATA from every point to the CLEC’s single point of interconnection.

Fourth, FCC authority on this issue supports Ameritech Illinois’ position, not Staff’s. The FCC recently reviewed Verizon Pennsylvania’s 271 application and was called upon to address CLEC complaints that Verizon was not permitting CLECs to interconnect using a single point of interconnection architecture.⁴⁶ As explained in footnote 341, Verizon offered CLECs a single point of interconnection, but also required CLECs to “bear the cost of Verizon’s transport

⁴⁶ Memorandum Opinion and Order, In the Matter of Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. For Authorization To Provide In-Region, InterLATA Services In Pennsylvania, C.C. Docket No. 01-0138, (Rel. Sept. 19, 2001), at para. 100. (“Verizon Order”).

from Verizon's designated interconnection point ("IP") which is usually its end office of [sic] tandem, to the actual competitive LEC physical point of interconnection ("POI"). CLECs argued that Verizon improperly shifted to competing carriers transport and switching costs associated with a single point of interconnection arrangement. The FCC rejected the CLEC arguments and specifically concluded that "Verizon's policies do not represent a violation of our existing rules." Verizon Order at para. 100. Thus, the FCC has specifically held that a single POI arrangement where the CLEC pays for the additional transport and switching costs does not effectively deny the CLEC of the option of a single POI architecture.

Staff also argues that Ameritech Illinois' proposal is inconsistent with a single POI architecture because it requires the creation of what it calls "virtual POIs". (Staff Ex. 2.0, p. 12). Staff's "virtual POI" argument is completely mistaken. First, nothing about the Ameritech Illinois proposal establishes a "virtual POI". There is no point other than the single POI at which traffic is exchanged and which defines each party's responsibility to maintain network facilities. There is no physical location associated with this "virtual POI", it is not a location where traffic is exchanged and it is not a location where facility responsibility begins and ends. Second, Staff fundamentally mistakes Ameritech Illinois' proposal. Ameritech Illinois is not suggesting that CLECs lease dedicated facilities on the Ameritech Illinois side of the single POI. To the contrary, Ameritech is willing to make available its network on a minute of use basis. Under Ameritech Illinois' proposal there is only a single POI in the LATA and the CLEC has no financial responsibility for establishing any other points of interconnection or for establishing dedicated links to any other points on the Ameritech network.

Staff also criticizes the Ameritech Illinois proposal because it allegedly does not adequately consider the CLEC network architecture. (Staff Ex. 2.1, pp. 5-10). This criticism

completely misses the point. The issue of how interconnection costs should be apportioned between carriers has little to do with judgment calls about whether an ILEC's multi-node network is "better" than a CLEC's single node network. That argument is essentially irrelevant. What is relevant is that there are additional costs incurred when two carriers interconnect their networks. The question remains, what is the fair, economically rational way to apportion costs between them? As Ameritech has explained above, the answer is that the cost-causer ought to pay for the additional transport and switching that it uses on the other carriers network, and this is properly reflected in Ameritech Illinois' tariff proposal. (Am. Ill. Ex. 7.0, p. 5).

Next, Staff argues that relieving CLECs of the obligation to pay for the transport they actually use "may permit CLECs to adopt innovative and potentially more efficient network architecture." (Staff Ex. 2.1, p. 13). As Dr. Aron testified, however, it is absolutely incorrect as a matter of economics to assert that protection from relevant price signals can encourage efficient decisions. (Am. Ill. Ex. 8.1, p. 15). As Dr. Aron explained, as a matter of efficiency and social welfare, CLECs should pay for the resources they use in order to encourage efficient innovation. Finding a better and less costly way to complete calls, in order to save on payments for the use of others' resources, is one of the desirable results of an efficient price system. Adopting Dr. Zolnierek's proposal of zero payments for transport in excess of 15 miles not only fails to compensate Ameritech Illinois for the use of its assets, it does away with the very incentive to innovate that Dr. Zolnierek lauds. Under Dr. Zolnierek's plan, there is no reason for CLECs to innovate because transport resources are provided free. (Am. Ill. Ex. 8.1, p. 16).

Staff next takes issue with Ameritech Illinois' proposal to use switched access rates to recover its costs. (Staff Ex. 2.1, p. 10). As Mr. Panfil explained, the appropriate rate for transport facilities in excess of local calling limits should be toll-type rates. (Am. Ill. Ex. 7.2, p.

7). As Mr. Panfil noted, the choice between access charges and some other cost-based charge (i.e., reciprocal compensation) for transport is not a significant issue in Illinois. Under ICC policy, both are established on a cost basis and are relatively equivalent.

Next, Staff criticizes the Ameritech Illinois proposal because it is allegedly not reciprocal. According to Dr. Zolnierek, it does not “appear that Ameritech proposes to pay CLECs access charges whenever a CLEC transports and terminates an Ameritech Illinois originated local call from a POI outside the called parties exchange”. (Staff Ex. 2.1, pp. 11-12). Staff’s criticism is wrong. As Mr. Panfil explains, Ameritech Illinois is willing to accept from CLECs the exact offer which Ameritech Illinois makes to the CLECs. That is, each carrier has two options; 1) either establish a minimal number of POIs in the LATA such that no additional transport charges are incurred; or 2) pay for transport services used in excess of 15 miles. As Mr. Panfil testified, a CLEC can avoid any additional transport charges by establishing as few as six points of interconnections in the Chicago LATA. (Am. Ill. Ex. 7.1, p. 9). Ameritech Illinois is willing to accept this offer, i.e., either exchange traffic with CLECs at multiple POIs throughout the LATA or reimburse the CLEC for the additional transport it provides. There is nothing asymmetrical or unfair about Ameritech Illinois’ position on this matter.

Staff also maintains that Ameritech Illinois’ proposal should not apply to foreign exchange (“FX”) and virtual NXX service. (Staff Ex. 2.1, p. 15). Staff sees potential merit to the claim made by Mr. Panfil that FX traffic has characteristics similar to long distance traffic and therefore should not be treated like local traffic. However, Staff does not believe this is the appropriate proceeding to address this issue. Ameritech Illinois does not agree that this issue can be deferred. For all the reasons set forth above, CLECs need to

pay for the additional costs which Ameritech Illinois incurs to accommodate a single point of interconnection architecture. This applies to normal local calling and it applies equally to FX calling arrangements. Ameritech Illinois is fully aware of the Focal arbitration decision that addressed the FX issue in ICC Docket No. 00-0027. That case is clearly distinguishable, however, because in the Focal arbitration the Commission held that Ameritech Illinois improperly required CLECs to establish a point of interconnection every 15 miles, with no reference to a de minimus amount of traffic beneath which a CLEC would not have to an additional POI. In this proceeding, Ameritech Illinois' tariff does not require the establishment of additional POIs at all – for either local traffic or FX traffic. Moreover, Ameritech Illinois proposes a “pay as you go” approach so that CLECs never have to establish dedicated facilities and can closely match the volume of traffic with the level of billing they incur. In other words, if a CLEC has a very small amount of traffic, the charge it would incur would be de minimus. (Am. Ill. Ex. 7.1, p. 11; Am. Il. Ex. 7.2, p. 8). For these reasons, the Focal arbitration result is not dispositive of the FX issues in this case.

Finally, Staff raises two wording problems in the first paragraph of Section 4.2.I. Ameritech Illinois' revised proposal addresses both of Staff's concerns. First, Dr. Zolnierek believes that the following language could be misconstrued to mean that Ameritech Illinois would not permit a CLEC to elect a single POI: “In many cases, multiple POI(s) will be necessary to balance the facilities investment and provide the best technical implementation of interconnection needs in a given LATA”. (Staff Ex. 2.1, p. 4, citing Section 4.2.I of Part 23, Section 2, Sheet 5.1 of Ameritech Illinois' proposed tariff). Even though Ameritech Illinois' tariff unambiguously gives the CLEC a right to select a single point of interconnection,

Ameritech Illinois proposes the following revision: “In most cases, once traffic volumes are sufficient, multiple POI(s) are recommended in order to balance the facilities investments and provide the best technical implementation of interconnection needs in a given LATA”. (Am. Ill. Ex. 7.2, pp. 3-4). This changes the phrase “multiple POI(s) will be necessary” to “multiple POI(s) are recommended” and should address Staff’s concern.

Staff also objects to language in Section 4.2.I. which says that once a CLEC selects a single point of interconnection, the point of interconnection must be “in a mutually agreed location”. (Staff Ex. 2.1, pp. 3-4). As Ameritech witness Mindell explains, the provision for mutual agreement is meant to encourage communication for mutual benefit. The parties need to discuss where interconnection will take place so that the most mutually efficient, least costly alternative can be agreed upon. Ameritech Illinois certainly hopes that neither Staff nor CLECs are advocating that one party ought to unilaterally select a place for interconnection without regard to the cost that it would impose on the other party. In order to address Staff’s concerns, Ameritech Illinois proposes to add the following sentence at the end of the first paragraph on 4.2.I: “If the Parties are unable to mutually agree upon a location for the POI, Carrier may designate the location of the POI, provided that it reimburses Company for the non-recurring costs at that POI which exceed the normal costs that Company incurs to establish an interconnection arrangement.”

For all of these reasons, Staff’s proposal to place all of the incremental financial burden of single POI architecture on Ameritech Illinois should be rejected and Ameritech Illinois’ tariff should be approved.

2. Focal Communications' Concerns

Focal raises many of the same points raised by Staff. For example, Focal complains that the Ameritech Illinois proposal is not reciprocal. (Focal Ex. 1.0, p. 7). Focal asserts that the Focal Arbitration in Docket No. 00-0027 addresses the FX issues. (Focal Ex. 2.0, p. 6). Focal joins in Staff's "virtual POI" argument. (Focal Ex. 2.0, p. 3). Ameritech Illinois has addressed each of these issues in response to Staff's position and those responses apply to Focal as well.

Focal raises two slightly different issues that merit response. First, Focal makes the unusual argument that since it has a statutory right to establish a single point of interconnection, an obligation to pay anything to Ameritech Illinois would abrogate its statutory right. (Focal Ex. 2.0, pp. 3-5). In other words, Focal argues that a right to do some act (in this case establish a single point of interconnection) carries with it the right not to pay anything in order to perform that act. Such a reading of the statute is groundless. Telecommunications law is filled with examples in which carriers are granted rights to do certain things (e.g. collocate, access UNEs), but they must bear the cost of doing those actions. A statutory right to do a thing is not license to do it for free. This is particularly true in this case where Section 13-801(g) and 13-801(b)(1) specifically require Ameritech to be compensated for the interconnection it provides. Focal's argument is not legally sustainable and should be rejected.

Focal also argues that it "cannot support the extensive new requirements" that Ameritech Illinois allegedly proposes in paragraph 4.2.H. (Focal Ex. 1.0, pp. 2,8). As Mr. Panfil explains, however, nothing about paragraph 4.2.H. is new. The words on that paragraph have changed location (from Sheet 5 to Sheet 5.1), but the words themselves are currently included in Ameritech Illinois' effective tariff and thus have already been accepted by the Commission.

There are no changes proposed to those provisions and they are not at issue in this proceeding. Accordingly, Focal's objection to that language should be rejected.

XII. AMERITECH ILLINOIS' SCHEDULE OF RATES PROPOSAL PROPERLY IMPLEMENTS SECTION 13-801(i)

Section 13-801(i) requires Ameritech Illinois "to provide a Schedule of Rates listing each of the rate elements of the incumbent local exchange carrier that pertains to a proposed order identified by the requesting telecommunications carrier for any of the matters covered in this Section". Ameritech Illinois' proposed Tariff No. 20, Part 19, Section 1 fully implements this process by addressing four general topics, including: 1) what information must be submitted by the CLEC (e.g., the service that is subject to the request); 2) how the information should be submitted (e.g., the request must be complete, clear and legible); 3) how the two (2) business day interval is calculated (e.g., the date the request is received is not counted in calculating the response time); 4) and how the Schedule of Rates affects the terms and conditions for the services provided (i.e., the tariff or the interconnection agreement contains the final rates terms and conditions). (Am. Ill. Ex. 3.0, pp. 14-16).

The CLEC Coalition disputes only two of the provisions in Ameritech Illinois' Schedule of Rates tariff. First, it proposes to delete the following language:

A Company single point of contact and the particular manner by which such requests are made is necessary to provide the Company with a reasonable opportunity to respond within the two (2) business day objective. Failure to send a request in this manner, or if the proposed order is incomplete, unclear, or illegible, may prevent the Company from responding promptly or accurately.

Under this language, the requesting CLEC would designate a single point of contact with whom Ameritech Illinois can communicate and would submit a complete, clear, and legible request.

These are modest and reasonable requirements, particularly where Ameritech Illinois is under a statutory obligation to provide a response within two (2) business days. Apparently, the CLEC

Coalition believes it is sufficient if the request is typed. (Am. Ill. Ex. 3.1, p. 36-n. 2). However, as Mr. Silver explains, a request could be neatly typed but it could still be incomplete and unclear, thereby preventing Ameritech Illinois from completing its response within two (2) business days.

Second, the CLEC Coalition proposes to add language that states “The Company shall deliver the requested Schedule of Rates to the requesting telecommunications carrier within two (2) business days for 95% of the requests for each requesting carrier”. Ameritech Illinois objects to including the statutory requirements in the tariff verbatim because it is needlessly duplicative and it creates the potential for inaccurate statements of the law in the tariff.

Staff raises additional objections, all of which should be rejected.

Staff’s first error is that it attempts to use the “Schedule of Rates” portion of the tariff under Section 13-801(i) for improper purposes. The sole purpose of Section 13-801(i) is to provide a Schedule of Rate elements for specific services identified by a CLEC. As discussed above in Section IX(C), Staff cannot transform this law into an obligation of Ameritech Illinois to identify UNEs and other components that are used in its retail services.

Second, Staff proposes that Ameritech Illinois’ obligation to provide a Schedule of Rates apply to services provided by its “affiliates”. For the reasons discussed in Section X , above, this requirement must be rejected.

Third, Staff deletes Ameritech Illinois’ language that provides “the date that the request is received will not be counted in calculating the response time”. Staff’s proposal would operate to deny Ameritech Illinois the full two (2) business days it is entitled to have in order to provide a Schedule of Rates. For example, if Ameritech Illinois received a request at 2:30 on a Monday, under Staff’s proposal Ameritech Illinois’ reply could be due as early as Tuesday. That would

not give Ameritech Illinois the two days to which it is entitled. Ameritech Illinois' language, in contrast, follows the general rule that the time periods do not include the day the request is received. In this regard, Illinois law provides that “[t]he time within which any act provided by law [e.g., Section 13-801(i)] is to be done shall be computed by excluding the first day and including the last . . .” 5 ILCS 70/1.11. Thus, for a request received at 2:30 on a Monday, the reply should be due on Wednesday⁴⁷.

Fourth, Staff objects to the paragraph which clarifies that a Schedule of Rates is not an offer to provide services and that the tariff or the interconnection agreement provides all controlling terms and conditions for the services provided by Ameritech Illinois. It is a fundamental regulatory principle that the tariff must control the services offered by Ameritech Illinois and that those tariff terms cannot be varied by rate quotations issued by its representatives. 220 ILCS 9/240 (“no public utility shall charge...different compensation for any product...than the rates...specified in its schedules on file...”); AT&T v. Central Office Telephone, Inc., 524 U.S. 214, 188 S. Ct. 1956; 141 L. Ed. 2d 222 (1998). This “filed rate doctrine” has not been repealed by Section 13-801(i).

For all of these reasons, the Commission should find that Ameritech Illinois' Schedule of Rates tariff is just and reasonable.

XIII. AMERITECH ILLINOIS' PROPOSED RESALE TARIFF PROPERLY IMPLEMENTS SECTION 13-801(f)

Section 13-801(f) requires Ameritech Illinois to offer for resale at wholesale rates all retail telecommunication services that it provides at retail within the LATA. The obligations under Section 13-801(f) are no different than those under the federal Telecommunications Act,

⁴⁷ Initially, the CLEC Coalition objected to the following sentence in Ameritech Illinois' tariff: “The date the request is received will not be counted in calculating the response time”. However, in subsequent testimony, this objection was dropped. (Jt. CLEC Ex. 1, Revised Sch. JPG-1; Tr. 551).

47 U.S.C. Section 251(c)(4). Ameritech Illinois' existing Resale Local Exchange tariff fully complies with the requirements under federal law and, therefore, fully complies with Section 13-801(f). (Am. Ill. Ex. 3.0, p. 16; Ill. C.C. No. 20, Part 22, Section 1). Ameritech Illinois has made just two changes to its resale tariff, each of which make it clear that the existing Resale Local Exchange tariff fully complies with Section 13-801(f).

Staff did not address the changes to Ameritech Illinois' Resale Local Exchange Tariff and apparently agrees that it complies with Section 13-801(f).

The CLEC Coalition raised two points. (Jt. CLEC Ex. 1, Schedule JPG-1; Jt. CLEC Ex. 2, pp. 22-23). First, Mr. Gillan on behalf of the CLEC Coalition initially stated that Ameritech Illinois' tariff should require Ameritech Illinois to resell the telecommunication services of its affiliates. In his rebuttal testimony, however, Mr. Gillan conceded that Ameritech Illinois has no obligation to resell the services of its affiliates and that Ameritech Illinois' tariff on its face complies with Section 13-801(f). (Jt. CLEC Ex. 2, p. 22)⁴⁸ Accordingly, it appears that the CLEC Coalition is no longer requesting any change to Ameritech's resale tariff that concerns affiliates or xDSL service.

Second, the CLEC Coalition proposes to delete language which specifies that Ameritech Illinois is providing resale services to the extent required by "the Telecommunications Act of 1996, Pub. L. No. 104, 110 Stat. 56 (1996) ("the Act") and the rules and regulations of the Federal Communications Commission, and to the extent not inconsistent with the foregoing, the IL PUA and the rules and regulations of the Illinois Commerce Commission. The Company intends that this tariff fully complies with the Company's obligations under the Illinois Public

⁴⁸ Mr. Gillan continues to assert that to the extent an Ameritech Illinois affiliate offers services to end users, that affiliate must make available those services at a wholesale discount. Since this is a tariff proceeding focused on the tariff obligations of Ameritech Illinois and not its affiliates, that is not an issue to be addressed in this proceeding.

Utilities Act as amended effective July 30, 2001.” This language should remain because it accurately describes the fact that Ameritech Illinois’ obligations under Illinois law cannot be inconsistent with federal obligations. 47 U.S.C. Section 261. In addition, the language provides the further benefit of putting CLECs on notice that state-specific obligations must be consistent with federal obligations.

For all these reasons, the Commission should find that Ameritech Illinois’ Resale tariff is just and reasonable.⁴⁹

XIV. AMERITECH ILLINOIS’ REVISIONS TO THE GENERAL TERMS AND CONDITIONS FOR TARIFF NO. 20, PART 19 ARE JUST AND REASONABLE

Ameritech Illinois’ Tariff 20, Part 19 contains a section for General Terms and Conditions which applies to the eighteen UNE/Number Portability sections in Part 19⁵⁰. (Am.

⁴⁹ Ameritech Illinois has made just two changes to its Performance Measurements Tariff, each of which make it clear that the existing Performance Measurements Tariff fully complies with Section 13-801. (Ill. C.C. No. 20, Part 2, Section 10). Staff did not address the changes to Ameritech Illinois’ Performance Measurements Tariff and apparently agrees that is just and reasonable. The CLEC Coalition proposes to delete two sentences. For the reasons discussed in the Resale and the General Terms and Conditions portions of this Brief (Sections XIII and XIV), this language should be retained. Mr. Silver testified that the following language proposed by Staff for Tariff 20, Part, Section 1, Sheet 4 appeared to be acceptable. (Am. Ill. Ex. 3.1, p. 40). “See Part 2, Section 10 of the their tariff for the objective performance characteristics, how they are measured, and remedies for inferior service.” On closer review, the term “remedies for interim service” is incorrect because it implies that performance has been less than that provided to others, when in fact remedies are available when Ameritech Illinois fails to meet particular benchmark standards. For this reason, it would be more accurate to say “See Part 2, Section 10 of this tariff for the objective performance characteristics, how they are measured, and available remedies.”

⁵⁰ The eighteen UNE/Number Portability sections are:

Unbundled Loops and HFPL	-Section 2
Unbundled Local Switching	-Section 3
Vacant	-Section 4
Unbundled Tandem Switching	-Section 5
Number Portability	-Section 6
Unbundled Directory Assistance Services	-Section 7
Unbundled Operator Services	-Section 8
Access to SS7	-Section 9
Access to 800 Database	-Section 10
Access to Line Information Data Base (LIDB) Database	-Section 11
Unbundled Interoffice Transport	-Section 12
Access to AIN Databases	-Section 13
Interim Shared Transport	-Section 14
Provision of Pre-Existing and Ordinarily Combined UNE-P	-Section 15

Ill. Ex. 1.0, Attach. 1.1, pp. 4-5; ICC Tariff No. 20, Part 19, Section 1). In the course of revising its UNE tariff to implement Section 13-801, Ameritech Illinois made two changes to the General Terms and Conditions. First, Ameritech Illinois inserted the following language:

The Company intends that this tariff fully complies with the Company's obligations under the Illinois Public Utilities Act as amended effective June 30, 2001. ("Illinois PUA").

This language expresses Ameritech Illinois' intent to comply with Section 13-801 and other relevant provisions of the Illinois Public Utilities Act as amended effective June 30, 2001.

Neither Staff nor the CLEC Coalition objects to this language. (Jt. CLEC Ex. 1, Sch. JPG-1; Tariff 20, Part 19, Section 1, Sheet 1).

Second, Ameritech Illinois inserted the following language:

The Company has filed this tariff under compulsion of the Illinois Public Utilities Act, including as amended by Illinois Public Act 92-0022, and specifically reserves any and all rights and remedies it may have relating to possible challenges to Illinois Public Act 92-0022 and this tariff under state and federal law, including federal preemption law.

Neither the CLEC Coalition nor Staff objects to this language. (Jt. CLEC Ex. 1, Sch. JPG-1; Tariff 20, Part 19, Section 1, Sheet 2).

The changes to the General Terms and Conditions proposed by Staff (one change) and the CLEC Coalition (several changes) are discussed below.

First, the CLEC Coalition proposes to delete Ameritech Illinois' pre-existing language which provides that Ameritech Illinois will modify its tariff to reflect changes in law. The entire provision is as follows:

Unbundled Sub-Loops	-Section 16
Access to CNAM Database	-Section 17
Unbundled Dark Fiber	-Section 18
Vacant	-Section 19
Enhanced Extended Loop (EEL)	-Section 20
Unbundled Local Switching with Shared Transport	-Section 21

In the event that any of the rates and/or other provisions in this Tariff, or any of the laws or regulations that were the basis or rationale for such rates and/or other provision in this Tariff, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts or competent jurisdiction, the Company fully reserves its rights to withdraw, conform, and/or otherwise alter this Tariff or any part hereof, including any rate and/or other provision, consistent with any action of such regulatory or legislative body or court. Such withdrawal, confirmation, and/or other alteration shall become effective upon its filing with the Commission or as soon thereafter as legally permitted and, absent a contrary ruling by the Commission or agreement between the Parties, shall relate back to the effective date of such regulatory, legislative, or court action. Without limiting the general applicability of the foregoing, it applies to AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999), Ameritech v. FCC, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), and the Eighth Circuit Court opinion in Iowa Utilities Bd. v. FCC, No. 96-3321, 2000 WL 979117 (8th Cir. , July 18, 2000) (invalidating the costing/pricing rules adopted by the FCC in its First Report and Order in In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (1996) (e.g., 47 C.F.R. § 51.501, et. seq.)), and any FCC subsequent remand proceedings.

This language has been a part of the Ameritech Illinois tariff for years and nothing about Section 13-801 requires, or even suggests, that this language should be deleted from the tariff.

Moreover, the CLEC Coalition presented no evidence to support its proposal to delete the language.

Second, in at least two locations in the General Terms and Conditions, the CLEC Coalition proposes changes which would add needless confusion. In each passage, the Ameritech Illinois tariff states that it will provide unbundled network elements and number portability to the extent required by federal law, and, to the extent not inconsistent with federal law, the Illinois

PUA.⁵¹ As discussed above, this language accurately describes the requirement for consistency between state and federal obligations. In addition, this generic approach to the description of

⁵¹ The Ameritech Illinois language is set forth below :

Unbundled Network Elements and Number Portability are available to telecommunications carriers for use in the provision of a telecommunications services within the LATA to the telecommunications carrier's end users or payphone service providers as specified and to the extent required by the Telecommunications Act

UNEs in the General Terms and Conditions section is preferable because it avoids the errors contained in the CLEC Coalition's proposal. The CLEC Coalition proposal would improperly permit UNEs to be used for:

any and all existing and new telecommunication services within the LATA, including, but not limited to, local exchange, interexchange that includes local, local toll, and interLATA toll and exchange telecommunication services.

(Jt. CLEC Ex.1, Sch. JPG-1, Tariff 20, Part 19, Section 1, p. 1). This mixes language from 13-801(a) and 13-801(d)(4) and produces a muddled, inaccurate statement of the law. In particular, it omits the important limitation in Section 13-801(d)(4) that allows a CLEC to use the UNE Platform only to provide services to "its end users or pay telephone service providers". Rather than patch together various statutory terms, the tariff should reference Ameritech Illinois' overall obligation to make UNEs available pursuant to the law. Detailed terms and conditions that apply to each individual UNE are set forth in the individual UNE sections of the tariff.

Third, the CLEC Coalition and Staff propose to insert language in the General Terms and Conditions which defines the term "ordinarily combines". (Jt. CLEC Ex. 1, Sch. JPG-1, Tariff 20, Part 19, Section 1, p. 3.4; Staff Ex. 1.0, Attach. 2, p. 1). This language should be rejected for all the reasons described in Section II of this brief. Moreover, the "ordinarily combines" issue should not be dealt with in the General Terms and Conditions Section, but rather in the specific sections which deal with UNE combinations, i.e., Part 19, Sections 15 and 20.

Fourth, the CLEC Coalition proposes a reference to the Commission's Order in Docket No. 99-0593 which is completely unnecessary. (CLEC Ex. 1, Sch. JPG-1, Tariff 20, Part 19,

of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) ("the Act") and the rules and regulations of the Federal Communications Commission and, to the extent not inconsistent with the foregoing, the IL PUA and the rules and regulations of the Illinois Commerce Commission.

The other passage is as follows:

Section 1, p. 2.1). The Commission in Docket No. 99-0593 issued a detailed order which defined when network elements are “available” in the Ameritech Illinois network and which further defined when Ameritech Illinois may impose special construction charges for access to unbundled network elements. (Docket No. 99-0593, Order dated August 15, 2000). In compliance with the Commission order, in September of 2000 Ameritech Illinois amended the General Terms and Conditions of the UNE tariff, as follows:

The Company shall be required to make available Network Elements only where such Network Elements, including facilities and software necessary to provide such Network Elements, are available. If the Company makes available Network Elements that require special construction, the telecommunication carrier shall pay to the Company any applicable special construction charges as stated in Part 2, Section 5, Sheets 1 and 2 of this Tariff with the exception of conditioning charges as stated in Part 19, Section 2, Sheet 8.1. A facility is considered available if the facility requested is located in an area presently (i.e., at the time at which a facility is requested) served by Ameritech Illinois.

(Ill. C.C. No. 20, Part 19, Section 1, Sheet 4.4). Accordingly, the General Terms and Conditions already includes language that implements the Order in Docket No. 99-0593 and no further language is required.⁵²

Fifth, the CLEC Coalition makes the extreme proposal that Ameritech Illinois be required to “determine deployment [of its own facilities] based on ... non-binding forecasts received” from CLECs. (Jt. CLEC Ex. 1, Sch. JPG-1, Part 19, Section 20, p. 2.1). Nothing in Section 13-801 remotely refers to or requires Ameritech Illinois to build capacity for CLECs without charge.

The unbundled network element services provided in this section are exclusively for use by “telecommunications carriers” for the provision of telecommunication service as defined by and to the extent required by the Act and, to the extent not inconsistent therewith, the IL PUA.

⁵² If the Commission continues to believe that some additional reference to Docket No. 99-0593 is absolutely required, Ameritech Illinois has proposed the following revision to its tariff:

Where insufficient capacity exists to meet the telecommunication carrier’s technically feasible network unbundling needs, the telecommunications carrier may request that additional capacity be added via the “Bona Fide Request” process or, as appropriate, may request that additional capacity be added pursuant to the Commission’s Order in Docket No. 99-0593, as long as such Order remains effective”.

(Am. Ill. Ex. 1.1, pp. 16-17)

The CLEC Coalition's proposal that Ameritech Illinois do so based on "non-binding forecast" is outlandish. This would require Ameritech Illinois to expend its capital based on unsubstantiated, overly-optimistic forecasts and to assume all the risk of inaccurate forecasts. As recent events in the telecommunications industry have shown, overly-optimistic forecasting is a common occurrence.

Next, the CLEC Coalition proposes language which would make clear that CLECs are not required to have an effective interconnection agreement in order to purchase unbundled network elements under the Ameritech Illinois tariff. Similar language already appears elsewhere in the Ameritech Illinois tariff, and Ameritech Illinois therefore has no objection to this language.⁵³

Finally, the Commission should not adopt the CLEC Coalition proposal to include the following language:

Telecommunications carriers that have an effective interconnection agreement with the Company pursuant to Section 252 of the Telecommunications Act of 1996 shall be permitted to prescribe to any offering under this Tariff.

(Sch. JPG-1, Tariff 20, Part 19, Section 1, p. 3.4). Certain sections of Ameritech Illinois' Tariff 20, Part 19 already contain language which makes it clear that a CLEC with an interconnection agreement can also purchase services under the tariff. However, that is limited to Section 15 (UNE Platform), Section 20 (EELs) and Section 21 (ULS-ST). Since these are the only sections of Tariff 20, Part 19 that are impacted by Section 13-801, no additional tariff change is required to implement Section 13-801. This appears to be yet another example where CLEC Coalition is trying to use this proceeding to make changes that are outside the scope of Section 13-801 implementation.

There are two other compelling reasons why CLECs with interconnection agreements should not be permitted to abrogate those agreements by purchasing services out of a tariff when the services are covered by the interconnection agreement. First, a state determination that a CLEC could do this would be pre-empted by federal law. Section 252(a)(1) of the Act and the federal regulatory scheme established by the Act’s local competition provisions forbid any attempt by a party to impose tariff obligations that clash with the “binding” terms of an interconnection agreement created under Sections 251 and 252 of the Act. The Supreme Court repeatedly has held that “[p]re-emption may be either expressed or implied, and ‘is compelled whether Congress’s command is explicitly stated in the statute’s language or implicitly contained in its structure and purpose.’” Gade v. National Solid Wastes Management Ass’n, 505 U.S. 88, 98 (1992); see also Crosby v. National Foreign Trade Council, 530 U.S. 363, 372 (2000) (“Even without an express provision for preemption, . . . state law is naturally preempted to the extent of any conflict with a federal statute.”). The doctrine of implied preemption applies where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress—whether that ‘obstacle’ goes by the name of ‘conflicting; contrary to; . . . repugnance; difference; irreconcilability; inconsistency; violation; curtailment; . . . interference,’ or the like.” Geier v. American Honda Motor Co., 529 U.S. 861, 873 (2000) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). And “[w]hat is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.” Crosby, 530 U.S. at 373. Significantly, federal law not only preempts state law that conflicts with federal substantive standards, but also trumps state action that “interferes with the methods by which the federal statute was designed to reach [its] goal.” Gade, 505 U.S. at 103.

⁵³ The proposed language states that “Telecommunications carriers are not required to have an effective interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996 with the Company in

These preemption principles clearly come into play where, as here, the CLEC Coalition proposes to circumvent the Congressionally prescribed procedures for imposing interconnection obligations. By imposing tariff obligations that purport to cover the same subject matter as a binding Section 252 interconnection agreement, the CLEC Coalition asks this Commission to “interfere with the methods by which the federal statute was designed to reach [its] goal” (Gade, 505 U.S. at 103) of implementing the local competition provisions of the Act. This is preempted by federal law.

The Commission accepted this rationale in Docket No. 99-0379, a complaint brought by MCI against Ameritech Illinois after MCI made a unilateral decision to switch from electronic to manual resale service orders, notwithstanding its obligation under a Section 252 agreement to place electronic orders. The Commission held that MCI could not invoke filed tariffs that contradicted a valid and binding interconnection agreement. The Commission explained that:

Having reviewed the record on these issues, and subject to the determinations made below, the Commission first concludes that MCI is not permitted to utilize the provisions of a tariff in a manner that is directly contrary to the terms of the parties’ Commission-approved Interconnection Agreement entered into pursuant to Sections 251 and 252 of the 1996 Act. As discussed above, the Agreement limits the use of manual ordering to “interim and backup” situations only, and it does not permit MCI to place faxed [] orders in the manner proposed by MCI. To allow MCI to avoid its obligations under the Agreement by simply invoking the terms of a tariff would have the effect of allowing one party to unilaterally amend the agreement. Such a result would undermine the integrity of the contract and the process of which it is a part, and would frustrate the federal scheme favoring individually negotiated agreements under the Telecommunications Act

Under the Commission precedent, the CLEC Coalition’s proposal must be rejected.

A second, independent reason why the CLEC Coalition’s proposal must be rejected is that under Sierra-Mobile, a party may not invoke a tariff to vary the terms of a Congressionally authorized private agreement that implements federal policy goals. The Sierra-Mobile doctrine,

order to subscribe to any offering under Part 19 of this Tariff 20”.

which derives from two Supreme Court cases that were decided on the same day, Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), provides that where parties have entered into a contract that is authorized by law, neither party may unilaterally abrogate that contract in favor of a provision found in a tariff. The doctrine prevents a party from unilaterally abrogating a contract through reliance on a tariff. See Global Access Ltd. v. AT&T Corp., 978 F. Supp. 1068, 1073 (S.D. Fla. 1997). The Sierra-Mobile doctrine thus applies to regulatory schemes, like that established under the 1996 Act, that favor private contracts filed with a regulatory body over tariff regimes, like that which had existed prior to the 1996 Act. See Mobile, 350 U.S. at 338.

The application of the Sierra-Mobile doctrine in Global Access is particularly germane. In that case, AT&T and Global Access agreed to terms for the sale of long-distances services pursuant to a 1991 FCC regulation that was designed to “streamline governmental regulation and to foster competition in the provision of telecommunication services to businesses” by permitting carriers to “set by private agreement” many terms of their relationship. Global Access, 978 F.Supp. at 1072. The court rejected a subsequent attempt by AT&T to impose higher rates under a new tariff on the ground that such action would undermine the FCC’s goals of creating a contract-based regime that “promotes efficiency (by allowing specially tailored, personalized contracts) and competitive pricing (by making negotiated contracts generally available to similarly situated customers). ” Id. at 1074.

For all these reasons, the CLEC Coalition’s proposed changes to the General Terms and Conditions Section should be rejected and the Commission should find that Ameritech Illinois’ tariff is just and reasonable.

X. CONCLUSION

For all the reasons discussed in this Brief, the Commission should approve Ameritech Illinois' proposed tariff amendments as filed by the Company in this matter and as revised by Ameritech Illinois Exhibit 1.0, Attachments 1.1 and 1.2 and Attachment 1 to this Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Karl B. Anderson, an attorney, certify that a copy of the foregoing **INITIAL BRIEF OF AMERITECH ILLINOIS** was served on the parties on the attached service list by electronic transmission on January 11, 2002 and by regular U.S. mail on January 14, 2002.

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