

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Illinois Bell Telephone Company</b>	:	
	:	
<b>Filing to implement tariff provisions related to</b>	:	<b>01-0614</b>
<b>Section 13-801 of the Public Utilities Act</b>	:	

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**REPLY BRIEF OF THE STAFF OF  
THE ILLINOIS COMMERCE COMMISSION**

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**I. INTRODUCTION**

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the above-captioned matter. The Staff's Reply Brief will respond specifically to arguments raised by Ameritech Illinois (hereafter "Ameritech") in its Initial Brief ("Ameritech IB" or "Ameritech Br.") and the Competitive Local Exchange Carriers ("CLECs") Initial Briefs ("CLECs Br." or "Joint CLECs Br.", "Focal Br.", "Sprint Br.", "Novacon Br.", "Globalcom Br.", "MCLEODUSA Br.") in this proceeding, except where otherwise noted. Staff has addressed most of the points raised in the initial briefs of the parties in its own initial brief ("Staff IB" or "Staff Br.") and so, in the interest of brevity, will not reiterate those points again. While Staff will comment on several specific points raised in all the initial briefs, the absence of a response in this reply brief should not be construed to mean that Staff concurs with those positions; rather, it means that Staff has adequately described its position in its initial brief or that Staff believes no further comment is necessary. Staff fully reserves

the right to address any issue properly within the scope of the second phase of this proceeding without respect to its failure to raise it in this phase.

## II. APPLICABLE LAW / REGULATIONS

### A. Preemption:

Ameritech has argued in the past, and in this proceeding, *see, e.g., Ameritech IB* at 79, 157, that all or part of Section 13-801 is preempted by federal law, specifically the Telecommunications Act of 1996 (“FTA”), to the extent that the Commission, acting under the authority of Section 13-801, promulgates rules or requires Ameritech to offer terms and conditions that are “inconsistent” with those required by federal law. Ameritech IB at 79. However, while Ameritech can make any federal preemption argument it cares to make regarding preemption of all or part of Section 13-801, or rules or terms and conditions adopted thereunder, the passage of PA 92-22 by the General Assembly prevents it from making such arguments before the Commission. As Ameritech will doubtless agree – having often argued as much – the Commission is a creature of state law, and bound by the acts of the General Assembly. City of Chicago v. Illinois Commerce Commission, 79 Ill. 2d 213, 217-18 (1980); Illinois Bell Telephone Co. v. Illinois Commerce Commission, 203 Ill. App. 3d 424, 438 (1990).

Of course, to the extent that Ameritech believes that the General Assembly has acted in a manner that is preempted by federal law, it has a remedy available to it. Specifically, Ameritech may petition the FCC under Section 253(d) of the FTA, to preempt all or part of Section 13-801, on the grounds that it violates, or is inconsistent with, the federal Act. 47 USC 253(d). If Ameritech has brought such a petition, the Staff is unaware of it.

However, Ameritech cannot hope to successfully raise a preemption argument here, in this proceeding. The Illinois Commerce Commission has no authority to declare an Act of the Illinois General Assembly preempted. Accordingly, the Commission must reject Ameritech's argument that federal law preempts the application of Section 13-801, even if it determines that such arguments have any scintilla of merit.

Fortunately, Ameritech's preemption arguments lack merit, in light of the fact that they have as their starting point Ameritech's belief that "not inconsistent with" is another way of saying "identical to in every respect."

Under Section 251 of the FTA, ILECs have a duty to provide interconnection, collocation, unbundled network elements, and other services to competitors. Section 13-801 of the Illinois Public Utilities Act requires ILECs to undertake similar, but somewhat more expansive duties. *See, generally*, 220 ILCS 5/13-801. The fact that these duties may somewhat exceed those imposed by the FTA is not, however, an automatic basis for preemption.

In adopting Section 13-801, the Illinois General stated 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...The Commission shall require the incumbent local exchange carrier to provide interconnection, collocation, and network elements in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications offerings.

220 ILCS 5/13-801(a) (Emphasis added).

Under the Supremacy Clause of the United States Constitution, the laws of the United States "shall be the supreme Law of the Land \*\*\* any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Resolving

a question of preemption is essentially a matter of gauging Congressional intent. Schneidewind v. ANR Pipeline Co., 485 U.S. 293, 299, 99 L. Ed. 2d 316, 325, 108 S. Ct. 1145, 1150 (1988). “Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law...” Louisiana Pub. Service Comm. v. FCC, 476 U.S. 355, 368; 90 L. Ed. 2d 369; 106 S. Ct. 1890 (1986).

In the case of the FTA, Congressional intent is readily ascertained, and it demonstrates that Congress did not intend to completely preempt state action. In enacting the FTA, Congress recognized that states have an important role to play in implementing the FTA, and a unique grasp of local market conditions. This solicitude for state regulation is reflected in Section 261(c) of the FTA, which provides that:

Additional State requirements. Nothing in this part [47 USC §§ 251 et seq.] 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 the State's requirements are **not inconsistent with** this part [47 USC §§ 251 et seq.] or the Commission's regulations to implement this part [47 USC §§ 251 et seq.].

47 USC § 261(c)

Clearly, Congress has not entirely preempted states from acting. To the contrary, under Sec. 261(c), states are explicitly permitted to impose additional requirements to further competition for intrastate services as long as those requirements are consistent with the FTA. The FTA is a “scheme of cooperative federalism”, Michigan Bell v. MCI, 128 F.Supp. 2d 1043, 1050 (E.D. Mich. 2001), and state law is only preempted to the extent that it actually conflicts with federal law.

Federal courts have addressed whether certain actions by state commissions are inconsistent with and, therefore preempted by, the FTA. In MCI Telecommunications

Corp. v. US West, 204 F.3d 1262 (9<sup>th</sup> Cir. 2000), the court held that the FTA permits a state commission to require collocation of remote switching units on an incumbent local exchange carrier's premises in an interconnection agreement. Under the facts of that case, the Washington Utilities and Transportation Commission ("WUTC") approved an interconnection agreement between U.S. West and MCIMetro, an MCI affiliate. U S West challenged a provision of the agreement requiring it to allow MCIMetro to co-locate remote switching units ("RSUs"). The court rejected US West's argument that the WUTC had violated the FTA by relying on the FCC's interpretation of the word "necessary", an interpretation with which the Supreme Court had found fault.

Here, our task is not to examine possible flaws in the WUTC's decision-making process, but to decide whether a provision resulting from that process - the provision requiring co-location - has resulted in an agreement that fails to "meet the requirements" of the Telecommunications Act. 47 U.S.C. § 252(e)(6). Although the Act may not require the provision, it certainly does not proscribe it. Sections 251 and 252 of the Act are designed to provide some flexibility in fixing the provisions of interconnection agreements. Hence, we conclude that the provision is valid and affirm the district court.

204 F.3d at 1269.

In Michigan Bell Telephone Co. v. Strand, 26 F. Supp. 2d 993 (W.D. Mich. 1998), the court upheld an order of the state commission that Ameritech claimed impermissibly modified its interconnection agreements with MCI. In the order the state commission determined the rates for "common transport" while the interconnection agreements contained provisions concerning "shared transport". Ameritech argued that the order effectively replaced the shared transport tariffs with common transport tariffs, thereby ignoring the negotiation procedures set forth in Section 252 of the FTA. The court

disagreed and held that the state commission's order constituted a consistent state regulation.

Under Section 261(c), state commissions are explicitly permitted to impose requirements to further competition for intrastate services as long as the requirements are consistent with the Telecommunications Act. Under Section 251(d)(3), the MPSC may enforce its own regulations to the extent they: (a) establish access and interconnection obligations of local exchange carriers; (b) are consistent with Section 251; and (c) do not substantially prevent implementation of the Telecommunications Act. The requirement of "common transport"--to the extent of any minimal difference between it and "shared transport"--represents such a state regulation. It was done under state law precisely to foster and encourage state competition (by AT&T, MCI and other such companies) as to telephone services and does not in any way interfere with the requirements of the Act or the implementation of the Act. As such, the tariffs are permissible as consistent state regulation.

26 F.Supp.2d at 1000-1001 (Emphasis added).

In summary, then, Ameritech's preemption argument lacks merit, and cannot, in any case, be advanced in this proceeding. The Commission should therefore disregard it.

### **III. ISSUE 1 -- AMERITECH'S RESERVATION OF RIGHTS AND EXCEPTIONS**

As the Staff noted in its Initial Brief, Ameritech's attempt to reserve rights to unilaterally withdraw its tariff in the event of legal or regulatory changes is objectionable. Staff IB at 9-11. Specifically, as the Staff pointed out, it allows Ameritech altogether too much latitude to alter or withdraw its tariff consistent with its own, unilateral interpretation of acts of the Commission, FCC, Congress, General Assembly, or courts. Id. Further, Ameritech's reservation of rights provision, on its face, authorizes the company to bypass the requirements of Section 13-406 of the Public Utilities Act, which requires the company to give notice to the Commission and customers before

withdrawing any service, and prohibits the company from withdrawing non-competitive services without Commission approval. Id.

In defense of this provision, Ameritech argues that “[t]his 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.” Ameritech IB at 153. As a factual statement, Ameritech’s assertion the provision has been in the tariff “for years” is difficult to support. While some roughly similar provision may have “been a part of the Ameritech Illinois tariff for years[,]” this particular provision appears to be of much more recent vintage, containing as it does references to court decisions from 1999 and 2000. See Ameritech IB at 153. Further, the provision permits the company to violate Section 13-406 by withdrawing non-competitive services without first obtaining the Commission’s assent. Thus, the provision is void *ab initio*, regardless of whether it has been in Ameritech’s tariff since the Flood.

Ameritech further argues its proposed tariff provisions stating that it will provide UNEs and number portability to the extent required by federal law, and to the extent not inconsistent with federal law, by the Illinois Public Utilities Act “accurately describes the requirement for consistency between state and federal obligations.” Id. This contention bears modest scrutiny, provided that one is prepared – as the Staff is not – to accept Ameritech’s position that “not inconsistent with” means “absolutely, and in all respects, identical to.” Since, as noted above, Ameritech intends to make the decision regarding whether the Illinois Act is inconsistent with federal obligations on a unilateral basis, this provision contains a great deal of scope for mischief. Likewise, if Ameritech believes that Section 13-801, or obligations arising thereunder, is preempted by federal law, its

remedy is plain: it may petition the FCC under Section 253(d) of the Telecommunications Act of 1996, to preempt the offending portions of Section 13-801, on the grounds that they violate, or are inconsistent with, the federal Act. 47 USC 253(d). Instead, Ameritech urges the Commission to leave this decision in to Ameritech. The Commission should reject this proposal.

#### **IV. ISSUE 3 -- SINGLE POINT OF INTERCONNECTION (SINGLE POI)**

In its brief, Ameritech outlines its proposal to implement Section 13-801(b)(1)(B). Staff has addressed many of the shortcomings of Ameritech's proposal in testimony and brief. See Staff Br. at 11-22; Staff Ex. 2.00 (Zolnierrek Direct), at 4-13; Staff Ex. 2.1 (Zolnierrek Rebuttal), at 2-17. Therefore, rather than repeat those responses here, in the interests of brevity Staff replies only to certain contentions and arguments. The absence of a response, however, should not be interpreted as conceding the point, but rather the argument or contention was sufficiently addressed in testimony or the initial brief, or no response is necessary.

Ameritech contends that the proposal set forth in its tariff fully implements Section 13-801(b)(1)(B) and establishes an equitable mechanism for apportioning costs. Ameritech Br. at 10. Ameritech is mistaken. Its proposal fails on both accounts and, accordingly, should be rejected. Ameritech first contends that Sections 13-801(g) and 13-801(b) provide a statutory basis for its proposal to saddle CLECs with transport and switching costs on its side of the single POI. Id. at 134, 139. In fact, Ameritech goes so far as to claim that "Section 13-801(g) and 13-801(b)(1) specifically require Ameritech to be compensated for the interconnection it provides." Id. at 146 (emphasis added).

Those sections do no such thing. Section 13-801(g) imposes a duty on Ameritech to charge cost-based rates. It says nothing whatsoever about whether or how Ameritech may recover its transport costs in a given instance. Similarly, Section 13-801(b) is an obligation imposed on Ameritech to interconnect with CLECs. It does not require that Ameritech recover its additional transport costs from CLECs, much less in the manner Ameritech proposes. It may be wholly appropriate, as it is here under Staff's proposal, for Ameritech and the CLECs to bear their own costs. Thus, Ameritech's contention that these sections require it to recover its additional transport costs from CLECs, or compel approval of its proposal, is incorrect. Staff's proposal is wholly consistent with these sections and should be adopted.

In describing its proposal, Ameritech asserts that "Dr. Aron's expert economic testimony supports Ameritech Illinois' position that CLECs should pay for the interconnection-related services they use." Ameritech Brief at 138. Hence, Ameritech suggests that its proposal is grounded in economic theory. Ameritech has provided no relevant, credible economic theory to support its position in this proceeding, however. Rather, Ameritech has peppered its testimony and brief with a few generalized economic "principles," suggested that its proposal adheres to these principles, and asserted that Staff has ignored these principles. For example, Ameritech asserts that "Staff inexplicably set aside the well established principle that a carrier pay for the costs which it causes." Ameritech Br. at 140. Staff acknowledges that as a general rule economic efficiency is achieved when producers pay the costs associated with the inputs they use to produce goods and services. What Ameritech fails to do, however, is explain how this general economic principle supports its position, demonstrates why its

position is superior to Staff's position, or even how it relates to the complex problem of allocating interconnection costs.

When an Ameritech customer calls a CLEC customer, the Ameritech customer receives telephone service produced using network elements that extend from the customer's own customer premises equipment (CPE) to the CPE of the CLECs customer. The call includes both Ameritech and CLEC facilities. Under general cost causation principles, it would appear that Ameritech's customer receives the service and should pay the costs associated with producing it. Under existing retail and interconnection pricing policies, Ameritech alone collects revenue from the Ameritech customer. Thus, if the Ameritech customer is to pay the costs associated with producing the service but does not remit payment to the CLEC directly, then Ameritech must collect enough revenue from its customer to pay the CLEC for the costs of the inputs it provides in order to produce the service for Ameritech's customer and, in turn, remit this payment to the CLEC. Therefore, under general economic principles of cost causation it would appear that solely Ameritech should compensate the CLEC for inputs the CLEC provides in jointly providing telephone service.

This grossly simplified analysis, however, fails to consider the customer called. The customer called also receives telephone service produced using network elements that extend from his own CPE to the CPE of the Ameritech customer who placed the call. Under the above logic, one could argue that solely the CLEC, which is the only carrier to collect revenue directly from its own customer, should compensate Ameritech for the inputs Ameritech provides to complete this call for the CLEC's customer. This example illustrates the complexity of establishing an optimal interconnection regime. In

a given telephone call there is a single set of inputs used to produce telephone service for two different customers, the calling party and the called party. Also, two or more telecommunications providers jointly provide a single set of inputs. Further complication involves the fact that calling and called parties receive different benefits depending on the nature of the calls (e.g., family conversations, telemarketing). Therefore, it is misleading to suggest, as Ameritech does, that general principles of cost causation can resolve this problem or compel adoption of Ameritech's proposal.

Sound economic theory identifies specific, relevant assumptions concerning a problem<sup>1</sup> and assimilates and processes these assumptions in order to arrive at conclusions that necessarily reflect these assumptions. Ameritech's economic analysis is contrary to sound economic theory. Ameritech provides no description of the assumptions it makes in reaching economic conclusions, nor does it provide any connection between these assumptions and the circumstances concerning interconnection of telecommunications networks. Although Ameritech's analysis suffers from numerous deficiencies, Staff focuses its reply on the most egregious ones. For example, in support of its proposal that CLECs pay it for additional transport and switching, Ameritech states: "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." Ameritech Br. at 138. This statement implies that under Staff's proposal some "service" is provided for free by Ameritech to the CLEC and that this results in economic inefficiency. Ameritech,

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<sup>1</sup> The real-world situations addressed by economic theory invariably are so complex as to require the elimination of irrelevant facts and, consequently, emphasis of the most important facts. However, these exercises must be conducted with caution as omission of pertinent facts can result in faulty conclusions.

however, fails to identify what that free service is or how Ameritech's proposal would lead to an efficient outcome.

Consider the following example based on the example offered by Ameritech (Br. at 137) of a call from a CLEC customer in Aurora to his neighbor also in Aurora who is an Ameritech customer. As in Ameritech's example, assume that the point of interconnection (POI) between Ameritech and the CLEC is located in downtown Chicago. Under Staff's proposal, the CLEC is responsible for delivering the call from its customer to the POI in Chicago. Similarly, Ameritech is responsible for delivering the call from the POI in Chicago to its customer in Aurora. Given the direction of this call Ameritech is able under the reciprocal compensation regime to recover the costs associated with transport and termination of the call at either the rate established in its interconnection agreement with the CLEC or at its tariffed rates. In this example, each carrier is responsible for transport between Chicago and Aurora, but Ameritech alone, given the direction of the call, is able to recover from the CLEC some of the transport costs (roughly 15 miles of transport and termination) on its side of the POI. Now assume the direction of the call is reversed--that is, assume a call from an Ameritech customer in Aurora who calls his neighbor in Aurora who is a CLEC customer. In this situation, Ameritech is responsible for delivering the call from its customer to the POI in Chicago. Under Staff's proposal, the CLEC is responsible for delivering the call from the POI in Chicago to its customer in Aurora. Given the direction of this call the CLEC is generally able to recover from Ameritech transport and termination costs for the last 15 miles of the call.<sup>2</sup>

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<sup>2</sup> Despite differing network architectures, CLECs have to date charged the same rates to Ameritech for

Based on Ameritech's proposal to levy access charges on the CLEC for transport on its side of the POI in more than 15 miles between Aurora and Chicago regardless of call direction, it appears that this portion represents the "free service" referred to by Dr. Aron that Ameritech would be required to provide under Staff's plan. If so, it is unclear why the transport of more than 15 miles between Aurora and Chicago on the CLEC's side of the POI does not also represent a "free service" that Ameritech receives from the CLEC. In this proceeding, Ameritech has at no time presented a set of assumptions applicable to an analysis of the single POI issue or shown how the economic theories it espouses in support of its proposal relate to the concrete set of facts at issue here. Instead, what Ameritech seems to imply is that any cost borne by Ameritech when it interconnects with another carrier must be recovered by Ameritech from the CLEC in order to avoid violation of basic economic principles. This premise is faulty and demonstrates the lack of reasoned economic support for its position.

Similarly, rather than reflecting a reasoned application of economics, Ameritech's assertion that "[s]ound economic policy also requires that the CLECs be asked to pay for the additional costs of interconnection caused by their decision to interconnect at a single point," Ameritech Br. at 139, reflects a myopic, monopolistic viewpoint that is not supported by rational economic theory. Interconnection between carrier networks enables customers of one carrier to access customers of another carrier. Despite the obvious benefits to its customers from interconnecting with other networks, Ameritech's assertion reflects a view that it is the responsibility of any carrier connecting with its

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transport and termination that Ameritech charges to the CLECs. Therefore, CLECs are able to recover reciprocal compensation from Ameritech for the last 15 miles of transport and termination at Ameritech's own cost based reciprocal compensation rates.

network to incur the costs “it causes” by interconnecting with Ameritech. Ameritech’s proposal would discourage interconnection between itself and nascent CLECs. Ameritech is in a position to promote this view due to its status as a dominant carrier in the local telecommunications market. As a dominant carrier, Ameritech is in the unique position of benefiting from the breakdown of intercarrier interconnection. It is unlikely that customers would subscribe to a CLEC’s local telecommunications service if that CLEC were unable to interconnect to Ameritech’s network. Consistent with such incentives, Ameritech has proposed inequitable interconnection terms that discourage CLEC interconnection.

In its Initial Brief, Staff pointed out that Ameritech’s proposal is not reciprocal insofar as when a CLEC elects a single POI, Ameritech requests reimbursement from the CLEC for additional transport incurred in transporting a call, but does not appear willing to reimburse CLECs for additional transport they incur in transporting that same call. Staff Br. at 22; Staff Ex. 2.1 (Zolnierek Rebuttal), at 11-12 Ameritech disagrees. According to Ameritech, it is “willing to accept from CLEC’s the exact offer which [it] makes to the CLECs. Ameritech Br. at 143. Specifically, accordingly to Ameritech, “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.” Id. Ameritech’s proposal offers a false choice and, thus, is not truly reciprocal. Once a CLEC exercises its statutory right to elect a single POI, Ameritech’s option to establish multiple POIs (option 1) is no longer relevant and not applicable. Section 13-801(b)(1)(B) gives a CLEC the right to elect, and Ameritech the duty

to provide, a single POI. It is the CLEC's choice that controls.

Under Ameritech's proposal, to be truly reciprocal, once a CLEC elects a single POI, Ameritech and the CLEC must compensate the other for the additional transport incurred on their respective sides of the POI. Ameritech's argument appears to be that the mere offering of its two options without regard to which option is selected by a CLEC eliminates any obligation on its part to reimburse the CLEC. Put another way, if the CLEC elects to interconnect at multiple POIs such that no additional transport obligations (on Ameritech's behalf) are incurred, Ameritech will interconnect at those POIs and no reimbursement is due either carrier. If, however, the CLEC elects to interconnect at a single POI, as it has a right to do under Section 13-801(b), Ameritech contends that it is entitled to reimbursement for additional transport on its side of the POI, but the CLEC is not entitled to additional transport on its side of the POI because, so the argument goes, Ameritech would have been willing to interconnect at multiple POIs, but the CLEC elected to interconnect at a single POI. The former is reciprocal, the latter is not. The reciprocity analysis is properly applied once the election is made, not when the options are presented.

As mentioned, under a reciprocal application of Ameritech's proposal, when a CLEC elects a single POI, the CLEC and Ameritech each compensate the other for the additional transport on their respective sides of the POI for a given call. Assuming, however, Ameritech and the CLEC charge the same rate to recover costs of additional transport and switching cost on their own side of the POI--and Ameritech has provided no reason why the rate should be different--the net effect of a truly reciprocal Ameritech proposal would simply be a "wash." In other words, Ameritech would bill the CLEC for

its additional transport costs on its side of the POI and the CLEC would bill Ameritech for its additional costs on its side of the POI, but since each carrier would bill the other the same rate per call, they each receive exactly the same amount per call and neither receives more revenue than the other. At the end of each billing period, each carrier would merely disburse a check to the other for the same amount for these calls. In this scenario, however, each carrier would likely incur transactions costs, including, at a minimum, the costs of billing and collection. Alternatively, under Staff's proposal, these administrative costs would be avoided as Ameritech and the CLEC would be responsible for their own additional transport costs on their own side of the POI and neither carrier would obtain compensation from the other for that additional transport.

In addition, Ameritech's proposal discourages adoption of network architectures that do not mirror its own, that is, that rely on less switching and more transport than Ameritech's network. Ameritech witness Dr. Aron acknowledges this point and her testimony supports the notion that if competition develops and Ameritech's customer base is reduced Ameritech might elect to configure its network with relatively more transport and relatively fewer switches (i.e. a less monopolistic network configuration). Staff Br. at 21-22. Ameritech's current proposal is consequently a function of its position as a dominant carrier in the local telecommunications market. Thus, given Ameritech's market dominance, its proposal discriminates in favor of monopoly networks and against new, potentially more innovative network architectures and, thus, constitutes a barrier to entry.

Staff in its Initial Brief described Ameritech's proposal, holding CLECs financially responsible for facilities on Ameritech's side of the POI, as one creating multiple "virtual

POIs.” Staff Br. at 19. Staff observed that if a CLEC leased facilities on its own side of the POI from Ameritech and was required to lease (or compensate) Ameritech for facilities on Ameritech’s side of the POI then “the entire link between the CLEC’s network and Ameritech’s tandem would be the financial responsibility of the CLEC.” Id. That is, under Ameritech’s proposal the CLEC bears the financial burden of providing facilities on both sides of the single POI. In response, Ameritech indicates that “there is no requirement that a CLEC actually build out additional points of interconnection and incur the expense of dedicated facilities to do so,” (Ameritech Br. at 136), and “Ameritech is not asking the CLECs to share any risk of establishing and maintaining an extensive network of additional interconnection facilities.” Id. Staff acknowledges that a difference exists between leasing of Ameritech’s transport facilities and a CLEC’s self-provisioning of facilities. Leasing permits CLECs to reduce risks associated with investing in network infrastructure, but increases their reliance on Ameritech. The relative advantages and disadvantages associated with leasing vis a vis ownership of transport facilities do not change the fact that Ameritech’s proposal places a disproportionate financial responsibility on CLECs that elect a single POI. Ameritech’s “pay as you go” plan still requires CLECs to pay Ameritech for transport and switching on Ameritech’s side of the single POI. Id. at 136, 144.

Staff’s proposal, supported in testimony and brief, provides a CLEC with the option to elect a single POI and, upon election, further provides that the CLEC and Ameritech bear the financial responsibility for transport and switching costs on their respective sides of the POI. Thus, Staff’s proposal synchronizes the physical and financial responsibilities when a CLEC elects a single POI. As drafted, Staff’s proposal

applies only to a single POI, and Staff did not address whether the reasons supporting its proposal should also apply beyond a single POI scenario to multiple POIs.<sup>3</sup> See Tr. 785-88. Focal, in its initial brief, while generally supporting Staff's proposal, argues that there should be no distinction between single and multiple POIs and recommends that Staff's proposal be adopted and extended to apply to multiple POIs. Focal Br. at 8-9.

Section 13-801(b)(1)(B) allows CLECs to interconnect with Ameritech "at any technically feasible point" within its network. 220 ILCS 5/13-801(b)(1)(B). Nothing in Section 13-801(b)(1)(B) limits a CLEC's right to interconnect with Ameritech to a single POI. Therefore, as a policy matter, Staff sees no reason to limit its proposal to a single POI. The reasons supporting Staff's single POI proposal are fully applicable to multiple POIs. Ameritech should provide CLECs the option of electing multiple, technically feasible POIs within a LATA and should provide CLECs the option to elect that each interconnected party bear financial responsibility for interconnection costs on their respective sides of the POI. Accordingly, Staff supports Focal's recommendation and amends its proposed tariff, Ill. C.C. No. 20, Part 23, Section 2, 2nd Revised Sheet No. 5.2, to reflect that CLECs' Section 13-801(b)(1)(B) rights apply to a single POI as well as multiple POIs.

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<sup>3</sup> On cross examination, Staff witness Zolnierек explained the genesis of Staff's proposal: "I was simply putting a provision in that allows carriers to exercise—requesting carriers to exercise their right under Section 801 for a single POI."

## **V. ISSUE 7 -- COLLOCATION EQUIPMENT: TYPES OF EQUIPMENT**

Ameritech argues in its Initial Brief that its tariff appropriately limits the type of collocation equipment that Ameritech must permit at its premises to “necessary” equipment. AI Brief at 108. Although Ameritech concedes that Section 13-801(c) of the PUA does not include any such restriction, Ameritech nevertheless argues that Ameritech’s obligation is limited to collocation of equipment that is “necessary” for interconnection. Id. at 109. Staff disagrees. As explained fully in Staff’s initial brief, Staff recommends that the Commission adopt the language of Section 13-801(c) which explicitly creates additional obligations upon carriers subject to the privilege of alternative regulation. Staff Brief at 27-38.

Moreover, the legislature did not impose these additional obligations upon alternative regulation carriers without reason. To be subject to alternative regulation, rather than rate of return regulation, is indeed a privilege which comes with it additional obligations. Section 13-506.1 of the PUA, which governs the alternative regulation option, bears this out by specifically authorizing this Commission to adopt different forms of regulation to fit the particular characteristics of different telecommunications carriers and their service areas and to impose additional conditions upon alternative regulation carriers in order to satisfy the explicit public policy goals identified in Section 13-506.1. 220 ILCS 5/13-506.1. The rationale for this approach is that alternative regulation carriers enjoy additional benefits under this scheme, not the least of which is the ability to retain more of their profits, in exchange for accepting the burden of additional competitive obligations and safeguards. For all of these reasons, to permit Ameritech’s tariff to modify the statutory language to include the word “necessary” would negate the intent of the legislature in requiring Ameritech to undertake obligations

that go beyond the requirements of federal law. As Staff has explained in its Initial Brief, the legislature specifically imposed additional obligations upon these carriers that this Commission cannot and should not ignore. Staff Brief at 32-34.

As support for its tariff restriction, Ameritech relies chiefly on three arguments. First, Ameritech argues that the collocation tariff approved by the Commission in Docket 99-0615 includes the “necessary” restriction. AI Brief at 9 and 108-109. Apparently, Ameritech views this fact as support for continuing to limit its obligations. Staff disagrees. Docket 99-0615 was concluded prior to the enactment of PA 92-22. As a result, it is and should be appropriately modified by the subsequent action of the Illinois General Assembly. While the Commission may not have chosen in Docket 99-0615 to impose additional obligations upon Ameritech, the legislature now has. Therefore, as a creature of statute, the Commission must now follow the directive of the legislature.

Second, Ameritech argues that PA 92-22 has imposed obligations upon Ameritech that are inconsistent with federal law and therefore, go beyond the state authority. Id. at 109.

For argument sake, even assuming Ameritech to be correct that the additional obligations imposed by the legislature are inconsistent with federal law and, as a result, the Illinois General Assembly has acted outside of its state authority, this argument cannot but fail at the Commission. Until PA 92-22 has been overturned on that basis, this Commission has no choice but to follow state law. As discussed earlier in Section II in this brief, Ameritech’s remedy is to seek to overturn the legislation, not to ask this Commission to countermand it.

Moreover, Ameritech has not made its case that the additional obligations imposed by Section 13-801 are inconsistent with federal law. Ameritech relies upon a misinterpretation of Section 13-801(a). Instead of indicating the legislative intent to impose upon alternative regulation carriers additional obligations that are consistent with federal law, Ameritech argues that Section 13-801(a) recognizes that it imposes additional obligations but leaves open to question whether those obligations are consistent with federal law. Id. at 109-110. As Staff explained in its initial brief, this interpretation is contrary to the language of Section 13-801(a) and common sense. Staff Brief at 31. A better reading of that section is that the legislature was aware of the federally imposed obligations, understood it was imposing additional state obligations and expressed its legislative intent that these additional obligations were consistent with federal law.

Finally, as discussed more fully in Staff's initial brief, although the federal law imposes a lesser standard upon ILECs, namely, that their obligation is limited to permitting equipment necessary to interconnection, federal law does not prohibit ILECs from accepting equipment that may not be necessary to interconnection nor does it prohibit states from requiring ILECs to accept such equipment. Staff Brief at 32-33. Indeed, Ameritech, in its tariff, has indicated the possibility that it may voluntarily exceed the FCC's minimum obligation by accepting additional equipment. Moreover, Ameritech's argument that this additional obligation may be an unwarranted intrusion on the ILEC's property interest (AI Brief at 109) ignores the fact that Section 13-801 does impose the limitation that the equipment must be for interconnection or access to unbundled network elements. 220 ILCS 5/13-801(c).

Ameritech also argues that the Illinois General Assembly is preempted from deviating from the federal standard. AI Brief at 110. This argument must fail for the same reasons stated above. If Ameritech believes that the State legislature acted improperly, its remedy is to challenge PA 92-22, not to ask this Commission to second-guess the legislature. Nevertheless, as support for this proposition, Ameritech cites to an opinion of a federal district court in Wisconsin (hereinafter, "Wisconsin Bell v PSC") that held that the Wisconsin state commission did not have authority to impose a standard (as an additional state obligation) that had been specifically held to be improper by a federal court. AI Brief at 110.

Wisconsin Bell v PSC is distinguishable from the issue in this proceeding in several ways. First, in Wisconsin Bell v PSC, the Wisconsin commission was not acting under the authority of a specific legislative mandate. The Wisconsin commission had approved an arbitrated interconnection agreement that contained a provision that obligated Wisconsin Bell to collocate equipment necessary for interconnection. This arbitrated interconnection agreement apparently defined the word "necessary" as "used or useful". Subsequent to the commission's approval, the court of appeals for the District of Columbia issued a decision that challenged the FCC's regulation that interpreted "necessary" to mean "used or useful." *GTE Service Corp. v. FCC*, 205 F.3<sup>rd</sup> 416, 422-423 (D.C.Cir. 2000) (hereinafter, "GTE").

In Wisconsin Bell v PSC, Wisconsin Bell objected to the collocation obligation in the approved interconnection agreement on the grounds that "the 1996 Act authorizes only necessary collocation and that necessary means what the Court of Appeals for the District of Columbia Circuit said it meant: 'that which is required to achieve a desired

goal.’” Wisconsin Bell v PSC at 20, citing GTE at 423. The Wisconsin commission argued that, as a state commission, they had the authority under Section 252(b)(4) of the Telecommunications Act of 1996 to impose requirements that go beyond those mandated by the Act. Wisconsin Bell v PSC at 21. While the district court in Wisconsin Bell v PSC agreed with the Wisconsin state commission that the Act gave such authority to state commissions, it did, however, question the Wisconsin’s commission’s right to impose an additional obligation on Wisconsin Bell that “us[ed] a standard that has been held to be improper.” Wisconsin Bell v PSC at 21. Nevertheless, the district court did not actually decide this issue. Rather, the district court disputed the contention of the Wisconsin commission that they had based their approval of the interconnection agreement on state law.

The district court judge in Wisconsin Bell v PSC stated the following:

Defendant commission argues that it based its decision on state law. Even if I agreed with the commission that state law would enable it to use a definition of necessary that has been held to be an improper interpretation of that term as used in § 251(c)(6), I would find this argument lacking. Nothing in the arbitration decision suggests that defendant commission considered state law when it ruled on Ameritech Wisconsin’s obligation to collocate. R. 68 at 12056-58. Thus, even if it had the authority under state law to require Ameritech Wisconsin to collocate, its decision could not stand because it did not rest on state law. Wisconsin Bell v PSC at 22.

Unlike Wisconsin Bell v PSC, in this proceeding, the Commission is absolutely considering state law in imposing an additional obligation upon Ameritech.

Second, the Wisconsin state commission sought to impose a definition of the word “necessary” that had been specifically struck down by the court of appeals. In this situation, the Commission does not seek to impose a rejected definition. This

Commission's actions would be merely to implement the additional obligations imposed by the legislature upon alternative regulation carriers.

Moreover, Wisconsin Bell v PSC is a Wisconsin district court case that is not controlling on this Commission. The value of the case rests solely in how persuasive it is. Colby v. J.C.Penney Co., Inc., 811 F2d 1119,1124 (7<sup>th</sup> Cir. 1987). Wisconsin Bell v PSC is not persuasive authority. As stated above, the court based its holding on a rejection of the contention of the Wisconsin commission that it rested its decision on state law. Moreover, even if the district court held what Ameritech argues it hold, i.e., that a state commission did not have authority to impose an additional obligation that used a standard that has been held to be improper, that is not what this Commission would be doing in supporting the language of Section 13-801. Further, it is exceedingly questionable that the GTE case, which struck down the FCC's interpretation of the necessary standard in TA96 as a lesser standard than the one imposed by TA96, actually takes away the right of a state commission to impose an additional obligation on an ILEC, even one that GTE struck down on other grounds. For all of these reasons, the Commission should disregard Ameritech's arguments and uphold the legislative mandate in PA 92-22.

As an adjunct to the general issue regarding collocation of equipment, Staff proposed that Ameritech's tariff specifically permit multifunctional equipment. Staff Brief at 37-38. Ameritech apparently does not object (although it is not its stated preference) to incorporating into its tariff Staff's position regarding multifunctional equipment, finding it to be consistent with the FCC's policy. AI Brief at 113. Staff maintains that the tariff should explicitly recognize that multi-functional equipment is permitted and points the

Administrative Law Judges to Staff's proposed language set forth in its brief. Staff Brief at 37-38.

## **VI. ISSUE 8 -- CROSS CONNECTIONS: INTERCONNECTIONS AMONG CLECS**

Ameritech argues in its brief that the Section 13-801(c) provisions governing cross-connections between CLECs in Ameritech's premises be modified in its tariff to require only those cross connects that "comply in all respects with the Company's technical and engineering requirements." AI Brief at 114. Staff initially considered accepting this language if Ameritech could prove that these additional technical and engineering requirements were in keeping with Section 13-801's permissible limitation on cross connects, namely that they be consistent with safety and network reliability standards. However, despite Staff's request for greater specificity made in its direct testimony in this proceeding, Ameritech failed to provide greater detail regarding these requirements. Staff Exhibit 3.0 (Omoniyi Direct) at 11. In Staff's view, Ameritech's proposed tariff language is overly broad and vague and, as a result, allows Ameritech too great an amount of discretion in prohibiting cross-connections. Staff recommends in its initial brief that the additional limitations Ameritech proposes to include in its tariff relating to technical and engineering requirements be eliminated. Staff Brief at 41. Ameritech's brief has added nothing to clarify this language other than the argument that Docket 99-0615 approved similar language in the Collocation tariff. AI Brief at 114-115. As previously explained in this reply brief, the order in Docket 99-0615 was issued prior to PA 92-22 and is modified by it. As a result, Staff continues to recommend deletion of Ameritech's proposed language.

## VII. ISSUE 9 -- AMERITECH MUST ALLOW CLECS TO COMBINE NETWORK ELEMENTS

Ameritech contends that it should not be required to tariff a so-called “secured frame option.” Ameritech IB at 14-15. In support of this contention, Ameritech asserts that, under existing tariffs, CLECs may employ a variety of option in combining elements for themselves, including physical collocation. Id. However, this argument must fail.

First, Ameritech cannot be heard to argue that its tariff provides 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. The “take advantage of” statement is particularly cagy; Ameritech neglects to point out that all these situations are situations where Ameritech is doing the combining, rather than the CLEC. There is no guarantee in the tariff that Ameritech will not require CLECs wishing to combine elements for themselves to collocate. This arrangement may be fine for particularly trusting CLECs, but it happens not to comply with Section 13-801(d)(4).

Second, Ameritech has made it very clear throughout this, and other proceedings, that it believes that it should be permitted to unilaterally remove services from its UNE tariffs in the event that it no longer considers itself required by law to provide them. *See, generally, Staff IB* at 5; Ameritech IB at 152-3. To the extent that the requirement that ILECs combine elements for CLECs is overturned, CLECs will need to do so themselves, and will in fact need to be collocated to do so, especially in view of the lightning speed at which Ameritech clearly intends to withdraw its tariffs in that event. This again argues in favor of a no-cost secured frame option.

It is clear that Section 13-801(d)(4) guarantees CLECs the right to utilize UNEs without having to collocate at Ameritech facilities. To require CLECs to collocate if they

wish to combine elements themselves is clearly contrary to Section 13-801(d)(4). Since the Staff's proposed "secured frame option" resolves this problem, it should be adopted.

Ameritech objects to the requirement that the secure frame option be provided at no cost to the requesting CLEC Ameritech IB at 15. Under the Staff's proposal, Ameritech would have to provide the frame and the cross connections to that frame at its own expense. This is because, in this case, Ameritech is the cost causer. It is for Ameritech's benefit that the CLECs are given access to a secure frame instead of direct access to Ameritech's main distribution frame (MDF)<sup>4</sup>. If CLECs were to pay for the secure frame and the cross connects to the frame, it would put CLECs at a cost disadvantage with respect to Ameritech because, instead of paying for one cross connection, as Ameritech would to serve its retail customer, CLECs would have to pay for two cross-connections, tie cables, a frame, possibly collocation, as well as the cost of the work to make the cross connection on its frame. Raising CLECs' costs relative to Ameritech will diminish their ability to compete.

Reviewing SBC's compliance with Federal rule similar to 13-801(d)(1) the FCC found in the FCC Kansas/Oklahoma 271 Docket that:

As required by our rules, competitive LECs may also request technically feasible methods of combining UNEs, other than collocation, that are consistent with the provisions of the 1996 Act and the governing statutes and decisions so that such carriers may combine network elements themselves. For example, SWBT [Southwestern Bell Telephone] will provide interested competitive LECs access to a secured frame room (or cabinet where space constraints require) that is set aside for accomplishing the necessary connections.

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<sup>4</sup> In, Iowa Utils. Bd. V. FCC, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), the Eighth Circuit Court found, "the fact that the incumbent LECs object to this rule [FCC rule 51.315(c) which requires ILECs to combine UNEs] indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them." Ameritech is now restricting the CLECs rights to access to elements.

Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, FCC 01-29, (Released Jan. 22, 2001).

Further, the FCC noted that “when competitors order UNEs for combining at the secured frame or cabinet, SWBT is required to cross-connect those elements to the frame or cabinet at no additional charge.” *Id.*, n. 496.

Finally Ameritech objects to the Secured Frame Option on the grounds that it would encourage CLECs to order this network access option simply to increase Ameritech’s cost. While this is not impossible under the Staff proposal, Ameritech has offered no language to remedy this situation. Without any constructive proposal from Ameritech, Staff does not consider itself obligated to resolve this alleged problem.

#### **VIII. ISSUE 10 -- AMERITECH MAY NOT SEPARATE UNES THAT ARE CURRENTLY COMBINED**

Ameritech contends that its proposed tariffs comply with Section 13-801(d)(2). Ameritech IB at 16-17. Ameritech argues that it is not required by Section 13-801(d)(2) to leave existing combinations, in its words, “nailed up”, for CLECs to use. *Id.* at 17. It therefore urges rejection of the Staff’s proposed deletion from its tariff of the phrase “[o]nce an order has been received by [sic] a telecommunications carrier[.]” Nonetheless, the Commission should delete this provision, as the Staff recommends.

Ameritech mischaracterizes the Staff’s position. The Staff has not proposed that anything be left “nailed up” on a semi-permanent basis. Rather, the Staff’s proposal recognizes that Ameritech has a financial – as well as a competitive – incentive to charge CLECs for new lines as opposed to existing lines. Specifically, Ameritech is able

under its proposed tariff to charge CLECs \$73.52 more (\$53.01 port charge and \$20.21 line charge) for new lines than for existing lines. ILL. C.C. No. 20, Part 19, Section 15, 4<sup>th</sup> Revised Sheet No. 2; Section 21, 1<sup>st</sup> Revised Sheet No. 42. Accordingly, Ameritech would be in a position to make money, cost its competitors money, and frustrate competition by disassembling loops after CLECs pre-order them. The Staff suggests that, without deletion of the provision in question, Ameritech might be unable to resist this temptation, especially since Ameritech would be the only party that knew the elements were combined in the first place. Tr. at 902. Accordingly, the Staff's recommendation should be adopted.

Ameritech further objects to the Staff's proposal that 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 Ameritech's UNE tariff. Ameritech IB at 18. Ameritech considers this unnecessary because its proposed tariff language correctly states its obligation to not separate UNEs, and is not intended to relate solely to the specific types of UNE-P combinations listed in the UNE-P tariff. Id. at 17-18. To the extent this latter statement is correct, however, it supports the Staff's recommendation, since conditions of general application – as these appear to be, based on Ameritech's representation – belong in the General terms and Conditions Section. Accordingly, the Commission should adopt the Staff's recommendation.

**IX. ISSUE 11 -- AMERITECH MUST COMBINE ANY SEQUENCE OF UNEs THAT IT “ORDINARILY” COMBINES FOR ITSELF -- COMBINATIONS OF ELEMENTS CONSTITUTING THE UNE PLATFORM**

Ameritech’s position regarding the proper definition of the term “ordinarily combines” is a curious one. Specifically, Ameritech contends that “ordinarily combines” in fact means “‘ordinarily combined’ to provide services to residential and small business customers on a widespread basis.” Ameritech IB at 20.

In support of this rather baroque contention, Ameritech first asserts that there are two broad categories of service: POTS (“plain old telephone service”) and “specials,” in which Ameritech appears to include everything that is not strictly POTS. Ameritech IB at 20. Since the latter are not “mass market” services, Ameritech contends that they should not be considered “ordinarily combined.” Id.

Second, Ameritech contends that its definition is consistent with the Commission’s Order in ICC Docket No. 98-0396. Id. at 21. Ameritech asserts that, in that Order, the Commission concluded that the purpose of Section 13-801(d)(3) was to “promote mass market competition for residential and small business customers.” Id., *citing Order*, Docket No. 98-0396 at 21. This, avers Ameritech, supports its contention that only those elements combined to provide POTS should be deemed “ordinarily combined.” Id.

Third, Ameritech argues that its definition of “ordinarily combined” will have certain economically desirable outcomes which will further the goals of the Public Utilities Act. Id. Specifically, Ameritech asserts that this will foster facilities-based competition, which will, in turn result in (1) less dependence by CLECs on ILECs; (2) a redundant network; (3) innovation; and (4) advancement of competition. Ameritech IB at

21-22. By contrast, Ameritech states that “an unduly expensive [sic; perhaps a Freudian slip] interpretation of requirements of Section 13-801(d)(3)” would reduce CLECs’ incentives to invest in facilities. Id. at 22.

Fourth, Ameritech asserts that the reclassification of business retail services by the General Assembly, see 220 ILCS 5/13-502.5, supports the proposition that “ordinarily combined” means, as Ameritech contends, “ ‘ordinarily combined’ to provide services to residential and small business customers on a widespread basis.” Id. at 22.

Ameritech’s position bears almost no scrutiny. First, the statutory language is directly contrary to Ameritech’s proposed definition. Section 13-801(d)(3) provides that:

Upon request, an incumbent local exchange carrier 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 of the Proposed Ameritech Illinois 271 Amendment (I2A) found in Schedule SJA-4 attached to Exhibit 3.1 filed by Illinois Bell Telephone Company on or about March 28, 2001 with the Illinois Commerce Commission under Illinois Commerce Commission Docket Number 00-0700. The Commission shall determine those network elements the incumbent local exchange carrier ordinarily combines for itself if there is a dispute between the incumbent local exchange carrier and the requesting telecommunications carrier under this subdivision of this Section of this Act.

220 ILCS 5/13-801(d)(3)

It is well established that the interpretation or construction of statutes is a question of law, to be decided by the court or tribunal. See, e.g., Matsuda v. Cook County Employees and Officers Annuity and Benefit Fund, 178 Ill. 2d 360, 364; 687 N.E. 2d 866 (1997); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014 (1997); Branson v. Dept. of Revenue, 168 Ill. 2d 247, 254; 659 N.E. 2d 961

(1995). The primary rule of statutory construction is to give effect to the legislature's intent in enacting the statute. Bruso, 178 Ill. 2d at 451. legislative intent should be sought primarily from the language of the statute, People v. Beam, 55 Ill. App. 3d 943, 946; 370 N.E. 2d 857 (5<sup>th</sup> Dist. 1977), since the language of the statute is the best evidence of legislative intent, Bruso at 451, and provides the best means of deciphering it. Matsuda, 178 Ill. 2d at 365. Accordingly, the best way to determine what the General Assembly meant is to look at what it said.

Such an analysis is fatal to Ameritech's position. Conspicuous by its absence is any limitation upon the class of customers that a CLEC may serve with elements "ordinarily combined" by the ILEC. An ILEC subject to Section 13-801 is required to combine for CLECs all elements it "ordinarily combines" in its own network, whether the CLEC intends to use the combination to serve the largest business customer, or an elderly lady who only uses the network once a week to call her cat's vet. As the Staff made clear in its Initial Brief, PA 92-22 is properly viewed as remedial legislation and should be broadly construed. See Staff IB at 5.

However, even if this were not the case, the Commission cannot narrow the scope of a lawful enactment of the General Assembly. It is clear that a court or tribunal must construe a statute as it is, and may not supply omissions, remedy defects, or add exceptions and limitations to the statute's application, regardless of its opinion regarding the desirability of the results of the statute's operation. Toys "R" Us v. Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328 (3<sup>rd</sup> Dist. 1991); cf. Thornton v. Mono Mfg. Co., 99 Ill. App. 3d 722, 425 N.E. 2d 522 (2<sup>nd</sup> Dist. 1981) (in determining that application of statute of limitations barring minor's products liability claim was proper, if perhaps harsh,

court observed that, where statute is clear, only legitimate role of court is to enforce the statute as enacted by legislature); People ex rel. Racing Bd. v. Blackhawk Racing, 78 Ill. App. 3d 260, 397 N.E. 2d 134 (1<sup>st</sup> Dist. 1979) (court observed that, though the General Assembly could have enacted a statute more effective in accomplishing its purpose than the one it did enact, the court was not permitted to rewrite the statute to remedy this defect). Thus, Ameritech's contention that its definition, which reads an exemption into Section 13-801(d)(3) where the General Assembly declined to do so, must be disregarded.

Ameritech's argument that the Commission has read such an exemption into the statute is therefore irrelevant, because the Commission has no authority to do so. In addition, Ameritech is incorrect as a matter of fact; the Commission has not done so. Ameritech takes the Commission's Order in Docket No. 98-0396 far out of context. First, *the very next sentence* of the passage of the Order cited by Ameritech supports the Order's conclusion that:

We ... require Ameritech to provide to CLECs unbundled network elements that it ordinarily combines for its own use or for the use of its end user customers, including the unbundled network element Platform and Enhanced Extended Links, or EELs.

Docket No. 98-0396, Order at 93.

The Commission's inclusion of EELs in the list of elements it ordered Ameritech to unbundled is fatal to Ameritech's contention that the Commission has construed Section 13-801(d)(3) to limit the term "ordinarily combined" to "ordinarily combined" to provide services to residential and small business customers on a widespread basis." EELs are, generally speaking, circuits used by CLECs to serve larger customers. See Novacon IB at 4-5. Thus, it is clear that the Commission had no intention whatever of limiting the

definition of the term “ordinarily combined.”

In fact, the Commission appears to have been quite certain what “ordinarily combined” means in its Order in Docket No. 98-0396. There, it stated that:

We also agree with the CLECs that FCC Rule 315(b) compels the conclusion that Ameritech is currently obligated to combine unbundled network elements that it **ordinarily combines** in its network, *even if the particular physical components of the network elements are not currently physically combined or connected*. We also agree with AT&T and MCI WorldCom that the FCC, in promulgating Rule 315(b), used **the word “currently” to mean those elements “ordinarily” combined in the ILECs’ networks**. See FCC First Report and Order, ¶296. Thus, we are persuaded that Rule 315(b) encompasses combinations actually combined and ordinarily combined in Ameritech’s network, and that Rules 315(c)-(f), now vacated, encompass those network elements not ordinarily combined by Ameritech. Indeed, we find that Ameritech’s interpretation of Rule 315(b) is unreasonably narrow as it would limit combinations to specific customer combinations that are presently in place, rather than the *type* of combinations the ILECs currently provide to themselves and customers as a matter of course. To limit Rule 315(b) as Ameritech suggests is nonsensical and constitutes bad public policy. Were we to adopt Ameritech’s interpretation, we would be severely limiting the benefits of local competition to those customers who, by pure and simple happenstance, happen to be served by an actual preexisting loop and port. This distinction is both arbitrary and discriminatory, and we reject it as a matter of law and as a matter of policy.

Docket No. 98-0396, Order at 94 (emphasis added).

Clearly, the Commission’s Order does not support Ameritech’s position.

Ameritech’s notion that its definition of “ordinarily combined” gives effect to the objectives of the Act is equally specious. The General Assembly did not, as Ameritech contends, intend to require CLECs to build a redundant network; instead, they intended to require Ameritech to give CLECs access to its network – the one that Illinois ratepayers have already paid for. As Senator Carol Ronen stated, in explaining to her colleagues the importance of Section 13-801 during senate debates on PA 92-22:

[T]he most important part of this bill is the part that deals with competition. What we’ve all talked about is Section (13-)801. **This bill requires that we open up the networks, our networks, the public networks. Ameritech talks about them as**

**their own. They're not their own. Those are networks that were built with ratepayer dollars.** They [Ameritech] were in a controlled environment. They took virtually no risk. They were guaranteed profits, and they made extremely high profits over the years, [but] did not put those profits back into the infrastructure or into developing innovations, and we've all seen the effect of a monopoly control over a system. ... This bill will address all of those problems.

Proceedings in the Illinois Senate, 51<sup>st</sup> Legislative Day, 92<sup>nd</sup> General Assembly, Debate Regarding HB 2900, Tr. at 21 (May 30, 2001)(emphasis added)

Similar remarks were made in the Illinois House by Representative Julie Hamos – the House Sponsor of HB 2900 – who stated that “one very important part of this Bill, Section [13-]801, in fact, will open the market to competition.” Proceedings in the Illinois House of Representatives, 69<sup>th</sup> Legislative Day, 92<sup>nd</sup> General Assembly, Debate Regarding HB 2900, Tr. at 6 (May 31, 2001).

Representative Hamos further remarked that:  
Section [13-]801 is intended to make it accessible for competitors to come into Illinois and **be able to tap into the existing public network**. So, in just this one Section, we have provided for many ways that we are now going to codify both federal and local regulations that should make it much more available for competitors to use that network.

Id., Tr. at 24 (emphasis added).

Clearly, the General Assembly had no intention of requiring CLECs to build redundant networks. Accordingly, Ameritech's assertions fail utterly on this count as well.

Finally, Ameritech asserts that the reclassification of business services supports its claim. This assertion is not even relevant. There is nothing whatever in the language of Section 13-801 that suggest that Ameritech's obligation to the provide all combinations that it ordinarily combines for itself is conditioned in any way upon the manner in which the end user's service is classified. Ameritech is, again, attempting to read a limitation into the statute where none exists. However, this must fail; Ameritech's fond hopes play no role in statutory construction.

It is clear that Ameritech's definition of the term "ordinarily combined" must be rejected.

Ameritech makes what is, in light of the above, the rather bold contention that the Staff's interpretation of which specific elements are "ordinarily combined" is "contrary to the plain language of the statute." Ameritech IB at 23. Specifically, Ameritech takes issues with the Staff's interpretation of "ordinarily combined" elements. *Id.* at 24. The Staff interprets "ordinarily combined" to include any combination of UNEs requested by a CLEC, except: (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 at 21-22.

Ameritech considers the exceptions proposed by the Staff to be so overbroad as to render the term "ordinarily combines" meaningless. Ameritech IB at 25. Ameritech appears to be particularly incensed with the Staff's proposal that CLECs be permitted to request rates for UNEs by specifying the retail service provided by Ameritech, rather than by the specific combination and configuration of UNEs used to provide the service. *Id.* This, according to Ameritech, goes far beyond the scope of Section 13-801(d)(3), and effectively requires it to provide resale of all services at TELRIC rates. *Id.*

Ameritech's arguments are singularly lacking in merit. As noted above, the Ameritech's definition of the term "ordinarily combined" is so defective and runs so counter to the statute that no interpretation can be based on it. The Staff has proposed a definition that recognizes that (1) only unbundled elements must be combined and (2) that certain UNE combinations either never or almost never occur. The Staff agrees that these are not "ordinarily combined."

The problem with any further interpretation of the term “ordinarily combined” is the fact that Ameritech has, until quite recently, categorically refused – in defiance of Commission Orders – to reveal what network elements it ordinarily combines, in what sequence, and for the provision of what service. In *Second Interim Order in Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic*, ICC Docket Nos. 96-0486 / 96-0569 (consol.) (February 17, 1998)(hereafter “TELRIC Order”), the Commission directed Ameritech to In its Order in Docket No. 98-0396, the Commission directed Ameritech to provide, with respect to end-to-end UNE bundling issues, the following information:

- 1) A description of the extent to which the separate elements of each combination are combined in Ameritech Illinois’ own network for its own use;
- 2) The separate unbundled element prices which Ameritech Illinois proposes would apply to a purchase of the combination;
- 3) The description of any additional activities and the costs of those activities which are required to provide each unbundled element come combination where recovery of cost of those activities is so;
- 4) An identification of each non-recurring charge which Ameritech Illinois proposes would or may apply to the purchase of the unique combination; including an identification of all non-recurring charges which Ameritech Illinois proposes would or may apply to the situation where end-users’ existing service is converted “as is” to a new entrant; and
- 5) A description of the basis for calculation of each non-recurring charge Ameritech Illinois proposes would remain apply.

TELRIC Order at 125.

Ameritech refused to comply with this Order, as the Commission noted in its Order in Docket No. 98-0396:

The Commission agrees with the claims by Staff that “the evidence supplied by Ameritech in response to the Commission’s directive does little to enlighten these

questions.” Staff Init. Br., p. 22. The Commission finds that Ameritech Illinois has not provided the requisite information for each of the five areas concerning UNE combinations identified by the TELRIC Order, and thus, has not complied with the TELRIC Order in this respect.

TELRIC Order at 93.

The HEPO on Reopening in Docket No. 98-0396 makes it even more clear that any lack of general knowledge regarding which elements are combined to provide what service is entirely attributable to Ameritech’s own recalcitrance and violation of Commission orders. In proposing the imposition of an interim tariff very unfavorable to Ameritech, the HEPO notes:

[Imposition of the interim tariff is], however, a result of Ameritech’s own invention because of its steadfast refusal to propose prices based upon the costs of installing new and second lines. **Rather than provide the Commission with the requisite information, Ameritech chose to take an all or nothing approach.** Put bluntly, they gambled and lost. The result is the conundrum now faced by the Commission. To refuse to impose the terms of the MCIWorldCom tariff would be to eviscerate the Commission’s prior determination that Ameritech must provide requesting carriers with new and second lines through the UNE-P as well as EELs by converting special access circuits. It would also aid and abet Ameritech in its untiring efforts to stymie competitors’ entry into the market, something we will not do. The other side of the coin is that it is quite likely that Ameritech will, for a short period of time, recoup less than the costs it will incur in provisioning new and second lines or EELs. Given a choice between two distasteful outcomes, the Commission has decided upon the outcome that will do the least harm (because of Ameritech’s opportunity to seek true-ups) and provide the greatest benefit (by allowing new entrants the opportunity to purchase new and second lines at an affordable rate) to consumers of telephone services in Illinois.

Docket No. 98-0396, HEPO on Reopening at 7 (emphasis added).

Thus, Ameritech’s arguments are futile. Having refused for nearly four years – in direct violation of its legal obligations – to provide the Commission with information regarding UNE combinations in its network, it now complains that the Commission and ordering CLECs should, but do not, have intimate knowledge of what elements the company combines, how often, and for what purpose.

As the HEPO on Reopening noted, the problem here is “a result of Ameritech’s own invention[.]” Id. To the extent that parties propose somewhat broad interpretation of what UNEs Ameritech ordinarily combines, this is entirely Ameritech’s fault. To permit it to parlay its lawlessness into the right to offer fewer UNE combinations would be rewarding that lawlessness. That Staff is certain that the Commission will not countenance this.

The Staff’s interpretation of “ordinarily combined” is lawful, reasonable and practical. It should be adopted.

**X.**

**XI. ISSUE 11 -- ENHANCED EXTENDED LOOPS (EELS) AND ISSUE 19 -- SPECIAL ACCESS CONVERSIONS**

**I. The Commission Should Reject Ameritech’s Unduly Narrow Definition of “Ordinarily Combines.”**

In its brief, Ameritech contends that its proposed tariff contains all of the EELs it is required to offer under Section 13-801(d)(3). In support of its contention, it offers an unduly restrictive definition of “ordinarily combined,” which serves to limit the type of EELs it is required to combine under that section. Accordingly to Ameritech, the phrase “ordinarily combines” refers at most “to UNEs that are ‘ordinarily combined’ to provide services offered to residential and small business customers on a widespread or mass market basis.” Ameritech Br. at 20. Ameritech offers four reasons to support its unduly narrow interpretation of ordinarily combined, none of which have merit.

First, Ameritech suggests that its interpretation “is consistent with the common-sense English meaning of ‘ordinarily.’” It is not. Staff explained in its initial brief that the term “ordinarily” is commonly understood as customary, usual, or regular. Staff Br. at 55-56. Ameritech, however, attempts to substitute the term “common” for “ordinarily,” and

argue that it need only provide commonly or widely used services. Ameritech Br. at 20. Its linguistic sleight-of hand should be rejected. Staff also explained that the term “ordinarily combines,” as used in Section 13-801(d)(3) describes the frequency and condition by which Ameritech performs work to combine the particular UNEs, not the uses or end user services to which those combinations are targeted or marketed. Staff Br. at 56. Ameritech’s suggested interpretation ignores the context in which the term is used. Thus, Ameritech’s suggested interpretation imposing a “widespread or mass-market” restriction on the term “ordinarily combines” in Section 13-801(d)(3) should be rejected.

Second, Ameritech contends that its interpretation of “ordinarily combines” is consistent with the Commission’s understanding of the term in its Order in Docket 98-0396. It is mistaken. The Commission, in ordering Ameritech to provide combinations of UNEs it ordinarily combines in its network, indicated that “public policy not only supports, but commands, that we require Ameritech to provide such combinations if we are to promote mass market competition for residential and small business customers in Illinois.” Order, ICC Docket 98-0396, at 93. Contrary to Ameritech’s contention, that the Order (and Section 13-801(d)(3)) identified that requiring Ameritech to provide UNE combinations (including EEL combinations) will promote mass market competition for residential and small business customers in Illinois does not transform that public policy into a limitation on Ameritech’s s duty to provide only those UNE combinations that will promote mass market competition for residential and small business customers. Section 13-801(d)(3) admits of no such “mass market” restriction on Ameritech’s obligation to combine for CLECs those UNEs it ordinarily combines for itself and, consistent with that section, the Commission imposes no such restriction in its Order.

Third, Ameritech asserts that its restrictive definition of “ordinarily combined” considers the objectives of the PUA. Ameritech Br. at 20. Ameritech further suggests that the General Assembly’s intent in enacting Section 13-801 was to promote facilities-based competition and that the means by which to achieve that objective was to limit Ameritech’s unbundling obligations. See Ameritech Br. at 26-28. Ameritech is mistaken. Section 13-801 imposes additional obligations that exceed those currently required by federal law; it does not reduce Ameritech’s unbundling obligations. See 220 ILCS 5/13-801(a). It is illogical to suggest, as Ameritech does, that the legislature, which clearly increased Ameritech’s unbundling obligations in new Section 13-801, intended for the Commission to reduce those statutory obligations in implementing that section. The Commission is obligated to follow the General Assembly’s properly enacted statutes. No suggestion is made that the new amendments to the PUA were improperly enacted.

Ameritech also relies on Governor Ryan’s statement upon signing House Bill 2900 into law in suggesting that Staff’s position is at odds with the legislature’s intent. Ameritech Br. at 28. For one thing, post-enactment comments are generally accorded no weight in determining legislative intent. 2A Norman J. Singer, Sutherland Statutory Construction § 48.20 (6th ed. 2000). For another, even considering the Governor’s message, it is hardly an indicator of the legislature’s intent in enacting the bill. The Governor’s letter is dated June 28, 2001, well after the General Assembly passed the bill on May 31, 2001. Section 13-801 itself clearly imposes a host of obligations on Ameritech to allow competitors access to its network, some of which go beyond federal requirements. Further, as discussed in Staff’s Initial Brief, the statements of several

legislators support the notion that the General Assembly anticipated greater use of Ameritech's network, not less use. Staff Br. at 1-3. Thus, although Governor Ryan's letter evidences the Executive's intent, the Commission in implementing the PUA is obligated to give effect to the legislature's intent. Moreover, as described below, Staff's position is wholly consistent with Governor Ryan's goal of encouraging facilities-based competition and guidance to the Commission.

Furthermore, Section 13-801(a) directs the Commission to require Ameritech to provide interconnection, collocation and UNEs in any manner technically feasible "to the fullest extent possible to implement the maximum development of competitive services offerings." It would not be consistent with this specific direction, nor the findings and policies of Article XIII, to interpret Section 13-801 as endorsing facilities-based competition as the exclusive or preferred means of entry at all times. See 220 ILCS 5/13-102, 103. Section 13-801(a) refers to "competitive service offerings," not "facilities-based competition," and the maximum development of competitive service offerings may be achieved, at least initially, by policies promoting less costly means of entry. And, as discussed below, policies that promote market entry by permitting resale or lease of Ameritech's network today may likely lead to increased facilities-based competition in the future.

Ameritech points to the testimony of its witness Dr. Aron who extolls the benefits of facilities-based competition. Id. What is missing from Ameritech's analysis, however, is evidence that restricting access to Ameritech's facilities will promote competition. The arguments presented by Ameritech ignore a fundamental premise behind unbundling and resale obligations imposed on Ameritech--viz., that carriers might elect to use these

methods of entry as a first step to eventually deploying their own facilities. In its Local Competition Order,<sup>5</sup> the FCC discussed the various methods of entry established by the federal Act:

The Act contemplates three paths of entry into the local market--the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities. This strategy was employed successfully by MCI and Sprint in the interexchange market during the 1970's and 1980's. Others may use a combination of entry strategies simultaneously--whether in the same geographic market or in different ones. Some competitors may use unbundled network elements in combination with their own facilities to serve densely populated sections of an incumbent LEC's service territory, while using resold services to reach customers in less densely populated areas. Still other new entrants may pursue a single entry strategy that does not vary by geographic region or over time. Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results. Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.

Local Competition Order ¶ 12 (emphasis added).

Ameritech merely asserts that allowing competitors unrestricted access to Ameritech's network will encourage CLECs to forgo investing in their own facilities. Ameritech Br. at 22. Ameritech, however, fails to consider that an unduly restrictive policy may deter entry by CLECs that will rely on Ameritech's network in the short run but deploy their own facilities in the long run. That is, if CLECs are denied the opportunities that the

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<sup>5</sup> In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("Local Competition Order").

FCC found instrumental in the development of competition in the long distance industry, they may in fact not enter the local market at all. Thus, a policy that provides CLECs only minimal or limited access to Ameritech's facilities may, in the long run, reduce the amount of facilities-based competition.

In its UNE Remand Order,<sup>6</sup> the FCC succinctly summarized the reason for the slow development of competition. The FCC explained that “[b]ecause unbundled network elements have not been made fully available to requesting carriers as the Commission expected in 1996, we do not yet know the extent to which competition will develop once all of the unbundling rules are actually implemented by incumbent LECs.” Id. ¶ 11. The FCC's conclusion is clear and its conclusion applies equally to Illinois, where Ameritech has similarly failed to comply with its obligations to combine UNEs. See Order, ICC Docket 98-0396, at 94 (noting previous orders by the Commission requiring Ameritech to offer UNE combinations).

Fourth, and finally, Ameritech contends that its interpretation of “ordinarily combines” is supported by the General Assembly's classification as competitive all retail telecommunications services provided by Ameritech to business ends users. Ameritech Br. at 22; see 220 ILCS 5/13-502.5(a). The gist of its contention appears to be that the interpretation of “ordinarily combined” should depend on the level of competition for a particular service. Thus, in Ameritech's view, voice grade service to residential and small business customers, which is classified as noncompetitive, should be considered ordinarily combined, but high-speed, dedicated point-to-point services, which is classified

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<sup>6</sup> In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (“UNE Remand Order”).

as competitive, should not. Id. The term “ordinarily combines” in Section 13-801(d)(3) does not turn on whether a particular service is classified as competitive or noncompetitive. If the General Assembly had chosen to define the scope of Ameritech’s duty to combine UNEs based on the classification of the service it could easily have done so, especially given its consideration of classification of services in new Section 13-502.5. It did not. Moreover, Ameritech’s contention is further undermined by Section 502.5(c), which provides that vertical services are to be reclassified as competitive on June 1, 2003. Vertical services are part of Ameritech telephone service to residential and small business customers.

**II. Ameritech’s Attempt to Enlarge the FCC’s Special Access Conversion Restriction to Include Any Combination of Unbundled Loop and Transport Not Specifically Identified in the Draft I2A Should Be Rejected.**

The FCC has described special access service as “employ[ing] dedicated high-capacity facilities that run directly between the end user, usually a large business customer, and the IXCs point of presence.” See Staff Br. at 62. Staff, in its initial brief, indicated that its proposed tariff included a restriction on the conversion of special access services to UNE combinations. Id. Staff explained that the special access conversion restriction, imposed by the FCC, applies to IXCs and is a restriction that applies to the use of facilities that extend between an end user’s premise and an IXC’s point of presence that are used to originate and terminate interstate toll traffic.<sup>7</sup> Id. at 66. Staff further

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<sup>7</sup> Ameritech mischaracterizes Staff’s position in defending its misapplication of the FCC’s local usage restriction. Ameritech Br. at 60. Ameritech states that “Mr. Gillan also proposed to eliminate from Staff’s and the Company’s proposed EEL tariff’s language that would limit the availability of DS1 loops to ‘circuit switched telephone exchange service.’” This statement mischaracterizes Staff’s position. See Staff Br. at 62-66. Staff’s proposed tariff permits Ameritech to impose a local usage restriction on the use of DS1 loops only when those loops are used for interexchange access.

indicated that Ameritech need not combine an unbundled loop and unbundled dedicated transport if a requesting CLEC uses such facilities to provide interexchange access and does not certify that it will provide a “significant amount of local exchange service” to its end-user customer. Id. The FCC has permitted incumbent LECs, such as Ameritech, to impose this restriction in order to protect their revenue streams. Id. at 63. Therefore, Staff’s proposed tariff reflects the FCC’s restriction, consistent with Sections 13-801(a) and 13-801(j).

Ameritech, however, seizes upon this limited exception to converting special access services to avoid its Section 13-801(d)(3) obligations involving dedicated private line service, particularly local point-to-point-circuits. Ameritech Br. at 29-34; id. at 33 (“[Ameritech] 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). Ameritech proposes to apply the FCC’s limited special access restriction to any combination of unbundled loops and dedicated transport. Ameritech’s position goes well beyond the FCC’s limited application of its conversion restriction and, therefore, should be rejected.

Ameritech purportedly relies on Section 13-801(j), but that section provides no support for its position. Ameritech claims that its position “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.’”

Ameritech Br. at 29. Section 13-801(j) provides in full:

Special access circuits. Other than as provided in subdivision (d)(4) of this Section for the network elements platform described in that subdivision, nothing in this amendatory Act of the 92nd General Assembly is intended to

require or prohibit the substitution of switched or special access services by or with a combination of network elements nor address the Illinois Commerce Commission's jurisdiction or authority in this area.

220 ILCS 5/13-801(j) (emphasis added).

Section 13-801(j) pertains to the ongoing special access conversion issue at the FCC. It indicates that the new amendments to the PUA are not intended to require or prohibit the substitution of special access by a combination of network elements. It expresses the General Assembly's intent to take no position one way or the other on the special access conversion issue, and allow the Commission to consider the issue, federal law permitting. The term "substitution," which necessarily implies an existing service, further supports the conclusion that this section refers to the FCC's special access conversion proceedings. The FCC's special access conversion restriction prohibits a carrier from substituting an incumbent LECs unbundled loop and transport combinations for special access, unless certain conditions are present. Staff Br. at 65. Thus, the use of the term "special access" in Section 13-801(j) should be understood to have same meaning the FCC has given to it in its special access conversion orders. As a consequence, Section 13-801(j) applies only to a limited category of special access circuits, as described in the FCC's special access conversion orders, and not to all special access and private line services as Ameritech suggests. Staff Br. at 62-66 (discussing FCC orders regarding special access conversion).

Moreover, Ameritech mistakenly contends that "[f]or 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." Ameritech Br. at 29.

Whether special access service and private line service are a “functionally identical means of providing dedicated transmission” is irrelevant for purposes of Section 13-801(j) and Ameritech’s obligations under Section 13-801(d)(3). Id. at 29; see 83 Ill. Admin. Code Part § 790.10. The relevant question is the use to which the transmission facilities are put. Services often receive different regulatory treatment, notwithstanding that such services may use similar of “functionally identical” facilities. See, e.g., Tr.192-93 (Ameritech witness Wardin indicating that special access, switched access, and private lines are separate services filed in three separate tariffs at the FCC). As the FCC recognized, special access applies to IXCs and the origination or termination of interstate toll traffic. Staff Br. at 66. Point-to-point private line service between two businesses, for example, is not special access as that term is used by the FCC and to which the conversion restriction applies. What’s more, Section 13-801(j) refers to switched access service and special access service, but not to private line service. The PUA treats private line service as a separate service. See 220 ILCS 5/13-13-203 (authorizing the Commission, by rulemaking, to exclude private line service not used for switched telecommunications service); id. § 13.505.1(a) (distinguishing between switched and private line service). Thus, given the General Assembly’s specific reference to switched and special access in Section 13-801(j), the omission of private line service must be assumed intentional. This omission further supports the reading that the term “special access” in Section 13-801(j) should be understood to mean the special access services at issue in the FCC’s special access conversion orders.

Finally, Ameritech’s proposal to require collocation for carriers requesting EELs should be rejected. See Ameritech Br. at 60-61. First, Section 13-801(d)(3) requires

Ameritech to provide “the network elements identified” in the [Draft I2A]”; it does not require that Ameritech include the terms, conditions, and restrictions Ameritech proposed to impose on those network elements in the Draft I2A. Contrary to Ameritech’s contention, Section 13-801(d)(3) did not “expressly incorporate[ ] by reference” the terms and conditions Ameritech sought to impose on EELs in the Draft I2A. Ameritech Br. at 60. Second, Section 13-801(d)(3) specifically includes the phrase “including but not limited to,” and, therefore, does not prohibit Ameritech (or prohibit the Commission from ordering Ameritech) from providing transport links between its end offices and CLECs’ facilities that it ordinarily combines as part of Special Access and Private Line offerings. Ameritech also contends that the purpose of the EEL 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.” Ameritech Br. at 61. Section 13-801(d)(3) does not describe the purpose of an EEL and nothing in Section 13-801(d)(3) compels this limited description of the purpose of EELs. Ameritech’s attempt to impose a collocation requirement on CLECs requesting ordinarily combined EELs is a blatant attempt to discourage carriers from requesting EELs by imposing additional costs--collocation costs--on them. Its proposal should be rejected.

**III. Ameritech’s Proposed BFR Process, as Modified, Is Still Unacceptable and Should Be Rejected.**

In its brief, Ameritech proposes a modified bona fide request (BFR) process, the BFR-OC process, to introduce all ordinary combinations not specifically listed by their

elements in Tariff III.C.C. No. 20, Part 19, Sections 15 and 20. Ameritech Br. at 119. Ameritech's existing BFR is an ineffectual, and thus unacceptable, vehicle for conveying "new" ordinary combinations to requesting carries. Although the proposed BFR-OC process reduces the processing time for CLEC requests by a few days, the process itself suffers from the same deficiencies as the existing BFR process.<sup>8</sup> Ameritech has at no point in this proceeding established identifiable or well-defined criteria that requesting carriers can look to in order to determine whether a combination of UNEs is a combination of UNEs that Ameritech ordinarily combines. In fact, in Ameritech's opinion the only UNEs that Ameritech currently ordinarily combines are those listed in Tariff III.C.C. No. 20, Part 19, Sections 15 and 20. Ameritech Br. at 118. Therefore, one can only assume that any current BFR submission will be summarily dismissed. Therefore, with respect to requests for ordinary combinations of UNEs, the BFR process is of little value.

Ameritech, however, suggests that the current list of UNE combinations that it ordinarily combines may increase in the future. Id. at 118. It is unclear, however, how CLECs will be able to determine when that increase has occurred. Ameritech offers no clear criteria by which a CLEC can evaluate and determine whether a combination of UNEs is a combination that Ameritech ordinarily combines. Moreover, and in any event, Ameritech has made it clear that it considers such information proprietary. See Staff Br. at 57-58.)

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<sup>8</sup> Because Staff opposes Ameritech's BFR process and new BFR-OC process, Staff expresses no opinion on the appropriateness of the time intervals Ameritech proposes.

The most compelling criticism of Ameritech's proposal to rely on the BFR-OC process comes from Ameritech itself. Ameritech indicates that its retail and wholesale operations are treated not merely differently, but that Ameritech discriminates against its wholesale customers. Although it is neither troubling nor unexpected that there is separation between Ameritech's retail and wholesale operations, it is startling to learn that its systems and processes discriminate against CLECs. Ameritech states that "[a]s 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." Ameritech Br. at 123. Thus, Ameritech offers its retail operations discriminatory access to wholesale services.

This discriminatory provisioning underscores why Staff objects to the BFR process in any form. Under the proposed BFR-OC, Ameritech ensures that its retail arm will be able to provide services using an ordinary combination then, when requested by a CLEC, begin to investigate whether and/or how to modify its wholesale systems to provide the same access to other carriers. Ameritech Br. at 121. After 90 days of inquiry, Ameritech will not actually provide the CLEC with the combination, but will let the CLEC know when it might get it and how much it will cost. Id. at 120. It is not difficult to see why Staff believes the proposed modification of the BFR process (the BFR-CO) is still unacceptable. The very process established by Ameritech virtually guarantees that no CLEC can compete against Ameritech by employing the BFR process, the BFR process will not be used, and the list of ordinary combinations Ameritech proposes, regardless of how incomplete, will never expand.

Ameritech describes the BFR process as time-consuming and complex. Ameritech Br. at 119-23. Staff does not dispute that configuring Ameritech systems to accept new UNE combinations is time-consuming. As indicated above, what Staff objects to is that Ameritech goes through this process for provisioning of wholesale services to its own retail arm then does not begin the process of provisioning these wholesale services to other carriers until it actually receives a CLEC request. For example, Ameritech emphasizes that Phase Two of its BFR process cannot be completed quickly because it must actually make the changes that will accommodate a CLEC order to ensure that the order can actually be processed. Ameritech Br. at 122 (“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.”). Thus, it appears at the end of Phase Two Ameritech is immediately able to process the order. Yet, at this point Ameritech begins the implementation phase. It is unclear how long Ameritech believes this phase will take, but it appears that it has been shortened by all the work done during the BFR process. The critical question Ameritech fails to address is when will the CLEC actually get its order filled.

In sum, under Ameritech’s proposed BFR-OC process, it takes at least 90 days to do part of what is necessary to provide a CLEC with an “ordinary combination.” Yet, Ameritech does not even clearly identify what parts will be completed and in what time frame. In fact, Ameritech’s proposed BFR appears to create an open-ended provisioning interval. Ameritech’s BFR process, as modified, is unacceptable and should be rejected by the Commission. The Commission should adopt Staff’s proposal

requiring Ameritech to notify the requesting CLEC and the Commission of the reason for rejecting a CLEC request to allow the Commission to promptly resolve any disputes. Staff Br. at 70-71.

**IV. Miscellaneous Changes to Proposed EELs Tariff.**

Staff acknowledges Ameritech's concern that the company not be required to provide either i) network elements or ii) features and functionalities associated with network elements as a component of a combination of UNEs if the Commission does not require Ameritech to otherwise provide those network elements or features and functionalities associated with network elements as UNEs. Ameritech Brief at 49. The language in Staff's proposed EELs tariff (attached to its initial brief) addressed the first concern but not the latter. Therefore, Staff has amended its proposed tariff, Ill.C.C No. 20 Part 19, Section 20, Original Sheet No. 1, to make clear that Ameritech need not offer, as a component of an EEL, a feature or functionality of a network element that the Commission does not otherwise require Ameritech to offer.

**XII. ISSUE 14 – MAXIMUM TIME PERIODS FOR PROVISION OF NETWORK ELEMENTS**

**A. The Commission Should Reject Ameritech's Proposed Tariff Because It Does Not Comply With Provisions Of Section 13-801(d)(5) Provisioning Intervals For Loops and High Frequency Portions of the Loop ("HFPL")**

**1. Provisioning Intervals For HFPL**

Ameritech disagrees with Staff's position that Section 13-801(d)(5) contains no language regarding consideration of loop conditioning. Ameritech Br. at 98. In support of its argument, Ameritech asserts that "Section 13-801(d)(5) expressly authorizes an

interval of 10 business days for the conditioning of unbundled loops,... [and that] 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. Id. at 98-99.

Ameritech's interpretation of the language in 13-801(d)(5) as well as its criticism of Staff's position is incorrect. In interpreting this Section, Ameritech has taken a phrase out of context and twisted its meaning to fit its argument. In reality, the wording of Section 13-801(d)(5) supports Staff's position. See 220 ILCS 5/13-801(d)(5). In Mr. McClerren's direct testimony, Mr. McClerren responded to a question regarding HFPL provisioning by making the statement that Section 13-801(d)(5) "contains no language regarding consideration of loop conditioning, 1-20 loops per order, or per location". Staff Ex. 4.0 (McClerren Direct) at 4 lines 114-115. This statement was made in response to the following question: "What is your position on this language regarding HFPL provisioning?" Id. at lines 106-107. As a result, the response that Section 13-801(d)(5) contains no language regarding consideration of loop conditioning must be read, in context, to apply to HFPL provisioning only. Ameritech's interpretation of this response in Staff's direct testimony is taken wholly out of the context of the question that it sought to answer. In context, it is clear that Staff is not supporting the proposition that the wording in Section 13-801(d)(5) should be interpreted to qualify HFPL provisioning with a 10 day conditioning interval. See Staff Br. at 76-77. Rather the language of Section 13-801(d)(5) supports a wholly different

interpretation. The last sentence of the first paragraph of Section 13-801(d)(5) reads 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.* (emphasis added)

220 ILCS 5/13-801(d)(5)

This sentence of Section 13-801(d)(5) does not provide a 10 day interval for conditioning of the high frequency portion of the loop (HFPL). Rather, the Section creates maximum time intervals for three categories of service, as follows:

1. (“category 1”) for the provision of unbundled loops, both digital and analog, the maximum time interval shall not exceed 5 business days,
2. (“category 2”) for the conditioning of unbundled loops or for existing combinations of network elements for an end user that has existing local exchange telecommunications service, the maximum time interval shall not exceed 10 business days, and,
3. (“category 3”) 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, the maximum time interval shall not exceed one business day.

Moreover, to argue, as Ameritech does, that the 10 business day time interval established for category 2 services applies to category 3 services renders the punctuation of this sentence in Section 13-801(d)(5) meaningless and blurs the distinctions made within the sentence. In particular, this sentence of Section 13-

801(d)(5) uses commas between the clauses in order to identify the maximum time intervals that apply to the categories of services discussed. Ameritech ignores this delineation between category 2 and 3 services without regard to the punctuation that clearly separates them. Under Ameritech's reading, the category 1 interval could just as plausibly apply to category 3 services. Obviously, this would render the entire sentence meaningless.

No reasonable interpretation of this Section would apply the category 2 maximum time interval, which clearly applies only to conditioning of unbundled loops, to the category 3 services. This sentence of Section 13-801(d)(5) simply establishes 3 different and distinct maximum time intervals for the provisioning of three separate categories of services, all in the same sentence. The sentence is cumbersome but the punctuation nevertheless does indicate how the time intervals apply to the three categories of services described.

As further support, Staff notes that for category 3 services (HFPL), this sentence of Section 13-801(d)(5) creates a different time interval of one business day. Category 3 services are also subject to a new performance measurement requirement of 95%, which does not apply to category 1 or 2 services. For all of these reasons, it is clear that Section 13-801(d)(5) does apply a 1 day provisioning interval to HFPL. Furthermore, Staff's interpretation of 13-801(d)(5) is consistent with previous orders from this Commission. See Staff Br. at 77 footnote 30 and Sprint Br. at 5-6. On two previous occasions this Commission, after carefully analyzing the evidence pertaining to the provisioning of the HFPL, rejected Ameritech's proposal for a 10 day provisioning interval for HFPL requiring conditioning. Id.

Ameritech argues that loop conditioning "...is a long and tedious process that involves many different departments..." Ameritech Br. at 100. Staff, however, believes it is significant that the legislature incorporated a 95% threshold in Section 13-801(d)(5) for Ameritech to provision the HFPL within one business day. The 95% threshold in essence gives Ameritech a 5% grace with respect to the provisioning of HFPL within one business day. The inclusion of a threshold indicates that the legislature did not expect the underlying carrier to provision all HFPL installations (only 95% of them) within one business day. Therefore, some contemplation of Ameritech's difficulty in provisioning HFPL was taken into consideration in the establishment of this 95% threshold for the provisioning of HFPL.

Notwithstanding the language of the statute, Ameritech continues to assert that it has the right to limit the number of installations of HFPL it will perform within the statutorily required time beyond the 5% grace established in the statute. Ameritech Br. at 101-104. Ameritech has argued that, in accordance with the Order in the line sharing docket, Docket 00-0393<sup>9</sup>, it filed a tariff with the 1-20 loop limitation for provisioning and installing the HFPL. Id. at 102. and Ameritech Ex. 4.0 (Welch) at 7. Ameritech, however, has acknowledged that there is nothing in the Line Sharing Order which provides for the 1-20 loop provisioning limitation.<sup>10</sup> (Tr. at 250) "Now, Ameritech is

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<sup>9</sup> HFPL/Line Sharing Service Order I.C.C. Docket No. 00-0393 (March 15, 2001) ("Line Sharing")

<sup>10</sup> In Line Sharing Order the Commission explains that Ameritech proposes intervals that would be different for orders of less than 20 loops per order or per end user location, and orders greater than 20 loops per order. Line Sharing Order at 73. The Commission also summarizes the position of the CLECs, which object to the 20-order limitation. After a review of the evidence and arguments, the Commission concludes, "Consistent with the discussion in the Arbitration, the CLECs' proposed provisioning intervals should be adopted. Id. at 73. The Commission in the Line Sharing order relies on the previous discussions in the COVAD/Rhythms Arbitration, ICC Docket Nos. 00-0312/0313(consolidated) (COVAD/Rhythms). The COVAD/Rhythms Arbitration Award, dated August 17, 2000, also details the varying arguments put forth by the parties regarding the intervals appropriate for

before the Commission again requesting similar treatment even though that argument has been rejected twice already.” Sprint Br. at 5. The Commission must remain consistent with prior orders and not allow a 20-order limitation. Id.

Staff noted that if the Company desired the Commission to establish a maximum time interval that was different from the interval established in Section 13-801(d)(5), it was the Company’s burden to justify the 1-20 loops and per location variables. Staff Ex. 4.0 (McClerrren Direct) at 4-5). Although Ameritech attempted to justify its position that a 1-20 loop limitation should apply to the provisioning and installation of HFPL by providing a lengthy list of actions that may need to be taken relative to the provisioning of HFPL, the Company did not indicate how many orders greater than 20 loops it typically receives or expects to receive, nor did the Company justify why 20 loops is the appropriate cut-off point. See Ameritech Br. at 102-104. Similarly, it is unclear whether Ameritech would treat an order for 30 HFPL loops as one order, or as 30 orders, when calculating its compliance with the 95% criterion. Mathematically, it makes a tremendous difference in how the 1-20 loops issue should be handled. Moreover, Ameritech also failed to provide information regarding how often multiple HFPL loops are ordered with multiple end user locations. As a result, Staff contends that even if this Commission desired to adopt Ameritech’s position, Ameritech failed to meet its burden to establish that conditioning is a variable that should be taken into account for the provisioning intervals of HFPL, or that the 1-20 loops per order is an appropriate cut off point.

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the provision of the HFPL loops. COVAD/Rhythms Arbitration Decision, ICC Docket No. 00-0312 (August 17, 2000) and Sprint Br. at 5. In the arbitration Ameritech proposed its 20 order interval limitation. COVAD/Rhythms objected to this limitation. Id. It was decided that the intervals proposed by

## 2. UNE Loop Provisioning Intervals

The Company states that the absence of a reference to the 3, 7, and 10 day intervals was the result of an administrative error, and that the Company plans to file corrected tariff sheets to reflect 3,7, and 10 days when it also files tariff sheets reflecting the results of the recently completed six month performance review. Ameritech Br. at 106. This tariff action, however, still does not make the 3, 7 and 10 day interval effective pursuant to Section 13-801(d)(5). See Staff Br. at 82-84.

As stated in Staff's initial brief and in Staff's testimony in this proceeding, Staff does not agree with Ameritech's assertion that the 3, 7, and 10 day interval for UNE Loops has been approved by this Commission through rule or order. Ameritech Br. at 104-106. See Also Staff Br. at 82-84. Consequently, the 5 day interval contained in Section 13-801(d)(5) remains effective. See Staff Br. at 81-84. Nevertheless, Staff does believe that the Commission, as a part of this proceeding, may elect to approve the 3, 7, and 10 day intervals over the 5 day interval contained in Section 13-801(d)(5) provided that the Commission believes that the record in this proceeding supports a change from the statutory interval. If so, any such action by the Commission in this proceeding would in effect be a subsequent order establishing a different specific maximum time interval, as permitted by the statute, and therefore the statutory intervals would be changed to reflect the Commission's Order. See Staff Br. at 81-84.

### **XIII. ISSUE 17 -- PRESUBSCRIPTION AND PIC CHANGE**

Ameritech has incorporated two concepts in its tariff that restrict the CLECs' rights with respect to Presubscription and PIC Change that were not envisioned by the provisions of Section 13-801(d)(6) of the PUA. 220 ILCS 5/13-801(d)(6). Namely, Ameritech limits the Section 13-801(d)(6) rights of a CLEC to receive, or to direct the disposition of "all revenues for all services utilizing the network elements in the platform" to the revenues for "all local exchange and access services." Id. Ameritech justifies the addition of the phrase "all local and exchange and access" to modify "services" on the grounds that "all services" would inappropriately include non-telecommunications services. AI Brief at 37. To the extent that the word "services" might be interpreted to include non-telecommunications services, Staff has proposed to clarify the word in a more direct manner, namely, to add the word "telecommunications" before the word "services". Staff Brief at 87. This change would resolve any concerns of Ameritech in a way that clearly resolves the issue while maintaining as much as possible the integrity of Section 13-801(d)(6).

Ameritech also seeks to limit the CLEC right to control the revenues for telecommunications services utilizing the UNE-P, by modifying the Section 13 801(d)(6) language from any UNE-P to "pre-existing UNE-P". AI Brief at 38. Ameritech argues that when Ameritech provides to a CLEC a new UNE-P combination (rather than a pre-existing one), Ameritech "would not be (nor would have been) billing the CLEC's end user for any services. Accordingly, the requirement that a CLEC is entitled to receive or direct the disposition of revenues from services utilizing the platform has no applicability to a new UNE-P combination." Id. Staff's response to this argument is that the additional limitation Ameritech seeks to impose is not necessary. Staff Brief at 86-87.

Even assuming Ameritech is correct that, for new UNE-P combinations, CLECs would be billing the end user for services, then Ameritech's language is needlessly limiting since for new UNE-P combinations, Ameritech would clearly be permitting CLECs to receive or direct the disposition of revenues from services utilizing the platform and thus, would always be in compliance with the requirements of Section 13-801(d)(6). To add the limitation Ameritech proposes creates an unnecessary and confusing inconsistency with the statute and should be rejected.

#### **XIV. ISSUE 18 – THE RATE SCHEDULE ISSUE**

##### **A. The Commission Should Reject Ameritech's Argument That Identification of UNEs and Other Components That Are Used In Ameritech's Retail Services Should Not Be Included In 13-801(i)**

Ameritech asserts that Staff attempts to use the "Schedule of Rates" portion of the tariff under Section 13-801(i) for improper purposes. Ameritech Br. at 148. Ameritech states that "13-801(i)... is a relatively narrow provision requiring Ameritech Illinois to provide rates for existing services and *cannot* be expanded to create the obligations Staff proposes." (emphasis added) Ameritech Br. at 129. Furthermore, Ameritech claims that "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. Id

This argument is illogical and should be rejected. The tariff is designed to implement *all* of Section 13-801. It is unreasonable to assume that the terms and conditions of the various Section 13-801 subsections are not interrelated. Staff has explained its rationale for requiring Ameritech to identify combinations of elements that it ordinarily combines for itself and then to provide that information to carriers. See Staff Br. at 88-

91 and Staff Direct Testimony (Zolnierek) at 26-27. Moreover, the Commission is not restricted to the specific language set forth in the statute. The Commission has the authority to apply any additional rules and interpretations which will aid in the implementation of the statute.

Ameritech suggests that Staff's proposed implementation of the rate schedule would "enable CLECs to simply point to a retail service offered by Ameritech and demand that the Company provide the CLEC with all of the network elements (whether they are UNEs or not) used to provide a service." Ameritech Br. at 25. This is factually incorrect. For example, Staff's proposal clearly indicates that Ameritech may refuse to provide an EEL if that EEL includes a UNE which the Commission does not require Ameritech to provide. However, to avoid any confusion, Staff has amended its proposed tariff language to specify that Ameritech may respond to a rate request with an indication that the company is not required to fulfill the request because the Commission does not require Ameritech to provide a particular network element as a UNE. Ill. C.C. No. 20, Part 19, Section 1, Original Sheet 3.2. This denial would require Ameritech to identify all of the network elements or features and functionalities included in the Ameritech service identified by the requesting carrier that Ameritech believes the Commission does not require it to provide as part of the combination of UNEs.

**B. Ameritech's Schedule of Rates Should Apply to Services Provided By Its Affiliates.**

Ameritech also argues that it should not be required to identify ordinary combinations provided to its affiliates through the rate schedule mechanism. See Ameritech Br. at 148. Yet, as Staff explained in its initial brief, Staff's proposal to allow carriers to request rate

schedules by simply pointing to offered services is directly responsive to Ameritech's failure to identify which unbundled network elements it ordinarily combines for itself to provide services. See Staff Br. at 89-90. The work that Ameritech does to combine elements for itself to provide retail service and to provide wholesale services to its affiliates is likely to be the least transparent to competitors unaffiliated with Ameritech. Consequently, Staff recommends that carriers be able to point to services provided by Ameritech affiliates and receive from Ameritech information indicating which unbundled network elements Ameritech ordinarily combines for those affiliates.

**C. Ameritech's Rate Schedule Should Include Language That Indicates the Date the Request Is Received Will Not Be Counted In Calculating the Response Time**

Additionally, Ameritech states that "Staff deletes Ameritech's language that provides 'the date that the request is received will not be counted in calculating the response time'." Ameritech Br. at 148. Staff does not object to Ameritech's request to include language indicating that the date the request is received will not be counted in calculating response time. Ameritech Br. at 148 and 149. Staff has amended its proposed language accordingly. See Ill. C.C. No.20, Part 19, Section 1 Original Sheet 3.1.

**D. The Commission Should Not Allow Ameritech to Include Language Which Would Provide Carriers False Rate Information**

Ameritech argues that its tariff should include language that would indicate that "the rates it provides to carriers making requests according to the rate schedule provision might not be actual rates." Ameritech Br. at 149. Staff recommends that Ameritech's

proposal should be rejected. It is well documented that the carriers as well as the Commission often experience difficulty in identifying and understanding Ameritech's rates. See Investigation into the compliance of Illinois Bell Telephone Company with the order in Docket 96-0486/0569, ICC Docket 98-0396 at 73-74 (October 16, 2001). Consequently , it is understandable that Ameritech is concerned that it might not be able to accurately represent these rates to carriers. However, carriers must have accurate information if they are to make efficient decisions. In Staff's view, language permitting Ameritech to provide carriers false information contravenes the intent of Section 13-801(i), that is, to provide carriers with service prices that allow them to make competitive business decisions. Accordingly, the Commission should reject Ameritech's proposed language and adopt the language set forth in Staff's proposed tariff. See Staff Attachment 1 Part 19 Section 1 Original Sheet Number 3.1.

## **XV. CONCLUSION**

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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