

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company)
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)
) **ICC Docket No. 00-0393**
Proposed Implementation of High)
Frequency Portion of Loop (HFPL)/)
Line Sharing Service.)
)

**BRIEF ON EXCEPTIONS ON SECOND REHEARING
OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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February 27, 2002

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its attorneys, and, pursuant to 83 Ill. Admin. Code 200.800, 200.830 and at the direction of the Administrative Law Judge (“ALJ”), submits the following Brief on Exceptions to the Proposed Order on Second Rehearing in this proceeding.

I. EXCEPTIONS

The Staff generally considers the Proposed Order to be well-reasoned and to correctly decide the contested issues in the proceeding. Accordingly, the Staff takes only one limited exception to the Proposed Order.

1. Staff’s proposed Special Request Process (“Process”) Should be Accepted in Place of Covad’s Proposed Process

The Proposed Order accepted the Covad Special Request Process language with a limited number of modifications. *Proposed Order* at 72. Staff acknowledges that Covad’s proposed tariff language is adequate and does not suffer from the defects of Ameritech’s proposal; namely, Covad’s proposed tariff language does not contain open-ended time frames. Nevertheless, Staff maintains that its proposed Special Request Process (“Process”) is preferable to Covad’s in a number of respects. Staff’s Process provides more reasonable timelines and is more flexible than Covad’s proposal while also correcting the open-ended time frames from which Ameritech’s proposal suffers. Staff therefore recommends that its Process be adopted in place of Covad’s.

A. Staff's Proposed Special Request Process

While Staff's proposal is based on the framework of Ameritech's tariff language, Staff has made significant improvements to Ameritech's tariff language. First, Staff assumed that there will be significant changes in telecommunications technology, and that it would be difficult to craft tariff language to account for all future developments. Therefore, knowing that G.Lite and G.SHDSL will be provisioned in the near future, Staff modified Ameritech's language related to those two Pronto Architecture products, and added a third category to permit the consideration of any new products; namely, the category entitled – Generic Special Request. Staff's Generic Special Request Process provides the flexibility that Covad's proposal lacks by permitting the consideration of any new products.

The Generic Special Request Process accounts for anything not offered in Ameritech Illinois' tariff. This would include anything that is not a product to be used with G.Lite, or G.SHDSL. Therefore, the Generic Special Request Proposal allows for future developments that are not envisioned at this time. Covad's tariff language also attempts to establish processes for consideration of new products, but those processes are needlessly complex and may actually be under-inclusive¹. Staff's Process is less complex than Covad's proposal, and may actually be more inclusive because Staff accomplishes in one category – Generic Special Request -- what Covad attempts to accomplish in two: its New Feature and/or Function Upgrade and Approval For Use categories) Further, Staff's Process is more flexible than Covad's process, since

¹ Covad groups its processes into four subcategories: (1) feature and/or function not commercially available (New Feature and/or Function Upgrade); (2) software upgrades (Software Only Upgrade); line card installations (Line Card); and feature and/or function that is commercially available but not yet tested and approved by SBC (Approval For Use). *Covad Proposed Special Request Language*, §1.4.

Covad's Software Only Upgrade and Line Card categories only address, as their names suggest, requests involving software upgrades or installation of new line cards. *Covad Proposed Special Request Language*, §§3.1 and 4.1, respectively. Staff's Process is more flexible since it has grouped requests by features/functions related to G.Lite, G.SHDSL, and the remainder into the Generic Special Request Process. Therefore, the G.Lite and G. SHDSL Processes will handle requests that are either line card or software related.

B. Staff's Proposal Imposes Reasonable Timelines

Staff's proposal is similar to Covad's proposal in that it is a tiered approach, and not a one-size fits all approach to requesting new features/functions. Staff, however, has taken Ameritech's Approval For Use ("AFU") process into account in setting its timelines, whereas it appears that Covad has not. Staff's Process focuses on the AFU process, and the fact that Ameritech has to ensure that changes to its system do not conflict with or interrupt current operations through this process. Staff's proposal strikes the balance between Ameritech's need to maintain current operations, and CLECs need to have new features/functions added to the architecture in a timely fashion, by focusing on the AFU process and yet nevertheless setting firm timelines that are lacking in Ameritech's AFU process.

The AFU process is a procedure for making sure new technology (e.g. feature or function) will work with its network. Ameritech Ex. 1.0 (Boyer Direct) at 8; see *also*, Covad Cross Ex. #18P Slide 4, and description below slide 4 (identifying, at a high level, the testing and verification involved in the AFU process). It is Staff's view that

Ameritech must be allowed to accomplish this testing to ensure network operations, provided however, that this testing is only permitted to proceed within fixed deadlines/timelines. In addition, Staff points out that the AFU process only needs to be done once for a specific feature/function. Tr. at 419-20 (Ameritech witness Boyer agreeing that once the AFU process is complete the feature/function is ready for deployment); *see also Staff's Proposed Special Request Process Language*, §3.4.

Staff has taken the AFU process into account, but nevertheless rejects Ameritech's "one-size fits all" approach. Staff proposes the AFU period be modified depending on whether the request is a feature/function of G.Lite, or G. SHDSL, or in use by another carrier, or when Ameritech offers to provide a streamlined process, and every other type of request is processed pursuant to the Generic Special Request Process. As Covad argues in its brief, the "one size fits all" approach results in "deployment of new features and functions that are already available from NGDLC manufacturers, and will most likely be needed by CLECs in the near-term would be subject to a needlessly complex and expensive process." *Covad IB* at 20 (cites omitted). Staff agrees. The complexity of the process however stems from Ameritech's AFU process. Staff's tariff language provides different AFU periods to account for the type of request. Adjusting the AFU timeline based on the request strikes what Staff views as the necessary balance between Ameritech's duty to operate its system and the CLECs need for new features/functions in a timely fashion.

	Generic Special Request	G.Lite Specific	G.shdsl Specific	When AI offers a Streamlined Process
Review Mtg with AI upon CLEC Request (Staff Proposed Special Request Language Sect. 2.2)	At CLEC Request	At CLEC Request	At CLEC Request	At CLEC Request
CLEC Submit Special Request Process Application (Sect. 2.3)	RD + 0	RD + 0	RD + 0	RD + 0
AI Acknowledge receipt of CLEC Special Request Process Application (Sect. 2.4)	RD + 1 business day			
Period for AI to determine Technical/Economic Feasibility (Sect. 2.5)	RD + 10 business days			
Period for AI to Provide Price to CLEC (Sect. 2.6)	RD + 45 business days			
Period for CLEC to Notify AI to Proceed (Sect. 2.7)	10 business days from receipt of quote from AI (RD + 55)	10 business days from receipt of quote from AI (RD + 55)	10 business days from receipt of quote from AI (RD + 55)	10 business days from receipt of quote from AI (RD + 55)
Period to Complete AFU Process	75 business days (RD + 130) (Note 1)	20 business days (RD + 75) (Note 2)	75 business days (RD + 130) (Note 3)	45 business days (RD + 100) (Note 4)
Product Delivery Timeframe	30 business days (RD + 160) (Note 5)	30 business days (RD + 105) (Note 2)	30 business days (RD + 160) (Note 3)	30 business days (RD + 130) (Note 6)

NOTES:

1. Staff Proposed Special Request Language Section 4.4.
2. Section 5.1.
3. Section 6.1 and 6.2.
4. Section 4.5.
5. Section 3.3.
6. Section 3.1 or 3.3.

Covad has failed to take into account time needed by Ameritech for network testing (through the AFU process), for software upgrades, and for installing line cards.

See *Covad Proposed Special Request Language*, §§3 and 4, respectively. Potentially, a software upgrade or new line card will be released, and commercially available, but not tested by Ameritech. It is unclear from Covad's proposal how the Approval For Use Process would be incorporated or interact with the Software Only Upgrade Process or the Line Card Process to test those features/functions requested by a CLEC that are not yet tested by Ameritech. See *Covad IB* at 12. Staff's Process accounts for that by handling requests as discussed above.

C. Staff's Timelines Prevent an Open-Ended Process

The Proposed Order found Ameritech's process to be "an open ended process with no end to opportunities to mischief." *Proposed Order* at 72. In its brief, Covad stated that Ameritech's "process is completely open-ended and uncertain on the back end because it does not specify any maximum timeframe for deployment of new features or function of line cards." *Covad IB* at 22. Covad elaborates by stating that the lack of specific deadlines leaves CLECs with "no leverage to push SBC/Ameritech to fulfill their requests, and would have no regulatory recourse regardless of how long SBC/Ameritech takes to deploy new features and functions." *Id.* Covad resolves this problem by setting definite timelines for its proposed four categories of Special Request Processes. Similarly, Staff has resolved this problem by establishing firm timelines within which Ameritech is to process the special requests, as shown in the table above.

Additionally, Staff provides two additional measures to prevent undue delay by Ameritech in rolling out new features/functions. First, under Section 3.4 of Staff's Proposed Special Request Process, Ameritech will only need to perform an AFU for the

first request of a feature or function.² This prevents Ameritech from using the AFU process when it is not needed.

Second, Section 5.3 requires Ameritech to complete its evaluation of the Alcatel Litespan Release 11.0 by the end of the second quarter of 2002.³ Alcatel Litespan Release 11.0 allows the use of G.Lite. Ameritech has made a commitment to perform the AFU process within 75 business days. Tr. at 422. Ameritech started the AFU process for the Alcatel Litespan Release 11.0 in September 2001. Tr. at 422-23. Based on the commitment made by Ameritech witness Boyer, the company will complete the Release 11.0 no later than the end of the second quarter of 2002, if not in the first quarter of 2002. By placing this commitment in the tariff, Ameritech cannot backslide on its commitment, or delay, the rollout of G.Lite without violating the express provisions of the tariff.

D. Staff's Proposed Tariff Language is Easily Adapted to the Findings of the ALJ in the Proposed Order

The Proposed Order required three substantive modifications to Covad's proposed Special Request Language, plus the removal of the reliance upon the completion of the OSMINE testing process. *Proposed Order* at 72-73. Staff understands the modifications the ALJ made to Covad's proposed language to be the removal of provisions related to the requests for features or functions not presently

² This correlates to the column entitled "Request for Feature/Function in use by Another Carrier" in the table above.

³

commercially available⁴, the removal of the definitions for technical and economic feasibility⁵, and removal of the reference to FMOD⁶. *Id.* at 73. Staff's Process can easily be modified to address the ALJ's concerns raised in connection with the Covad Proposed language.

Staff's language can easily be adapted to the Proposed Order. First, Staff's reference to technical and economic feasibility should be left in Section 1.2. It should remain in order to allow technical and economic feasibility to be determined on a case-by-case basis. The Order currently rejects Covad's definition, and this would have the same affect – Ameritech will deny a CLECs request as not being technically and economically feasible, and thereafter the CLEC will, in all likelihood, bring the claim to the Commission for resolution. Therefore, since Staff does not attempt to define technical and economic feasibility in the tariff, the result will be the same as the Proposed Order and should remain in the tariff.

Second, Staff's proposal can be adapted to the ALJ's findings by removing references to FMOD (Staff Brief, Attachment A §2.13), and the OSMINE process (Staff Brief, Attachment A §6.3). Finally, Staff's proposal can be adapted to the ALJ's findings by adding language to modify Section 1.3 of its Availability of Future Features and Functionalities Section, to limit the Special Request Process, at this time, to features or functions that are commercially available.

⁴ Which Staff interprets to be deletion of all the first two sentences of Section 2.1 all of Sections 2.3-2.7, and Section 1.4(1).

⁵ Deletion of Sections 1.1 through 1.3.

⁶ Deletion of Section 4.2.

E. Exception Language

Staff proposes the Commission Analysis and Conclusion section on pages 72 and 73 of the Proposed Order to be modified as follows:

The Commission has reviewed the evidence and the arguments of the parties and has determined that the special request process proposed by ~~Covad-Staff~~, with a limited number of modifications, should be adopted. The Commission finds that the basic structure of the process, which recognizes ~~various~~ three categories through which additional functions may be added to the Project Pronto, is a much more workable format than that proposed by Ameritech, which would simply recognize two new products that are soon to be provisioned and relegate the deployment of all other advances to what is appropriately criticized as an open ended process with no end to opportunities for mischief. Staff resolves this problem by establishing firm timelines within which Ameritech is to process the special requests. Staff's proposed process is also superior to Covad's proposal, since Staff's proposed process offers timelines that are more reasonable, is simple, and offers greater flexibility.

While the Commission adopts Staff's proposed special request process as the starting point, some modifications are required. The Commission, however, finds particularly troubling the insertion of completion of the OSMINE process as a condition precedent to requests for a new technology, when the timeline for completing this process is wholly within Ameritech's control and the Commission has been provided no objective criteria upon which it can determine the average amount of time one would normally expect this process to take or how Ameritech will determine when the process should begin. Therefore, the first modification is to remove the reference to the OSMINE process from Section 6.3 of Staff's Proposed Special Request Process Language.

~~While the Commission adopts Covad's proposed special request process as the starting point, some modifications are required.~~ The second ~~first~~ modification will add language, so that Special Requests are limited to remove the portion of the process that would address new functions or features that are ~~not~~ commercially available at the time a request is made. The Order on Rehearing was limited to functions that were commercially available and the second rehearing was limited to issues involving ordering those functions. Any issues relating to requests for functions or features that are not yet commercially available are well beyond the scope of this rehearing. Similarly, the manner in which developmental costs will be recovered are generally beyond the scope of this docket. The only matter which seems clear at this time is that a requesting CLEC would be expected to pay all actually incurred developmental costs following the "go ahead" authorization, if the authorization were later rescinded. Our review of the remaining arguments relating to cost recovery of developmental costs

indicates that the issues are complex and require a much more fully developed record prior to any final decision.

In addition, we agree with Ameritech that Covad's definitions of technical and economic feasibility should not be decided at this time, and should be developed on a case-by-case basis. ~~appear on the face of the tariffs.~~ While we agree with Covad that defining the terms would be preferable, we find Covad's definitions tautologies that, in fact, do away with any distinction between functions that would be deemed feasible or infeasible. It may be that the process of making this determination is so fact driven that no ready definition is available, and the determination must be made on a case by case basis.

Finally, we conclude that references to the FMOD process should be removed from Section 2.13 of Staff's Proposed Special Request Process Language ~~the tariff.~~ We accept Ameritech's representations that, the FMOD process does not define when facilities are available, which is the precise use of the process that Covad and Staff propose. Rather, the FMOD process establishes a process to be followed after it is determined that facilities are unavailable.

II. CONCLUSION

For the foregoing reasons, we request the Administrative Law Judge accept Staff's recommendations in their entirety as set forth herein.

Dated: February 27, 2002

Respectfully submitted,

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