

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	
)	No. 01-0662
Investigation Concerning Illinois Bell Telephone)	
Company's compliance with Section 271 of the)	
Telecommunications Act of 1996.)	

POST-HEARING BRIEF (PHASE I) OF AMERITECH ILLINOIS

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<u>Connecticut 271 Order</u>	<u>Application of Verizon New York Inc. et. al. for Authorization to Provide In-Region, InterLATA Services in Connecticut</u> , 16 F.C.C. Rcd. 14147 (2001)
<u>Georgia & Louisiana 271 Order</u>	<u>In re Joint Application by Bellsouth Corp. et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</u> , CC Docket No. 02-35, 2002 WL 992213 (rel. May 15, 2002)
<u>Kansas & Oklahoma 271 Order</u>	<u>In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</u> , 16 F.C.C. Rcd. 6237 (2001)
<u>Maine 271 Order</u>	<u>In re Application by Verizon New England Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Maine</u> , CC Docket No. 02-61, 2002 WL 1339069 (rel. June 19, 2002)
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<u>Advanced Services Remand Order</u>	Fourth Report and Order, <u>Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , 16 F.C.C. Rcd. 15435 (2001)
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<u>Line Sharing Order</u>	<u>Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , Third Report and Order In CC Docket No. 98-147 and <u>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</u> , Fourth Report and Order In CC Docket No. 96-98, 14 F.C.C. Rcd. 20912 (1999)
<u>Line Sharing Reconsideration Order</u>	<u>In re Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , Third Report and Order on Reconsideration in CC Docket No. 98-147 and <u>In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</u> , Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 F.C.C. Rcd. 2101 (2001)
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INTRODUCTION

This proceeding represents a significant step toward an important goal. Since before Congress passed the Telecommunications Act of 1996 (“1996 Act”), this Commission has been in the vanguard of efforts to open the local telecommunications market. As a result of the Commission’s approval of the merger of SBC and Ameritech in 1999, those efforts coalesced into a comprehensive and exhaustive set of collaborative proceedings, in which Ameritech Illinois – with open participation from competing local exchange carriers (“CLECs”) and active supervision by Staff – developed and implemented a number of enhancements designed to keep pace with evolving rules and technologies and to address concerns raised by the CLECs. The purpose of this proceeding is to recognize the benefits that those efforts have yielded – and to realize the additional benefits that flow from competition in *all* markets, local *and* long-distance.

As the Commission noted in its October 24, 2001 order initiating this docket (at 1), section 271 of the 1996 Act “set[s] forth the requirements and procedures for a Bell Operating Company (‘BOC’) to obtain authority from the Federal Communications Commission (‘FCC’) to provide in region, interLATA services” and thus compete in the long-distance market. The FCC, in turn, has issued numerous orders applying the Act’s requirements and procedures, laying out a comprehensive road map. BOCs have followed that map and obtained approval in 14 states, including five states served by Ameritech Illinois affiliates. Consumers in those states can obtain “one-stop” calling plans that wrap up local, toll and long distance service – and they can choose among plans offered by the BOC and its competitors.

Ameritech Illinois plans to ask the FCC to give consumers in Illinois the same choice. Under section 271(d)(2)(B), the FCC consults with the applicable state commission “in order to verify the compliance of the [BOC] with the requirements of subsection (c).” Section 271(c), in turn, requires an “agreement or statement” (commonly referred to as Track A or B) as set forth in

section 271(c)(1), and compliance with the competitive “checklist” set forth in section 271(c)(2). The purpose of this proceeding is to prepare for the FCC filing and for the Commission to “develop a comprehensive factual record in order to properly discharge its role as consultant to the FCC.” Oct. 24, 2001 Order Initiating Investigation, at 3.

At the same time the Commission initiated this docket, it decided to divide the proceedings into “two or more phases with corresponding interim orders.” *Id.* In Phase I, we address Track A and “as much of the competitive checklist as possible” subject to the results of Phase II. Phase II will include an analysis of commercial performance and third-party testing of Ameritech Illinois’ operations support systems (“OSS”). For Phase I, Ameritech Illinois seeks a “corresponding interim order” that finds Ameritech Illinois to be in compliance with the requirements of Track A and of the competitive checklist, subject to the results of Phase II.

Although the testimony in this case is extensive, we demonstrate below that there is no material dispute about the substance of Ameritech Illinois’ *prima facie* case, or about the issues that matter in this phase of the proceeding:

I. There is no dispute that Ameritech Illinois satisfies section 271(c)(1)(A) (Track “A”) in that it has “entered into one or more binding agreements” – over 150 of them, in fact – with competing providers that serve residential and business customers using their own facilities. CLECs have captured nearly *two million* lines – approximately 23 percent of the total access lines – in Ameritech Illinois’ service area. This level of entry comfortably exceeds that set forth in each and every one of the fourteen FCC-approved section 271 applications to date. The intervenors challenge the number of CLEC lines estimated by Ameritech Illinois, but do not provide their own figures and do not challenge the bottom-line conclusion that Ameritech Illinois satisfies Track “A.” They also complain about the financial difficulties faced by some CLECs

and about the downturn in the industry as a whole, but the FCC has “consistently declined to use factors beyond the control of the BOC, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an application.” Georgia & Louisiana 271 Order, ¶ 282. See Section I infra.

II. There is also no real dispute that Ameritech Illinois has concrete and binding legal obligations (in the form of Commission-approved interconnection agreements and effective tariffs) to furnish the numerous wholesale products and services encompassed within the 14-point competitive checklist of section 271(c)(2)(B). See Section II infra.

The Commission has reviewed most of the rates for these products and services, and there is no dispute that the Commission has aggressively applied the FCC’s pricing rules and that the resulting wholesale rates are at least as low as (if not lower than) those required by the Act. The intervenors take issue with the few rates that are interim or that have not yet been investigated, but the FCC has made clear that such arguments do not affect checklist compliance. See Section II.B.3 infra.

There is also no dispute that Ameritech Illinois “has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS [operations support systems] functions” (Kansas & Oklahoma 271 Order, ¶ 105) subject to the Commission’s review of the actual performance of those interfaces and functions in Phase II. After all, CLECs are using those very interfaces right now to request installation and maintenance of, and obtain information about, Ameritech Illinois’ wholesale products and services. AT&T’s recent expansion into the local market is founded on products and services obtained through Ameritech Illinois’ OSS – and on public assurances to customers, backed by aggressive testing of the OSS interfaces, that it would

verify that “Ameritech’s [operations support] systems will allow customer data to be exchanged quickly and accurately.” Am. Ill. Cross Exs. 25 & 27. Although the intervenors dispute whether the OSS are performing adequately – in most instances by raising unsubstantiated allegations or complaining about already-resolved issues – those are matters to be resolved in Phase II. See Section II.B.4 infra.

This proceeding is not one of first impression with regard to the FCC’s requirements. The substance of Ameritech Illinois’ testimony (and the underlying product offerings) track the legal and analytical precedent established in prior section 271 orders issued by the FCC, including the successful section 271 applications of Ameritech Illinois’ affiliates for the states of Texas, Kansas, Oklahoma, Arkansas, and Missouri. Ameritech Illinois’ filings also embody the agreements reached in collaborative proceedings throughout the Ameritech region, in which Ameritech Illinois and its affiliates met with the CLEC community and commission staffs to work out technical issues and to address specific areas of concern.

The Commission Staff and intervenors oppose Ameritech Illinois’ request for a favorable recommendation on Phase I compliance. However, much of their testimony raises matters that are not properly part of this Phase I, or not properly part of any phase of a section 271 proceeding at all.

Many of the opposing comments are out of *time*, as they do not address the issue in Phase I (what Ameritech Illinois provides) but the issue that the Commission deferred to Phase II (how Ameritech Illinois performs in providing it). Many of these allegations lack specificity or substantiation; others repeat issues that have already been addressed by the FCC or this Commission; others lack context (how Ameritech Illinois performs overall, and how performance has been over time). More fundamentally, such allegations defeat the purpose of

establishing “two or more” phases in the first place: to streamline the issues for efficient resolution. The volume of opposing comments on performance issues is exactly what a phased proceeding is designed to avoid.

Most of the remaining Staff and intervenor comments are out of *place*. Staff, for example, seeks to expand this docket to include a lengthy analysis of compliance with state law. While Ameritech Illinois takes its obligations under state law seriously, a section 271 proceeding is governed by federal law, and is decided by a federal agency, the FCC, on the basis of existing federal rules. In this proceeding, the Commission is acting as an advisor to the FCC, not as a decision-maker. We value the Commission’s input in that role, but compliance with state law is an issue for another place. No one disputes that the Commission has adequate means outside of this proceeding to enforce state laws, and in fact the Commission has addressed in other proceedings many of the issues that Staff has raised here.

Some intervenor comments invoke federal law by name, but seek to expand federal requirements or even to resurrect suggestions that the FCC has expressly rejected in its orders applying section 271. The purpose of a section 271 proceeding is to apply existing federal rules, not to create new rules or to litigate “new and unresolved interpretive disputes about the precise content of an incumbent LEC’s obligations to its competitors - disputes that [the FCC’s] rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act.” Kansas & Oklahoma 271 Order, ¶ 19.

To be sure, section 271(d) also calls for the FCC to consider whether granting an application would be in the public interest. However, the public interest test applied by the FCC is narrow. It is not a blank card on which parties can list whatever new requirements they would like imposed on Ameritech Illinois by the Commission (either by order or as a condition for a

positive recommendation to the FCC). To the contrary, section 271(d)(4) states that the FCC “may not, by rule or otherwise, limit *or extend* the terms used in the competitive checklist,” and the FCC has recognized that limitation on the public interest test. Therefore, although the Commission’s order initiating this proceeding permits parties to comment on public interest issues, it would be inappropriate for this Commission to ignore the limitations of the checklist or to unduly expand the “public interest” test. Congress did not authorize the Commission to act, even as an advisor, with respect to the public interest analysis of section 271(d); rather, section 271(d)(2)(B) authorizes the FCC to seek state commission input only on the Track “A” and checklist requirements of section 271(c). See Section III infra.

DISCUSSION

I. AMERITECH ILLINOIS IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A)

Section 271(c) of the 1996 Act sets forth two “requirements for providing . . . in-region interLATA services.” Subsection (c)(1) requires an “agreement or statement” and we address that requirement here; meanwhile, subsection (c)(2) contains the 14-point competitive “checklist” and we demonstrate compliance with that checklist in Section II of this brief.

As the phrase “agreement or statement” suggests, section 271(c)(1) offers applicants two alternative methods or “tracks” to prove compliance. Track “A” applies where a BOC has interconnection agreements with at least one competing provider of telephone exchange service. 47 U.S.C. § 271(c)(1)(A). Track “B” applies if no facilities-based provider has requested access and interconnection arrangements. The BOC demonstrates compliance in that case by showing that the state commission has approved a “Statement of Generally Available Terms” (“SGAT”) – essentially a binding offer – that satisfies the competitive checklist. *Id.* § 271(c)(1)(B).

Ameritech Illinois is proceeding under Track “A.” There, a BOC must have interconnection agreements with one or more competing providers of “telephone exchange service . . . to residential and business customers.” *Id.* § 271(c)(1)(A). “[W]hen a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers.” *Michigan 271 Order*, ¶ 82. The FCC has further held that a BOC must show that at least one of these competing providers constitutes “an actual commercial alternative to the BOC,” which means that the provider serves “more than a *de minimis* number” of subscribers. *New Jersey 271 Order*, ¶ 10. Once that is done, however, Track A does not “require any particular level of market penetration.” *Id.* The

D.C. Circuit has affirmed that the Act “imposes no volume requirements for satisfaction of Track A.” Sprint Communications Co. v. FCC, 274 F.3d 549, 553-54 (D.C. Cir. 2001).

Ameritech Illinois has cleared the Track A hurdle with ample room to spare, and no one disputes that it has. Ameritech Illinois has over 150 Commission-approved wireline interconnection and resale agreements with competing providers. Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-2, ¶ 4. At least 12 of these entrants provide services to residential and business subscribers in Illinois, either exclusively or predominantly over their own facilities, and thus qualify as Track “A” competitors. Id. ¶ 4 & Attach. C. These Track “A” carriers run from A (AT&T) to Z (Z-Tel). Id.

Clearly, CLECs are giving Illinois consumers “an actual commercial alternative.” New Jersey 271 Order, ¶ 10. As of February 2002, CLECs had gained over 1.8 million lines approximately 23 percent of the total lines in the Ameritech Illinois service area. Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 9 & Table 1; id. Sch. DOH-2, ¶ 5 & Table 2. Approximately 1.6 million of these lines were served by competitors over their own facilities.¹ Id. ¶ 5 & Table 1. CLECs captured approximately 1.2 million business lines, and over 600,000 residential lines, in Ameritech Illinois’ service area. See id., Tables 1 (facilities-based lines) & 6 (resold lines). Since then, CLEC activity continued to grow, exceeding 1.9 million lines by April 2002. Am. Ill. Ex. 14.1 (Heritage Surrebuttal) at 5.

These levels of CLEC penetration outstrip *every single one* of the fourteen applications that the FCC has approved thus far, as shown by Table I below.

¹ These 1.6 million lines include nearly 700,000 lines served by unbundled loops and UNE platforms provided Ameritech Illinois. The FCC has determined that CLECs using UNEs to provide service are providing service over their “own facilities” for purposes of Track “A.” Michigan 271 Order, ¶ 94.

Table 1: Comparison of CLEC Market Shares

STATE	SOURCE OF DATA	LINES CAPTURED BY CLECs	CLEC MARKET SHARE
Illinois	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-2, at 5.	1,874,000	23%
New York	<u>New York 271 Order</u> , ¶ 14	1,118,180	9%*
Texas	<u>Texas 271 Order</u> , ¶ 5 & n.7	890,000	8%
Kansas	<u>Kansas & Oklahoma 271 Order</u> , ¶ 4	191,000	13%
Oklahoma	<u>Id.</u> ¶ 5	170,000	9%
Massachusetts	<u>Massachusetts 271 Order</u> , ¶ 3	781,000	11%*
Connecticut		2,500*	5%*
Pennsylvania	<u>Pennsylvania 271 Order</u> , ¶ 2	1,145,000	14%*
Arkansas	<u>Arkansas & Missouri 271 Order</u> , ¶ 2	98,500	9%*
Missouri	<u>Id.</u>	295,000	10%*
Rhode Island	<u>Rhode Island 271 Order</u> , ¶ 2	119,000	16%
Vermont	<u>Vermont 271 Order</u> , ¶ 2	21,500	6%*
Georgia	<u>Georgia & Louisiana 271 Order</u> , ¶ 3	913,000	19%*
Louisiana	<u>Id.</u>	227,000	9%*
Maine	<u>Maine 271 Order</u> , ¶ 2 & n.3	50,600	7%
New Jersey	<u>New Jersey 271 Order</u> , ¶ 3	614,000	8%*

* In these instances, the data did not appear in the relevant FCC Order, but was taken from the U.S. Department of Justice's evaluation (available at <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>) and is included here solely for reference. Note that in Connecticut, Verizon serves only 60,000 lines. Connecticut 271 Order, ¶ 2.

Further, an April 2002 study by the Eastern Management Group assessed the current state of competition in ten states, including five states that previously received approval under section 271. Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 6. The study found that Illinois had the highest level of CLEC penetration save for New York (at 25%), and that CLECs already had higher market share in Illinois than in four states for which the BOCs had obtained long-distance authority under section 271. Id.

Vigorous competition is evident not only to those who review the data but to anyone who turns on a television, or opens a newspaper and sees a CLEC advertisement, or drives down the state's highways and sees a CLEC billboard, or receives CLEC solicitations in the mail or by phone. Several CLECs are aggressively packaging and promoting local service plans. See Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 5-6; id. Sch. DOH-3 (advertisements and articles documenting CLEC solicitation of customers in Illinois); Am. Ill. Ex. 14.1 (Heritage Surrebuttal) at 5-6 & Schs. DOH-1 & DOH-2. AT&T, which had already established itself in the business market and serves residences over its cable facilities, entered the residential local service market in force and with fanfare in June 2002, offering bundled packages of local, local toll, and long distance services supported by press releases and by promotional discounts that it included with mailings to its long-distance subscribers. Id. at 5-6 & Schs. DOH-1 & DOH-2; Am. Ill. Cross Exs. 27-29. Z-Tel has launched "Z-LineHOME" and "Z-LineBUSINESS" offerings with direct mail inserts in gas and electric bills (id. at 5-6) and with an ad campaign featuring "Iron Mike" Ditka.

The current market figures reflect substantial growth in recent months. Between September 2000 and September 2001, CLECs' facilities-based lines nearly doubled and UNE loops increased by 43 percent. Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-1, ¶ 7 & Attach. D. In the five months between September 2001 and February 2002, facilities-based lines increased by an additional 347,000 or 27 percent, while unbundled loops increased by another 50,000 or 18 percent. Table 2 depicts this dramatic growth, and the continued evolution of the Illinois market as resale services mature into facilities-based competition.

Table 2: Growth in CLEC Activity

Competitive Indicator	Sept. 2000	Sept. 2001	Feb. 2002	Percentage Change, Sept. 2000 – Feb. 2002
Facilities-based Lines	575,000	1,291,000	1,638,000	185 %
Resale Lines	301,000	266,000	236,000	(22 %)
Total Lines	876,000	1,557,000	1,874,000	114 %
Unbundled Loops	193,000	276,000	326,000	69 %
UNE Platforms	0	190,000	335,000	Not applicable
SOURCE	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-1, at 95 (Attach. D)	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-1, at 95 (Attach. D)	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-2, at 95 (Attach. D)	Calculated from columns 2 and 4

The foundation is in place for continued growth. CLECs' *existing* collocation arrangements allow them to serve 94 percent of the business customers and 91 percent of the

residential customers in Ameritech Illinois' service area. Id. ¶¶ 6, 31-32 & Table 5. The CLECs' installed switching capacity is capable of serving 96 percent of the customers in Ameritech Illinois' serving area. Id. ¶ 27 & Table 4.

Not surprisingly, then, no one disputes that Ameritech Illinois satisfies Track "A." Indeed, Staff's witness agrees "that Ameritech IL meets the requirements in Sec. 271(c)(1)(A) in that there are alternative carriers, which provide telecommunications services predominantly or exclusively over their own telephone exchange facilities in Illinois." Staff Ex. 10.0 (Liu Direct) at 2; see also id. at 22 (reiterating that "Ameritech IL has met the requirements of Sec. 271(c)(1)(A)"). And not one of the Track A CLECs identified by Ameritech Illinois disputes that it is a Track A carrier.

The commenters instead try to contest the data presented by Ameritech Illinois concerning the number of lines served by CLECs, or to complain that the data should be ignored because of financial difficulties experienced by some CLECs. See, e.g., AT&T Ex. 1.0 (Turner Direct) at 12-27; Staff Ex. 10.0 (Liu Direct) at 8-22; WorldCom Ex. 6.0 (Campion Direct) at 23. We refute those criticisms below and in the Rebuttal and Surrebuttal Testimony of Deborah Heritage. The most important point, however, is not that the intervenors' arguments are inaccurate, but that they are irrelevant for purposes of determining whether Ameritech Illinois satisfies Track A. No party contends that competitive entry in Illinois falls short of the Track "A" standards established by federal law. Further, while some commenters questioned the methodology Ameritech Illinois used to estimate CLEC lines, no CLEC challenged (or used its own records to rebut) the number of lines that Ameritech Illinois estimated for that CLEC.

Estimates of CLEC Lines. Ameritech Illinois uses its own records to determine the total number of its own access lines, and to determine the number of lines that CLECs serve by using

Ameritech Illinois' facilities (via resale or the UNE "Platform"), but it does not have records for facilities-based CLEC lines (the CLECs naturally maintain their own records). Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 18. Thus, Ameritech Illinois estimates that portion of CLEC lines by using two complementary and conservative methodologies, each of which serves as a check on the other. Id. at 7, 14. First, Ameritech Illinois uses the number of listings CLECs have in the database that is used for routing "911" calls. Id. at 16; see Section II.G infra for further discussion of the 911 database. This methodology is conservative in that the 911 database includes only lines that are used for outbound calling, and excludes lines used only for inward calls, for faxes, or for computers. Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 16. Lines served by resale or by the UNE "Platform" are not attributed to CLECs in the 911 database, and Ameritech Illinois adds these to the E911 listings to derive the total number of CLEC lines. Id. at 9 n.6.

Second, Ameritech Illinois calculates CLEC facilities-based lines by using the number of interconnection trunks that the CLECs use to link with Ameritech Illinois' network facilities. Id. at 10-16; see Section II.A infra for discussion of interconnection. A single trunk can serve approximately 10 end user lines. Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-2 ¶ 20. Based on a number of unique factors related to CLEC engineering practices and customer bases, CLECs typically use a higher number of trunks relative to the number of lines they serve. An average line to trunk ratio of 2.84:1 was calculated using actual CLEC data (E911 and interconnection trunks) for Ameritech Illinois. Nevertheless, Ameritech Illinois chose an even more conservative ratio of 2.75:1 to estimate CLEC facilities-based lines. Id. at 11-12.

These two approaches are the same as those used by SWBT in its FCC-approved applications for Texas, Kansas, Oklahoma, Arkansas, and Missouri. Id. at 6. Conclusive confirmation that Ameritech Illinois' estimates are reasonable (and, if anything, conservative)

comes from the CLECs themselves. Despite AT&T's protestations, and despite the fact that the CLECs have their own business records showing the exact number of lines they serve, not one CLEC produced evidence to rebut the number of lines attributed to it by Ameritech Illinois, and not one CLEC challenged Ameritech Illinois' ultimate conclusion that it satisfies Track "A." For the same reasons, the FCC has repeatedly rejected similar CLEC criticisms of the methodology used to estimate CLEC market share. Kansas & Oklahoma 271 Order, ¶ 42 ("We note that commenters have complained that SWBT's method of estimation overstates the number of [CLEC] customers. We find, however, that SWBT's response[s] to these competitors . . . support our conclusion that more than a de minimis number of residential customers are served via UNE-P in Kansas."); Georgia & Louisiana 271 Order, ¶ 13 ("Two commenters assert that BellSouth overestimates the number of lines provided by competitors in Georgia. . . . [E]ven if BellSouth's methodology inflates the total number of lines, as Sprint and AT&T suggest, we still find that there is an actual commercial alternative based on the sufficient number of voice customers served over competing LECs' own facilities."); New Jersey 271 Order, ¶ 13 (rejecting allegation that "the numbers that Verizon reports for Track A are wrong" because none of the "competing LECs disputed the numbers that Verizon attributes to them for purposes of Track A").

Financial Difficulties in the Telecommunications Industry. AT&T contends that some of the carriers included in Ameritech Illinois' market analysis (including 8 of the 12 Track "A" carriers) are not "viable" and should be ignored because they are in or "near" bankruptcy. AT&T Ex. 10.0 (Turner Direct) at 19-23. The evidence does not support AT&T's conclusion about individual carriers or the viability of CLECs in Illinois as a whole. First, as described above, CLECs have achieved remarkable growth in Illinois – hardly a sign of failure. Nationwide, the Eastern Management Group's study on competition reports that, while the raw

number of CLECs has gone down, “their power is growing by leaps and bounds” – a view shared by several analysts. Am. Ill. Ex. 14.1 (Heritage Surrebuttal) at 30. Even at the carrier-specific level, none of the Track “A” carriers that AT&T deems not viable disputes its status as a Track “A” carrier; to the contrary, several have publicly proclaimed that they *are* viable (as Focal, XO, and Z-Tel did), or that they have emerged from bankruptcy (as Covad and McLeodUSA did), averted bankruptcy (as CoreComm did), or will continue operations without interruption. *Id.* at 28-29; Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 37-39. Even if an individual CLEC does fail, its assets and customer base are often acquired by another – a point AT&T, which acquired Northpoint Communications, knows full well. *Id.* at 38-39.

But more fundamentally, AT&T’s contentions do not affect Track “A” compliance. There is no denying that the telecommunications industry in general (incumbents and CLECs alike) is experiencing a downturn, but there is also no need to review CLEC financials, or attempt to predict the future economic climate. The FCC – which knows the state of the industry as well as anyone – has granted several section 271 applications in the current economic setting, and it has specifically held that a section 271 proceeding is no place for a referendum on the viability of individual CLECs or the industry as a whole. See Rhode Island 271 Order, ¶ 106 (“Sprint also argues that . . . the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments.”); Georgia & Louisiana 271 Order, ¶ 282 (“Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the financial hardships of the competitive LEC community do not undermine that showing.”). As the FCC explained, “[w]e have consistently declined to use factors beyond the control of the BOC, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an

application.” Id. Track “A” does not require that CLECs achieve any particular market share; still less does it require that CLECs achieve any particular profit level.

II. AMERITECH ILLINOIS HAS A CONCRETE LEGAL OBLIGATION TO PROVIDE ALL PRODUCTS AND SERVICES REQUIRED BY THE COMPETITIVE CHECKLIST

A. Checklist Item 1: Interconnection

1. Interconnection Trunking.

Interconnection is the process whereby two carriers physically connect their networks so that an end user served by one carrier can call an end user served by the other carrier, and vice versa. The physical places where the two networks meet are called points of interconnection (“POIs”). Section 271(c)(2)(B)(i) of the 1996 Act (checklist item 1) provides that a BOC must offer “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).” To meet the requirements of section 251(c)(2), an incumbent LEC must provide interconnection (1) at any technically feasible point in its network, (2) that is equal in quality to what the LEC provides itself, and (3) on just, reasonable, and nondiscriminatory terms and conditions. Maine 271 Order at D-8. Ameritech Illinois provides interconnection to competing carriers as required by section 251(c)(2); we discuss compliance with the pricing standards of Section 252(d)(1) in Section II.B.4 infra.

The FCC’s rules require an incumbent LEC to make any technically feasible form of interconnection available, including physical and virtual collocation and meet-point arrangements (where a CLEC’s fiber optic cable is connected to the incumbent’s fiber optic cable at a point between a CLEC’s premises and an incumbent’s tandem or end office). 47 C.F.R. § 51.321(a)-(b). There is no dispute that Ameritech Illinois makes all required forms of interconnection available pursuant to binding interconnection agreements. Am. Ill. Ex. 5.0 (Deere Direct) Sch. WCD-1, ¶¶ 14-15. CLECs can interconnect their network with Ameritech Illinois’ network at any of the many points required by the applicable FCC rule (47 C.F.R. § 51.305(a)(2)), as well as at other technically feasible points upon request. Id. ¶¶ 14, 23-24, 31.

Further, CLECs, at their own discretion, can obtain a single point of interconnection per LATA (“SPOI”), or may choose to interconnect at multiple points per LATA. Id. ¶ 32.

Ameritech Illinois uses standard trunk traffic engineering methods to ensure that interconnection trunking is managed in the same manner as the trunks used to carry Ameritech Illinois’ own local services. Id. ¶ 49. In order to ensure nondiscrimination, Ameritech Illinois interconnects with CLECs using the same facilities, interfaces, technical criteria, and service standards that it uses for its own retail operations. Id. ¶¶ 33-34.

Direct End Office Trunking. Ameritech Illinois’ network contains “end” offices and “tandem” offices. Local switches, which connect end users to Ameritech Illinois’ network, are located in end offices. Tandem offices, on the other hand, contain tandem switches that route traffic between end offices, and are not directly connected to end users. Assume a CLEC uses a single point of interconnection in a LATA, and one of the CLEC’s end users calls an Ameritech Illinois end user within that LATA. In that case, the CLEC’s network carries the call to the SPOI. From the SPOI, the call is generally routed, or “trunked,” to an Ameritech Illinois tandem office. Ameritech Illinois’ tandem switch will then route the call to the appropriate end office, where the local switch routes the call to the end user.

However, a tandem switch has a limited amount of capacity; that is, it has only a limited number of “ports,” where trunks can be connected. If all calls within a LATA were routed to one Ameritech Illinois tandem office, and if the volume of those calls were to exceed the tandem office’s switching capacity, the tandem switches there would be “exhausted.” Therefore, when the level of traffic from a SPOI that leads to a specific end office reaches a certain level, sound engineering practice dictates that direct trunks be installed from the SPOI to the end office, in

lieu of routing the traffic indirectly through the tandem switch. See Am. Ill. Ex. 5.1 (Deere Rebuttal) at 9-12; Am. Ill. Ex. 5.2 (Deere Surrebuttal) at 7.

AT&T raises two issues with respect to Ameritech Illinois' direct trunking policy. First, AT&T claims that the threshold level established by Ameritech Illinois (that is, the level of traffic at which a carrier is required to establish direct trunking) is too low. The FCC has not set or required a specific threshold. However, Ameritech Illinois complies with the general requirement that interconnection be nondiscriminatory. Ameritech Illinois requires an interconnected carrier to establish direct trunking to an end office when the level of traffic to that end office reaches the capacity of one "DS1" facility (24 trunks or POTS lines). AT&T alleges that the threshold should be at the much higher DS3 (28 DS1s or 672 trunks) level. AT&T Ex. 6.0 (Noorani Direct) at 22. But the existing DS1 threshold is unquestionably nondiscriminatory, because Ameritech Illinois uses a more demanding threshold (17 trunks) for establishing direct trunks in its own network. Am. Ill. Ex. 5.2 (Deere Surrebuttal) at 7.

Moreover, the Commission expressly upheld the DS1 (24 trunk) level threshold for direct end office trunking in the Ameritech Illinois/Verizon Wireless arbitration. May 1, 2001 Order, Docket No. 01-0007, at 6. The Commission found that the threshold of one DS1 was reasonable, and adopted a requirement that Verizon establish direct end office trunking at that level. Id. at 7. In so doing, the Commission recognized that "tandem exhaust is a significant problem in Illinois." Id. at 6.²

² For the same reasons, the Commission should reject AT&T's objection to Ameritech Illinois' direct trunking policy regarding local traffic that Ameritech Illinois "transits" between a CLEC and a third party. See AT&T Ex. 6.0 (Noorani Direct) at 19-22. As with traffic between a CLEC's POI and one of Ameritech Illinois' end offices, when the traffic level that Ameritech Illinois transits between two carriers reaches the 1 DS1 level, Ameritech Illinois asks those carriers to either arrange for direct trunking or establish Direct End Office Trunk Groups to

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The second dispute regarding Ameritech Illinois' tandem exhaust policy concerns the issue of financial responsibility for direct end office trunking. AT&T asserts that it should not bear the cost of transporting its own traffic (even though it collects revenue from its end users for such traffic) from the SPOI (at the tandem office) to Ameritech Illinois' end office. However, AT&T, as the cost causer, should be responsible for the cost of this transport. This, too, is nondiscriminatory; Ameritech Illinois bears the cost for using direct trunking in its own operations, and at a threshold level lower than that used for CLECs.

Further, AT&T's claim that it is entitled to free transport for direct trunking has nothing to do with the requirement that Ameritech Illinois offer a SPOI, contrary to AT&T's argument that the payment for direct end office trunking creates some kind of second, "virtual," interconnection point. A "single point of interconnection" refers only to the *physical* point at which two networks are connected. The FCC specifically held in the Pennsylvania 271 Order (§ 100) that "our rules . . . [require] that incumbent LECs provide for a single *physical* point of interconnection per LATA." (Emphasis in original). The FCC also found that issues of cost-sharing with regard to the use of a SPOI are irrelevant to checklist compliance, because "[t]he issue of allocation of financial responsibility for interconnection facilities is an open issue" which the FCC will address in a pending rulemaking. Id.; see also New Jersey 271 Order, ¶ 155 (finding that Verizon satisfied checklist item 1 by allowing "a competing carrier to interconnect

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Ameritech Illinois' end offices. In either case, the CLEC's POI remains the same. Both arrangements bypass Ameritech Illinois' tandem switch, thus protecting against tandem exhaust. See Am. Ill. Ex. 5.1 (Deere Rebuttal) at 12. This is the same way Ameritech Illinois conducts business within its own network, in order to preserve tandem resources. Id. at 12-13. As with direct end office trunking for traffic between a CLEC and an Ameritech Illinois end office, the Commission has previously approved this direct trunking requirement with respect to third party carriers, at the same DS1 threshold level. May 1, 2001 Order, Docket No. 01-0007, at 8.

at a single *physical* point in a LATA,” notwithstanding allegations that Verizon had improperly shifted costs to interconnecting CLECs); Georgia & Louisiana 271 Order, ¶ 208 (holding that “unresolved intercarrier compensation issues” do not implicate compliance with checklist item 1). As AT&T admits, “a SPOI and trunking to several switches are not necessarily, and should not be, mutually exclusive.” AT&T Ex. 6.1 (Noorani Rebuttal) at 9. Even if AT&T must compensate Ameritech Illinois for the costs incurred in establishing direct trunking, AT&T can still obtain physical interconnection at a single POI.

Staff’s Issues With Respect to Single Point of Interconnection. Contrary to the assertions of Staff and AT&T, there is no single point of interconnection (“SPOI”) issue in this case. Staff Ex. 3.0 (Zolnierek Direct) at 52-57; AT&T Ex. 6.1 (Noorani Rebuttal) at 8. As Ameritech Illinois witness Deere explains, there is no dispute that Ameritech Illinois offers a *physical* single point of interconnection. Am. Ill. Ex. 5.1 (Deere Rebuttal) at 1-9; Am. Ill. Ex. 5.2 (Deere Surrebuttal) at 2-5. The only dispute is whether Ameritech Illinois must provide free transport to and from that SPOI, but the FCC has consistently ruled that it will not address this issue in the context of a 271 proceeding. Pennsylvania 271 Order, ¶ 100 and n.341; Georgia & Louisiana 271 Order, ¶ 208. Equally important, the Commission’s June 11, 2002 Order in the Section 13-801 case (Docket No. 01-0614) requires Ameritech Illinois to provide free transport to the SPOI and, while reserving all rights to challenge that decision, Ameritech Illinois has filed a compliance tariff to implement that decision.

Staff’s Transiting Claims. Staff alleges that Ameritech Illinois does not accept local traffic from an interconnected CLEC when the CLEC is delivering local traffic that originated on

some third party's network (a service Staff calls "transiting").³ Staff Ex. 3.0 (Zolnierek Direct) at 47-52. Staff is wrong. While there is no requirement under section 271 that Ameritech Illinois provide this service,⁴ Ameritech Illinois does, in fact, accept such traffic (Am. Ill. Ex. 5.1 (Deere Rebuttal) at 13) and, in fact, could not distinguish it from direct traffic.

Staff's real concern is with form, not substance. Staff contends that Ameritech Illinois does not have an interconnection agreement with any CLEC that explicitly requires Ameritech Illinois to accept such traffic. Staff Ex. 20.0 (Zolnierek Rebuttal) at 66. But even if it wanted to, Ameritech Illinois would likely not be able to prevent CLECs from transiting traffic originated by a third party, because "realistically [Ameritech Illinois] would never know it was happening." Tr. 196 (Deere). Moreover, the Commission has already declined to require Ameritech Illinois to include such language in an interconnection agreement. May 1, 2001 Order, Docket No. 01-0007, at 35. The Commission noted that Verizon Wireless (the carrier seeking such language) did not actually ask the Commission for authorization to transit, and had no concrete plans to

³ Generally, the term "transiting" refers to one carrier acting as a "middleman" for transferring traffic from one carrier's network to another carrier's network, rather than terminating that call to an end user. Although the FCC does not specifically require this practice, there is no dispute that Ameritech Illinois provides transiting in this traditional sense, acting as a middleman. Am. Ill. Ex. 5.1 (Deere Rebuttal) at 13. The issue here concerns Ameritech Illinois' treatment of local traffic where a CLEC acts as the middleman.

⁴ The FCC has not required transiting in any of its orders under section 271, and transiting does not fall within the language of the statute. Checklist item 1 requires Ameritech Illinois to offer "[i]nterconnection in accordance with the requirements of section[] 251(c)(2)." Section 251(c)(2), in turn, requires only that an ILEC offer a CLEC interconnection "for the transmission and routing of telephone exchange service and exchange access." When a CLEC acts merely as an interoffice transport provider for local traffic, the CLEC is not providing "telephone exchange service" (a service allowing end users to originate and terminate calls within an exchange area) or "exchange access" (offering access to one's telephone exchange service or facilities for the purpose of originating or terminating toll service). The duty created by section 251(c)(2) is a duty to allow a CLEC to interconnect its network so the CLEC can hand off its own telephone exchange service and exchange access, not to allow interconnection such that a CLEC can act as a transit provider for some third party's traffic.

transit traffic in Illinois. Similarly, Staff has not shown that any CLEC has plans to transit traffic in Illinois; and, even if one did, Ameritech Illinois could not prevent it from doing so. In short, the issue here is merely theoretical.

2. Collocation

In accordance with section 251(c)(6), 47 C.F.R. § 51.321, and 47 C.F.R. § 51.323, Ameritech Illinois makes available to CLECs collocation of telecommunications equipment necessary for interconnection and access to unbundled network elements. See Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 13; Am. Ill. Ex. 5.0 (Deere Direct) Sch. WCD-1, ¶ 26. Ameritech Illinois' terms and conditions for collocation are provided in binding interconnection agreements and through its effective collocation tariff (Ill. C.C. Tariff 20, Part 23, Section 4). Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 13. Ameritech Illinois' interconnection agreements incorporate and fully comply with the FCC's collocation requirements as set forth in the Advanced Services Order, the Advanced Services Reconsideration Order, and the Advanced Services Remand Order. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 13.

Physical collocation of CLEC equipment is available where space permits. See id. ¶ 24; Am. Ill. Ex. 5.0 (Deere Direct) Sch. WCD-1, ¶ 25. Ameritech Illinois makes available caged, shared cage, cageless and other physical collocation arrangements, all at the option of the CLEC. See Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶¶ 24-35; Am. Ill. Ex. 5.0 (Deere Direct) Sch. WCD-1, ¶ 5. These offerings fully comply with the FCC's collocation rules. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 13. Adjacent space collocation is available on Ameritech Illinois' premises when all space available for physical collocation within an Ameritech Illinois Eligible Structure is legitimately exhausted. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1 ¶¶ 24, 33; Am. Ill. Ex. 5.0 (Deere Direct) Sch. WCD-1, ¶ 25.

Ameritech Illinois also will make available other technically feasible arrangements consistent with Paragraph 45 of the Advanced Services Order, which provides that “deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a competitive LEC seeking collocation in any incumbent LEC premises that such an arrangement is technically feasible.” See Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 35.

If Ameritech Illinois must deny a CLEC’s request for physical collocation because space is not available, Ameritech Illinois will inform the CLEC by letter within ten days. Id. ¶ 16. Ameritech Illinois has also modified its internal procedures to ensure that, if it denies collocation on the grounds that a CLEC’s equipment fails to meet applicable safety standards, the FCC-required affidavit will contain all the information required by the Advanced Services Reconsideration Order, ¶ 57 (revising 47 C.F.R. § 51.323(b)); Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 47. Furthermore, if space is not available to accommodate the CLEC’s request, the CLEC may request a tour of the premises. Id. ¶ 37. Consistent with 47 C.F.R. § 51.321(f), this tour will be scheduled within five business days from the date the written request for such a tour is received from the CLEC. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 37.

In addition, Ameritech Illinois maintains a publicly available document on the Internet indicating those facilities, if any, that currently are full; this list is updated within ten days of the date a central office is determined to be out of physical collocation space. Id. ¶ 38. Ameritech Illinois ensures that only offices that do not have a minimum of one bay space for physical collocation are posted on this list. Id. Moreover, prior to submitting an application for physical collocation, a CLEC may request a report that indicates the available collocation space in a particular Ameritech Illinois premises. Id. ¶ 39.

Space Reservation. Ameritech Illinois' space reservation policies are nondiscriminatory. Id. ¶ 40. As required by 47 C.F.R. § 51.323(f), Ameritech Illinois does not and will not allow any of its affiliates to reserve space on terms more favorable than those that apply to unaffiliated CLECs. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 40; Advanced Services Reconsideration Order, ¶ 53. Moreover, Ameritech Illinois has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶¶ 27, 41. For instance, Ameritech Illinois will remove obsolete, unused equipment upon reasonable request by a collocator or upon order of the Commission. Id. Ameritech Illinois also conserves caged collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain a single rack or bay of equipment. Id. ¶ 27.

Ameritech Illinois employs security measures for collocators in its central offices to reasonably protect its network and equipment from harm, and these measures are no more stringent than the security arrangements Ameritech Illinois maintains on its premises for its own employees or authorized contractors. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 42. CLEC personnel are not required to undergo security training that is more stringent or intensive than the training undergone by Ameritech Illinois personnel, nor are they required to obtain training from Ameritech Illinois. Id. ¶ 43. Ameritech Illinois does not impose security measures more stringent than those permitted by the FCC. Id. ¶ 42; Advanced Services Order, ¶¶ 46-49.

Virtual collocation is available to CLECs regardless of the availability of physical collocation. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶ 48. Ameritech Illinois uses the same engineering practices for virtually-collocated equipment as it does for similar equipment of its own. Id. ¶ 49. Ameritech Illinois will maintain and repair virtually-collocated equipment at

the direction of the collocator using the same standards that Ameritech Illinois uses for maintaining and repairing its own equipment. Id. ¶ 50.

Access to the Main Distributing Frame (“MDF”). CLECs have access to their physically collocated equipment 24 hours a day, seven days a week. CLEC physical collocation space may be physically separated from Ameritech Illinois’ equipment as contemplated by the FCC’s collocation rules and orders. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶¶ 24-35, 46; Am. Ill. Ex. 5.0 (Deere Direct) Sch. WCD-1, ¶ 5. The Main Distributing Frame (“MDF”) is the facility within Ameritech Illinois’ central office on which every customer line, trunk and circuit is terminated as it enters the central office. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 19-20. These lines, trunks and circuits are then cross-connected to either Ameritech Illinois’ switch (for switched services), an Ameritech Illinois interoffice facility (for dedicated services) or to a facility which connects them to a CLEC’s collocation equipment. The MDF is owned by Ameritech Illinois, is located in Ameritech Illinois’ space in the central office, and constitutes the “heart” of the network. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 20.

AT&T, McLeodUSA/TDS and RCN contend that their technicians should be permitted to access the MDF directly.⁵ They contend that direct access to the MDF is required to perform necessary maintenance functions, to test their lines, to verify dial tone and perform other functions. MTSI/TDS Ex. 1.0 (Cox Direct) at 16-18; AT&T Ex. 6.0 (Noorani Direct) at 26-29; RCN Ex. 1.0 (Piticavong Direct) at 3-5. The CLECs contend that Ameritech Illinois’ policy requiring them to use approved third party vendors to perform work in Ameritech Illinois’ space

⁵ McLeodUSA/TDS describe their proposal as access to the “back of the DMARC,” while AT&T and RCN describe their proposal as access to the Connecting Facilities Assignment (“CFA”). McLeodUSA/TDS Ex. 1.0 (Cox Direct) at 16; AT&T Ex. 6.0 (Noorani Direct) at 24-25; RCN Ex. 1.0 (Piticavong Direct) at 2-3. These terms mean the same thing as the MDF. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 14, 16.

in the central office is cumbersome and can result in CLEC customers being without service for an extended period of time. Id.

Ameritech Illinois has no obligation to provide collocating CLECs access to the MDF. The FCC has made clear that “protection of their [ILECs’] equipment is crucial to the incumbents’ own ability to offer service to their customers.” Advanced Services Order, ¶ 48; see also Advanced Services Remand Order, ¶ 102. This Commission has addressed the issue of access to the MDF in two separate orders and both times concluded that CLECs should not have such access. Aug. 17, 2000 Order, Docket Nos. 00-0312/00-0313, at 23-24; March 14, 2001 Order, Docket No. 00-0393, at 74. In the Texas 271 Order, the FCC found that SWBT’s collocation tariff satisfied the checklist, even though that tariff expressly prohibited CLEC access to the MDF. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 17.

Since access to the MDF is not required, Ameritech Illinois’ third party vendor policy is a necessary, practical and reasonable way to give CLECs the ability to perform work such as testing and maintenance functions outside their collocation space. Third party vendors must be certified by the Company. Through this approach, Ameritech Illinois can assure that all technicians who work on its network facilities are properly trained and insured, and that they will not harm the facilities of Ameritech Illinois or other CLECs that have facilities terminated on the MDF. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 19; Tr. 1332-33, 1424-25 (Alexander). This approach also limits the absolute number of people working in confined central office space, which itself reduces the potential for trouble reports and service outages for all customers. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 14; Tr. 1424, 1427 (Alexander).

Contrary to the CLECs’ contentions, the third party vendor policy is not overly cumbersome and does not result in excessively long service outages. Ameritech Illinois’

technicians will assist CLECs in troubleshooting service outages without the need for vendor involvement. Whenever a CLEC reports that one of its customers has no dial tone, an Ameritech Illinois technician will check for dial tone at the MDF, and, if requested, will assist the CLEC in resolving the trouble. If there is no dial tone at the MDF, Ameritech Illinois verifies or corrects any wiring and cabling problems for which it is responsible. Tr. 1335-36 (Alexander). Even where the problem is in the CLEC's facilities, in many cases it can be resolved simply by changing the cross connection at the MDF to another facility within the CLEC's Connecting Facility Assignment, a function which Ameritech Illinois' technicians will perform upon request. Tr. 1418 (Alexander). Thus, CLECs would require third party vendor support only when the problem resides in their facilities. Where use of a third party vendor is required in a service outage or maintenance situation, the CLEC's vendor can obtain ready access to Ameritech Illinois' central office and resolve the problem expeditiously. Tr. 1613-14 (Alexander).⁶ Therefore, the CLECs' contentions are unwarranted.

Path Star Equipment. McLeodUSA complains that Ameritech Illinois improperly denied its request to collocate certain equipment known as "Path Star" in Ameritech Illinois' central offices. McLeodUSA Ex. 3.0 (Redman-Carter Direct) at 2-3. Ameritech Illinois has been unable to locate any records of an actual application by McLeodUSA to collocate this equipment. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 25. In any event, the FCC made clear in its

⁶ McLeodUSA/TDS complain that Ameritech Illinois changed its policy in September of 2001, and no longer permitted escorted CLEC access to the MDF. McLeodUSA/TDS Ex. 1.0 (Cox Direct) at 17-18. In fact, this did not represent a change in policy as existing security procedures already prohibited such access. Following the events of September 11, 2001, Ameritech Illinois tightened up its existing policies and reinforced with its central office technicians the need to limit MDF access to Ameritech Illinois' employees and authorized third-party vendors. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 15; Tr. 1419-20 (Alexander).

Advanced Services Remand Order (§ 48) that ILECs are not required to allow collocation of “traditional circuit switching equipment,” and the Path Star equipment constitutes traditional circuit switching equipment. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 25-26. Therefore, McLeodUSA’s position is unfounded.

Adjacent Collocation Intervals. McLeodUSA contends that Ameritech Illinois is obligated to provide adjacent collocation within a 90-day time frame. McLeodUSA Ex. 3.0 (Redman-Carter Direct) at 3-4.⁷ McLeodUSA is incorrect. Adjacent collocation is not subject to standard provisioning intervals. In the FCC’s Collocation Waiver Order (§ 14), the FCC concluded that a New York collocation tariff was generally consistent with its goals, even though that tariff did not establish standard intervals for adjacent collocation. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 26. Adjacent collocation is a sufficiently unique arrangement that additional engineering work is likely to be required beyond what is contemplated by the standard 90-day collocation interval for physical collocation. Accordingly, it should be dealt with in the same manner as “Raw Space.” The Commission approved provisions for raw space preparation in Ameritech Illinois’ collocation tariff in Docket 99-0615. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 26-27; Jan. 31, 2001 Order on Rehearing, Docket No. 99-0615.

In any event, this is an issue in search of a purpose. Under the FCC’s rules, adjacent collocation is essentially a “last resort” physical collocation arrangement. That is, an incumbent LEC is required to provide adjacent collocation only when physical collocation space is legitimately exhausted (*e.g.*, where the office is “closed” to physical collocation and posted on

⁷ When space is legitimately exhausted, CLECs may physically collocate in adjacent controlled environmental vaults or similar structures outside of the central office that Ameritech Illinois uses to house telecommunications equipment, to the extent technically feasible. Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1 at 18-19.

the company's website as such). No CLEC in Illinois, including McLeodUSA, has ever requested adjacent collocation. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 26.

Collocation Pricing. Staff and AT&T contend that Ameritech Illinois' prices for collocation are not permanent and, therefore, do not comply with the FCC's TELRIC pricing rules. Staff Ex. 5.0 (Hanson Direct) at 6-7; AT&T Ex. 3.0 (Henson Direct) at 13-15. Staff and AT&T are incorrect. Ameritech Illinois' tariffed collocation rates were investigated by the Commission in Docket No. 99-0615 and the tariffed rates in effect today were ordered by the Commission based on the record in that proceeding. Aug. 9, 2000 Order, Docket No. 99-0615, at 23, 27. They were affirmed on appeal. Illinois Bell Telephone Co. v. Illinois Commerce Comm'n, 327 Ill. App. 3d 768 (3d Dist., 2002). Although the Commission originally designated certain of these rates as "interim," pending review of revised cost studies which the Company was ordered to file, they have now been in effect for more than two years without further Commission action. As a result, the Company considers them to be *de facto* permanent rates. Am. Ill. Ex. 10.1 (Smith Rebuttal) at 8-9. Even if one accepts Staff's characterization that the rates are "interim," the FCC accepts interim rates in section 271 application proceedings. See Section II.B.3 infra.

Staff also expresses concern that the collocation rates in Ameritech Illinois' Generic Interconnection Agreement differ from those in the tariff. Staff Ex. 5.0 (Hanson Direct) at 10-11. This is not a section 271 issue. Ameritech Illinois is not under any FCC obligation to conform the rates in its GIA to the rates in its tariffs. The GIA is an offer, which CLECs are not obligated to accept. CLECs that wish to obtain collocation under the rates ordered by the Commission in Docket No. 99-0615 can take service under tariff or opt into those portions of another carrier's interconnection agreement which contain those rates. Am. Ill. Ex. 1.1

(Alexander Rebuttal) at 27-28. Under section 252(a)(1) of the 1996 Act, parties may negotiate rates in an interconnection agreement without regard to filed tariffs or even TELRIC standards. In any event, the rates in the GIA reflect an updating and restructuring of collocation rates which took place in 2001. They provide CLECs with an optional, consistent 13-state product offering and rate structure which may be of value to multi-state CLECs. This structure also provides new provisions and rate elements which enable CLECs to manage more of their own collocation work (*e.g.*, designating vendors for the placement of cabling). Am. Ill. Ex. 10.0 (Smith Rebuttal) at 9-10.⁸ Nothing in the 1996 Act or any of the FCC's section 271 orders precludes ILECs from offering CLECs alternative terms and conditions for wholesale products.

⁸ Staff contends that the availability of collocation alternatives creates undue uncertainty. Staff Ex. 5.0 (Hanson Direct) at 10-11. These concerns are unfounded. CLECs today are sophisticated and are capable of making informed choices between the tariff and contract plans, both of which have been available for some time now. The GIA and Ameritech Illinois' tariffs are available for viewing over the Internet. Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 28-29. However, in response to Staff's concerns, the Company has established a "hot link" between the GIA website and the Company's tariffs which will facilitate comparisons between the two. Am. Ill. Ex. 1.2 (Alexander Surrebuttal) at 32.

B. Checklist Item 2: Access to Unbundled Network Elements.

1. Access to UNEs Generally.

Section 271(c)(2)(B)(ii) of the 1996 Act (checklist item 2) provides that a BOC must offer “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).” Congress assigned to the FCC the primary responsibility for “determining what network elements should be made available” on an unbundled basis “for purposes of section 251(c)(3),” and it told the FCC to “consider, at a minimum, whether (A) access to such network elements as are proprietary in nature is *necessary*; and (B) the failure to provide access to such network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.” 47 U.S.C. § 251(d)(2) (emphasis added). Tests (A) and (B) are often called the “necessary” and “impair” tests.

The FCC issued its first rules implementing the Act’s unbundling requirements in the 1996 First Report and Order, where it promulgated a nationwide list of seven elements that incumbents had to unbundle. In AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366, 389 (1999), the Supreme Court found the FCC’s view of the unbundling obligation was too broad (or, stated another way, that the FCC’s “impair” test was too lenient), stating that under the FCC’s standard it was “hard to imagine when the incumbent’s failure to give access to the element would not constitute an ‘impairment.’” The Court vacated and remanded the FCC rules, reasoning that if “Congress had wanted to give blanket access to incumbents’ networks,” it “would simply have said (as the Commission in effect has) that whatever requested element can be provided must be provided.” Id. at 390.

The FCC issued new rules and a new national list of UNEs in the UNE Remand Order. Although the Supreme Court had criticized the FCC’s previous approach as too broad, the FCC’s new list retained the original UNEs (with two partial exceptions) and added four more. On May

24, 2002, the U.S. Court of Appeals for the D.C. Circuit issued its decision on review of that order (and of the Line Sharing Order). United States Telecom Ass’n v. FCC, 290 F.3d 415 (D.C. Cir. 2002) (“USTA”). The D.C. Circuit held that the “impair” test employed by the FCC to develop the unbundling requirements in those orders was still overly broad and unlawful. In so holding, the court rejected the FCC’s “more unbundling is better” approach, recognizing that unbundling requirements impose significant societal costs. Id. at 425. The D.C. Circuit also held that the FCC’s imposition in the Line Sharing Order of “line sharing” obligations on incumbent LECs (which we describe in more detail under checklist item 4) was unlawful, not only because it rested on the FCC’s impermissibly broad “impair” test, but also because it “completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite).” Id. at 428. Accordingly, the D.C. Circuit granted the ILECs’ petitions for review in full, remanded both the UNE Remand Order and the Line Sharing Order to the FCC, and specifically vacated the Line Sharing Order in its entirety.

The D.C. Circuit’s decision removes the legal basis for the FCC’s entire national list of UNEs, because the FCC classified each and every network element on that list based on its unlawful formulation of the impair test. It also means that the FCC has no current regulations for it or state commissions (under their limited power to do so) to apply when determining whether a specific network element is subject to the 1996 Act’s unbundling obligations. Instead, the standards that govern unbundling will remain unknown until the FCC establishes new rules.⁹

⁹ The FCC has already begun that work in an open docket, the Triennial Review UNE rulemaking. It recently extended the reply comment date in that proceeding to allow parties to address the D.C. Circuit’s decision. New Jersey 271 Order, ¶ 9 n.26.

For purposes of this proceeding, the Commission need not concern itself with future unbundling rules, because (as shown below) Ameritech Illinois is in compliance with its pre-USTA obligations. Ameritech Illinois has no plans to unilaterally retract or change the price of any UNEs based on USTA.¹⁰ To avoid disruption, Ameritech Illinois, like all other SBC ILECs, has committed to continue to provide all of the UNEs required in connection with the UNE Remand Order, until the FCC issues and implements new unbundling rules.

That does not mean, however, that the D.C. Circuit's decision is irrelevant. Rather than put forth any serious dispute that Ameritech Illinois is in compliance with pre-USTA unbundling requirements (because there is no basis for any serious dispute), the CLECs and Staff have attempted to use this proceeding to create new unbundling obligations that neither the FCC nor this Commission has imposed. For example, the CLECs request that the Commission order the "unbundling" of the integrated Project Pronto DSL architecture into piece-parts, which the Commission ultimately declined to do in Docket No. 00-0393. See Section II.D.2(e), infra.

As we described in the Introduction to this brief, this proceeding is not the *place* for such issues. The Commission is acting as an advisor to the FCC, not as a rulemaker, and the FCC has made clear that compliance with existing federal requirements (as opposed to the creation of new requirements) is the only relevant inquiry in a section 271 proceeding. Pennsylvania 271 Order, ¶ 92; Arkansas & Missouri 271 Order, ¶ 105; Georgia & Louisiana 271 Order, ¶ 114. In the wake of USTA, moreover, it is also clear that this is not the *time* to address new unbundling proposals, particularly with regard to advanced services, where alternative modes of transmission

¹⁰ SBC's ILECs, including Ameritech Illinois, have specifically committed (notwithstanding the explicit vacatur of the Line Sharing Order) to voluntarily provide the HFPL to CLECs, until at least February 15, 2003. The specific terms of SBC's commitment in this regard are set out in a June 18, 2002 letter from SBC's President, William Daley, to FCC Chairman Powell.

(such as cable modem) already compete with (and in fact, have more market share than) Ameritech Illinois' DSL-capable facilities. The pre-USTA obligations under federal law have already been found too broad; the “more is better” approach to unbundling that the intervenors espouse has already been rejected; and the standards for developing new unbundling requirements are uncertain. Under these circumstances, it would be difficult to conceive of a more inappropriate time to consider additional unbundling.

While the CLECs request the creation of new UNEs, Staff asks the Commission to create a new series of rules for how to provide the pre-USTA UNEs. Staff appears to suggest that these rules come from federal law, but it does not really tie any of them to an FCC rule. Rather, Staff Witness Zolnierек borrowed language from the FCC's discussion of the “impair” test in the UNE Remand Order, and tried to extend it to justify a framework of new rules. But the FCC did not use the impair test to evaluate the quality or other aspects of an incumbent's UNE offerings, or to determine *how* UNEs should be provided. It used the test to evaluate the quality of *alternatives* to potential UNEs, to determine *whether* such elements must be unbundled in the first place. UNE Remand Order, ¶¶ 51, 65. The impropriety of Staff's approach is demonstrated by its results: Staff's proposals are not currently required by the FCC, and many of those proposals have been affirmatively rejected by the FCC in section 271 proceedings. For instance, Staff's suggestion that section 271 approval requires that all rates be permanent, rather than interim, to eliminate rate “uncertainty” (Staff Ex. 3.0 (Zolnierек Direct) at 85-86, 70-72), has been rejected by the FCC. See Section II.B.3(b), infra.

Over and above the fact that Staff is trying to use the impair test for purposes that the FCC did not intend, the D.C. Circuit has now held that the FCC's impair test is inconsistent with the 1996 Act even for the purpose that the FCC *did* use it: *i.e.*, to determine whether an element

should be provided on an unbundled basis. The FCC’s “impair” test is certainly not a foundation on which to build new rules.

2. UNE Combinations

Section 251(c)(3) requires incumbent LECs to provide UNEs in a manner that allows CLECs to combine them. The FCC’s implementing rules further require incumbent LECs to (i) not separate UNEs that are already combined with one another, unless the CLEC so requests, and (ii) combine UNEs at a CLEC’s request, in certain circumstances. 47 C.F.R. § 51.31(b)-(f); Verizon Comms. Inc. v. FCC, 122. S. Ct. 1646 (U.S., May 13, 2002). Ameritech Illinois meets all these requirements – as confirmed by the fact that CLECs are actively obtaining and using combinations of UNEs to compete. Indeed, as of April 2002 CLECs were using 352,000 UNE Platforms (combinations of UNE loop, switching, and shared transport). Am. Ill. Ex. 14.1 (Heritage Surrebuttal) at 19. AT&T has made the platform a cornerstone of its entry strategy. See Am. Ill. Cross Ex. 26-27; Tr. 1676 (Willard).

CLEC Combinations. Ameritech Illinois provides UNEs in a manner that allows CLECs to combine them by offering various collocation arrangements. Am. Ill. Ex. 1.0 (Alexander Direct), Sch. SJA-1, ¶ 69. No party disputes that Ameritech Illinois provides UNEs in a manner that allows the CLEC to combine them.

Existing Combinations. Ameritech Illinois also provides existing combinations of UNEs; that is, it does not separate UNEs that are already combined, unless the CLEC so requests. Id. ¶ 63. The most commonly provided existing combination involves a “migration” of an end-user’s existing retail service to a combination of UNEs. Such a migration might occur if a retail end-user of Ameritech Illinois switched to a CLEC for local service, and that CLEC elected to serve the customer through the UNE Platform, or “UNE-P.” Ameritech Illinois has an effective tariff that enables CLECs to request such UNE-P migrations, which includes prices that comply

with the Commission's October 16, 2001 Order and May 2, 2002 Order on Reopening in Docket No. 98-0396. Am. Ill. Ex. 1.0 (Alexander Direct) at 25-26; Am. Ill. Ex. 1.1 (Alexander Rebuttal) at 30; Am. Ill. Ex. 1.2 (Alexander Surrebuttal) at 33; Tariff Ill. C.C. No. 20, Part 19, § 15.

Staff contends that Ameritech Illinois' offerings are unclear with respect to what types of "migrations" are available, what the cost for each type is, and what provisioning intervals will apply. Staff Ex. 3.0 (Zolnierек Direct) at 123. Three points are worth noting in response. *First*, it is telling that, while Staff Witness Zolnierек spends a great deal of time addressing the provision of existing UNE combinations, no CLEC disputes that Ameritech Illinois provides existing combinations. In fact, many CLECs have taken full advantage of those offerings and are obtaining UNE combinations in substantial commercial volumes. On the front lines of competition, then, Ameritech Illinois is providing the required combinations (including "migrations") to competitors.¹¹

Second, Staff complains about the alleged lack of detail regarding the provision of existing combinations *other than* the UNE Platform and Enhanced Extended Links or "EELs." But neither Staff nor any CLEC has identified any other existing combination in which CLECs might be interested, which again indicates that, on the front lines, Ameritech Illinois is providing the combinations CLECs actually desire. Furthermore, if a CLEC did desire other existing UNE combinations, it could request them through the Bona Fide Request process. Am. Ill. Ex. 5.0 (Deere Direct) Sch. WCD-1, ¶¶ 83-87. See also Sections II.B.5 and II.F for further discussion of BFRs.

¹¹ AT&T contends that Ameritech Illinois does not provide "as-is" migrations from retail service to the UNE Platform. AT&T Ex. 8.1 (Willard Rebuttal) at 18. Its real complaint, however, is with the format for ordering the product via Ameritech Illinois' OSS interfaces. We address that claim in Section II.B.4(b) infra.

Third, Staff's argument has no legal basis. It is based on Staff's misapplication of the criteria set forth in the FCC's "impair" test (Staff Ex. 3.0 (Zolnierrek Direct) at 67-68) which we rebutted in the introduction to this Section II.B.

Staff also complains that Ameritech Illinois has not established detailed processes for "migrating" a private line service, or point-to-point data circuit, to UNEs, including whether Ameritech Illinois will enforce the FCC's requirement that CLECs use such migrations to provide a substantial amount of local service (a requirement that appears in the Supplemental Order and Supplemental Order Clarification to the UNE Remand Order). Staff Ex. 3.0 (Zolnierrek Direct) at 119-22. That concern is now moot: Ameritech Illinois recognizes that the Commission's Order in Docket 01-0614 holds that Ameritech Illinois must perform certain migrations without applying the FCC's local usage restrictions. Without waiving its legal rights to challenge that decision, Ameritech Illinois will abide by that decision pending a stay or modification on rehearing or judicial review. In fact, Ameritech Illinois filed a compliance tariff in the section 13-801 case on July 11, 2002 that contains procedures for such conversions.

New Combinations. Finally, Ameritech Illinois also provides new combinations of UNEs that are at least sufficient to meet (if not exceed) the requirements of federal law. Ameritech Illinois makes these available through its tariff (which was updated on July 11, 2002 to comply with the Commission's Order implementing section 13-801 of the Illinois PUA, Docket No. 01-0614, subject to rehearing or judicial review) and through interconnection agreements where the CLEC has adopted a contract amendment based on section 13-801.

Staff complains that Ameritech Illinois has not implemented everything necessary to meet Staff's view of section 13-801 of the PUA or Staff's preferred pricing for combinations (at least as Staff's view existed prior to the April 30, 2002 Order on Reopening in Docket No. 98-

0396). Staff Ex. 3.0 (Zolnierек Direct) at 132-139. Putting aside the fact that an affirmative showing of compliance with every nuance of Illinois state law (here, section 13-801) is not required for purposes of section 271, Staff's concern is now moot. The Commission has issued an order on UNE combinations issues under section 13-801 (June 11, 2002 Order, Docket No. 01-0614), and Ameritech Illinois has already filed a compliance tariff. Similarly, with respect to pricing, Ameritech Illinois also has filed a compliance tariff, which was proposed by and agreed to with Staff, based on the April 30, 2002 Order on Reopening in Docket 98-0396 (the TELRIC Compliance case). Tr. 1722-24 (Zolnierек).

3. Pricing

Ameritech Illinois provides UNEs and interconnection to CLECs at rates that comply fully with all FCC and statutory requirements. Section 252(d)(1) of the Act requires that a “just and reasonable rate for network elements” is one that is “based on the cost . . . of providing the interconnection or network element.” To implement this requirement, the FCC determined that prices for UNEs are to be based on the total element long run incremental cost (TELRIC) of providing those elements. First Report and Order, ¶¶ 674-79; 47 C.F.R. § 51.501 et seq. Ameritech Illinois’ cost studies, and the rates ultimately approved by the Commission, adhere to these principles and to the FCC’s TELRIC methodology.¹²

The assessment of checklist compliance does not entail the same type of searching inquiry that the Commission performs in approving wholesale rates. The FCC does not conduct a ratemaking proceeding in the first instance, nor will it “conduct a *de novo* review of a state’s pricing determinations.” Georgia & Louisiana 271 Order, ¶ 23. Rather, the first (and often dispositive) step is to confirm that the state commission applied TELRIC in approving the UNE rates without violating any of the basic TELRIC principles. “[The FCC’s] analysis is complete if it reveals that there are no basic TELRIC violations or clear errors on substantial factual matters.” Id. ¶ 24. If – but only if – the FCC finds a substantial error or departure from TELRIC, it reviews the resulting rates to determine if they fall within a “zone of reasonableness” (based on comparisons with other states) notwithstanding the error in methodology. Id. ¶ 25.

¹² Indeed, Ameritech Illinois believes that the currently available rates are, for the most part, significantly lower than those authorized by TELRIC principles. Accordingly, Ameritech Illinois is currently challenging the validity of certain aspects of the ICC orders mandating the rates in question. Pending completion of those proceedings, and without waiving its appellate rights, Ameritech Illinois has complied, and will continue to comply, fully with all aspects of final orders in all applicable dockets. What matters for present purposes, however, is that the Commission-approved rates are not higher than those authorized by TELRIC principles.

There is and can be no dispute that the Commission has demonstrated a consistent commitment to fully investigate Ameritech Illinois' wholesale rates, and has required Ameritech Illinois to establish rates that do not exceed what TELRIC principles, applied in a strict manner, would dictate. (In fact, as we noted above, we believe the rates imposed by the Commission are lower than those that a proper application of TELRIC principles would generate.) As Staff recognizes, “[i]t is entirely safe to assume that this Commission has demonstrated its commitment to TELRIC principles, so that particular requirement is met in all cases.” Staff Ex. 6.0 (Koch Direct) at 16. AT&T's Chairman C. Michael Armstrong recently praised the state commissions in the Ameritech region – including this Commission – for “tak[ing] steps in recent months to cut the rates AT&T and others pay to lease portions of the Bell companies' networks – making it economically feasible to offer competing local service.” Am. Ill. Cross Ex. 29 (Willard) at 1. An AT&T Senior Vice President similarly “applaud[ed] the Illinois Commerce Commission” for approving UNE prices that “mak[e] Illinois one of the lead states in recognizing the value of competition among local service providers.” Am. Ill. Cross Ex. 27 (Willard) at 1.

The great majority of Ameritech Illinois' UNE rates were reviewed in extensive, contested proceedings in which major CLECs and Staff played active roles:

- Most of the basic UNE and collocation rates were reviewed in Docket Nos. 96-0486/96-0569, which commenced in late 1996 and concluded with an order (the “TELRIC Order”) dated February 17, 1998. As a result of the TELRIC Order, Ameritech Illinois revised its cost studies and models and made the resulting rates (which were in each case lower than those proposed by Ameritech Illinois) available to all CLECs in Illinois. Am. Ill. Ex. 10.0 (Smith Direct) Sch. 2, ¶ 11.

- The Commission confirmed compliance with the TELRIC Order in its October 16, 2001 TELRIC Compliance Order in Docket No. 98-0396. Am. Ill. Ex. 10.0 (Smith Direct) Sch. 2, ¶¶ 12-13. The Commission also issued an Order on Reopening in that same docket on April 30, 2002, which adopted interim rates for certain nonrecurring charges associated with the provision of UNEs. Ameritech Illinois filed compliance tariffs on May 10, 2002. Am. Ill. Ex. 10.0 (Smith Direct) Sch. 2, ¶¶ 11-14, 36; Am. Ill. Ex. 1.0 (Alexander Direct) Sch. SJA-1, ¶¶ 134-135.
- The Commission established rates for the high-frequency portion of a loop (“HFPL UNE”) and related products and services in Docket No. 00-0393. These rates in all cases are lower than those proposed by Ameritech Illinois; indeed, the Commission set the monthly recurring charges for the HFPL UNE and certain other items at zero. Am. Ill. Ex. 10.0 (Smith Direct) Sch. 2, ¶¶ 16-17.
- The Commission has now approved permanent rates for unbundled local switching and unbundled local switching-shared transport in Docket No. 00-0700. See July 10, 2002 Order, Docket No. 00-0700.

The Commission’s aggressive application of TELRIC is confirmed by the fact that the currently available rates are among the very lowest in the country. Take, for instance, the staple element: the unbundled loop. The monthly rate of \$2.59 for a loop in Zone “A” (Chicago) is by far the lowest rate in the nation. The statewide average loop rate in Illinois of \$9.81 is the fourth-lowest in the country. Am. Ill. Ex. 15.1 (Johnson Rebuttal) Sch. RJJ-2 at 8. The national average loop rate of \$14.18 is nearly 50% higher than the Illinois average. Id. Further, the rate for an entire unbundled network element platform (loop, switching, and transport) in Illinois is significantly less than the rate for a stand-alone loop in many states. Finally, the Illinois average

loop rate is much lower than the rates for incumbent LECs that have recently received approval under section 271, such as the rates for Georgia and Louisiana, and for Missouri, and it is comparable to the rate recently approved by the FCC in its New Jersey 271 Order:¹³

Table 3: Comparison of Loop Rates

State	Loop Rate
Illinois	\$9.81
Missouri	\$15.18
Georgia	\$16.51
Louisiana	\$17.30
New Jersey	\$9.52

a. Possible Future Rates

Much of the argument from opposing parties on pricing has nothing to do with the current Commission-approved rates. Rather, those parties complain that Ameritech Illinois might someday propose higher rates. As of now, no new rate proposals have been submitted. Tr. 942-945 (Johnson). More importantly, it should go without saying that no rate proposals can be made without interested parties having an opportunity to respond, and that no rate changes would result unless the Commission approved them. Past experience shows the Commission does not approve rates until it is convinced that they comply with TELRIC.

¹³ The Illinois and New Jersey rates are found in Am. Ill. Ex. 15.1 (Johnson Rebuttal) Sch. RJJ-2 at 8. The FCC recently approved the New Jersey rate. See New Jersey 271 Order, ¶ 18. The Missouri rate is taken from Arkansas & Missouri 271 Order, ¶ 59, while the Georgia and Louisiana rates come from the Georgia & Louisiana 271 Order, ¶ 47 & nn. 166-167.

Nonetheless, Staff and WorldCom propose that Ameritech Illinois' UNE rates be capped for five years. Staff Ex. 6.0 (Koch Direct) at 39-41; ICC Staff Ex. 23.0 (Koch Rebuttal) at 24; WorldCom Ex. 6.1 (Campion Rebuttal) at 16-17.¹⁴ Similarly, at the hearing the CLECs sought to cross-examine Ameritech Illinois witnesses as to what rates might be developed. Tr. 307-318 (Smith); Tr. 920-930 (Johnson); Tr. 1582-83, 1594-96 (Alexander). The FCC, however, has held that the rates to be reviewed for assessing compliance are the rates that are in effect, and it has rejected the theory that post-approval rate changes are a barrier to section 271 approval. In the Georgia 271 proceedings, CLECs opposed BellSouth's application on the ground that BellSouth had opened a new cost docket to establish new UNE rates. The FCC, however, held that "we do not believe that the existence of a new Georgia cost docket, without more, should affect our review of the currently effective rates submitted with BellSouth's section 271 application." As the FCC explained:

States review their rates periodically to reflect changes in costs and technology. As a legal matter, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself. Such a requirement would likely limit the ability of incumbent LECs to file their section 271 applications to specific windows of opportunity immediately after state commissions have approved new rates to ensure approval before the costs of inputs have changed. We doubt that Congress, which directed us to complete our section 271 review process within 90 days, intended to burden the incumbent LECs, the states, or the Commission with the additional delays and uncertainties that would result from such a requirement. That a cost factor has changed does not always invalidate rates that were originally set according to a TELRIC process. As the D.C. Circuit stated, "[i]f new [cost] information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change."

¹⁴ Staff also recommends that the Commission prohibit Ameritech Illinois from using any new cost models even to propose UNE rates until the Commission has approved the underlying models. ICC Staff Ex. 6.0 (Koch Direct) at 41. Assuming Ameritech Illinois used a new model to develop a new proposed rate, that new rate would not go into effect unless and until the Commission approved both the rate and the model that produced it.

Georgia & Louisiana 271 Order, ¶ 96 (internal citations omitted). Similarly, the FCC recognized in its Massachusetts 271 Order (¶ 36) that “the fact that a state may conduct a rate investigation and change the rates in the future does not cause an applicant to fail the checklist item at this time. Indeed, rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions.”

In sum, Staff’s attempt to prohibit or impose limits on future rate changes is not relevant to checklist compliance. To the extent Staff contends the Commission should impose such restrictions under the “public interest” inquiry, we demonstrate in Section III.D that Staff’s proposal is also contrary to the public interest.

b. Interim Rates

The vast majority of Ameritech Illinois’ wholesale rates have been approved by the Commission on a permanent basis after active and detailed investigation. Am. Ill. Ex. 10.1 (Smith Rebuttal) at 2. These include all of the components of the UNE-P (loops, switching, and shared transport). As pointed out above, Ameritech Illinois’ loop rates are among the lowest (if not the lowest) in the nation, and with the conclusion of Docket No. 00-0700, Ameritech Illinois’ switching and transport rates are likewise among the lowest in the nation. July 10, 2002 Order, Docket No. 00-0700, at 21-24. Ameritech Illinois’ collocation rates, as noted above, have also been set by the Commission, and have been affirmed on appeal. Most non-recurring charges are also permanent, as a result of substantial reductions to Ameritech Illinois’ proposed charges with the adoption of various WorldCom proposals in Docket No. 98-0396. Oct. 16, 2001 Order, Docket No. 98-0396, at 39-43. Finally, the recurring UNE rate for the HFPL has been set at zero

on a permanent basis, as have rates for line sharing OSS modifications and xDSL manual loop qualification.¹⁵ March 14, 2001 Order, Docket No. 00-0393, at 84, 88.

A handful of rates, however, are interim. Interim rates include the charges associated with the “end-to-end Broadband UNE” established in Docket No. 00-0393, and certain nonrecurring charges associated with UNE combinations (UNE-P and EELs).¹⁶ Staff argues that Ameritech Illinois’ 271 application should be rejected until permanent rates for these products are approved by the Commission (Staff Ex. 6.0 (Koch Direct) at 18), or at least until the Commission determines whether these rates fall within a “zone of reasonableness.” Staff Ex. 3.0 (Zolnierrek Direct) at 85-86. AT&T joins in this argument. AT&T Ex. 3.0 (Henson Direct) at 10-11. Both are wrong.

The FCC has already rejected the position taken by Staff and AT&T and has made clear that section 271 does not require that permanent rates be in effect for each and every UNE at the time of a section 271 application. To the contrary, interim rates may be acceptable if “1) the interim solution to a particular rate dispute is reasonable under the circumstances; 2) the state commission has demonstrated its commitment to our pricing rules; and 3) provision is made for refunds or true-ups once permanent rates are set.” Arkansas & Missouri 271 Order, ¶ 64; see

¹⁵ While Staff suggests that the Commission designated the zero rate for OSS modifications as “interim,” Staff Ex. 6.0 (Koch Direct) at 16, nowhere does the Commission’s Order in Docket No. 00-0393 designate that rate as interim. Further, no other proceeding has been initiated to revisit the OSS modification charge. In any event, even if the zero rate is interim, the Commission’s Order did not make that rate subject to true-up. Thus, no party except Ameritech Illinois is in any way harmed by the zero rate, because (1) the zero rate obviously does not exceed a TELRIC-based rate, and (2) even if the Commission later approves some positive charge, no carrier will have to pay any true-up.

¹⁶ As noted above in Section II.A.2, the Commission designated certain collocation rates as “interim” in Docket No. 99-0615. However, as explained in that Section, these rates are de facto permanent rates given that they have been in effect for more than two years without further Commission action.

also Kansas & Oklahoma 271 Order, ¶ 238. Otherwise, section 271 applications would be unnecessarily be held hostage (Texas 271 Order, ¶87):

[T]he section 271 process could not function as Congress intended if we adopted a general policy of denying any 271 application accompanied by unresolved pricing and other intercarrier disputes. Our experience has demonstrated that, at any given point in time at which a section 271 application might be filed, the rapidly evolving telecommunications market will have produced a variety of unresolved, fact-specific disputes concerning the BOC's obligations under sections 251 and 252. . . . If uncertainty about the proper outcome of such disputes were sufficient to undermine a section 271 application, such applications could rarely be granted. Congress did not intend such an outcome.

Ameritech Illinois' interim rates for the "end-to-end Broadband UNE" (Docket No. 00-0393) and the non-recurring charge for Special Access-to-EEL conversions (Docket No. 98-0396) satisfy all three of the FCC's factors. Staff can hardly claim that the rates are not reasonable: Staff proposed these interim rates. See March 28, 2002 Order on Second Rehearing, Docket No. 00-0393, at 25 (approving the interim end-to-end Broadband UNE rate proposed by Staff witness Koch); April 30, 2002 Order on Reopening, Docket No. 98-0396, at 11 (approving Staff's proposed \$1.02 interim rate for EEL conversions). The second of the FCC's factors is also satisfied: there is no question that the Commission has "demonstrated its commitment to [the FCC's] pricing rules," as Staff itself concedes. Staff Ex. 6.0 (Koch Direct) at 16. Finally, these interim rates are subject to true-up once permanent rates are approved. March 28, 2002 Order on Second Rehearing, Docket No. 00-0393, at 25; April 30, 2002 Order on Reopening, Docket No. 98-0396, at 15.

One other non-recurring rate associated with UNE combinations is also interim in nature: the NRC for new UNE-P. The Commission's April 30, 2002 Order on Reopening in Docket No. 98-0396 (at 11) set this NRC at an interim rate level proposed by Staff. Again, Staff cannot claim that this rate is unreasonable – Staff proposed it. And again, there is no question that the Commission has "demonstrated its commitment to [the FCC's] pricing rules." Staff Ex. 6.0

(Koch Direct) at 16. Admittedly, the NRC for new UNE-P is not subject to true-up. But this is immaterial, for only Ameritech Illinois could possibly be hurt by this lack of a true-up. New UNE-Ps clearly entail additional provisioning and installation costs, for which the interim rate does not account. April 30, 2002 Order on Reopening, Docket No. 98-0396, at 5-6. Further, Ameritech Illinois “agreed to forego the opportunity for a true-up with respect to” the new UNE-P non-recurring charges “[a]s a concession to Staff and the CLECs.” Id. at 10.

c. Not-Yet-Approved Rates

Staff (Staff Ex. 23 (Koch Rebuttal) at 9), and AT&T (AT&T Ex. 3.0 (Henson Direct) at 18) contest Ameritech Illinois’ rates for subloops, dark fiber, and CNAM queries on the grounds that the Commission has not yet opened an investigation into these rates. The rates for these products and services are reflected in tariffs that have been on file for nearly a year and a half. During that time, no party has formally requested a Commission investigation. In any event, the FCC has made clear that a few unresolved pricing disputes will not “undermine a section 271 application.” Texas 271 Order, ¶ 87. Moreover, there are additional reasons why the position of Staff and the CLECs lacks merit.

First, subloops, dark fiber, and CNAM queries are relative newcomers to the unbundling scene. Rates for these products were not developed and investigated during the initial round of cost investigation in Docket Nos. 96-0486/96-0569 because they were not even designated as UNEs until the FCC issued its UNE Remand Order in 1999. Accordingly, the status of these rates in Illinois is hardly unusual in the industry and should not impede 271 approval. The FCC has approved the 271 applications for all five SWBT states even though none of them have permanent subloop rates. Am. Ill. Ex. 10.1 (Smith Rebuttal) at 13. And the FCC approved

SWBT's application for Texas even though it did not (and still does not) have permanent rates for subloops, dark fiber, or DS3 loops. Id.

Second, Ameritech Illinois' subloop, dark fiber, and CNAM rates are TELRIC-compliant, because the supporting cost studies used input assumptions approved by the Commission in the TELRIC Docket. Am. Ill. Ex. 10.0 (Smith Direct) at 5. Finally, Ameritech Illinois' subloop, dark fiber, and CNAM rates are comparable to the rates for those products approved in TELRIC proceedings in Michigan and Wisconsin, and satisfy Staff's "zone of reasonableness" test. Am. Ill. Ex. 1.2 (Alexander Surrebuttal) at 45-46; Schedule SJA-4. With respect to recurring rates, as Schedule SJA-4 demonstrates, while it is true that some Michigan and Wisconsin rates are lower than their Illinois counterparts, for many rate elements, the exact opposite is true: the Illinois rates are lower, and frequently substantially so – *e.g.*, most Area A and some Area B subloops. With respect to dark fiber, the Michigan rates are somewhat lower, and Wisconsin rates are generally higher. And the CNAM query rates are substantially the same in all three states.

On the non-recurring side, Staff asserts that the non-recurring rates are higher than those approved in Michigan, based on a surface comparison. Staff Ex. 23.0 (Koch Rebuttal) at 15. But Staff's view fails to consider differences in how Illinois and Michigan wholesale rates are structured. In Michigan, nonrecurring charges are generally segregated into separate installation and disconnect charges, while the nonrecurring charges in Illinois are not segregated as such. Am. Ill. Ex. 1.2 (Alexander Surrebuttal) at 46. Accordingly, Ameritech Illinois' nonrecurring charges for subloops cannot be directly compared to those in Michigan, unless one first adds the Michigan installation and disconnection charges. The comparison that results from doing so

reveals that Ameritech Illinois’ subloop nonrecurring charges fall within a “zone of reasonableness” and are in all instances lower than their Michigan counterparts.

Table 4: Sub-loop Rates

Subloop Nonrecurring Charges¹⁷	Michigan	Illinois
Service Order Charge (Initial, per order)	\$4.70	\$2.58
Service Order Charge (Subsequent, per order)	\$3.02	\$1.71
Service Order Charge (Record Work, per order)	\$1.86	\$1.02
DS1 (Administrative Charge, per order, per location)	\$235.71	\$142.93
DS1 (Design and central office connection charge, per DS1)	\$386.32	\$332.61
DS1 (Carrier connection charge, per DS1)	\$284.20	\$185.48

Staff also argues that Ameritech Illinois’ subloop rates are not TELRIC-compliant because they are higher than the rates for the whole loop of which the subloop is simply a part. ICC Staff Ex. 23.0 (Koch Rebuttal) at 11-12. Ameritech Illinois’ subloop cost study was performed much later than the loop cost study. And although the subloop study used the same Commission-ordered inputs from the TELRIC docket (*i.e.*, fill factors, depreciation rates, and

¹⁷ Source: Am. Ill. Ex. 1.2 (Alexander Surrebuttal) Sch. SJA-4.

cost of capital), the subloop cost study had the benefit of using updated cable cost and installation information, and appropriately included premises termination investment that had been improperly omitted from the original loop cost study. Am. Ill. Ex. 10.2 (Smith Surrebuttal) at 7.

Moreover, Staff's "sum of the parts" approach for subloops does not adequately account for the fact that different subloop components may share overlapping pieces of equipment, which appear only once in an end-to-end loop. Am. Ill. Ex. 10.2 (Smith Surrebuttal) at 5-7. The same piece of common equipment is required in each subloop element, even though it appears only once in an end-to-end loop, because of the requirement to provide a cross-connect at the point of access. Id. Therefore, a simple summation of the costs of the individual subloops comprising the end-to-end loop double-counts the costs of certain equipment that is counted only once in the end-to-end loop, and therefore produces a misleading comparison. In any event, as shown by Schedule SJA-4 (discussed above), the Illinois subloop rates fall within the "zone of reasonableness" generated by the comparable Michigan and Wisconsin rates. Am. Ill. Ex. 10.2 (Smith Surrebuttal) at 5-8.