

BEFORE THE ILLINOIS COMMERCE COMMISSION
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Witness _____

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Corrected Version of
Direct Testimony of Eric Panfil
On Behalf of Ameritech Illinois

Ameritech Illinois Exhibit 1.0

June 11 , 2002

**DIRECT TESTIMONY OF
ERIC PANFIL**

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INTRODUCTION

Q. Please state your name and business address.

A. My name is Eric L. Panfil. My business address is 225 W. Randolph St.
Chicago, Illinois 60606.

Q. By whom are you employed and in what capacity?

A. I am employed by Illinois Bell Telephone Company as Director - Network
Technology and New Services in the Illinois Regulatory organization.

Q. What are your duties and responsibilities in that position?

A. I am responsible for advocacy and policy development on a broad range of
regulatory matters, with particular focus on issues related to network technology,
network interconnection, and the evolution and development of competitive
networks and services.

Q. How long have you been in your present position?

A. I have been in my present position since October 2, 2000. Prior to
accepting this new position. I was employed by Ameritech Corporation as
Director - Local Exchange Competition Issues, where I was responsible
for issue analysis and policy development across all aspects of the

28 evolving competitive environment for local exchange services in both the
29 state and federal jurisdictions, with a focus on network interconnection
30 issues.

31

32 **Q. Please describe your professional background and experience in the**
33 **telecommunications industry relevant to your testimony.**
34

35 A. I have been a member of the Regulatory and Public Policy Organizations at
36 Ameritech (including its predecessor and subsidiary companies) since 1982, when
37 I assumed responsibility for development of interexchange carrier switched access
38 tariffs. At various times since, I have been responsible for policy development,
39 issues analysis, tariff development, tariff interpretation, rate and cost
40 development, demand analysis, and imputation analysis for carrier switched
41 access (in both the federal and state jurisdictions), cellular carrier interconnection,
42 payphone service, competitive carrier interconnection, and network unbundling.
43 Prior to 1982, I worked in the Information Systems Department, where I held
44 program design and coding, systems design, project management, and software
45 support management positions.

46

47 I have previously testified in Illinois on behalf of Ameritech Illinois on numerous
48 occasions over the past 15 years, most recently in Docket 01-0485, the Part 732
49 Rulemaking, in Docket 00-0596, the Part 730 rulemaking, in Docket 98-0195, the
50 Commission's investigation into certain payphone issues, and in Docket 01-0614,
51 the investigation of the Company's compliance with Section 13-801(b) of the

52 Illinois Public Utilities Act (the "PUA"). In addition, I have testified in
53 proceedings before the Indiana, Michigan, Ohio, and Wisconsin Commissions on
54 numerous issues, primarily in the area of network interconnection for LEC,
55 wireless, and interexchange carrier networks, and the related inter-carrier
56 compensation arrangements.

57

58 **Q. What is the purpose of your testimony?**

59 A. I will explain Ameritech Illinois' position regarding Staff's proposed Part 731
60 rule. First, I will describe ~~statutory and~~ policy areas where Ameritech Illinois
61 disagrees with Staff's proposed rule and the rationale for our disagreement. Next,
62 I describe a number of specific problems with Staff's proposed rule that the
63 Company believes should be corrected should the Commission decide to retain
64 portions of Staff's proposed rule. The most significant concerns are related to
65 ~~Staff's attempt to expand~~ the scope of performance reporting and standards
66 applicable to Level 1 carriers ~~beyond the services covered by section 712.~~
67 ~~Finally, because we believe that Staff's proposed rule is completely in conflict~~
68 ~~with the express purpose and intent of section 712 of the PUA,~~ ^{Finally,} I will present
69 Ameritech Illinois's draft of a competitively neutral replacement rule that
70 ~~responds to the General Assembly's direction to establish and implement "carrier~~
71 ~~to carrier" service quality rules and remedies that~~ would apply to every
72 telecommunications carrier in Illinois.

73

74

74

75 **Q. Are other witnesses presenting direct testimony on behalf of Ameritech**
76 **Illinois?**

77

78 A. Yes. James Ehr is providing testimony on behalf of Ameritech Illinois and
79 addresses the unreasonableness of some aspects of the Wholesale Service Quality
80 Plan for Level 1 carriers proposed by Staff Witness McClerren in his Direct
81 Testimony filed May 8, 2002 in this proceeding. Terry Spieckerman is also
82 providing testimony addressing in detAmeritech Illinoisl the problems that are
83 caused for Ameritech Illinois and its customers when other LECs do not provide
84 quality wholesale service in the provision of customer service records, unbundled
85 loop return, and number porting.

86

87 **Purpose and Intent of Section 712(g)**

88

89

90 **Q. What does Ameritech Illinois believe to be the proper scope and intent of a**
91 **"carrier to carrier" service quality rule under section 712(g)?**

92

93 A. Throughout my testimony I will be referring to the Illinois PUA, including section
94 712 and the Telecommunications Act of 1996. I am not an attorney and,
95 therefore, I am not offering any legal opinions regarding these statutory
96 provisions. ~~Rather, I will only be describing Ameritech Illinois' understanding of~~
97 ~~the statutory purpose and intent of these provisions.~~

98

99 ~~With that caveat in mind, Ameritech Illinois believes that any such rule should be~~
100 ~~consistent with the statutory scope and intent of Section 13-712(g), which states:~~

j

101 The Commission shall establish and implement carrier to carrier wholesale
102 service quality rules and establish remedies to ensure enforcement of the
103 rules.
104

105 Therefore, ^{with} respect to "carrier to carrier wholesale service quality rules",
106 ~~there should be~~
107 Ameritech Illinois believes that ~~the statute requires and contemplates a set of~~
108 ~~basic wholesale service quality requirements that apply on a nondiscriminatory~~
109 ~~and competitively neutral basis to all local exchange carriers in the state of~~
110 ~~Illinois that provide one or more of the covered services or functions to another~~
111 ~~carrier. Therefore,~~ the services that should be included in the final Rule are those
112 that are fundamental to the process of all local exchange carriers inter-operating in
113 a competitive environment in a manner that supports all carriers' ability to meet
114 the basic retail service quality requirements set forth in both sections ~~13-712 and~~
115 ~~13-902 (in particular, 13-902(c)(3)) of the PUA. I address the statutory reference~~
116 to ~~"remedies" below.~~

117 Q. What are the statutory bases for Ameritech Illinois' position that the
118 "carrier to carrier" rules of section 712(g) should apply to all carriers?
119

120 A. First, section 712(g) itself calls for "carrier to carrier" rules without making any
121 distinction among carriers. Since the rule, by definition, is to apply when one
122 carrier provides service to another carrier, it is reasonable to assume that the
123 General Assembly would have clearly differentiated between the two carriers if it
124 intended to treat them differently. Thus, if a CLEC provides a service to an ILEC,
125 that "carrier to carrier" transaction should be covered by the rule. The General

126 Assembly did not make any distinctions, and it seems unreasonable for the
127 Commission to do otherwise, as the Staff's proposal would do.

128
129 Second, reading section 712(g) in the context of the statute of which it is a part
130 leads to the same conclusion. The legislative intent of Section 712 is set forth in
131 Section 712(a), which states:

132 It is the intent of the General Assembly that every telecommunications
133 carrier meet minimum service quality standards in providing basic local
134 exchange service on a non-discriminatory basis to all classes of customers
135 (emphasis added).

136
137 The use of the word "every" supports Ameritech Illinois's position.
138
139

140 Third, the retail service standards mentioned in the other provisions of section 712
141 apply generally to all carriers, consistent with the intent expressed in section
142 712(a). As a result the rules implementing 712(c) do not create different service
143 standards for different types of carriers. There is no statutory support for adopting
144 a different approach in implementing the rules to implement 712(g).

145
146 For example, the existing Part 730 and Part 732 retail service quality rules, which
147 set forth fundamental basic retail service requirements, apply across the board to
148 all local exchange carriers in Illinois, regardless of whether the covered services
149 are provided on a competitive or noncompetitive basis, and regardless of the size
150 of the carrier. As is true of the retail service quality rules mandated by the statute
151 (and implemented by the Commission), there is no indication that the statute
152 contemplates anything other than wholesale service quality rules that are broadly

153 ~~applicable to every LEC that provides carrier-to-carrier wholesale service in the~~
154 ~~state.~~

155

156 **Q. What is Ameritech Illinois' position with respect to the "remedies" described**
157 **in section 712(g)?**

158

159 A. This reference must first be considered hand in hand with the standards that the
160 remedies are intended to enforce. ~~Because the statute requires "minimum service~~
161 ~~standards" of general applicability to all carriers,~~ the related "remedies" must
162 necessarily be minimum requirements of general application as well.

163

164 **Q. Please explain the statutory provisions that set forth the remedial structure**
165 **you described.**

166

167 A. Section 712(g) authorizes the Commission to establish remedies "to ensure
168 enforcement of the [wholesale service quality] rules. This language in section
169 712(g) needs be considered together with the rest of section 712 and the PUA as a
170 whole. These statutes set forth a very clear structure of when, how, and what
171 kinds of relief are to be assessed. The statutes allow automatic relief only in a
172 carefully limited extent — as a "credit" against the monthly service revenue for the
173 transaction in question, calculated based on that revenue, and with only a portion
174 of a typical month's bill being credited except in extreme (and unusual)
175 circumstances. By contrast, monetary awards for damages, or penalties, are
176 allowed only after notice and a hearing, with case-by-case consideration of
177 several factors deemed important by the legislature. Nothing in section 712(g)

178 indicates that the legislature intended to unravel that structure. However, as Mr.
179 Ehr explains more fully in his Direct Testimony, the application of Staff's
180 proposed rule to Ameritech Illinois would result in the imposition of automatic
181 monetary payments that are not based on credits for monthly services, or on
182 notice and hearing.

183

184 **Q. Please explain further the statutory provisions regarding automatic credits**
185 **for retail services.**
186

187 A. Section 13-712(e) provides for customer credits in three specific situations. For
188 out of service conditions, customer credits are defined that begin with credit for
189 one day's charges for an outage of 24 to 48 hours, escalate to the point where a
190 full month's charges are credited for an outage of 96 to 120 hours (4 to 5 days),
191 and exceed a full month's service credit only when an outage persists for over five
192 days' duration. For Installation delays, failure to complete installation within five
193 business days (or on the customer's requested date, if later) results in a credit of
194 50% of installation charges. If the installation is delayed a full five additional
195 days after that, an additional 50% of the installation charges is credited. Only
196 when the installation delay exceeds five business days past the initial five day
197 target (or the customer requested date) does the credit exceed the amount of
198 installation charges. The third type of customer credit that is specified in the
199 statute is a one-time \$50 credit for a missed customer premises appointment. This
200 credit is only applicable if the carrier fails to contact the customer at least 24

201 ~~hours in advance to reschedule the appointment. No other customer credits are~~
202 ~~specified in the statute.~~

203

204 **Disparate Treatment of Level 1 Carriers**

205 **Q. What is Ameritech Illinois's overall reaction to Staff's proposal in Section**
206 **731.115, which classifies Illinois local exchange carriers into four different**
207 **groups?**
208

209 A. As noted above, Staff's proposal runs directly counter to the ~~statutory~~ mandate
210 that the Commission establish and implement "carrier to carrier" wholesale
211 service quality standards and remedies that are broadly applicable to "every
212 telecommunications carrier." Staff's proposed wholesale service quality rules
213 create four classes or "levels" of carriers. In particular, Staff's proposal seems
214 devised to single out two carriers, Ameritech Illinois and Verizon, create a
215 definition that will put them in a separate "Level 1" category, and thereby impose
216 different standards and rules on those two carriers. "Level 2" carriers, represent
217 all other incumbent LECs except those that qualify as "rural carriers" under the
218 1996 Telecommunications Act, which are classified as "Level 3." Meanwhile,
219 competing local exchange carriers ("CLECs"), which are classified as "Level 4,"
220 are exempted entirely from any rules.

221

222 **Q. Will the Staff's proposed approach result in "carrier to carrier" service**
223 **quality standards and remedies as directed in section 712(g)?**
224

225 A. No. In the vast majority of carrier to carrier transactions (those between Level 1
226 and Level 4 carriers, and those between Level 2 and Level 4 carriers) only one

227 carrier will be subject to any service quality standards or be subject to remedies.
228 For example, a transaction where a Level 4 CLEC needs to provide a CSR or
229 return a loop to a Level 1 or a Level 2 carrier would not be covered by Staff's
230 proposed rule, even though the same transaction would be covered by the rule
231 when the CSR goes in the opposite direction.

232

233 **Q. Did Staff explain why or what basis they are recommending a difference in**
234 **treatment between incumbent carriers that are subject to Section 251(c)**
235 **depending on whether they have more or less than 400,000 access lines (at**
236 **Section 731.115(a)(2) and (b)(1)(A) of their proposed rule)?**
237

238 A. ~~No. In fact I am not aware of any statutory justification for drawing the line at~~
239 ~~400,000 access lines. As I discussed above, Section 712, including Section~~
240 ~~712(g), applies to all telecommunications carriers. Moreover, the 400,000~~
241 ~~subscriber line standard is not one used anywhere else in the PUA. The~~
242 ~~legislature carefully created an exemption for small incumbent LECs with less~~
243 ~~than 35,000 subscriber access lines from some of the PUA's requirements in~~
244 ~~Section 13-504, and also used that same dividing line in Sections 13-305 and 13-~~
245 ~~516. The legislature did not create such an exemption in Section 712(g). Had the~~
246 ~~legislature intended to apply different wholesale service quality rules based on the~~
247 ~~number of access lines, it could have done so as it did in Section 13-504. It did~~
248 ~~not do so.~~

249

250 ~~This appears to be another example of how the draft rule has strayed from the~~
251 ~~purposes of Section 712. The 400,000 subscriber line standard seems targeted~~

252 towards treating Verizon and Ameritech Illinois in the state differently than other
253 telecommunications carriers, whether or not the carrier is subject to the
254 obligations of Section 251(c).

255
256 **Q. What are Ameritech Illinois' objections to the proposed rule's treatment of**
257 **"Level 1" carriers?**
258

259 A. Section 731.230(b) is objectionable for several reasons. First, by selecting two
260 carriers (Ameritech Illinois and Verizon) for disparate treatment, it conflicts with
261 the legislature's goal of minimum requirements for all carriers. Second, the
262 criterion by which these two carriers would be selected is improper. Third, by
263 imposing the terms of a performance assurance plan on these two carriers, it
264 would lead to the imposition of automatic payments unrelated to service revenues
265 ~~and unsupported by notice and hearing, as I just mentioned and will describe~~
266 ~~further below.~~

267

268 **Q. What is wrong with the proposed rule's treatment of voluntary performance**
269 **assurance plans?**
270

271 A. It is entirely possible that a carrier might enter into a voluntary performance
272 assurance plan that meets or exceeds the minimum service quality standards to be
273 established under ~~the statute~~. It is reasonable for a carrier and the Commission to
274 enter into such an arrangement, and it is perfectly valid for the service quality
275 rules here to account for the existence of such agreements, while they are in force.
276 As proposed, however, the rule seems to recognize only "pre-existing" plans of

277 "Level 1" carriers, and does not seem to contemplate the possibility of such a plan
278 for any other carrier.

279

280 The most serious problem is that Staff's proposal does not just *account* for
281 voluntary plans of "Level 1: carriers that are already in force – it would turn them
282 into involuntary, mandatory requirements after the agreements expire. In effect,
283 it would change the agreements underlying the performance assurance plans after
284 the fact, and it would punish the carrier for having entered into such an
285 agreement.

286

287 Section 731.230 would apparently override the term limit of the voluntary plan.

288 ~~This goes beyond the authority granted to the Commission under Section 712.~~

289 Subsections 731.310 and 731.315 are similarly flawed. Those sections appear to
290 provide that no measure, standard, or remedy in a wholesale service quality plan
291 may expire without a Commission order. ~~Nothing in the authority granted to the~~
292 ~~Commission under Section 712 suggests that it contemplates that the term of a~~
293 ~~carrier's voluntary agreement can be arbitrarily extended, or that such an~~
294 ~~agreement could be resurrected after its expiration.~~

295

296 In addition, there is no allowance made for the possibility that the preexisting plan
297 may exceed the minimum requirements ~~intended by the statute or~~ created under
298 the rule or that remedies under the plan may not be consistent with the limitations

299 of the rule ~~or the statute~~. For example, the remedies paid under the voluntary plan
300 may exceed the level of remedies that may lawfully be imposed under the rule.

301

302 **Q. What is a better way to address the possibility of voluntary performance**
303 **assurance plans?**

304

305 A. The Telecommunications Act of 1996 established a national pro-competitive, de-
306 regulatory policy that encourages carrier to carrier negotiations. The
307 Commission's minimum service quality Rule should encourage such voluntary
308 plans, and it should adjust for plans while they exist. It should provide that if a
309 carrier enters into a voluntary agreement that meets or exceeds the minimum
310 requirements of the rule, it may seek a waiver of the application of all or part of
311 the rule for the period while the agreement is in force. The waiver can be
312 addressed in the same proceeding by which the Commission accepts the voluntary
313 plan: for example, in the approval of an interconnection agreement. I propose
314 specific language to accomplish this objective below.

315

316 **Q. Please comment on Section 731.110 (lines 318-376) of Staff's proposed rule.**

317 A. Section 731.110 should be deleted in its entirety ~~for several reasons. First, it~~
318 ~~clearly goes beyond the scope of Section 13-712(a) in which the legislature~~
319 ~~explicitly stated that it was its intent that "every telecommunications carrier meet~~
320 ~~minimum service quality standards in providing basic local exchange service on a~~
321 ~~non discriminatory basis to all classes of customers."~~ In addition, these detailed
322 ~~policies, goals and objectives, if adopted, would be an inappropriate exercise of a~~

323 legislative function not delegated by the legislature to this Commission. The
324 General Assembly has clearly stated its goals for Article 13 in Section 13-103 of
325 the PUA. The Commission does not have the authority to engage in this
326 legislative function in drafting rules under Section 13-712.

327

328 **Amount of "Remedy" Payments for Level 1 Carriers**

329

330 **Q. Explain the difference that Staff proposes regarding Level 1 remedy**
331 **payments.**

332

333 A. ~~As I described above, section 712 intends that automatic payments be made only,~~
334 ~~as "credits" against the monthly service revenue for the transaction in question,~~
335 ~~and that monetary awards for damages, or penalties, be required only after notice~~
336 ~~and a hearing, with case-by-case consideration of several factors deemed~~
337 ~~important by the legislature. As Mr. Ehr explains in his testimony, Staff's~~
338 proposal would require Ameritech Illinois to make automatic payments that are
339 not based on monthly service revenues for the affected wholesale service, and that
340 would require no showing that there has been any wrongdoing on the part of
341 Ameritech Illinois or that these are proper damages for any failure to meet a
342 wholesale service quality rule. This approach is inconsistent with the statutory
343 structure, which requires notice and a hearing prior to the imposition of any
344 monetary penalty, and provides for limited automatic payments only as credits
345 against related monthly service revenues. It is also inconsistent with fundamental
346 ~~rights of due process that require notice and hearing before monetary sanctions~~

347 ~~may be imposed by law. A further example of how the proposed rule exceeds~~
348 ~~what is contemplated by Section 721(g) is that it would require the payment of~~
349 ~~"tier 2" penalties, payable to the state of Illinois, which are plainly not a carrier to~~
350 ~~carrier remedy.~~

351

352 **The Proposed Rule's Exemption of CLECs**

353

354 **Q. Why is it inappropriate that the proposed rule exempts CLECs from the**
355 **wholesale service quality standards?**

356

357 A. ~~As I described above, the statute requires the Commission to implement "carrier~~
358 ~~to carrier" standards and remedies that cover "every" carrier. Therefore, Staff's~~
359 ~~proposed blanket exemption for all CLECs is in direct conflict with section~~
360 ~~712(g). In addition to these statutory obligations,~~ there are obvious policy reasons
361 why CLECs should not be given a blanket exemption. First, CLECs serve an
362 increasing share of end users in Illinois. ~~A recent study found that CLECs had 21~~
363 ~~percent of the Illinois market. See attached Panfil Exhibit 1.1, at 4.~~

364

365 Second, it is beyond dispute that CLECs perform functions that are critical to the
366 ability of end users to freely choose and move between providers. CLEC
367 adherence to basic service quality standards for these functions is a critical
368 component of competitive, high-quality retail service for end users. For example,
369 CLECs provide customer service records ("CSRs") of end users they currently
370 serve to competitors that have won the right to take over the provision of service

371 to those end users. They need to return unbundled loops after using them, so the
372 end user's service can be transferred to another service provider, ~~as required by~~
373 ~~section 13-902 of the PUA.~~ They must also assist in the process of "porting" an
374 end user's phone number when the end user moves to a different carrier.

375 Unfortunately, as Ms. Spieckerman details in her testimony, Ameritech Illinois
376 continues to experience serious problems with CLECs who fail to promptly
377 provide CSR data or release unbundled loops. Ms. Spieckerman's testimony
378 provides details on the extent of these problems and the impact on customers. ~~If~~
379 ~~the goals of the PUA are to be achieved,~~ ^I it is absolutely critical that minimum
380 wholesale service quality rules apply to CLECs to the extent they provide
381 wholesale services and functions such as CSR data and unbundled loop return.

382

383 **Q. Don't CLECs perform fewer wholesale functions than incumbents?**

384 A. That may be true, but to the extent a CLEC does not perform a given function
385 covered by the rule, then that portion of the rule would be inapplicable and there
386 would be no need to exempt the CLEC (and no basis for the CLEC to request an
387 exemption). To the extent a CLEC does perform a wholesale function, though,
388 some minimum standard should apply.

389

390 **Q. You mentioned loop return in your response above. Is Ameritech Illinois**
391 **providing the recommendations regarding unbundled loop return requested**
392 **by Staff in Ms. Jackson's testimony?**
393

394 A. Yes. Those recommendations are provided by Ms. Spieckerman in her testimony.

395

396 Q. You mentioned that one Level 4 to Level 1 transaction that will occur
397 involves customer service records. Do you have any recommendations
398 regarding Staff's proposed definition of a customer service record?
399

400 A. Yes. Ameritech Illinois believes the definition of customer service record is not
401 complete and specific enough, and proposes the following alternative:

402 "Customer Service Record" or "CSR" means account information that a
403 providing carrier maintains about an end user and includes, but is not
404 limited to the billing name, service address, billing address, service and
405 feature subscription, directory listing information, and long distance
406 carrier identity for the end user. A CSR shall not be requested until after
407 the requesting carrier is in receipt of a signed letter of authorization or
408 third party verification pursuant to Sections 13-902 and 13-903 of the
409 PUA.
410

411 Scope of Service Covered by Staff's Proposed rule

412

413 Q. Is Staff's proposal limited to ~~the purpose of section 712, which is~~ basic local
414 exchange service?
415

416 A. Not for Level 1 carriers. For example, Section 731.305 states that the services
417 covered by a Wholesale Service Quality Plan shall include, but not be limited to,
418 the services in the carrier's most recently adopted plan. This is objectionable to
419 the extent that those are not wholesale services used to provide basic local
420 exchange service.

421

422

422 Q. In addition to your concern with Staff's proposal described above, are you
423 concerned that any of the definitions exceed the scope of section 712?
424

with other

425 A. Yes. ~~As discussed above, Section 712 addresses minimum service quality~~
426 ~~standards for basic local exchange service which is defined in part as "...~~
427 ~~residential and business lines used for local exchange telecommunications service~~
428 ~~..." Section 13-712(b)(2). Because all of the provisions in Section 13-712 are~~
429 ~~expressly limited to basic local exchange service, Section 712(g) is also so~~
430 ~~limited.~~ Staff's draft definition at lines 121 - 125 in Section 731.105 ~~does not~~
431 ~~reflect that limitation. It should be modified to read:~~

432 "Carrier to carrier wholesale service quality" means the quality of
433 telecommunications services measured pursuant to the Standards and
434 Measures adopted in this Part that one telecommunications carrier sells or
435 provides to another telecommunications carrier for the sale to end users of
436 basic local exchange service in Illinois."
437

438 As discussed below, special access is not appropriately included within these
439 rules.

440

441 Q. Please comment on the definition of "Wholesale Service" (lines 264-266) of
442 Staff's proposed rule.
443

444 A. This section should be modified in accordance with the changes recommended to
445 lines 121-125 discussed above:

446 "Wholesale Service" means any telecommunications service subject to the
447 Commission's jurisdiction that one carrier sells or provides to another
448 carrier, as a component of, or for the provision of, basic local exchange
449 service to end users.
450

451

452 Q. Are there definitions in Staff's proposal that exceed the scope of the services
453 covered by section 712? ~~that is not the scope of the services?~~
454

455 A. Yes, the definition of "high frequency portion of the loop" or "HFPL" should be
456 deleted, along with any other references to HFPL in the proposed rule. HFPL is
457 used in the provision of advanced services, which are specifically excluded from
458 the definition of basic local exchange service in Section 712(b). Because all of
459 the provisions in Section 712 are expressly limited to basic local exchange
460 service, Section 712(g) is also so limited. At a minimum, the reference to "line
461 splitting" should be deleted, since it does not apply. Line splitting occurs only
462 where a CLEC is using an unbundled loop to provide both voice and data. In
463 contrast HFPL only applies where Ameritech Illinois is providing voice service at
464 retail and a CLEC is using the HFPL to provide data.

465

466 Q. Please comment on Section 731.105 "Maintenance and Repair" (lines 172-
467 174) of Staff's proposed rule.
468

469 A. It is unclear what the intent of the phrases "view status history" and "receive
470 proactive status reports" is. This does not appear necessary to include within the
471 definition, and should be removed.

472

473 Q. Please comment on Section 731.105 "Wholesale Special Access" (lines 310-
474 315) of Staff's proposed rule.
475

476 A. This definition of wholesale special access should be deleted, as discussed below
477 in this testimony.

478

479 Special Access Services are outside the scope of Section 712

480

481 **Q. Are there other 'scope of service covered' problems with Staff's proposed**
482 **rule?**
483

484 A. Yes, again limited under Staff's proposal to Level 1 carriers. For example, Section
485 731.305 is also objectionable in that it states that the "services to be covered for a
486 Level 1 carrier shall include wholesale special access services". "Wholesale
487 special access services" are not properly included.

488

489 **Q. Why does Ameritech Illinois object to the language on special access?**

490 A. First, the rule on special access applies only to Level 1 carriers, and thus
491 represents another improper attempt to treat such carriers differently from others.
492 That disparate treatment is especially improper here. As described above, a Level
493 1 carrier is defined to include any carrier that has previously agreed to a wholesale
494 performance assurance plan. Ameritech Illinois has voluntarily agreed to such a
495 plan, but that plan does not include special access. In effect, then, Staff's
496 proposal would not only alter Ameritech Illinois's agreed-to plan with respect to
497 duration, but also with respect to scope, by expanding the agreed-to plan after the
498 fact to encompass performance measurements, standards, and remedies for
499 special access.

500

501 Q. **Does Staff propose only to address intrastate special access services?**

502 A. Yes, that appears to be the case, since the definition of "Wholesale Service" is
503 limited to services subject to the Commission's jurisdiction.

504

505 Q. **Does it make good policy sense to address intrastate special access at this**
506 **time?**

507 A. No. ~~The overwhelming majority of special access circuits are jurisdictionally~~
508 ~~interstate. Thus, they fall outside the jurisdiction of this Commission and within~~
509 ~~the interstate jurisdiction of the FCC.~~ The FCC has already issued a Notice of
510 Proposed Rulemaking (NPRM) with regard to performance standards for special
511 access in CC Docket No. 01-321. The pending FCC proceeding eliminates any
512 arguable need for addressing special access here. Moreover, action by this
513 Commission in the face of the pending FCC docket would create a significant risk
514 that the Commission's rules (which would apply to only a small fraction of
515 special access circuits) would conflict with federal rules.

516

517 Q. **Is there any need to establish performance standards for intrastate special**
518 **access?**

519

520 A. No. Above and beyond the fact that the FCC is already addressing the issue, the
521 market for special access is highly competitive. Special Access services offered
522 in Ameritech Illinois's Access Tariff have been classified as competitive since
523 1998, and the Company has been granted considerable special access pricing
524 flexibility by the FCC based on showings of the availability of competitive
525 alternatives.

526 The proposed rule would impose additional performance standards on only two
527 providers and would not apply either to the numerous competitive providers of
528 special access service or to the other ILECs that provide special access services in
529 Illinois. ~~This discriminatory application is contrary to the fundamental~~
530 ~~requirements of 13-712, as I discussed above, as well as being contrary to the~~
531 ~~fundamental goals of the PIA as a whole, because~~ discriminatory regulation in a
532 competitive segment of the marketplace distorts the competitive process and
533 result to the ultimate detriment of consumers.

534

535 **Q. Could you explain further some of the problems with the treatment of**
536 **Special Access in Staff's proposed Rule?**
537

538 A. An additional fundamental problem is that the proposed rule is simply too vague
539 to be meaningful or reasonable. The requirement that there be service quality
540 standards for "special access service" could be read to require that a Level 1
541 carrier must propose such standards, measurements, and remedies for a huge
542 number of services, everything from burglar alarm and telegraph circuits, through
543 the myriad varieties and permutations of analog dedicated circuits, and
544 incorporating all of the growing array of digital services. Such an effort could
545 consume huge resources to no real purpose. Ameritech Illinois's special access
546 tariff covers hundreds of pages, and separate standards would be required not only
547 for each product but for different volume categories within each product, because
548 some critical measures such as installation intervals vary based on the size of an
549 order (i.e. a large order may require a longer interval or even special handling).

550 The complexity of existing rates and their competitive nature also presents a
551 problem. In many cases, services have been contracted under term agreements.
552 After-the-fact imposition of new service quality standards would potentially
553 change the costs on which the service prices were based ~~and effectively break the~~
554 ~~agreements between Ameritech Illinois and its customers.~~

555

556 **Q. If the Commission believes that the issue of service quality requirements for**
557 **special access services requires further investigation, how would Ameritech**
558 **Illinois recommend that the Commission address the issue in this**
559 **proceeding?**
560

561 A. The Commission should rule that special access performance measures, if any, to
562 be established in the future (like all other performance measures in the Part 731
563 rule) should be equally applicable to all carriers that provide such services on an
564 intrastate basis in the state of Illinois. The Commission should then order that the
565 issue should be deferred to a phase 2 proceeding that would begin following an
566 FCC order in CC Docket No. 01-321. ~~This would give all parties the opportunity~~
567 ~~to be heard.~~

568

569 **General Implementation Concerns Applicable to Level 1 Carriers**

570

571 **Q. You have indicated that the rules applicable to "Level 1" carriers are not the**
572 **same as for other carriers. Are there specific portions of the proposed rules**
573 **that are particularly objectionable?**
574

575 A. Yes. I will outline some of these objections in this section of my testimony and
576 offer wording changes. These objections are better addressed, not through

577 changes to the rules for Level 1 carriers. but by rules that apply to all carriers. I
578 will make suggestions later in my testimony as to what that proposed rule should
579 be. The recommendations contained in this section should be unnecessary if the
580 rule is appropriately revised to apply equally to all carriers. Under Ameritech
581 Illinois's proposed rules, these sections would be deleted.

582

583 **Q. Please comment on Section 731.300(g) (lines 658-664) of Staff's proposed**
584 **rule.**
585

586 A. Subsection (g) addresses audits. It would require the carrier to retain "the original
587 source data necessary for regular audits to be conducted for a time period of three
588 years". That sentence should be modified to read:

589 The carrier must retain for three years, for purposes of regular audits, data
590 required to generate the performance measurement results in its original,
591 unmodified form.
592

593 **Q. Are there problems with Section 731.305 (lines 669-678) of Staff's proposed**
594 **rule in addition to the issue of special access, which you addressed earlier?**
595

596 A. Yes. That provision states in part that the Commission may "include Wholesale
597 Services not yet provided by the carrier (including but not limited to emerging
598 services)." I simply cannot understand how service quality standards could be
599 defined for a service that is not even being provided. This is a provision that
600 seems designed solely to discourage innovation and customer choice by proposing
601 that the Staff and the Commission should be the primary designers and definers of
602 new services to be offered by carriers in Illinois. This provision should be
603 removed.

604

605 **Q. Please comment on Section 731.320 (lines 705-717) of Staff's proposed rule.**

606 A. It is unclear what level of detail or reporting is required under Section 731.320.

607 Certainly any report issued to the carriers purchasing wholesale services should

608 not include competitive information about the providing carrier or about another

609 competitor. The carrier receiving performance measurement reports should

610 receive no more than data regarding its own business interactions with the carrier

611 whose service is being measured, its remedy, if any, and the corresponding retail

612 results of the carrier being measured for measures that require a parity

613 comparison. It is unclear from the rule as drafted what the intent of this change to

614 Section 731.320 is. Also, the reporting would require the carrier reporting to

615 provide calculations of any remedies paid. As calculations required would be

616 defined in either the Rule itself or specific performance measurement "business

617 rules" defined under the Rule, it is unclear what this means and whether this

618 would require a competitive disclosure about the providing carrier or other

619 carriers.

620

621 **Q. Please comment on Section 731.325 (lines 720-733) of Staff's proposed rule.**

622 A. Section 731.325 provides that "plans should provide for both Commission

623 initiated audits as well as audits initiated by Requesting Carriers". Ameritech

624 Illinois submits that the section regarding audits initiated by requesting carriers

625 should be modified to state:

626 "Their plans should provide for both Commission-initiated audits as well
627 as audits initiated by Requesting Carriers. If a Requesting Carrier initiates

628 an audit, suitable limits may be placed on such audit, the purpose of such
629 audit shall be clearly stated and the Requesting Carrier shall pay all costs
630 of the audit unless and until the basis for requesting the audit is found to
631 be warranted, in which case the carrier being audited would reimburse the
632 Requesting Carrier the reasonable and customary costs of the third-party
633 auditor."

634
635 The proposed rule as written would enable requesting carriers to seek
636 unwarranted audits as a form of harassing the providing carrier.

637

638 **Q. Please comment on Section 731.400 (lines 738-745) of Staff's proposed rule.**

639 A. Ameritech Illinois questions why the exemptions set forth in subsection
640 731.605(f) would not apply equally to Level 1 carriers. Subsection 731.605(f)
641 sets forth several circumstances under which the Level 2 carrier will not be
642 deemed to have violated the standards. These appear to be based on Section 13-
643 712(e)(6) of the PUA , which provides that credits will not be given to retail
644 customers under certain circumstances. ~~Section 13-712 of the PUA applies to all~~
645 ~~telecommunication carriers.~~ The same rules should apply to all carriers. There
646 can be no basis for a rule that permits exemptions for Level 2 carriers that does
647 not permit the same exemption for all carriers.

648

649 **Q. Please comment on Section 731.410 (lines 748-778) of Staff's proposed rule.**

650 A. Subsection (a) requires that the service quality plan be posted at both the
651 Commission's website and the Level 1 carrier's website. Ameritech Illinois
652 believes that the Commission's website should simply reference the carrier's
653 website with a link to the carrier's site. This would seem to be simpler and less
654 prone to error. Also, Section 731.410 would require carriers to make both

655 aggregate data and performance data available. For the reasons discussed above
656 in the comments on Section 731.320, there should be additional clarification on
657 what data is required to ensure that carriers are not given access to competitive
658 information about each other. Also, under subsection c. sub-paragraphs 2, 3, and
659 4, it is unclear what expectations Staff has for this reporting.

660

661 **Q. Please comment on Section 731.500 (lines 804-841) of Staff's proposed rule.**

662 A. ~~For reasons cited earlier,~~ subsections, 3, 4, 5, and 6 are objectionable as penalties ~~and raise serious due process questions.~~

664 Further, item 2 either duplicates the language on "clearly articulated performance
665 measures" in item 1 (in which case it is unnecessary) or expands that requirement
666 in some vague manner (in which case it is improper). In the same manner, item 5
667 either duplicates item 4 or expands it in some vague manner particularly as it
668 appears to contemplate that remedies reach a certain dollar level irrespective of
669 the carrier's level of performance or the level of damage.

670

671 **Q. Please comment on Section 731.220(b)(3) (lines 537-539) of Staff's proposed**
672 **rule.**

673

674 A. Ameritech Illinois objects to Section 731.220(b)(3) which would require the
675 carrier to address "[t]he extent to which the carrier's Wholesale Service Quality
676 Plan has successfully facilitated a competitive telecommunications market." This
677 should be rejected ~~for two reasons. First, it exceeds the scope of Section 712~~ ^{the rule should}
678 ~~which addresses minimum quality of service standards for basic local exchange~~

679 ~~service. Second,~~ This would require Ameritech Illinois to engage in speculation as
680 to what market decisions a CLEC makes or does not make based upon Ameritech
681 Illinois' ability to meet its performance measures. Subparagraph (3) should be
682 deleted.

683

684 Ameritech Illinois Proposed Rule

685

686 **Q. Given the serious ~~statutory~~ and policy problems with the rule proposed by**
687 **Staff, is Ameritech Illinois proposing an alternative rule for carrier to carrier**
688 **minimum quality of service standards for wholesale services?**
689

690 A. Yes. Ameritech Illinois proposes that the Commission adopt a simple rule
691 modeled on the "Level 2" section of Staff's proposed Rule. I have attached a
692 proposed Rule (Panfil Exhibit 1.2) to my testimony. This proposed Rule is a
693 draft, and we expect to revise it further, after seeing the direct testimony of other
694 parties, and to re-file a revised version with our rebuttal testimony.

695

696 **Q. Can you describe the changes made to the Staff proposed Rule that are**
697 **incorporated in Panfil Exhibit 1.2?**
698

699 A. The changes primarily consist of the elimination of much objectionable material
700 from Staff's proposed Rule, based on the objections I have been presenting in this
701 testimony. We have eliminated the sections covering "Level 1" carriers and
702 "Level 4" carriers. We have also eliminated any definitions whose sole purpose
703 was to support the discriminatory division of carriers into the various levels. We
704 have added provisions describing how a negotiated plan that meets or exceeds the

705 requirements of the Rule could substitute for it. In the former "Level 2" section,
706 we have added a performance measures for Firm Order Confirmations for number
707 portability orders and unbundled loop return, consistent with Ms. Spieckerman's
708 testimony.

709

710 **Q. How does your proposed rule treat carriers with a rural exemption?**

711 A. Ameritech Illinois is not taking a position on the manner in which the final Rule
712 should address carriers with a rural exemption. We have left the "Level 3" section
713 out of our draft rule for the sake of simplicity.

714

715 **Q. Does this conclude your testimony?**

716 A. Yes.

717