

The un rebutted evidence in this case demonstrates that SBC Ameritech is creating new databases and interfaces for its new overlay network of DSL-capable RTs in Project Pronto. For example, SBC Ameritech's May 24, 2000 Accessible Letter re-introducing Project Pronto alludes to a new database and/or system dubbed SOLID, and a "new" GUI.²³⁶ Nowhere in this case did SBC Ameritech commit to provide Rhythms and Covad with access to such databases and interfaces. Indeed, as discussed above, Ms. Jacobson's testimony even omits the data elements related to Project Pronto that SBC had agreed to give CLECs during the POR process. Further, although SBC Ameritech has agreed in principle to update its databases with loop provisioning information as CLECs order and pay for manual (paper record) searches,²³⁷ it has not committed to permanently store and make available such information to CLECs in databases such as LFACs.

5. The POR Process Does Not Preempt State Authority And Failed To Establish OSS Sufficient To Support CLEC Needs

SBC Ameritech improperly attempts to convince the Commission that it should be allowed to rely solely on the results of the FCC's POR requirements in the Merger Conditions Order to meet its OSS obligations in Illinois. Not only was the POR process not designed to examine OSS necessary for line sharing, it is only intended to establish a minimum level of OSS support to mitigate competitive harms arising from the merger. The POR process was not intended as a substitute for a state's own judgment as to what OSS are necessary to allow CLECs full and fair access to line shared loops for the provision of xDSL services. Further, the process has failed to produce an acceptable plan for developing sufficient OSS for CLECs. As demonstrated in detail below, SBC Ameritech cannot demonstrate that it is providing non-discriminatory access to OSS.

6. SBC Ameritech Fails to Discredit The Rhythms OSS Testimony

SBC Ameritech strenuously objected to Rhythms' OSS witness Anita Taff-Rice on the basis that she is an attorney, and thus is not qualified to testify on OSS issues. SBC Ameritech's objection is meritless. It is well-settled that one attorney may act as an advocate in a trial in

²³⁶ Schlackman Cross Exh. 1.0, Accessible Letter, at 11.

²³⁷ Jacobson Cross Exh. 2.0, Adv. Serv. POR, at 17.

which another lawyer in that attorney's firm will be called as a witness.²³⁸ Ms. Taff-Rice did not act as both advocate and witness in this proceeding, and thus her appearance as a witness is clearly authorized.

In addition, *any* person qualified by practical experience, or by professional, scientific, or academic training, which imparts to her a special knowledge not shared by persons in ordinary walks of life, may testify as an expert in a proceeding.²³⁹ An expert's testimony may be based on personal observation as well as a hypothetical presentation.²⁴⁰ Ms. Taff-Rice has more than ten years' experience in the telecommunications industry, and has specific experience on the subject of OSS. Ms. Taff-Rice has first-hand knowledge about the specific POR meetings on which SBC Ameritech relies as a substitute for fulfilling its obligations under the UNE Remand Order. Indeed, Ms. Taff-Rice was the only witness presented who attended all of the POR meetings regarding xDSL services.²⁴¹ Additionally, Ms. Taff-Rice acted as an informal facilitator at the POR meetings on behalf of the CLEC community and authored one of the OSS exhibits admitted in this case.²⁴²

Notably, SBC Ameritech made no effort whatsoever to challenge either the substance of Ms. Taff-Rice's testimony or her knowledge or expertise on the subject matter. Instead, SBC Ameritech engaged in a five-minute cross examination solely on non-substantive matters regarding the nature of Ms. Taff-Rice's employment. Given SBC Ameritech's trivial cross examination, SBC Ameritech has waived any claim that her testimony is improper, and cannot be heard to argue now that Ms. Taff-Rice is somehow substantively unqualified to testify in this proceeding. SBC Ameritech's refusal to cross-examine Ms. Taff-Rice on the substance of her testimony itself indicates that Ameritech concedes her expertise on those issues.²⁴³ Indeed, even the non-substantive cross examination conducted by SBC Ameritech confirmed that Ms. Taff-

²³⁸ RPC 3.7(c).

²³⁹ *E.g.*, *Diaz v. Chicago Transit Authority*, 174 Ill. App. 3d 396 (1st Dist. 1988); *In Re Marriage of Olsen*, 223 Ill. App.3d 636 (2d Dist. 1992). The admission of expert testimony is within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *First Nat. Bank v. Village of Mt. Prospect*, 197 Ill. App. 3d 855 (1st Dist. 1990).

²⁴⁰ *E.g.*, *Spence v. Commonwealth Edison Company*, 34 Ill.App.3d 1059 (1st Dist. 1975) (personal knowledge of location and expertise in safety); *Board of Education v. Del Bianco & Assoc.*, 57 Ill. App.3d 302 (1st Dist. 1978) (architect's opinion of replacement cost damage to building).

²⁴¹ Hearing Tr. (Jacobson), (didn't attend all POR meetings), 708:2-5; Rhythms/Covad Exh. 2.0, Taff-Rice, at 1-2.

²⁴² See Jacobson Cross Exh. 1.0, Adv. Servs. POR Notification, at 24.

²⁴³ It should also be noted that the Commission Staff declined to cross examine Ms. Taff-Rice.

Rice's level of OSS expertise was sufficient that Rhythms' lead attorney relied on her for preparation of cross examination of SBC Ameritech's OSS witness.

SBC Ameritech presented no evidence at all that Ms. Taff-Rice did not have a sufficient level of expertise to testify on OSS. Indeed, Rhythms and Covad submit that SBC Ameritech did not avail itself of the opportunity to fully cross examine Ms. Taff-Rice because SBC Ameritech was aware that further cross examination would only enhance her testimony. Uncontradicted and unimpeached expert testimony cannot be rejected arbitrarily.²⁴⁴ Thus, SBC Ameritech's objections to the appearance of Ms. Taff-Rice as a witness are manifestly specious, were properly rejected during the hearing, and should be dismissed outright.

B. SBC Ameritech Has Not Provided Rhythms Or Covad With Either The Data Or Mechanized Access Sufficient To Support Their Needs In Provisioning xDSL Services On Line Shared Loops

SBC Ameritech employees have direct access, as well as gateway access, to all loop provisioning information in SBC Ameritech's records, backend systems and databases.²⁴⁵ The UNE Remand Order requires SBC Ameritech to provide CLECs with access to loop provisioning information in the same manner and in the same timeframe as such information is available to its internal operations or affiliates. Therefore, SBC Ameritech must provide CLECs with both direct and gateway access to loop provisioning information.²⁴⁶ SBC Ameritech is unwilling to provide Rhythms and Covad with direct access to the back-end systems and databases containing the information.

Rhythms and Covad have requested in this arbitration, and through the POR process, that they be given direct and gateway access to SBC's loop provisioning information. Rhythms and Covad have explicitly stated that direct access should be supported on a read-only, or mediated basis.²⁴⁷ Thus, Rhythms and Covad would not be able to manipulate or change any of the data, thereby eliminating any possible security concerns that SBC Ameritech might have about CLEC

²⁴⁴ *In Re Glenville*, 139 Ill. 2d 242, 251 (1990).

²⁴⁵ Hearing Tr. (Jacobson), at 687-690; 690:13-18.

²⁴⁶ Direct access to databases such as LFACS is not of the type governed by ¶ 29 of the Illinois Merger Conditions, and about which Commission staff have expressed concerns. Paragraph 29 is referencing direct access to SBC's core ordering and provisioning system SORD (which directs and controls the entire ordering process). Access to individual databases is much more limited than would be access to SORD. Rhythms Exh. 3.0, Taff-Rice.

²⁴⁷ Jacobson Cross Exh. 1.0, at 16.

access to data. Despite the legal mandate of the UNE Remand Order, and Rhythms' and Covad's repeated requests, SBC Ameritech has not committed to provide direct access to its records, backend systems and databases.

SBC Ameritech has also failed to provide Rhythms and Covad with sufficient gateway access to OSS. SBC Ameritech's witness Ms. Jacobson asserts that the company is providing CLECs with all access they require to SBC Ameritech's OSS. Specifically she mentions two modifications, one implemented on April 3, 2000 and one implemented on May 17, 2000. However, the record evidence clearly demonstrates, as described below, that these modifications only partially address CLEC requirements for access to OSS, and some capabilities will not be useable by CLECs until March of next year.

The April 3, 2000 modification referenced merely added some of the new data elements SBC Ameritech agreed to provide to CLECs through the POR process.²⁴⁸ The May 17, 2000 modification added some mechanized ordering capabilities to EDI, SBC Ameritech's ordering interface.²⁴⁹ However, these modifications fall far short of the capabilities needed by CLECs. First, the EDI ordering system must be accessed via a graphical user interface ("GUI").²⁵⁰ SBC Ameritech currently does not offer a GUI for pre-ordering and ordering.²⁵¹ SBC will offer a GUI for pre-qualification, an extremely limited lookup that provides loop length on September 1, 2000.²⁵² Such capabilities are scheduled to be added in September.²⁵³ SBC Ameritech will not offer a standardized GUI usable by CLECs in Illinois for pre-ordering (Verigate) or ordering (LEX) until March 24, 2001.²⁵⁴

In the interim, CLECs that do not have EDI pre-ordering systems and will be unable to place mechanized orders for xDSL service. Neither Rhythms nor Covad have such a system.²⁵⁵ Thus, Rhythms and Covad, like all other CLECs without EDI pre-ordering systems, will only be able to place xDSL service orders by fax or email until next year.

²⁴⁸ Jacobson Cross Exh. 1.0, Adv. Servs. POR, at Attachment A, pg. 8.

²⁴⁹ Jacobson Cross Exh. 4.0, at 41.

²⁵⁰ *Id.* at 8.

²⁵¹ Ameritech Illinois Exh. 3.0, Jacobson, at 7.

²⁵² Jacobson Cross Exh. 1.0, at 14.

²⁵³ Covad Exh. 1.0, Carter, at 102: 19-20 (Loop qualification information is not available on TCNet until September).

²⁵⁴ Jacobson Cross Exh. 4.0 at 41.

²⁵⁵ Covad Exh.1.0, Carter, at 102: 19-20 (Covad does not yet have EDI operational).

Rhythms and Covad have demonstrated that it is not difficult for SBC Ameritech to configure its OSS to provide CLECs with mechanized access to gateways and interfaces necessary to utilize line-shared loops. SBC Ameritech has been planning to offer xDSL through a separate affiliate.²⁵⁶ Therefore, SBC Ameritech has necessarily been developing OSS to allow two different carriers to order, provision, test and bill for services provided on a single loop. The FCC has concluded, and the evidence in this proceeding shows, that SBC Ameritech will need to make only incremental adjustments to their OSS to support line sharing with unaffiliated carriers.²⁵⁷ After a thorough review of the matter, the FCC determined that ILECs such as SBC Ameritech will not have to undertake a major development initiative to modify their OSS to support line sharing.²⁵⁸ The FCC provided SBC Ameritech a six month grace period to make all such modifications. SBC Ameritech should thus have been able to meet the FCC's June 6, 2000 deadline, since it was given a sufficient period to make OSS modifications to support line sharing.²⁵⁹ The Commission should order SBC Ameritech to expedite its current schedule of OSS modifications to support immediately all of the OSS functions and capabilities available in other SBC states.

III. COSTING ISSUES

Issue No. 6: What Are The Appropriate Recurring And Non-recurring Charges For All Elements Of The Line Sharing UNE?

Under this issue, Covad/Rhythms discusses charges associated with the high-frequency portion of the wire sharing loop and the splitter. Charges for other elements of the line sharing UNE are discussed under other issues. The prices for cross connects and tie cables are discussed in Issue No. 11, charges for OSS are discussed in Issue No. 12, charges for loop conditioning are discussed in Issue No. 13, and charges for loop qualification are discussed in Issue No. 14.

²⁵⁶ See Request of SBC Ameritech Advanced Solutions, Inc. For Interim Arbitration, at 1.

²⁵⁷ Line Sharing Order, ¶¶ 96, 99.

²⁵⁸ Line Sharing Order, ¶ 99.

²⁵⁹ Line Sharing Order, ¶ 99.

A. Charges For The High-Frequency Portion Of The Loop

The cost-based, non-discriminatory price for the high-frequency portion of the loop in the home-run copper case is \$0.²⁶⁰ The FCC set forth a simple prescription in its May 31, 2000 Access Charge Order:

The Line Sharing Order concluded that states should not permit incumbent LECs to charge more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services. To date, we are not aware of any incumbent LECs that have allocated any loop costs to ADSL services.²⁶¹

Although SBC Ameritech does not offer retail ADSL service, the Commission can infer its position by reviewing SBC's stance relative to SBC Ameritech's affiliate, Pacific Bell. In its federal filing on behalf of Pacific Bell, SBC stated:

Several petitioners contend that Pacific must assign outside plant (local loop) costs to its ADSL service. But Commission [FCC] rules impose no such requirement. FCC Rule 61.38 requires LECs to identify the direct cost to provide the proposed new service. Pacific proposes to transmit ADSL over loops under tariffs already approved by the Commission and state regulators. *Loop costs therefore contribute nothing to the direct cost of ADSL service.* Pacific has offered a low-speed data-over-voice (DOV) service as part of its Generic Digital Tariff (GDT) product line in the interstate tariff since 1992. Cost allocation issues for DOV services were settled long ago.²⁶²

In addition, a monthly recurring price of \$0 is also the price that other incumbent local exchange carriers are offering to competitors. The Texas Commission, in the June 2000 line sharing arbitration, established a \$0 charge for the high-frequency portion of the loop, stating that a \$0 charge is consistent with the general pro-competitive purposes underlying TELRIC principles.²⁶³

²⁶⁰ Covad and Rhythms have voluntarily withdrawn their request to arbitrate prices for line sharing over fiber-fed loops in this docket. From this point forward in the brief, therefore, we discuss pricing exclusively in the context of line sharing in the home-run copper case.

²⁶¹ Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45 (rel. May 31, 2000), ¶ 98.

²⁶² Reply of Pacific Bell, In the Matter of Pacific Bell, Pacific Tariff FCC No. 128, Transmittal No. 1986, Pacific's ADSL Service, June 26, 1998, at 15 (emphasis added) (footnotes omitted).

²⁶³ Line Sharing Interim Award, Public Utility Commission of Texas, Docket Nos. 22168 and 22469 (June 6, 2000), at 26.

The non-discrimination basis is equally clear. Non-discrimination requires that UNE prices permit an unaffiliated competitor that is equally efficient as the ILEC or its data affiliate in supplying the competitively provided portions of DSL services, such as the customer premises equipment and DSLAM, to have the same opportunity to earn an overall corporate profit from the offering of DSL-based services as does the incumbent's parent company. The only price for the high-frequency spectrum of the local loop that satisfies this requirement is \$0, because that is the loop cost that incumbents, including other SBC affiliates, have imputed to their retail ADSL service.²⁶⁴

The cost basis for a \$0 price is straightforward. The incumbent incurs the same forward-looking economic cost for feeder, distribution and loop termination facilities whether it provides an entire loop, just the high-frequency portion of the loop or just the remaining frequency of the same loop. Therefore, a \$0 price for the high-frequency portion of the loop is TELRIC-compliant.²⁶⁵ Presumably, this Commission has established prices for SBC Ameritech's retail and wholesale services in Illinois that are designed to recover all allowable loop-related costs. SBC Ameritech does not propose to reduce any of the other loop-related prices in conjunction with the establishment of a positive price for the line sharing UNE. Thus, any revenues that SBC Ameritech receives for line shared loops will represent double recovery of the previously allowed loop costs.²⁶⁶ This Commission should not reward SBC Ameritech with bonus revenue for its delay in offering efficient, line shared xDSL services to Illinois consumers.

The prices that SBC Ameritech have proposed, however, could equal or even exceed the price of a stand-alone xDSL loop. As Ms. Meyer acknowledged, the monthly recurring costs for a line shared loop in Zone A under SBC Ameritech's proposed pricing exceed the monthly recurring costs for a standalone UNE loop in the same Zone.²⁶⁷ Specifically, the monthly recurring costs of a line shared loop in Zone A include the HFPL (\$1.30), cross connects (56 cents), the OSS upgrade (87 cents) and the ILEC-owned splitter (\$1.32), totaling \$4.05 per month. In contrast the monthly recurring costs of a standalone UNE loop include the loop (\$2.59) and cross connects (14 cents), totaling \$2.73 per month.²⁶⁸

²⁶⁴ See e.g., Pacific Bell Telephone Co., Tariff FCC No. 128, Transmittal No. 1986 (June 15, 1998).

²⁶⁵ Covad/Rhythms Exh. 1.0, Murray, at 17.

²⁶⁶ Covad/Rhythms Exh. 1.1, Murray Suppl., at 10:10-14.

²⁶⁷ Hearing Tr. (Meyer), 945-51.

²⁶⁸ *Id.*

As another incumbent, Bell Atlantic, has stated, “[a]ny requirement to impute loop costs to DSL would artificially inflate the cost of that service, place Bell Atlantic’s DSL service at a competitive disadvantage, and deprive customers of truly competitive pricing for these services.”²⁶⁹ Thus, the sole purpose of SBC Ameritech’s proposed charge for the high-frequency portion of the loop to CLECs would be to impose a barrier to competitive entry for line sharing. The Commission can avoid this by establishing a \$0 monthly recurring price for the high-frequency portion of the loop.

Moreover, the staff’s recommendations on interim pricing for the high frequency portion of the loop are based on a number of misconceptions. Mr. Koch’s opinion that a zero rate for line sharing would cause the CLECs to lose some of their incentive to build facilities is without factual or other support. Although a zero rate may have some effect on the incentive to build facilities, it is neither necessarily true nor is it obvious that any effect that might occur would be meaningful. A positive price for the line sharing loop might influence a new entrant to seek alternatives to access the SBC Ameritech-owned copper loop, if such alternatives were available, and if the new entrant were already committed to entry. However, the FCC’s finding that the line sharing loop satisfies the “necessary and impair” standard of the Telecom Act implies that reliance on such alternatives is not a meaningful option.²⁷⁰ Unfortunately, denying competitors non-discriminatory access to high frequency portion of the loop, which requires a price of zero, will influence not just the decision to make or buy facilities, but also the entry decision itself. Entrants facing a non-zero price are likely to limit the scope of their entry or choose against entry entirely.²⁷¹

B. Splitter Costs

On the day that its costing witness appeared for cross-examination, SBC Ameritech submitted a new cost study that, among other changes, increased its splitter investment and total splitter costs by 21 percent each.²⁷² Mr. Smallwood, who sponsored the new cost study, testified

²⁶⁹ Bell Atlantic Telephone Companies, Tariff FCC No. 1, Transmittal No. 1076, CC Docket No. 98-168, Bell Atlantic’s Direct Case at 13, (emphasis added).

²⁷⁰ Line Sharing Order, ¶ 25.

²⁷¹ Covad/Rhythms Exh. 1.1, Murray Supp, at 5: 10-6:4.

²⁷² Murray Tr. 445:2-13.

that this increase was necessary to reflect a “design change” in which SBC Ameritech chose to deploy a type of splitter that includes a test head on the line card.²⁷³

The effect of the last-minute modifications to the Illinois cost study is to inflate SBC Ameritech’s requested splitter port price in Illinois even further beyond the \$0.89 per splitter port price that SWBT-TX proposed, and that Covad and Rhythms recommend be adopted in Illinois. This result is particularly curious because Mr. Smallwood testified that he first learned of the design change in conversations prior to the Texas arbitration and, as a result, submitted modified nonrecurring cost results in that arbitration.²⁷⁴ Yet Mr. Smallwood did not modify the *recurring* cost study for splitters in Texas, although he had already discovered this “design error.”²⁷⁵

There is no good reason for SBC Ameritech to be charging substantially more for the same splitter model in Illinois compared to its proposed charge in Texas. Based on representations that SBC has made in other line-sharing proceedings, SBC is purchasing the same splitter model in bulk for deployment throughout the SBC region. According to the testimony of Ms. Murray, labor rates in Illinois should not be substantially different from those in Texas.²⁷⁶ Therefore, SBC Ameritech should not incur a significantly higher cost per splitter port than would SWBT if the two companies used the same efficient practices to install and maintain those splitters. The large discrepancy between the \$0.89 price per splitter port recommended by SWBT-Texas, and approved by the Texas Commission,²⁷⁷ in the Texas line-sharing arbitration and the \$1.32 price that SBC Ameritech is recommending in this proceeding is thus *prima facie* evidence of the unreasonableness of the Illinois proposal.

The Arbitrator and the Commission should give little weight to SBC Ameritech’s belated increase in its proposed splitter costs. A 21 percent increase over an already unreasonably high price is simply not acceptable when parties have not had an opportunity to conduct discovery concerning the new alleged costs or to review the backup documentation concerning the increased splitter investment. This is particularly true when, as Ms. Murray explained, “there is no showing here as to the reasonableness of that increase on the investment or the benefit to companies such as Rhythms and Covad from the choice of that sort of splitter.”²⁷⁸

²⁷³ Smallwood Tr. 415:7-416:12; *see also* Smallwood Tr. 30261:9-15.

²⁷⁴ Smallwood Tr. 30263:12-21.

²⁷⁵ Murray Tr. 444:8-19.

²⁷⁶ Covad/Rhythms Exh. 1.5, Murray Suppl., at 23:2-3.

²⁷⁷ Line Sharing Interim Award, Texas Public Utility Commission, in Docket Nos. 22168 and 22469, June 6, 2000, at 27.

²⁷⁸ Murray Tr. 445:5-9.

Further, SBC Ameritech's new cost analysis illustrates the force of the Rhythms/Covad critique of the original SBC Ameritech splitter cost study. As noted above, the total cost of the splitter increased by the same percentage amount as the claimed increase in the splitter investment. This occurs because SBC Ameritech estimated the cost of splitter installation and maintenance using an "in-place factor" applied to the investment. Based on Mr. Smallwood's cross-examination testimony — the first and only explanation of what is included in the generic factor that SBC Ameritech applied, SBC Ameritech intends this factor to reflect costs such as power and HVAC (heating, ventilating and cooling) associated with digital circuit equipment, as well as costs such as the tie cables to and from the splitter.²⁷⁹ There is absolutely no reason to believe that such costs — to the extent that they are applicable to splitters at all — increased 21 percent merely as a result of SBC Ameritech choosing a splitter with a test point on the line card; indeed, Mr. Riolo confirmed that the installation costs should be essentially identical for the two splitter types.²⁸⁰ Moreover, the factor includes costs that are clearly inappropriate because SBC Ameritech admits that the splitter is a passive device that does not require power.²⁸¹ Despite this evidence concerning the splitter technology and associated expenses, SBC Ameritech's factor cost methodology incorrectly links splitter expenses to investments in a way that does not reflect the efficient costs that SBC Ameritech would incur.²⁸² A simple comparison of the expenses that result from SBC Ameritech's factors to the direct estimate of splitter installation and maintenance costs supported by Covad/Rhythms witness Mr. Riolo, based on his expert engineering knowledge, demonstrates that the SBC Ameritech factor-based expenses make no sense for a simple, passive device such as a splitter.²⁸³

SBC Ameritech may respond, as did Staff witness Mr. Koch, that the factor methodology is one that has historically be employed in Illinois. The question here is not whether factors are ever appropriate in a cost analysis, but whether SBC Ameritech used factors that reasonably estimate the relevant costs. The evidence summarized above demonstrates conclusively that the SBC Ameritech expense factor does not do so. Although these factors might reflect the puts and takes in installing digital circuit equipment that SBC Ameritech used in the past, such factor do not reflect the cost of installation activity for any specific new equipment, such as a splitter, that

²⁷⁹ Smallwood Tr. 323:14-324:16.

²⁸⁰ Riolo Tr. 532:16-533:7.

²⁸¹ Smallwood Tr. 324:17-19.

²⁸² Murray Tr. 445:11-446:22.

²⁸³ Covad/Rhythms Exh. 2.0, Riolo, at 17:1-19:14.

it will place tomorrow.²⁸⁴ Indeed, SBC Ameritech's approach is particularly inappropriate for a new activity such as splitter installation, because this activity did not contribute to SBC Ameritech's overall historic relationship between digital circuit equipment investment and installation costs.²⁸⁵ Application of the SBC Ameritech digital circuit equipment factor would therefore lead to a systematic overrecovery of the costs that the factor was designed to recover.²⁸⁶

SBC Ameritech also inflated its splitter costs by applying an inappropriate and substantial markup for "shared costs" into its proposed prices for splitters. This markup is in addition to the Illinois-specific 12.54% common cost markup that SBC Ameritech and Rhythms/Covad already applied to line-sharing elements including splitters.²⁸⁷ Yet, SBC Ameritech has provided no evidence that line-sharing costs were, or should be, included in the group of elements that resulted in the overall shared cost factor. Absent evidence, the Commission cannot presume that previously determined shared costs for some preexisting group of elements and/or services have any reasonable application to splitter costs.

For all of these reasons, the Arbitrator and the Commission should reject SBC Ameritech's proposed splitter price and apply as a proxy the \$0.89 price that SWBT-TX proposed for the *exact same splitter*.

C. Service Order Costs

SBC Ameritech proposes to apply its existing service order charge for a standalone unbundled loop to orders for line sharing. The Commission is currently considering the service order charge for an unbundled loop in Docket 98-0396, in which many parties, including Rhythms and Covad, have filed testimony showing that the current SBC Ameritech charge exceeds efficient, forward-looking costs. Accordingly, as Ms. Murray testified, "[i]f the Commission permits Ameritech-IL to apply its existing analog loop service order charge to orders for line-sharing arrangements, that charge should be subject to refund, pending the outcome of Docket 98-0396. Otherwise, Rhythms and Covad will be paying more than an efficient, TELRIC-based price for service orders."²⁸⁸

²⁸⁴ *Id* at 50:8-12.

²⁸⁵ *Id.* at 50:12-15.

²⁸⁶ Covad/Rhythms Exh. 1.5, Murray Suppl., at **22:9-23:3.

²⁸⁷ Exh. 1.0, Murray, at 47:1-8.

²⁸⁸ Covad/Rhythms Exh. 1.0, Murray Dir., at 59:12-16.

Issue No. 11: Should SBC Ameritech pay for the cable that carries voice traffic from the CLEC's splitter back to SBC Ameritech's main distribution frame ("MDF")?

SBC Ameritech's proposed charges for cross-connects purportedly recover the recurring costs of tie cables and the nonrecurring cost of jumper placements and removals.²⁸⁹ SBC Ameritech has overstated both the number of such tie cables and jumper activities for which it should be allowed to recover costs, and the cost per individual item or activity.

Originally, SBC Ameritech proposed identical nonrecurring cross-connect charges for both CLEC- and ILEC-owned splitters. As discussed above with respect to Issue No. 10, SBC Ameritech subsequently revised its cost study on the day that its cost witness appeared for cross-examination. The new study distinguishes between CLEC- and ILEC-owned splitters, proposing to charge for four jumpers in the former case and five in the latter, as opposed to six in both instances in the original SBC Ameritech study.²⁹⁰ The new study also includes lower work times for the individual jumper efforts, which purportedly reflect SBC Ameritech's experience with line sharing to date.²⁹¹ That experience is limited to the jumper work for installing line-sharing arrangements, so SBC Ameritech has made the simplifying assumption that disconnecting a line-sharing arrangement will require the same amount of time as was required for the original connection.²⁹²

For tie cables, SBC Ameritech now assumes that line-sharing arrangements will require six tie cables, at least where there is an Intermediate Distribution Frame ("IDF") in the central office. The cost for two such cables — one shielded and one nonshielded — is incorporated in SBC Ameritech's proposed recurring charge for cross-connects.²⁹³ As previously noted, the costs for tie cables to and from the splitter are bundled into SBC Ameritech's splitter charge. Finally, SBC Ameritech's presentation in this arbitration does not address the cost for tie cables to and from the CLEC's collocation space; instead, CLECs must obtain those tie cables as part of collocation.²⁹⁴

²⁸⁹ Smallwood Tr. 30255:16-20.

²⁹⁰ Smallwood Tr. 30258:20-30259:6.

²⁹¹ Smallwood Tr. 332:1-339:7.

²⁹² Smallwood Tr. 343:2-344:12.

²⁹³ Covad/Rhythms Exh. 1.0, Murray Dir., at **54:8-10.

²⁹⁴ Smallwood Tr. 30307:3-9.

A. SBC Ameritech's Proposal Seeks Cost Recovery for Far More Tie Cables and Jumper Placements/Removals Than Is Consistent with an Efficient Configuration for Line Sharing.

SBC Ameritech's proposal is unreasonable because it results in charges for tie cables and jumpers that are neither cost-based nor consistent with FCC directives. Instead, a CLEC should only pay for the single tie cable that would be required to deliver the xDSL high-frequency signal from a splitter placed at SBC Ameritech's Main Distribution Frame ("MDF"). This efficient arrangement would only require placement of two jumpers.²⁹⁵

The SBC Ameritech proposal results in costs to the competitor that exceed considerably those that the FCC found presumptively reasonable in its *Line Sharing Order*. The FCC contemplated that incumbents would place the splitter on the MDF, and accordingly stated that:

We would expect that the costs of installing cross connects for xDSL services in general would be the same as for cross connecting loops to the competitive LECs' collocated facilities, particularly where the splitter is located within the incumbent LEC's MDF. Accordingly, we find it reasonable to establish a presumption that, where the splitter is located within the incumbent LECs' MDF, the cost for a cross connect for entire loops and for the high frequency portions of loops should be the same. We would expect the states to examine carefully any assessment of costs for cross connections for xDSL services that are in excess of the costs of connecting loops to a competitive LECs' collocated facilities where the splitter is located within the MDF. If the splitter is not located within the incumbent LEC's MDF, however, then we would expect the states to allow the incumbent LEC to adjust the charge for cross connecting the competitive LEC's xDSL equipment to the incumbent LECs' facilities to reflect any cost differences arising from the different location of the splitter, compared to the MDF. We would expect that this amount would be only minimally higher than for cross connecting a splitter located within the MDF to the competitive LEC's xDSL equipment.²⁹⁶

The Commission should hold SBC Ameritech to the efficiency standard that the FCC has established and Mr. Riolo has confirmed.²⁹⁷ At a minimum, the Commission should require SBC Ameritech to meet a high burden of proof before allowing it to assess cross-connect charges that are more than "only minimally higher" than the cost of the MDF placement scenario.²⁹⁸ SBC Ameritech's showings fall far short of any such standard.

²⁹⁵ Riolo Tr. 530:16-531:12.

²⁹⁶ *Line Sharing Order*, ¶ 145.

²⁹⁷ Covad/Rhythms Exh. 2.0, Riolo, at 15:1-13.

²⁹⁸ Covad/Rhythms Exh. 1.0, Murray, at 30-31.

Instead, the Commission should adopt the FCC presumption that the efficient arrangement of cross-connections is to place the splitter on the incumbent's MDF. Such a configuration would allow the incumbent to use its existing connection to the switch for the end user's existing voice-grade service and therefore would require only a single tie cable to connect the high-frequency portion of the loop to a collocator's space. Mr. Riolo has amply established that locating the splitter on SBC Ameritech's MDF is both technically feasible and practical.²⁹⁹ Indeed, this arrangement is far superior to the one that SBC Ameritech proposes because it not only involves fewer cross-connections, splitter placement at the MDF also minimizes potential points of failure, leading to more reliable service.³⁰⁰

In setting line-sharing prices, the Commission should also recognize that SBC Ameritech always needs a facility such as a tie cable to link its voice-grade service customer to its switch. This is true regardless of the specific line-sharing arrangement and *even for voice only service when no line sharing exists and the high frequency portion of the loop is not used*. The Commission should not allow SBC Ameritech to assign the cost of that existing facility to a competitor merely because the service is reconfigured into a line-sharing arrangement.

Even if one assumes for the sake of argument that the incumbent should be allowed to charge competitors for more than a single tie cable, the Commission should rule out SBC Ameritech's proposal to charge for six tie cables where only two tie cables (including the cable otherwise needed for voice-only services) were previously required. SBC Ameritech's recommendation does not meet the FCC's requirement of being "only minimally higher" than for cross connecting a splitter located within the MDF to the competitive LEC's xDSL equipment.

In particular, the Commission should give no weight to the SBC Ameritech scenario that includes an IDF. In its *Advanced Services Order*, the FCC prohibits incumbent local exchange carriers from requiring competitors "to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible."³⁰¹ As Ms. Murray explained, SBC Ameritech's inclusion of an IDF in calculating the required tie cables and jumper work to connect a splitter in a line-sharing arrangement is precisely the kind of intermediate interconnection arrangement that the FCC has ruled out.³⁰² Moreover, SBC

²⁹⁹ *Id.*

³⁰⁰ Hearing Tr. (Riolo), at 530:3-531:21.

³⁰¹ *Advanced Services Order* at ¶ 42.

³⁰² Hearing Tr. (Murray), at 448:1-10.

Ameritech's rationale for including an IDF does not comport with the "scorched node" approach to forward-looking cost that the FCC has adopted as part of its TELRIC rules.³⁰³

B. SBC Ameritech's Assumed Recurring Cost for Individual Tie Cables Is Excessive and Potentially Internally Inconsistent.

An additional source of concern about SBC Ameritech's tie cable costs is the inconsistency in methodology applied to estimate those costs. Mr. Smallwood testified, "When we install equipment, when we install a splitter, we take the costs of installing a splitter with the miscellaneous materials, which would be the tie-cables to complete the installation, and those costs are capitalized and made a part of a splitter investment."³⁰⁴ He freely acknowledged that this methodology for identifying the tie-cable costs to and from an ILEC-owned splitter is an entirely different cost approach from the approach that SBC Ameritech uses to estimate the cost of the tie cables that run between the MDF and the IDF.³⁰⁵ Indeed, it appears that there is yet a third cost estimating methodology, about which SBC Ameritech has provided no information in this proceeding, that relates to tie cables provided in conjunction with collocation arrangements. Mr. Smallwood acknowledged that CLECs would have to buy some of the required (and comparable) tie cables for line-sharing arrangements as part of collocation, but could not explain the way in which SBC Ameritech had calculated the cost of tie cables in that context.³⁰⁶ Thus, neither the Commission nor the parties can readily verify that SBC Ameritech has calculated comparable costs for each of the various tie cables.

The recurring cost for the two tie cables that SBC Ameritech has reflected in its proposed recurring cross-connect charge appear to be excessive on their face. SBC Ameritech is proposing to charge CLECs for two sections of 100-pin cable each 200 feet long.³⁰⁷ Yet, SBC Ameritech has provided no justification for these unusually long lengths of cable that are unnecessary in an efficient configuration.

³⁰³ Murray Tr. 447:9-22. See also Smallwood Tr. 30275:21-30276:22 (discussing Mr. Smallwood's understanding of the FCC's pricing rules).

³⁰⁴ Smallwood Tr. 30299:3-8.

³⁰⁵ Smallwood Tr. 30299:11-15.

³⁰⁶ Smallwood Tr. 30307:3-30308:5.

³⁰⁷ Covad/Rhythms Exh. 2.0, Riolo, at 17:3-4.

The Arbitrator and Commission should simply exclude the cost for the two tie cables bundled into SBC Ameritech's splitter investment³⁰⁸ because these cables would be unnecessary if SBC Ameritech chose an efficient arrangement, placing the splitter at the MDF. Unfortunately, it is not possible using the data on this record to "unbundle" the cost of these tie cable. Instead, the Commission should make the price for an ILEC-owned splitter subject to refund and order SBC Ameritech to submit a new cost study in the DSL tariff proceeding that removes all tie cable costs from the splitter investment (as well as making all other necessary corrections in the splitter expenses discussed under Issue 10 above). CLECs should pay a uniform price for tie cables, not a price that differs depending on the way in which SBC Ameritech chooses to group rate elements. That uniform price should be the price for a collocation tie cable, the only tie cable that would be necessary in an efficient arrangement.³⁰⁹

C. SBC Ameritech's Proposed Nonrecurring Charge for Cross-Connects Reflects Excessive Work Times.

Although SBC Ameritech's revised cost study incorporates fewer jumper placements and removals and generally lower work times than did its original nonrecurring cross-connect study, even the revised study result is overstated. Mr. Riolo's additional live direct provided a detailed critique of the errors in the revised SBC Ameritech cost study, including excessive times for such tasks as login and completeness check and cross office test and the erroneous assumption that it takes as long to disconnect a line-sharing arrangement as to make the original connections.³¹⁰ The Arbitrator and Commission should give special deference to Mr. Riolo's restated task times, as SBC Ameritech's "actual" experience with connecting line-sharing arrangements includes times for jumper work that much more closely match Mr. Riolo's expert judgment than the times that SBC Ameritech's Subject Matter Expert had provided, prior to evaluating the line-sharing experience.³¹¹ If the Commission makes any use of the SBC Ameritech study at all, it should apply the alternative task times that Mr. Riolo has provided.

³⁰⁸ Presumably, the same is true of the SWBT-TX splitter cost because Mr. Smallwood's cross-examination testimony addressed the general costing methodology upon which he relies as an SBC cost analyst.

³⁰⁹ Smallwood Tr. 316:8-317:12.

³¹⁰ Riolo Tr. 521:4-528:1.

³¹¹ Murray Tr. 442:21-443:5.

Issue No. 12: What, if any, charges for OSS upgrades should CLECs pay to SBC Ameritech to accommodate line sharing?

SBC Ameritech seeks to impose a monthly recurring charge of \$0.87 to recover the cost of upgrades that it allegedly must make to its OSS to accommodate line sharing by unaffiliated competitors such as Covad and Rhythms. We note at the outset that this charge, on its face, demonstrates the unreasonableness of applying the extraordinarily high SBC Ameritech shared cost factor to costs that were not included in the original pool of costs over which that factor was developed. The SBC Ameritech cost study for OSS upgrade costs purportedly reflects a *pro rata* allocation of an SBC-wide cost across lines in the 13 SBC states, yet in other SBC states, the incumbent local exchange carrier is proposing a charge of only \$0.61 to recover the identical per-line costs. The high Illinois shared cost factor means that consumers in this state will be absorbing a disproportionate share of SBC's claimed OSS upgrade costs if the Commission adopts SBC Ameritech's proposed charge.³¹²

It is far from clear that SBC Ameritech should be allowed *any* recovery of OSS upgrade costs. These costs, like all other costs associated with unbundled network elements, must meet the TELRIC standard of being efficient, forward-looking economic costs. Yet, as Ms. Murray testified:

The most efficient OSS technology for reasonably foreseeable capacity requirements at this time would be OSS that integrate the capability to track the multiple uses of shared lines. There is no evidence on this record that the cost to install and maintain such forward-looking OSS — if one is starting from scratch (that is, *reconstructing* the local network) — would be any greater than the cost of the legacy OSS already reflected in the prices that Ameritech-IL charges for unbundled network elements and interconnection. Thus, there is no evidence that Ameritech-IL has incurred any incremental, forward-looking OSS cost attributable to line sharing.³¹³

To comply with the FCC's proposed requirements for recovery of OSS modification costs, SBC Ameritech is required provide a detailed evidentiary basis on which interested parties and the Commission could determine the extent to which any OSS upgrades or modifications benefit SBC Ameritech's own operations (or those of its affiliates), as opposed to being required solely for the provisioning of line sharing for unaffiliated competitors.³¹⁴ SBC Ameritech has

³¹² Covad/Rhythms Exh. 1.5, Murray Suppl., at **16:11-17:6.

³¹³ *Id.* at 16:1-10.

³¹⁴ *Line Sharing Order*, ¶ 106.

not done so. Indeed, when one considers that SBC intends to provide retail ADSL in Illinois in a line-shared mode via its data subsidiary AADS, it is clear that SBC Ameritech would incur all of the same OSS costs to accommodate its affiliate's retail plans even if there were no line sharing by unaffiliated competitors such as Covad and Rhythms. Thus, the record strongly suggests that there are *no* incremental, forward-looking OSS costs attributable to line sharing by unaffiliated competitors.

Even if one were to agree that there may be some OSS costs incremental to line sharing, SBC Ameritech has not even met the most minimal burden of proof concerning the level of its OSS upgrade costs. As Staff witness Mr. Koch stated, "Ameritech has not yet provided proof that its charge for OSS modification is reasonable."³¹⁵ In particular, Mr. Smallwood admitted that SBC Ameritech's cost study showing does not provide any detail concerning what is included in its cost estimate for the Telcordia OSS upgrade package or how SBC Ameritech developed the demand estimate across which it distributes its claimed cost.³¹⁶ Thus, there is no basis for the Commission to find that SBC Ameritech's proposed OSS modification charge meets the standard that the FCC established in paragraph 106 of its Line Sharing Order. Without such a showing, the Commission should not approve Ameritech-IL's proposed charge, even on an interim basis.

For all of the reasons above, the Commission should reject any recovery of line sharing-related OSS costs at this time, and should direct that SBC Ameritech file any claimed OSS implementation costs in a subsequent all-party docket with the level and type of documentation that the FCC and the Commission requires.

Issue No. 13: Should SBC Ameritech be allowed to charge for de-conditioning (or sometimes referred to as "conditioning") a loop to provide line sharing and, if so, what should that charge be?

In a forward-looking cost study, the nonrecurring charge for line "conditioning" should be zero. Those items that are classified as "interferers" should not occur on any copper loops properly designed over the past 20 to 30 years.³¹⁷

³¹⁵ Staff Exh. 2.0, Koch, at 8.

³¹⁶ Smallwood Tr. 321:19-322:19.

³¹⁷ Rhythms/Covad Ex. 1.0, Murray, at 39.

For the purposes of this interim proceeding, however, the Commission should adopt the interim conditioning charges adopted in Docket No. 99-0593. The position that the interim “conditioning” charges identified in Docket No. 99-0593, which are not specific to line-sharing arrangements, should apply to line-sharing situations is consistent with the FCC’s finding that “[t]he conditioning charges for shared lines, however, should never exceed the charges incumbent LECs are permitted to recover for similar conditioning on stand-alone loops for xDSL services.”³¹⁸ SBC Ameritech now agrees that, consistent with the FCC’s *Line Sharing Order*, the interim conditioning rates established in Docket No. 99-0593 would apply as the interim rate for conditioning line-shared loops.³¹⁹

Issue No. 14: Should CLECs pay for SBC Ameritech to determine whether a loop desired for line sharing is capable of providing DSL and, if so, what should that charge be?

Competitors should not pay SBC Ameritech to determine whether a loop desired for line sharing is capable of providing DSL. Instead, SBC Ameritech should provide competitors with access to the loop makeup information necessary for the competitor to make its own determination of whether a loop is “qualified” for DSL. The TELRIC-based price for access to such loop makeup information is at or near \$0, as commissions in two other SBC states have recently concluded.

The ability to provide xDSL services depends on the technical characteristics of the loop.³²⁰ Therefore it is necessary to access data held by SBC Ameritech in its databases, backend systems and records that identify the characteristics of a loop (such as loop length and the presence and location of potential DSL-inhibiting network components such as load coils, excessive bridged taps and repeaters) and then evaluating if that loop is suitable (or can be made suitable) for provisioning some form of DSL-based service.³²¹

Pursuant to the FCC’s UNE Remand Order, incumbents must produce the information that will allow competitors to make their own determinations about the suitability of loops for the technologies that the competitors intend to deploy. Specifically, the FCC requires that

³¹⁸ *Line Sharing Order* at ¶ 87.

³¹⁹ Hearing Tr. (Meyer) at 953:1-6.

³²⁰ Covad/Rhythms Exh. 2.0, Riolo, at 8.

³²¹ *Id.* at 10:10-11:2.

incumbents provide requesting carriers access to all available information relating to loop qualification for DSL-based services including, but not limited to:

fiber optics or copper; the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; the loop length, including the length and location of each type of transmission media; the wire gauge(s) of the loop; and the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.³²²

Moreover, the FCC clearly intends for ILECs to step aside and allow competitors to make their own loop qualification determination, using the same information available to ILEC's own "back office" personnel. This intention is implicit in the FCC's finding that "under our existing rules, the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel."³²³

In the long run, SBC Ameritech should make loop makeup information available directly to new entrants in an electronic format. Indeed, SBC Ameritech is required by FCC order to provide new entrants with access to its OSS as an unbundled network element.³²⁴ Because access to OSS is an unbundled element, the price for that access should reflect "the use of the most efficient telecommunications technology currently available and *the lowest cost network configuration*,"³²⁵ not the manner in which SBC Ameritech currently provides such access. The Texas Public Utility Commission has also ordered SBC Ameritech's sister company SWBT to develop and deploy enhancements that will allow new entrants to have real-time electronic access to loop qualification information.

The Texas Public Utility Commission found that "SWBT should be fairly compensated for the real time access to its OSS functionalities required" and established an interim nonrecurring "dip charge" of \$0.10 per loop for loop makeup information.³²⁶ The Arbitrator in a

³²² 47 C.F.R. § 51.5; UNE Remand Order, ¶¶ 427-8.

³²³ UNE Remand Order, ¶ 430.

³²⁴ 47 C.F.R. § 51.313(c) directs that "[a]n incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems."

³²⁵ 47 C.F.R. 51.505(b)(1), emphasis supplied.

³²⁶ Public Utility Commission of Texas, Arbitration Award, Docket No. 20226 and 20272, November 30, 1999, at 102-103.

recent Kansas arbitration proceeding between Covad and SWBT similarly ordered that, based on SBC's planned Project Pronto network upgrades, SWBT's loop qualification price should be \$0.³²⁷

The Kansas Arbitrator's decision is consistent with an efficient, long-run estimate of the cost to provide access to loop makeup information. This Commission should also adopt a \$0 charge for access to loop makeup information.

³²⁷ Arbitrator's Order (Redacted) State Corporation Commission of the State of Kansas, Docket No. 00-DCIT-389-ARB, May 9, 2000, at 20.

CONCLUSION

For all of the foregoing reasons, Rhythms and Covad respectfully request that the Commission grant its Petition for Arbitration in all respects.

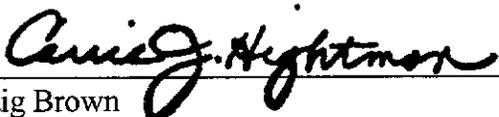
Dated: July 13, 2000

Respectfully submitted,

Carrie J. Hightman
SCHIFF HARDIN & WAITE
6600 Sears Tower
Chicago, Illinois 60606
(312) 258-5657

Counsel for
RHYTHMS LINKS, INC.

Steve Bowen
BLUMENFELD & COHEN
4 Embarcadero Center
Suite 1170
San Francisco, CA 94111
(415) 394-7500


Craig Brown
Assistant General Counsel
RHYTHMS LINKS, INC.
6933 South Revere Parkway
Englewood, CO 80112
(303) 876-5335

Felicia Franco-Feinberg
COVAD COMMUNICATIONS Company
8700 W. Bryn Mawr
Suite 800 South
Chicago, Illinois 60631
(773) 714-2397

Clay Deanhardt
COVAD COMMUNICATIONS
COMPANY
4250 Burton Drive
Santa Clara, California 95054
(408) 987-1109

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused copies of the attached Draft Order of Covad Communications Company and Rhythms Links, Inc. and the corrected Post Hearing Brief Of Covad Communications Company And Rhythms Links, Inc. to be served on each of the persons listed below electronically on July 17, 2000 and in the manner indicated below on July 18, 2000:

Donald L. Woods
Hearing Examiner
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62706
(Federal Express)

Jennifer Moore
Illinois Commerce Commission
160 N. LaSalle Street
Suite C-800
Chicago, IL 60601
(Messenger Delivery)

G. Darryl Reed
Matthew Harvey
Illinois Commerce Commission
160 N. LaSalle Street
Suite C-800
Chicago, IL 60601
(Messenger Delivery)

Christian F. Binnig
Mayer Brown & Platt
190 So. LaSalle Street
Chicago, IL 60603
(Messenger Delivery)

Nancy H. Wittebort
Ameritech Illinois
225 West Randolph Street
Suite 29B
Chicago, IL 60601
(Messenger Delivery)



Owen E. MacBride