STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,	**:**	
On Its Own Motion	**:**	
	:	
Investigation concerning Illinois Bell	**:**	**01-0662**
Telephone Company's compliance with	**:**	
Section 271 of the Telecommunications	**:**	
Act of 1996.	**:**	

PHASE I INTERIM ORDER ON INVESTIGATION

February 6, 2003

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PHASE I INTERIM ORDER ON INVESTIGATION

By the Commission:

Introduction

1. Section 271 (d)(1) of the Telecommunications Act of 1996 ("Act") provides Ameritech Illinois ("AI", "the Company" or "SBC-Illinois") with the opportunity to apply to the Federal Communications Commission ("FCC") for authority to provide in-region interLATA service in Illinois. 47 U.S.C. Section 271(d)(1). Before making a determination on any Section 271 application, however, the FCC is required to consult with the Department of Justice. 47 U.S.C. Section 271 (d)(2)(A). Further, it is required to consult with the relevant state commission in order to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions, and that either the agreement(s) or the general statement, satisfy the Act's "competitive checklist" as set out in Section 271(c). 47 U.S.C. Section 271(d)(2)(A).

2. On October 24, 2001, the Illinois Commerce Commission ("Commission") entered an order, initiating this docketed proceeding to investigate the status of Ameritech Illinois' compliance with Section 271 of the Act, to hold hearings thereon, and to develop a comprehensive factual record for purposes of its anticipated consultation with the FCC. ("Initiating Order"). Given the importance of AI's compliance with the "competitive checklist" to ensuring that its markets are open to effective competition, the Commission would examine whether the Company currently satisfies these items or whether further action is required. (Id. at 3). Along therewith, the Commission indicated that it will work with Ameritech Illinois, the CLECs, Staff and other interested parties to bring about any necessary changes or improvements.

3. The Initiating Order further outlined the process to be followed in these premises. At the outset, the Commission made AI (the only BOC serving Illinois

customers) a party to this proceeding. It further directed that all carriers, granted certificates of Exchange Service Authority pursuant to Section 13-405 of the PUA, be provided notice of the instant proceeding.

4. Recognizing the enormity, complexity and expanse of this task, the Commission considered it appropriate to deal with the matters at hand in the process of several separate phases. Pursuant to the directives of the Initiating Order, the "first phase shall cover as much of the competitive checklist as possible absent OSS test results" and the "second phase shall cover all remaining OSS issues and any other relevant issues that were not addressed in the first phase." (Id. at 3). It further granted the ALJ authority to provide additional interim orders when beneficial to do so.

Phase IA Procedural History

5. Due notice of this proceeding was served pursuant to the Commission's directives. The first of several status hearings was held on November 7, 2001 at the Commission's offices in Chicago, Illinois. On November 20, 2001, Ameritech Illinois served its "Checklist Informational Filing" that provided, in draft form, the affidavits and the brief for its 271 filing before the FCC. Thereafter, on November 27, 2001, a schedule for the Phase IA proceeding was established, but later modified on grant of Staff's motion.

6. Pursuant to their respective petitions, the following parties were granted leave to intervene:

> Allegiance Telecom of Illinois, Inc. ("Allegiance"); Association of Communications Enterprises; AT&T Communications of Illinois, Inc., TCG Chicago, TCG Illinois, TCG St. Louis, (collectively "AT&T"); CIMCO Communications, Inc. ("CIMCO"); City of Chicago; Cook County State's Attorney's Office ("Cook County"); CoreComm Illinois, Inc.; DataNet Systems, LLC; GlobalCom, Inc.; Illinois Independent Telephone Association; Illinois Public Telecommunications Association; McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"); Moultrie Independent Telephone Company; MPower Communications, Corp.; New Edge Networks, Inc.; the People of the State of Illinois ("AG"); RCN Telecom Services of Illinois, Inc. ("RCN"); Sprint Communications Company, L.P., d/b/a Sprint Communications L.P. ("Sprint"); TDS MetroCom, Inc. ("TDS MetroCom"); TruComm Corporation; Vertex Broadband Corporation ("Vertex"); WorldCom, Inc. ("WorldCom"); XO Illinois Inc. ('XO"); and Z-Tel Communications, Inc. ("Z-Tel").

7. Industry workshops were held on January 8 and 9, 2002, at which time the parties attempted to identify and refine the issues to be addressed in this proceeding.

Between the dates of January 28, 2002 and June 5, 2002, the parties circulated pre-filed testimony addressing the issues identified in the workshops as well as other issues related to Track A compliance pursuant to Section 271(c)(1)(A); the fourteen item competitive checklist of Section 271(c)(2)(B); and whether Ameritech's entry into the in-region interLATA market is consistent with the "public interest, convenience and necessity" as required under Section 271(d)(3) of the Federal Act requires.

8. At an emergency status hearing convened on June 13, 2002, the Administrative Law Judge granted Ameritech's Motion to Amend A Portion of the Schedule to Address Proposed Modifications to the Remedy Plan, severing out the performance and remedy plan issues for review in the upcoming Phase 1B proceeding. As such, AI witness Ehr's pre-filed testimony – addressing performance and remedy plan issues - was not entered into the record for Phase IA. So too, the entire pre-filed testimony of Staff witnesses Melanie Patrick and Sam McClerren, and parts of the pre-filed testimony of Staff witnesses Weber, were not offered into the record for Phase 1A. Two issues addressed by Staff witness McClerren (provisioning of unbundled local loops, and the high frequency portion of the loop) were removed from his testimony and addressed in Ameritech-Staff Stipulation No. 3, pending Staff's determination that the tariff language Ameritech submits is in compliance with the Order for Docket 01-0614. (Phase 1B was ultimately dismissed insofar as the performance plan issues were carried into the Phase II proceeding).

9. An evidentiary hearing was held on the dates of June 17-21, 2002 and July 1, 2002. The witnesses providing sworn testimony in the Phase 1 proceeding were as follows:

> For Ameritech Illinois: Justin W. Brown; Carol A. Chapman; William C. Deere; Barbara A. Smith; Rhonda J. Johnson; John Muhs; Don A. Thompson; Mark J. Cottrell; Scott J. Alexander; Patrick L. Foster; John S. Habeeb; Deborah O. Heritage; Denise Kagan; Robben Kniffen-Rusu; Chris Nations; Eric Smith; Marcia J. Stanek; and Bernard Valentine.
>
> For WorldCom: Edward J. Caputo; Mindy J. Chapman; Joan Campion; Earl A. Hurter; and Sherry Lichtenberg.
>
> For AT&T: Eva Fettig; Walter W. Willard; Joseph Gillan; James F. Henson; Daniel Noorani; Steven E. Turner; and Mark Van de Water.
>
> For Z-Tel: Ron A. Walters.
>
> For Staff: Jeff Hoagg; Robert F. Koch; James Zolnierek; Jonathan A. Fiepel; Rick S. Gasparin; Mark A. Hanson; George Light; Qin Liu; Russell W. Murray; Olusanjo A. Omoniyi; Nancy B. Weber.

For McLeodUSA/TDS: Rod Cox.

For McLeodUSA: Joy Heitland; Julia Redman-Carter; and Michelle L. Sprague.

For RCN: Rahul Dedhiya; Jack Piticavong; and Linda E. Valentine.

For XO Communications: Randall Barstow andTara McCabe.

10. The testimony of each of the above named witnesses was admitted into the record. Further, each of these witnesses was made available for cross-examination at the hearing.

11. On or about July 24, 2002, the initial briefs for Phase-IA were filed by, Ameritech Illinois, Staff, AG, AT&T, Cook County, McLeodUSA/TDS, RCN, WorldCom, XO, and Z-Tel.

12. Thereafter, on August 23, 2002, Ameritech Illinois and the Commission Staff entered into a Stipulation to Eliminate Issues ("Stipulation"). Pursuant to this document, it was agreed between these parties that certain issues, having been adequately addressed in Docket 01-0614 and in the Compliance Tariff for Docket 01-0614, need not be addressed again in this proceeding. (The precise issues were identified in the Stipulation at 2-3). Further, the Stipulation states the parties agreement that the Compliance tariff that Ameritech filed on May 10, 2002, (together with any other compliance tariffs or revisions thereto previously filed) i.e., 98-0396 Compliance Tariff, properly reflects the "non-recurring charges" established in the Order on Reopening in Docket 98-0396, and no issues thereon need be addressed in this proceeding. According to the Stipulation, AI also agreed to amend its Bona Fide Request (BFR) tariff to reflect certain changes, on a date no later than September 6, 2002. (At a status hearing on September 4, 2002, the Stipulation was admitted into the record, without objection, as Staff/Ameritech Stipulation No. 2).

13. Reply Briefs were filed on August 28, 2002, by Ameritech Illinois, Staff, AT&T, WorldCom, the AG, Cook County, RCN, XO, Z-Tel and McLeodUSA/TDS.

14. The ALJ issued a Proposed Interim Order for the Phase IA Investigation on December 6, 2002. Thereafter, Briefs on Exceptions were filed by Staff, AI, AT&T, WorldCom, the AG, Z-Tel, XO and McLeodUSA/TDS Metrocom. Further, Reply Briefs to Exceptions were filed by Staff, Ameritech, AT&T, WorldCom and Z-Tel. All of the arguments set out in those briefs were considered and inform the instant Order.

Scope and Outline of the Phase 1A Interim Order

15. In accord with the Initiating Order's direction, this Phase I (A) interim order covers as much of the competitive Checklist Items as possible absent OSS test results. It also considers the evidence, issues and positions pertinent to Track A compliance under Section 271 (c)(1)(A), and looks to whether Ameritech Illinois' entry into the in-region interLATA market is consistent with the public interest, convenience and necessity.

16. In this investigation, it is incumbent upon AI to demonstrate compliance with the detailed requirements of the Section 271 checklist and the implementing orders of the FCC and this Commission. This was made clear by the Initiating Order's pronouncement that AI bears the burden of proof in this proceeding and that it is to be the first to file testimony. The FCC has similarly emphasized that the 271 applicant bears the burden of showing compliance even if no party challenges its compliance with a particular requirement. Thus, in each of the particulars, AI needs to establish the requisite prima facie showing.

17. By the same token, Staff and the other interested parties have the burden of clearly stating and supporting their respective issues and positions. This investigation is a fact-driven inquiry, such that mere arguments or conclusory assertions do not suffice. This Commission, likewise, should not be put to the burden of ferreting out issues or positions that are not set out clearly.

18. All total, the Commission has been intent on collecting, recording and evaluating necessary and relevant information in order to present a credible and comprehensive consultative report to the FCC. The massive record before us bears testament to the success of our efforts as does the breadth of the instant order. As broad as this proceeding might be, however, it has certain limitations. We are examining information to assess AI's compliance with existing obligations – not to entertain novel issues or reconsider settled decisions or to impose new obligations. The latter would be most inappropriate given that this proceeding is not set up to adjudicate the rights of any parties. In the same vein, we are not in any position to excuse AI from any of its existing obligations.

19. The instant Phase IA Interim Order is organized as follows:

In Part I, the Commission sets out the general statutory framework of Section 271.

In Part II, we examine AI's showing of eligibility under the entry requirements of Section 271 in light of all the evidence and arguments.

In Part III, we review the AI showings of compliance with respect to each of the 14 competitive checklist items set out in Section 271, along with the

factual disputes and arguments, if any, raised on the record. With respect to each item, we set out a summary of the federal standards for review based on the federal Act and FCC pronouncements as adapted from Appendix C of the New Jersey 271 Order. Along therewith, we include a state perspective – that identifies any Commission action that is relevant to the checklist item or to issues raised thereunder. We separately detail the extensive and explicit recommendations for compliance set out by Staff for many of the checklist items.

In Part IV, the Commission examines the Public Interest positions of all the interested parties and addresses a number of arguments and proposals that fall outside the competitive checklist requirements. While the Commission is focusing on Section 271(c) obligations, there are, in some instances, state-based requirements that go beyond the federal standards for checklist compliance. A failing in this regard, is valid for our consideration, but must be identified as such, i.e., an obligation outside the checklist.

20. It is our intent, as near as possible, to address the issues and positions relative to state matters separate from federal concerns. In this way, the Commission is fully informed as to all aspects of compliance, yet able to maintain a clear perspective when consulting with the FCC on the Section 271(c) obligations.

21. Overall, and to the extent that the Commission considers certain remedial action by Ameritech is required for Section 271 compliance, the Company will have the option to:

1. accept the remedial action and prove compliance therewith in Phase II.

2. ignore the remedial action and risk an adverse recommendation.

3. dispute the need for the particular remedial action in Phase II or at an earlier stage to be agreed upon (or through its Brief on Exceptions if further evidence is not required).

22. The main focus, here and now, is on AI's compliance with Section 271 requirements as they have been set out in the federal Act, and as described, implemented and addressed by the FCC. This constitutes our standard for review. We believe it critical to establish just what compliance is. In looking to the dictionary definitions, we see that:

> To comply is to act in accordance with another's command, request, rule, or wish. American Heritage Dictionary.

> To yield; to accommodate, or to adapt oneself to; to act in accordance with; to accept. Black's Law Dictionary

23. We trust that all parties have proceeded to address the issues of Section 271 compliance on this basis.

I. GENERAL STATUTORY FRAMEWORK OF SECTION 271

24. According to Section 271 (a), neither a Bell Operating Company ("BOC") nor an affiliate of a BOC may provide interLATA services except as provided for in Section 271. (47 U.S.C. Sec. 271(a)) (emphasis added). More specifically, Section 271 (b)(1) states that a BOC, or any affiliate of that BOC, may provide interLATA services originating in any of its in-region States if the FCC approves the application for such State under subsection (d)(3).

25. The Administrative Provisions of Section 271 (d) outline the application process. Pursuant to Section 271(d)(1), a BOC or its affiliate may apply to the Federal Communications Commission ("FCC") for authorization to provide interLATA services originating in any in-region State. 47 U.S.C. Sec. 271. Within 90 days of its receipt of the application, the FCC is required to issue a written determination either approving or denying the authorization requested by the application for each state. This same subsection specifies that approval of the requested authorization in the application is contingent on the FCC's finding that:

> *(A) the petitioning Bell operating company has met the requirements of subsection (c)(1) and—*
>
> *(i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A), has fully implemented the competitive checklist in subsection (c)(2)(B); or*
>
> *(ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B), such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B);*
>
> *(B) the requested authorization will be carried out in accordance with the requirements of section 272 [47 USCS § 272]; and*
>
> *(C) the requested authorization is consistent with the public interest, convenience, and necessity.*

26. The FCC is further required under Section 271 (d)(2) to engage in certain consultative actions during its review. At the outset, the FCC must promptly notify and

consult with the Attorney General with respect to any Section 271 (d)(1) application. 47 U.S.C. Sec. 271. Further, before making a subsection (d) determination, the Commission must also consult with the state commission in the State that is the subject of the application in order to "verify the compliance of the BOC with the requirements of subsection (c).

27. In accord with the framework set out above, this Commission is preparing itself for the consultation with the FCC "to verify the compliance" of Ameritech Illinois with the requirements of subsection (c), as set out below:

> *Section 271 (c) Requirements for Providing Certain In-Region INTERLATA Services.*
>
> *(1) Agreement or statement. A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.*
>
> *(A) Presence of a facilities-based competitor. A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 [47 USCS § 252] specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A) [47 USCS § 153(47)(A)], but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.*
>
> *(B) Failure to request access. A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], no such provider has requested the access and interconnection*

described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f) [47 USCS § 252(f)]. For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252 [47 USCS § 252], or (ii) violated the terms of an agreement approved under section 252 [47 USCS § 252] by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

(2) Specific interconnection requirements.

(A) Agreement required. A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—

(i) (I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or

(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and

(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

(B) Competitive checklist. Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) [47 USCS §§ 251(c)(2) and 252(d)(1)].

(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) [47 USCS §§ 251(c)(3) and 252(d)(1)].

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224 [47 USCS § 224].

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

(vi) Local switching unbundled from transport, local loop transmission, or other services.

(vii) Nondiscriminatory access to—

(I) 911 and E911 services;

(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

(III) operator call completion services.

(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

> *(xi) Until the date by which the Commission issues regulations pursuant to section 251 [47 USCS § 251] to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.*
>
> *(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) [47 USCS § 251(b)(3)].*
>
> *(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) [47 USCS § 252(d)(2)].*
>
> *(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) [47 USCS §§ 251(c)(4) and 252(d)(3)].*
>
> 47 U.S.C. Sec. 271 (c).(cites included).

28. Overall, Section 271(c) of the 1996 Act sets forth two basic "requirements for providing . . . in-region interLATA services." Subsection (c)(1) requires an "agreement or statement" and subsection (c)(2) contains the 14-point competitive checklist. 47 USC Sec. 271(c).

II. Satisfaction of the Entry Requirements of Section 271(c)(1)(A)

A. The Federal Act

29. To gain FCC approval of its application to provide in-region, interLATA services, a BOC must demonstrate that **"it meets the requirements of either subparagraph (A) or subparagraph (B)"** 47 U.S.C. Section 271(c)(1).

B. Standards For Review

30. According to Section 271 (c), there are two separate and independent means, by which a BOC may satisfy, or qualify under, the Act's initial entry requirements.

31. To qualify for "Track A," a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers." 47 U.S.C. Section 271(c)(1). The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier." Id. In the Ameritech Michigan Order, the FCC concluded that, section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers. See also Kansas/Oklahoma 271 Order at para. 40.

32. As an alternative, "Track B" permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the state has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under section 271(d)(3)(A)(ii), the Commission shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, "with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist." Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.

33. (Adapted from the New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

Further Authority

34. When a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers. Michigan 271 Order, ¶ 82. The FCC has further held that a BOC must show that at least one of these competing providers constitutes "an actual commercial alternative to the BOC," which means that the provider serves "more than a *de minimis* number" of subscribers. New Jersey 271 Order, ¶ 10. Once that is done, however, Track A does not "require any particular level of market penetration." Id. At least one court has affirmed that the Act "imposes no volume requirements for satisfaction of Track A." Sprint Communications Co. v. FCC, 274 F.3d 549, 553-54 (D.C. Cir. 2001).

C. The Evidence, Arguments and Positions

1. Ameritech Illinois Showing of Eligibility

35. Ameritech Illinois asserts that its application would proceed under, and satisfy the test of Track "A." To establish eligibility under this provision, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business customers." 47 U.S.C. § 271(c)(1)(A). Ameritech Illinois submits the testimony of Deborah Heritage as support for meeting this requirement.

36. Ameritech Illinois shows to have over 150 Commission-approved wireline interconnection and resale agreements with competing providers. (Am. Ill. Ex. 14.0 Sch. DOH-2, ¶ 4). At least 12 of these entrants, AI contends, provide services to residential and business subscribers in Illinois, either exclusively or predominantly over their own facilities, and thus qualify as Track "A" competitors. (Id. ¶ 4 & Attach. C).

37. According to AI, CLECs are clearly giving Illinois consumers "an actual commercial alternative." New Jersey 271 Order, ¶ 10. As of February 2002, it notes, CLECs had gained over 1.8 million lines ? approximately 23 percent of the total lines ? in the Ameritech Illinois service area. (Am. Ill. Ex. 14.0 at 9;Table 1; Id. Sch. DOH-2, ¶ 5; Table 2). Approximately 1.6 million of these lines, AI contends, were served by competitors over their own facilities.[1] (Id. ¶ 5;Table 1). CLECs captured approximately 1.2 million business lines, and over 600,000 residential lines, in Ameritech Illinois' service area. (Id., Tables 1 (facilities-based lines) & 6 (resold lines). Since then, AI asserts that CLEC activity continued to grow, exceeding 1.9 million lines by April 2002. (Am. Ill. Ex.14.1 at 5).

38. These levels of CLEC penetration, AI contends, outpace *every single one* of the fourteen applications that the FCC has approved thus far. It offers the following Table I in support of this assertion.

Table 1: Comparison of CLEC Market Shares

STATE	SOURCE OF DATA	LINES CAPTURED BY CLECs	CLEC MARKET SHARE
Illinois	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-2, at 5.	1,874,000	23%

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

New York	New York 271 Order, ¶ 14	1,118,180	9%*
Texas	Texas 271 Order, ¶ 5 & n.7	890,000	8%
Kansas	Kansas & Oklahoma 271 Order, ¶ 4	191,000	13%
Oklahoma	Id. ¶ 5	170,000	9%
Massachusetts	Massachusetts 271 Order, ¶ 3	781,000	11%*
Connecticut		2,500*	5%*
Pennsylvania	Pennsylvania 271 Order, ¶ 2	1,145,000	14%*
Arkansas	Arkansas & Missouri 271 Order, ¶ 2	98,500	9%*
Missouri	Id.	295,000	10%*
Rhode Island	Rhode Island 271 Order, ¶ 2	119,000	16%
Vermont	Vermont 271 Order, ¶ 2	21,500	6%*
Georgia	Georgia & Louisiana 271 Order, ¶ 3	913,000	19%*
Louisiana	Id.	227,000	9%*
Maine	Maine 271 Order, ¶ 2 & n.3	50,600	7%
New Jersey	New Jersey 271 Order, ¶ 3	614,000	8%*

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

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

40. Vigorous competition is evident, AI claims, not only by a review of the data but also through common and everyday experience. CLEC advertisements appear on

the television and in the newspapers. In driving down the state's highways one sees a CLEC billboard, and at the home, CLEC customer solicitations arrive in the mail or by telephone. Several CLECs, AI asserts, are aggressively packaging and promoting local service plans. (See Am. Ill. Ex. 14.0 at 5-6; id. Sch. DOH-3 (advertisements and articles documenting CLEC solicitation of customers in Illinois); (Am. Ill. Ex. 14.1 at 5-6; Schs. DOH-1 & DOH-2).

41. AI notes that AT&T, which had already established itself in the business market and serves residences over its cable facilities, entered the residential local service market in force and with fanfare in June 2002, offering bundled packages of local, local toll, and long distance services supported by press releases and by promotional discounts that it included with mailings to its long-distance subscribers. (Id. at 5-6 & Schs. DOH-1 & DOH-2; Am. Ill. Cross Exs. 27-29). So too, AI observes, Z-Tel has launched "Z-LineHOME" and "Z-LineBUSINESS" offerings with direct mail inserts in gas and electric bills (Id. at 5-6) and with an ad campaign featuring sports celebrity "Iron Mike" Ditka.

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

Table 2: Growth in CLEC Activity

Competitive Indicator	**Sept. 2000**	**Sept. 2001**	**Feb. 2002**	**Percentage Change, Sept. 2000 – Feb. 2002**
Facilities-based Lines	575,000	1,291,000	1,638,000	185 %
Resale Lines	301,000	266,000	236,000	(22 %)
Total Lines	876,000	1,557,000	1,874,000	114 %
Unbundled Loops	193,000	276,000	326,000	69 %
UNE Platforms	0	190,000	335,000	Not applicable

SOURCE	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-1, at 95 (Attach. D)	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-1, at 95 (Attach. D)	Am. Ill. Ex. 14.0 (Heritage Rebuttal) Sch. DOH-2, at 95 (Attach. D)	Calculated from columns 2 and 4

43. According to AI, there is a solid foundation in place for continued growth. The CLECs' *existing* collocation arrangements, it contends, allow them to serve 94 percent of the business customers and 91 percent of the residential customers in Ameritech Illinois' service area. (Id. ¶¶ 6, 31-32;Table 5). The CLECs' installed switching capacity, AI asserts, is capable of serving 96 percent of the customers in Ameritech Illinois' serving area. (Id. ¶ 27;Table 4).

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

45. There is, however, AI notes, an attempt to contest the data presented by Ameritech Illinois concerning the number of lines served by CLECs, or to complain that the data should be ignored because of financial difficulties experienced by some CLECs. See, e.g., AT&T Ex. 1.0 at 12-27; Staff Ex. 10.0 at 8-22; WorldCom Ex. 6.0 at 23. The testimony of Deborah Heritage, AI contends, refutes such criticisms. Most important, AI asserts, is not that the intervenors' arguments are inaccurate, but that these claims are irrelevant for purposes of determining whether Ameritech Illinois satisfies Track A.

46. No party contends that competitive entry in Illinois falls short of the Track "A" standards established by federal law, AI notes. Moreover, while some do question the methodology that the Company used to estimate CLEC lines, AI points out that no CLEC provided its own records to rebut the number of lines that Ameritech Illinois estimated for that CLEC.

Estimates of CLEC Lines

47. Ameritech Illinois explains that it uses its own records to determine the total number of its own access lines, and to determine the number of lines that CLECs serve by using Ameritech Illinois' facilities (via resale or the UNE "Platform"), but it does not have records for facilities-based CLEC lines (the CLECs maintain their own records). (Am Ill. Ex.14.0 at 18). Thus, Ameritech Illinois estimates that portion of

CLEC lines by using two complementary and conservative methodologies, each of which serves as a check on the other. (Id. at 7,14).

48. First, Ameritech Illinois uses the number of listings CLECs have in the database that is used for routing "911" calls. (Id. at 16). This methodology is conservative, AI maintains, in that the 911 database includes only lines that are used for outbound calling, and excludes lines used only for inward calls, for faxes, or for computers. (Am. Ill. Ex. 14.0 at 16). Lines served by resale or by the UNE "Platform" are not attributed to CLECs in the 911 database, and Ameritech Illinois adds these to the E911 listings to derive the total number of CLEC lines. (Id. at 9, n.6).

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

50. These two approaches, AI notes, are the same as those used by SWBT in its FCC-approved applications for Texas, Kansas, Oklahoma, Arkansas, and Missouri. (Id. at 6). Despite AT&T's protestations, and despite the fact that the CLECs have their own business records showing the exact number of lines they serve, AI notes that not one CLEC produced evidence to rebut the number of lines attributed to it by Ameritech Illinois, and not one CLEC challenged Ameritech Illinois' ultimate conclusion that it satisfies Track "A."

51. For the same reason, AI observes, the FCC has repeatedly rejected similar CLEC criticisms of the methodology used to estimate CLEC market share. See Kansas & Oklahoma 271 Order, ¶ 42 ("We note that commenters have complained that SWBT's method of estimation overstates the number of [CLEC] customers. We find, however, that SWBT's response[s] to these competitors support our conclusion that more than a de minimis number of residential customers are served via UNE-P in Kansas."); Georgia & Louisiana 271 Order, ¶ 13 ("Two commenters assert that BellSouth overestimates the number of lines provided by competitors in Georgia. . . . [E]ven if BellSouth's methodology inflates the total number of lines, as Sprint and AT&T suggest, we still find that there is an actual commercial alternative based on the sufficient number of voice customers served over competing LECs' own facilities."); New Jersey 271 Order, ¶ 13 (rejecting allegation that "the numbers that Verizon reports for Track A are wrong" because none of the "competing LECs disputed the numbers that Verizon attributes to them for purposes of Track A").

Financial Difficulties in the Telecommunications Industry

52. AI observes AT&T to contend that some of the carriers included in Ameritech Illinois' market analysis (including 8 of the 12 Track "A" carriers) are not "viable" and should be ignored because they are in or "near" bankruptcy. (AT&T Ex. 10.0 at 19-23). According to AI, however, the evidence does not support AT&T's conclusion about the individual carriers or the viability of CLECs in Illinois as a whole.

53. At the outset, AI asserts, CLECs have achieved remarkable growth in Illinois – hardly a sign of failure. Nationwide, the Eastern Management Group's study on competition reports that, while the raw number of CLECs has gone down, "their power is growing by leaps and bounds" – a view shared by several analysts. (Am. Ill. Ex. 14.1 at 30). Notably too, none of the Track "A" carriers that AT&T would deem "not viable" disputes its status as a Track "A" carrier. To the contrary, AI maintains, several have publicly proclaimed that they *are* viable (as Focal, XO, and Z-Tel did), or that they have emerged from bankruptcy (as Covad and McLeodUSA did), averted bankruptcy (as CoreComm did), or will continue operations without interruption. (Id. at 28-29; Am. Ill. Ex. 14.0 at 37-39). Even where an individual CLEC does fail, AI observes, its assets and customer base are often acquired by another – a point that AT&T, having acquired Northpoint Communications, knows full well. (Id. at 38-39).

54. In any event, AI asserts, AT&T's contentions do not affect Track "A" compliance. While there is no denying that the telecommunications industry in general (with respect to incumbents and CLECs alike) is experiencing a downturn, there is also no need to review CLEC financials, or attempt to predict the future economic climate, AI claims.

55. AI notes that the FCC – which knows the state of the industry as well as anyone – has granted several section 271 applications in the current economic setting, and it has specifically held that a section 271 proceeding is no place for a referendum on the viability of individual CLECs or the industry as a whole. See Rhode Island 271 Order, ¶ 106 ("Sprint also argues that . . . the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments."); Georgia & Louisiana 271 Order, ¶ 282 ("Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the financial hardships of the competitive LEC community do not undermine that showing."). As the FCC explained, "[w]e have consistently declined to use factors beyond the control of the BOC, such as the weak economy, or over-investment and poor business planning by competitive LECs to deny an application." Id. Track "A" , AI maintains, does not require that CLECs achieve any particular market share and still less does it require that CLECs achieve any particular profit level.

2. Staff's Position

56. According to Staff, Ameritech Illinois has demonstrated that it meets the "Track A" eligibility requirement. There are, Staff observes, alternative facilities-based local service providers in Illinois that have interconnection agreements with Ameritech that have been approved under Section 252. Nevertheless, Staff maintains that a showing of the mere existence of facilities-based service providers does not necessarily mean that the local exchange market is competitive. In addition, it contends, the mere presence of alternative facilities-based providers today does not guarantee the future existence of alternative facilities-based providers once BOCs, such as Ameritech, are authorized to compete in the in-region, inter-LATA market.

57. While recognizing that Ameritech Illinois presented an analysis of competition in Illinois, Staff considers same to be incomplete, unreliable, and not reflective of the realities in the marketplace. Staff sets out the reasons for its views. First, Staff contends, the degree of competition is ultimately reflected in a carrier's ability to raise and maintain prices above costs and, in a robustly competitive market, prices should be driven toward costs. (Staff Ex. 10.0 at 4-5; Staff Ex. 24.0 at 2-4). According to Staff, the mere presence of alternative providers sheds no light on a carrier's ability to raise prices above its costs. (Staff Ex.10.0 at 5). Nor does the mere presence of alternative providers imply that Ameritech Illinois, the dominant carrier, is *unable* to maintain its prices above its costs. Thus, in Staff's view, the existence of alternative providers alone does not signify a competitive market.

58. Second, while acknowledging that CLECs have made some progress over the past few years in penetrating the local service market, Staff maintains that this market is generally not competitive and still dominated by Ameritech Illinois. This dominance, Staff contends, is clearly reflected in the market share figures presented by Staff witness Liu. (Staff Ex. 10.0 at 14 (noting that as of September, 2001 Ameritech Illinois controlled 81% of the local service market).

59. Third, Staff argues, Ameritech Illinois did not present an adequate analysis of competition in the *local service market*. In Staff's view, a meaningful analysis of competition in the local service market cannot be done without examining all market participants, including the dominant carrier, i.e., Ameritech Illinois. An analysis, which focuses solely on CLEC data, Staff contends, is less than adequate. A complete analysis of local competition requires consideration of the entire market, not just CLEC access lines. (Staff Ex. 10.0 at 6; Staff Ex. 24.0 at 3-4).

60. According to Staff, Ameritech Illinois' methodology "probably" produces inflated estimates of CLEC access lines. (Staff Ex. 10.0 at 8-22; Staff Ex. 24.0 at 8-32). Staff demonstrated this concept by showing that Ameritech Illinois used different standards to estimate CLEC access lines and its own access lines. (Staff Ex. 10.0 at 14-16). While Staff sees Ameritech Illinois to claim that one estimation method, E911 estimation, inflates estimates of only Ameritech Illinois' access lines, it wholly failed to

present a convincing reason why this admitted upward bias applied solely to Ameritech Illinois. Staff claims to have refuted each of Ameritech Illinois' explanations. (Staff Ex. 24.0 at 17-19).

3. WorldCom's Position

61. According to WorldCom, the issue at hand is not whether facilities-based local providers exist – there appears to be little if any debate as to whether facilities-based local providers exist -- but the extent to which competition has a foothold in the Illinois local market. On this score, WorldCom contends, the analysis performed by AI's witness Heritage, should not be relied upon by the Commission. To the extent that the Commission is inclined to comment to the FCC on the level of competition in Illinois, WorldCom believes that it should rely upon information gathered from carriers, which forms the basis for the Commission's annual report to the Illinois General Assembly on the status of competition in the state.

62. WorldCom notes Staff and AT&T to also agree that Ameritech's methods of estimating lines, "likely" exaggerates the actual number of lines served by CLECs. WorldCom notes Staff witness Liu to have testified that Ameritech's E911-based estimation shows an overstatement of 1.2 million or 18.2% of Ameritech switched access lines using September 2001 data and 1.3 million or 20.7% of Ameritech switched access lines using February 2002 data. (Staff Ex. 24.0 at 20).

63. According to WorldCom, Ameritech would object to the use of the information that the Commission has independently gathered from carriers to gauge the status of local competition in Illinois. In her testimony, WorldCom observes, Ameritech witness Heritage asserted that the Commission should not rely on this information because there is a possibility that not all carriers have responded to the Commission's competition data request; the results of the data request have not yet been published; and once published, discrepancies in the data would need be resolved before the data can be treated as a credible source. (Ameritech Ex. 14 at 49). According to WorldCom, Ms. Heritage believes that her local competition analysis will be superior to the Commission's independent analysis of local market competition, and offers reasons in support of that belief. WorldCom disagrees and respectfully submits that if the information is proper for the Commission to report to the Illinois General Assembly, it is similarly proper for the Commission to use in its consultation with the FCC on Ameritech's 271 application. (WorldCom Ex. 6.1 at 19).

64. Even though the information that the Commission gathers may not include information regarding every single LEC, WorldCom contends that it will likely be superior to Ameritech's proposed method. The superiority arises from its independence, given that, unlike AI, the Commission has no incentive to inflate the levels of competition.

65. There is no requirement, as WorldCom sees Ms. Heritage to suggest, that an unbiased report must include information from each and every carrier in the state, or

that the Commission will not have resolved discrepancies before it issues its annual report. The Commission, WorldCom maintains, has a statutory obligation to provide the General Assembly with a report that, among other things, "collect[s] all information, in a format determined by the Commission, that the Commission deems necessary to assist in monitoring and analyzing the telecommunications markets and the status of competition and deployment of telecommunications services to consumers in the State." 220 ILCS 5/13-407(5).

66. In addition, WorldCom contends, the timing of the Commission's annual report to the General Assembly makes it perfect for providing the most up-to-date information concerning the status of competition in the Illinois local market. The Commission generally submits its annual report for the period from January 1 through December 31 of the immediately preceding year by the end of January of the current year. Thus, the Commission will likely have its report for calendar year 2002 ready for submission by January 31, 2003. It should not be presumed, as WorldCom sees Ameritech to suggest, that the Commission's report will have discrepancies or otherwise be not credible.

4. AT&T Position

67. According to AT&T, facilities-based competition exists only in a limited form in Illinois and at such a nascent level that it cannot provide a "check" on the anticompetitive tendencies of the local exchange service monopoly. So too, as AT&T witness Turner testified, the competition that exists in Illinois is highly concentrated on a narrow set of customers, i.e., Internet Service Providers, or ISPs and after adjusting for that fact, only about 2.4 percent of local traffic in Ameritech serving territory is being served by CLECs. (AT&T Ex. 1.0 at 3).

68. AT&T concludes that its witness Turner showed that the various indicators Ameritech has used to demonstrate the degree of competition in Illinois produce flawed and misleading estimates of the level of actual competition. It further maintains that Mr. Turner's testimony demonstrated that Ameritech has precluded competitors from entering its market via the UNE-P alternative, particularly for small business customers, as compared to some other states where SBC has already received approval to offer long distance. The level of competition in Illinois is actually quite low when compared to these other states, AT&T argues, and that alone should cause the Commission to review of Ameritech Illinois' compliance with Section 271 requirements with strict scrutiny.

Ameritech's Competitive Data

69. AT&T complains that Ameritech is, in many instances, the only source of the data available to conduct a complete assessment of competition in Illinois. As such, it suggests that this Commission not take Ameritech's one-sided version of the data at face value.

70. AT&T explains that its witness, (Turner), relied on four sources of information to rebut Ms. Heritage's claims regarding the level of competition in Ameritech Illinois' territory, to wit:

(1) information available from the FCC;

(2) public sources of information on the status of competitors that Ameritech has identified in Illinois, including press releases and financial filings relevant to the assessment of the sustainability of the limited competition that does exist in Illinois;

(3) the Texas Public Utility Commission's "2001 Report on the Scope of Competition in Telecommunications Markets", a document requested by the Texas legislature and prepared by the Texas Public Utility Commission ; and,

(4) the level of UNE-Platform (UNE-P) competition in Illinois relative to other states where SBC has already obtained Section 271 authority, including Texas, Missouri, Oklahoma, and Kansas. (AT&T Ex. 1.0 at 5-6).

Facilities-Based Competition

71. Several factors, AT&T contends, must be evaluated in considering the capabilities of CLECs to provide facilities-based service in Illinois. Although not an exhaustive list, CLECs need the following components in order to provide facilities-based local exchange service: (1) interconnection trunks and usage; (2) unbundled loops; (3) local switching; and (4) interoffice facilities. These components, AT&T argues, are currently in place on a very limited scale in Illinois. And, AT&T comments that Ms. Heritage's use of data in these areas grossly overstates the competitive threat of CLECs in Illinois because it fails to place CLEC data in context against the vastly greater resources of Ameritech.

Interconnection Trunks and Usage

72. Interconnection trunks, AT&T informs, are used to exchange traffic between local exchange carriers (LECs). According to the information provided by Ameritech witness Heritage, 428,716 interconnection trunks have been established between itself and CLECs in Illinois. (AI Ex. 14.2 at 11). Further, the Company indicates that approximately 1.295 billion minutes of local traffic are exchanged across these interconnection trunks per month based on Ameritech's most recent data. See, Attachment A to Ameritech Illinois Ex. 14.2. While these numbers are quite large in AT&T's view, and would indicate a thriving local exchange market, AT&T believes that they illustrate the opposite.

73. These interconnection minutes, AT&T contends, must be put into perspective by placing them in context alongside data for Ameritech and taking into account the way in which the interconnection trunks are being used. For example, AT&T notes that in the ARMIS Report for 2000 (filed with the FCC), Ameritech reports that it switched approximately 118.6 billion end office local minutes in 2000. (AT&T Ex. 1.0 at. 8). According to AT&T, and using this information to project the number of local minutes in 2002 and develop the monthly end office local minutes in 2002 (the comparable period for Ameritech's reported interconnection minutes), shows that Ameritech will switch approximately 121.2 billion minutes of local use in 2002 or 10.1 billion minutes per month. (AT&T Ex. 1.0 at 8). Because virtually all CLEC local calls either terminate to an Ameritech customer or originate from an Ameritech customer, AT&T claims, all CLEC local minutes of use must pass over the interconnection trunks. In other words, AT&T contends, the combined local minutes of the CLECs per month (1.295 billion minutes of use) are comparable to Ameritech's local minutes per month (10.1 billion minutes of use). (AT&T Ex. 1.0 at 8).

74. The numbers Ameritech has presented for CLECs' combined interconnection trunks and minutes of use appear fairly significant (1.295 billion minutes per month or 11.4 percent of the total local usage) but, AT&T maintains, the additional information Ameritech reveals regarding the nature of this traffic demonstrates that there is substantial reason to regard this level of competition in Illinois as unsustainable.

75. According to AT&T, Ameritech's statistics reveal that the traffic flow between ILECs and CLECs is significantly out of balance. Of the 1.295 billion minutes of use per month exchanged between Ameritech and the CLECs, AT&T contends, 1.160 billion of the minutes originated with Ameritech (terminating to the CLECs), and only 0.135 billion of the minutes originated with the CLECs (terminating to Ameritech). Stated still another way, approximately 79.2 percent of the local traffic handled by CLECs, was for customers who terminated an enormous amount of traffic. (AT&T Ex. 1.0 at 9).

76. According to AT&T, 79.2 percent of the CLEC local traffic in Ameritech Illinois' territory is from a narrow scope of customers who terminate tremendous amounts of traffic such as Internet Service Providers (ISPs). AT&T considers Ameritech's own data to reveal the extremely an narrow scope of competition. Again, based on Ameritech's data, the proportion of facilities-based local competition excluding ISP users in Illinois is only a mere 2.4 percent, AT&T contends. According to AT&T, it is impossible for competition in a narrow segment of the local exchange market to create the type of market discipline needed to replace regulatory constraints. (AT&T Ex. 1.0 at 9-10).

Unbundled Loops

77. AT&T submits that unbundled loop usage is another key factor in demonstrating the actual level of competition in Illinois and, it asserts, the limited use of unbundled loops in Illinois speaks for itself. AT&T notes that, according to Ameritech,

465,963 unbundled loops have been utilized in Illinois. (AI Ex. 14.2, Attachment A). In its most recent publicly available data, AT&T observes, Ameritech indicates that it has 10,478,261 access lines in Illinois. (AT&T Ex. 1.0 at 11). Even when accepting this data as accurate, AT&T maintains that the total number of unbundled loops equates to only 4.4 percent of the access lines in Illinois. (AT&T Ex. 1.0 at 11).

Local Switching

78. According to Ameritech witness Heritage, AT&T notes, there are 35 competing local voice switches in Illinois and she indicates that 35 switches *could* serve 82 percent of the market in Illinois. (AI Ex. 14.2, Attachment A). Compared to these 35 CLEC switches, AT&T observes, and based on the latest publicly available information, Ameritech has 211 central office switches excluding remotes and 397 switches (including remotes) (AT&T Ex. 1.0 at 11). As such, AT&T argues, Ameritech has sufficient switching capacity in Illinois to serve every line approximately 4.9 times, excluding the capacity of Ameritech's remote switches. In AT&T's view, the fact that CLECs have 35 switches bears no relationship to the number of lines the CLECs actually *do* or *will* serve any more than it matters that Ameritech can serve every line in Illinois 4.9 times (excluding remote switches).

Facilities-Based Access Line Count - Trunk to Line Count Ratio

79. AT&T contends that Ameritech's estimated assessment of the number of lines served by facilities-based CLECs is inappropriate, in that as much as 86.1 percent of Ameritech's alleged access line losses are nothing more than *estimates* based on converting interconnection trunks into access line equivalents -- without any regard for how the trunks are used. (Am Ill Ex. 14.2 at 4, 11; AT&T Ex. 1.0 at 13-14).

80. AT&T observes witness Heritage to state that Illinois CLECs have acquired as many as 1,369,166 facilities-based access lines. (AI Ex. 14.2 at 4; setting out "Interconnection Trunks 2.75:1 Ratio + UNE-P"). According to Ms. Heritage's testimony, however, only 190,197 access lines (those that are UNE-P combinations) represent the *actual* number of access lines directly included in the total. The remaining 1,178,969 access lines, AT&T points out, are merely an estimate of the number of lines served in Illinois by facilities-based CLECs. To reach this number, AT&T observes, Ameritech simply assumed that each trunk somehow equates to 2.75 access lines per trunk, and multiplied the 428,716 interconnection trunks that Ameritech has provisioned in Illinois by a factor of 2.75 lines per trunk. (AT&T Ex. 1.0 at 13).

81. While estimating is not an inappropriate tool, AT&T contends that Ameritech used erroneous assumptions regarding interconnection trunks that skew the results. *First*, AT&T argues, Ameritech did not adjust for the large quantity of ISP traffic that CLECs terminate. As it demonstrated, AT&T asserts, local traffic for Illinois CLECs is predominantly ISP traffic at the present (and approximately at 79.2 percent). Due to the nature of this traffic, AT&T maintains, the CLEC will require closer to one trunk per each ISP line equivalent – not 2.75 lines per trunk. Otherwise, the CLEC could be in a

situation where it has ISP lines available to terminate calls, but has insufficient trunk capacity to complete the call from Ameritech. For such trunks, AT&T argues, the 2.75 access line per trunk ratio used by Ameritech's Ms. Heritage significantly overstates the number of access lines, especially given the fact that the vast majority of trunks are used for ISP traffic. (AT&T Ex. 1.0 at 13-14).

82. AT&T sees Ms. Heritage to acknowledge, many CLECs, in the early stages of network development, lack the economies of scale to obtain the efficient trunk configurations Ameritech currently enjoys. Moreover, some CLECs primarily serve business customers (that have a very focused busy hour), AT&T argues, and this drives up CLEC trunking requirements because trunking arrangements must be in place to accommodate traffic during this peak period, (even if traffic volumes are lower at other times of day). (AT&T Ex. 1.0 at 14). There are numerous reasons, AT&T contends, why Ameritech's conversion of all interconnection trunks to access line equivalents using a 2.75 factor is inaccurate and produces misleading results. According to AT&T, Ms. Heritage acknowledged that the Department of Justice (DOJ), when evaluating this very issue in prior Section 271 proceedings, recognized that use of a 2.75 factor overstates the level of competition. In commenting on the Texas Section 271 application, the DOJ recommended that a 1:1 ratio between trunks and estimated lines was a "more reasonable multiplier." (AT&T Ex.1.0 at 14). As such, AT&T contends, this is what the Commission should use. (AT&T Ex 1.0 at 14-15).

<u>E911 Database To Demonstrate Facilities-Based Competition</u>

83. AT&T notes AI witness Heritage to propose that the ratio of lines, business to residential, contained in the E911 database, be used to determine the split of all facilities-based lines (after the inaccurate conversion of trunks into line equivalents that AT&T already addressed, has occurred). This approach, AT&T argues, is significantly flawed in additional respects.

84. As AT&T sees Ms. Heritage to note, E911 listings only represent those customer lines from which outbound calls can be made. (AI Ex. 14.2 at 1). As a result, AT&T maintains, business customers such as call centers, reservation or telemarketing centers, and Internet providers need not report them in the 911 database and, thus, will have few of their access lines represented in the E911 database. According to AT&T, this means that the ratio of business lines reflected by the database is likely significantly *understated*. If the E911 database underreports business lines (because the CLEC does not need to include many of them in the database), then, AT&T contends, the ratio of business to residential lines in the E911 database will make the residential percentage look *artificially high*. (AT&T Ex. 1.0 at 15). Consequently, in AT&T's view, Heritage's approach will convert trunks to equivalent access lines that are not included in the E911 database.

The Viable Competitors Are Struggling Or Bankrupt

85. AT&T notes Ms. Heritage to list a total of 41 facilities-based CLECs as "evidence" of the vibrant competitive market in Illinois. There is missing from Ms. Heritage's analysis, AT&T argues, all mention that many of these companies are either in bankruptcy or in grave financial circumstances.

86. At the time AT&T witness Turner filed his direct testimony, AT&T observes, at least 19 of the companies listed in Ms. Heritage's testimony (Am Ill Ex. 14.2) were already in or extremely near bankruptcy or simply no longer existed: (1) Adelphia Business Solutions; (2) CoreComm; (3) Covad Communications (filed August 15, 2000 and exited December 20, 2001); (4) Focal Communications; (5) Global Crossing (filed January 28, 2002); (6) ICG Communications (filed November 14, 2000); (7) Intermedia Communications (acquired by Allegiance Telecom January, 2002); (8) McLeodUSA (filed January 31, 2002); (9) MPower (filed February 25, 2002); (10) Pathnet (filed April 2, 2001); (11) Teligent (filed May 21, 2001); (12) WinStar (filed April 18, 2001); and (13) XO Communications. AT&T would also now add the WorldCom bankruptcy filing, dated July 21, 2002, which brings the total to 20.

87. According to AT&T, Ameritech selectively spotlights just ten of its competitors in Attachment C of Ameritech Illinois Ex. 14.2. Only three of these ten CLECs, AT&T contends, could even arguably be considered viable "Track A" competitors to Ameritech in Illinois. These three CLECs – AT&T, Sprint, and TDS – are all part of much larger companies that can support the cash infusion required to start up a new business in an area currently dominated by one company. The other CLECs on the list, AT&T argues, do not represent viable future enterprises or do not compete with Ameritech in a materially significant manner. These, AT&T maintains, are Choice One Communications, Focal Communications Corporation, Global Crossing. McLeodUSA, RCN Communications, Z-Tel Communications.

The UNE-Platform Is Struggling

88. The level of UNE-Platform competition in Illinois, AT&T contends, is indicative of a market that is truly in its infancy. AT&T provides a chart, derived from information provided by SBC in its Section affidavits, to demonstrate how Illinois compares unfavorably for overall UNE-P lines and UNE-P business lines.

State	Total UNE-P Lines	Business UNE-P Lines
Texas	1,210,233	810,856
Missouri	58,093	56,260
Oklahoma	25,034	20,072
Kansas	53,453	52,450
Illinois	190,197	8,964

(AT&T Ex. 1.0 at 28).

89. According to this chart, AT&T maintains, Illinois trails significantly in the number of business UNE-P lines when compared to Texas, Missouri, Oklahoma, and Kansas. Ameritech's competitors have acquired only 8,964 business lines via UNE-Platform competition, while Texas has seen competitors acquire approximately 800,000 business lines through the UNE-Platform. Given the size of the Illinois' local telecommunications market, AT&T argues, the Commission should be particularly concerned that even UNE-Platform competition for business customers has not been irreversibly established in Illinois. (AT&T Ex. 1.0 at 28).

D. The Reply Positions

1. Ameritech Illinois Reply Position

90. No one, the Company contends, disputes the showing that Ameritech Illinois' has interconnection agreements with "one or more competing providers of telephone exchange service" that serve "more than a *de minimis* number" of residential and business subscribers. (New Jersey 271 Order, ¶ 10) Nor is there any room for dispute, AI asserts. As of April 2002, it notes, CLECs gained over 1.9 million or 23 percent of the total lines in the Ameritech Illinois service area. (Am. Ill. Br. at 8). If anything, this amount is conservative, AI contends, because it does not even include AT&T's June 2002 large-scale high-profile entry into the residential market. (Id. at 10). Further, the April 2002 figure still exceeds *every single one* of the fourteen applications that the FCC has approved thus far. (Id. at 9). WorldCom itself acknowledges that "there appears to be little if any debate as to whether facilities-based local providers exist" and Staff concludes that "Ameritech has demonstrated that it meets this [Track A] requirement."

Estimates of CLEC Lines

91. AI sees Staff and the CLECs as trying to manufacture a debate about the market share of the CLECs. They would challenge the data on competitive entry presented by Ameritech Illinois as "highly suspect" (WorldCom Br. at 4) or "inflate[d]" (AT&T Br. at 16), while Staff joins in to argue that Ameritech Illinois' methodology "probably" overstates CLEC lines.(Staff Br. 39)

92. It is no secret, Ameritech Illinois asserts, that its analysis is based, in part, on estimates. Ameritech Illinois contends that it has actual data for about 897,000 or nearly half the CLEC lines (consisting of 335,000 served by UNE Platforms, 326,000 served by unbundled loops, and 236,000 served by resale), and it estimates the other half (lines that CLECs serve entirely by means of their own facilities). Its estimation methodologies, were explained on brief and supported by the testimony of Ms. Heritage (Am. Ill. Exs. 14.0 and 14.1). In short, Ameritech Illinois estimates CLEC lines by using (i) the number of CLEC-provided listings in the E911 database and (ii) the number of CLEC interconnection trunks with Ameritech Illinois (using a conservative assumption that CLECs have 2.75 lines per trunk). (Am. Ill. Br. at 13)

93. Ameritech Illinois agrees that actual data is generally preferable to estimates, but it also views several flaws in the criticisms of its showings. At the outset, AI notes, even if one were to take the patently under-inclusive approach of *ignoring* the estimated portion of Ameritech Illinois' analysis (and thus assume that there are *no* CLEC lines served entirely by CLEC facilities, and that CLECs are installing interconnection trunks and placing numbers in the 911 databases purely as a lark), the 897,000 lines for which Ameritech Illinois has actual records – and as to which there is no dispute – are enough to satisfy the "more than *de minimis*" requirement of Track A.

94. So too, the Company contends, the critics overlook the obvious, i.e., for those lines estimated by Ameritech Illinois, the actual data reside with the CLECs themselves. If there was really a material problem with its estimates, any CLEC could have presented the following simple rejoinder: "Ameritech Illinois estimated that we have *x* lines. That is wrong. Our records show we have only *y* lines." No CLEC did so, AI contends. The CLECs resort to estimates of their own making (such as the contrived account based on minutes of use in AT&T Br. at 11-14) only confirms that Ameritech Illinois' estimates are reasonable or even conservative.

95. In the final analysis, AI asserts, the critics are simply attempting to impose the never-accepted and oft-rejected "market share" test, under which a BOC would not receive long-distance relief until CLECs declared themselves satisfied with their market share. AI points out that based on Congress' intent, the FCC, and the D.C. Circuit have both held that there is no such test under Track A. Georgia & Louisiana 271 Order, ¶ 14 ("Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance. Accordingly, the applicant is not required to show that competitors have captured any particular market share."); New Jersey 271 Order, ¶ 10 (Track A does not "require any particular level of market penetration"); Sprint Communications Co. v. FCC, 274 F.3d 549, 553-54 (D.C. Cir. 2001) (agreeing with the FCC that the Act "imposes no volume requirements for satisfaction of Track A").

96. The FCC has further rejected attempts to revivify the market share test as part of the public interest analysis, the same tactic that AI sees AT&T and Cook County to attempt here. New York 271 Order ¶ 427 (stating that, "Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here [under the public interest test]."); See Georgia & Louisiana 271 Order, ¶ 282.[2]

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[2] Ameritech Illinois does not understand Staff's assertion (at 39) that Ameritech Illinois' estimates are flawed because they consider only CLEC lines, not Ameritech Illinois lines or the number of lines in total. In the first place, Ameritech Illinois *did* present data as to its own lines, and the percentage of total lines served by CLECs. (Am. Ill. Br. at 8-10). In the second place, the analysis under Track A focuses on the number of CLEC lines (and whether it is "more than a *de minimis* number") and the FCC has expressly rejected a market share test.

Financial Difficulties in the Telecommunications Industry

97. Ameritech Illinois claims that AT&T's reports of the CLEC industry's demise are not only greatly exaggerated, but also irrelevant to Track A. It points out that not even one of the CLECs that AT&T has declared as "not viable" (including WorldCom, which AT&T lately added to its critical list) agrees with AT&T's assessment of its prospects.

98. AI observes that AT&T further adds a few extra-record articles from the popular media in an attempt to bolster its position. (AT&T Br. at 21, 23, 26). To the extent the Commission would even consider such materials, Ameritech Illinois vigorously disagrees with AT&T's assertions that the CLEC industry is dying and that Ameritech Illinois is to blame. AI goes on to inform the Commission of other media-reported matters that might also be considered. (AI Reply Brief Attachments 1-3).

99. The more important point, AI maintains, is that this Commission need not resolve the debate taking place in the media or the contradiction between the arguments that AT&T makes here and its public statements. For purposes of section 271, AI contends, the FCC has already found that "the financial hardships of the competitive LEC community" result from "the weak economy" and "over-investment and poor business planning by competitive LECs," and it has decided that such "factors beyond the control of the BOC" do not affect the BOC's application. Georgia & Louisiana 271 Order, ¶ 282; See also Rhode Island 271 Order, ¶ 106 ("Sprint also argues that . . . the continuing bankruptcy of competitive LECs mean that the public interest is not served by granting Verizon section 271 approval in Rhode Island. We reject these arguments.").

2. Staff Reply Position

100. Staff agrees that Ameritech Illinois has demonstrated satisfaction of the Track A requirements. (Staff IB at 37). It takes issue, however, with the suggestion that the local service market is competitive, when, in Staff's view, Ameritech has failed to support that contention with a complete and reliable analysis of market competition. (Id. at 37-39). Staff believes to have demonstrated that Ameritech's analysis of competition is incomplete, unreliable, and fails to reflect realities of the marketplace. (Id. at 38-39). Ameritech's analysis also fails to present an accurate estimate of CLEC access lines. Id.

101. Staff notes AI to contend, on brief, that its estimates of CLEC access lines are reasonable. (Ameritech IB at 13). To determine the total number of CLEC access lines, however, Staff observes AI to rely on estimates. One methodology it uses to estimate CLEC access lines, Staff informs, is the number of listings CLECs have in the 911 database. (Id. at 13). Staff sees Ameritech Illinois to claim that "[t]his methodology is conservative in that the 911 database includes only lines that are used for outbound calling, and excludes lines used for inward calls, faxes, or for computers." (Id).

102. According to Staff, however, when that same methodology is used to estimate Ameritech Illinois' access lines, it overstates the quantity of access lines compared to the quantity of Ameritech Illinois access lines calculated based on the company's own records. (Staff IB at 39; Staff Ex. 10.0 at 14-15; Staff Ex. 24.0 at 17-19). Ameritech has provided no adequate explanation for this disparity, Staff contends, and, more importantly, provided no reason to forestall the obvious conclusion that, the methodology that produces an overestimation of its own access lines also produces an overestimation of CLEC access lines. For this reason, Staff maintains that Ameritech's methodology, for estimating CLEC access lines, is flawed.

3. AT&T Reply Position

The Level of Competition In Illinois

103. In making its "guesstimate" of the number of access lines served by CLECs, AT&T notes Ameritech to have used a 2.75:1 line to trunk ratio. AT&T contends, however, that a one-to-one line to trunk ratio – that is, one trunk for each line served -- is more appropriate for CLECs. Such is the case, AT&T argues, because the CLEC's customer base is very small relative to Ameritech's and, CLEC traffic is highly weighted toward terminating calls to Internet Service Providers, the heavy users. (AT&T Ex. 1.0 at 9-10; AT&T Ex. 1.1 at 3-4). According to AT&T, simple math demonstrates that assuming 2.75 lines per trunk when, a one line per trunk ration is suitable, will greatly inflate the number of actual access lines served by CLECs.

104. While Ameritech has repeatedly taken the position that no "particular level of market penetration" or "volume requirements" are necessary to satisfy Track A, AT&T observes the Company to itself list Lines Captured by CLECs and CLEC Market Share. To the extent such matters are significant, AT&T witness Turner and Staff witness Liu have demonstrated that Ameritech's market share statistics are greatly overstated, AT&T contends.

The Financial Health of CLECs

105. AT&T observes Ameritech witness Heritage to quote from various 271 Orders, wherein the FCC disagreed "with those commenters that assert under our public interest examination we must consider the level of competitive LEC market share, (and) *the financial strength of competitive LECs*" (Penn. 271 Order) and where the FCC rejected arguments that the "continuing bankruptcy of competitive LECs means that the public interest is not served by granting Verizon section 271 approval in Rhode Island" (Rhode Island 271 Order). But, the problem, in AT&T"s view, is not that a few CLECs are in danger of failing, but that, with very few exceptions, the entire competitive industry is in danger of failing. (AT&T Ex. 1.1 at 11-12).

106. Until the Commission is satisfied that irreversible competition is here to stay in the local market (and it is not there yet), AT&T argues, it should reject

Ameritech's request for interLATA relief. (AT&T Ex. 1.1 at 12-13). The competition, that currently exists, is not "irreversible" in AT&T's view. (AT&T Ex. 1.1 at 13).

E. Commission Review and Conclusion.

107. No party disputes that AI has at least 150 Commission-approved wireline and resale agreements with competing providers. At least twelve of these entrants provide services to residential and business subscribers in the State of Illinois, either exclusively or predominantly over their own facilities.

108. Our Staff agrees that AI satisfies the Track A requirements. WorldCom contends that the question, as to whether facilities-based local providers exist, is not even an issue. In its Exceptions Brief, AT&T now also maintains that Ameritech has satisfied the requirements of Track A. (AT&T Br. on Exceptions at 5.)

109. Despite the numerous arguments raised regarding the degree of competition in Ameritech Illinois service territory, Staff recommends that the Commission remain focused on the only relevant issue at hand. That inquiry is whether Ameritech provided sufficient evidence that one or more carriers are providing local exchange services either exclusively over their own telephone exchange service facilities or in combination with the resale of the telecommunications services of another carrier. On this key issue, Ameritech has provided sufficient evidence to warrant a finding that the eligibility requirements of Section 271(c)(1)(A) are satisfied.

III. THE "COMPETITIVE CHECKLIST" ITEMS SECTION 271(c)(2)(B)

110. To gain approval of its Application, and a favorable recommendation from this Commission, Ameritech Illinois must futher demonstrate that it safifies the requirements of Section 271 (c)(2)(B) which sets out 14 Checklist Items.

A. CHECKLIST ITEM 1 – Interconnection – Section 271(c)(2)(B)

1. Description of Checklist Requirement

111. Section 271(c)(2)(B)(i) of the Act requires a Section 271 applicant to provide: **"[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."** 47 U.S.C. Section 271 (c)(2)(B)(i).

2. Standards For Review

112. In the Local Competition First Report and Order, the FCC concluded that interconnection referred "only to the physical linking of two networks for the mutual

exchange of traffic." Id. para.176. As such, the transport and termination of traffic is excluded from the FCC's definition of interconnection. Id.

Statutory Incorporation - Section 251

113. Section 251(c)(2) imposes, on incumbent LECs, the duty "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. Sec. 251(c)(2)(A). It further sets out three requirements for the provision of interconnection.

114. First, an incumbent LEC must provide interconnection "at any technically feasible point within the carrier's network." 47 U.S.C. Sec. 251(c)(2)(B) (emphasis added). Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate or any other party. 47 U.S.C. Sec. 251(c)(2)(C) (emphasis added). Third, the incumbent LEC must provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252." 47 U.S.C. Sec. 251 (c)(2)(D) (emphasis added).

115. Competing carriers may choose any method of "technically feasible" interconnection at a particular point on the incumbent LEC's network. Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements. The provision of collocation is an essential to demonstrating compliance with item 1 of the competitive checklist. In the Advanced Services First Report and Order, the FCC revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.

116. In response to a remand from the D.C. Circuit, the Commission adopted the Collocation Remand Order, establishing revised criteria for equipment for which incumbent LECs must permit collocation, requiring incumbent LECs to provide cross-connects between collocated carriers, and establishing principles for physical collocation space and configuration. Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, help the Commission evaluate a BOC's compliance with its collocation obligations.

117. To implement the "equal-in-quality" requirement in section 251, the FCC's rules require an incumbent LEC to design and operate its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within the incumbent LEC's network. In the Local Competition First Report and Order, the FCC identified trunk group blockage and transmission standards as indicators of an incumbent LEC's technical criteria and service standards. In prior

section 271 applications, the FCC concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations.

118. In the Local Competition First Report and Order, the FCC concluded that the requirement to provide interconnection on terms and conditions that are "just, reasonable, and nondiscriminatory" means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations. The FCC's rules interpret this obligation to include, among other things, the incumbent LEC's "installation time" for interconnection service, and its provisioning of two-way trunking arrangements. Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations

Statutory Incorporation - Section 252 (d)(1)

119. Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit. 47 U.S.C. Sec. 252 (d) (1) The FCC's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.

120. To the extent that pricing disputes arise, the FCC will not duplicate the work of the state commissions. As noted in the SWBT Texas Order, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law. Although the FCC has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel it to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the FCC's pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.

121. Consistent with the FCC's precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as:

(a) an interim solution to a particular rate dispute is reasonable under the circumstances;

(b) the state commission has demonstrated its commitment to the Commission's pricing rules; and

(c) provision is made for refunds or true-ups once permanent rates are set. Bell Atlantic New York Order, 15 FCC Rcd at 4091, para. 258.

122. In addition, the FCC has determined that rates contained within an approved section 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state. Although the FCC has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding. At some point, states will have had sufficient time to complete these proceedings. The FCC will, therefore, become more reluctant to continue approving section 271 applications containing interim rates. It would not be sound policy for interim rates to become a substitute for completing these significant proceedings.

3. The State Perspective

123. Interconnection allows competitive local carriers to connect their networks with the networks of incumbent local exchange carriers. Requiring interconnection reduces the cost of entering the local telephone market because competitors no longer have to duplicate the entire local network in order to serve the market. In 1995, this Commission found that "[t]echnically and economically efficient interconnection of incumbent LEC and new LEC networks is an essential predicate to the emergence of a competitive local exchange market." Order at 78, Docket 94-0096, Illinois Bell Telephone Company, Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois. (April 7, 1995).

124. The Commission addressed the basic rules of interconnection in its Administrative Code Part 790 adopted in Docket 92-0398. Order, Docket 92-0398, Illinois Commerce Commission On Its Own Motion, Development of a Statewide Policy Regarding Local Interconnection Standards. (April 6, 1994) Those rules were reviewed and updated in Docket 99-0511. Order, Docket 99-0511, Illinois Commerce Commission On Its Own Motion, Revision of 83 Illinois Administrative Code 790. (March 27, 2002).

125. One fundamental category of interconnection is collocation, i.e., the duty of the incumbent LEC to provide space within its facilities for competitive LECs to interconnect its equipment with that of the incumbent. The Commission addressed Ameritech's obligations regarding collocation in Docket 99-0615. Order, Docket 99-0615, Illinois Bell Telephone Company Proposed Expansion of Collocation Tariffs. (August 15, 2000).

126. In July of 2001, the Illinois General Assembly enacted Section 13-801 of the Public Utilities Act, which adopted interconnection requirements additional to those set out in the federal Telecommunications Act of 1996. The Commission addressed the requirements of Section 13-801 in Docket 01-0614. Order, Docket 01-0614, Illinois Bell

Telephone Company Filing to Implement Tariff Provisions Related to Section 13-801 of the Public Utilities Act. (June 11, 2002).

4. The Evidence, Arguments and Positions

a. Ameritech Showing of Compliance

Interconnection Trunking

127. Interconnection is the process, AI informs, whereby two carriers physically connect their networks so that an end user served by one carrier can call an end user served by the other carrier, and vice versa. The physical place where the two networks meet is referred to as the points of interconnection ("POIs").

128. Ameritech contends that it provides interconnection to competing carriers as required under Section 251(c)(2). Testimony in support of these assertions, was provided by AI witness Deere.

129. The FCC's rules, AI informs, require an ILEC to make any technically feasible form of interconnection available, including physical and virtual collocation and meet-point arrangements (where a CLEC's fiber optic cable is connected to the ILEC's fiber optic cable at a point between a CLEC's premises and an ILEC's tandem or end office). See 47 C.F.R. § 51.321(a)-(b). Ameritech contends that it makes all required forms of interconnection available pursuant to binding interconnection agreements. (Am. Ill. Ex. 5.0 Sch. WCD-1, ¶¶ 14-15). A CLEC can interconnect its network with Ameritech's network at any of the many points required by the applicable FCC rule, i.e., 47 C.F.R. § 51.305(a)(2), as well as at other technically feasible point upon request. (Id. ¶¶ 14, 23-24, 31). Further, CLECs, at their discretion, can obtain a single point of interconnection ("SPOI") per LATA, or may choose to interconnect at multiple points per LATA. (Id. ¶ 32).

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

Direct End Office Trunking

131. According to Ameritech Illinois, its network contains both "end" offices and "tandem" offices. Local switches, which connect end users to its network, are located in end offices. Tandem offices, on the other hand, contain tandem switches that route traffic between end offices, and are not directly connected to end users.

132. AI sets out the situation where a CLEC uses a SPOI in a LATA, and one of the CLEC's end users calls an Ameritech end user within that LATA. In this situation, AI explains, the CLEC's network carries the call to the SPOI. From the SPOI, the call is generally routed, or "trunked," to an Ameritech tandem office. Ameritech's tandem switch will then route the call to the appropriate end office, where the local switch routes the call to the end user.

133. A tandem switch however, AI notes, has a limited amount of capacity, i.e., it has only a limited number of "ports," where trunks can be connected. If all calls within a LATA were routed to one Ameritech tandem office, and if the volume of those calls were to exceed the tandem office's switching capacity, the tandem switches there would be "exhausted." Therefore, when the level of traffic from a SPOI that leads to a specific end office reaches a certain level, in the Company's opinion, sound engineering practice dictates that direct trunks be installed from the SPOI to the end office, in lieu of routing the traffic indirectly through the tandem switch. (See Am. Ill. Ex. 5.1 at 9-12; Am. Ill. Ex. 5.2 at 7).

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

135. Moreover, AI notes, this Commission expressly upheld the DS1 level threshold for direct end office trunking in the Ameritech Illinois/Verizon Wireless arbitration. Order at 6, Docket 01-0007. The Commission found that the threshold of one DS1 was reasonable, and adopted a requirement that Verizon establish direct end office trunking at that level. Id. at 7. In doing so, AI asserts, it further recognized that "tandem exhaust is a significant problem in Illinois." Id. at 6.

136. AI sees AT&T to assert that it should not bear the cost of transporting its own traffic (even though it collects revenue from its end users for such traffic) from the SPOI (at the tandem office) to Ameritech's end office. It is the Company's position, AI asserts, that AT&T, as the cost causer, should be responsible for the cost of this transport. This too, is nondiscriminatory by nature, as Ameritech bears the cost for using direct trunking in its own operations, and at a threshold level lower than that used for CLECs.

137. Further, AT&T's claim that it is entitled to free transport for direct trunking has nothing to do with the requirement that Ameritech offer a SPOI, contrary to AT&T's argument that the payment for direct end office trunking creates some kind of second, "virtual," interconnection point. A "single point of interconnection," AI maintains, refers only to the *physical* point at which two networks are connected. The FCC specifically held that "our rules . . . [require] that incumbent LECs provide for a single *physical* point of interconnection per LATA." Pennsylvania 271 Order ¶ 100. (Emphasis in original).

138. The FCC also found that issues of cost-sharing with regard to the use of a SPOI are irrelevant to checklist compliance, because "[t]he issue of allocation of financial responsibility for interconnection facilities is an open issue" which the FCC will address in a pending rulemaking. Id.; See also New Jersey 271 Order, ¶ 155 (finding that Verizon satisfied checklist item 1 by allowing "a competing carrier to interconnect at a single *physical* point in a LATA," notwithstanding allegations that Verizon had improperly shifted costs to interconnecting CLECs); and, Georgia & Louisiana 271 Order, ¶ 208 (holding that "unresolved intercarrier compensation issues" do not implicate compliance with checklist item 1). As Ameritech notes AT&T to admit, "a SPOI and trunking to several switches are not necessarily, and should not be, mutually exclusive." (AT&T Ex. 6.1 at 9). Even if AT&T must compensate Ameritech for the costs incurred in establishing direct trunking, AI argues, it can still obtain physical interconnection at a SPOI.

The Staff Issues on SPOI

139. Contrary to the assertions of Staff and AT&T, Ameritech contends that there is no SPOI issue in this case. As Ameritech witness Deere explains, there is no question but that it offers a *physical* SPOI. (Am. Ill. Ex. 5.1 at 1-9; Am. Ill. Ex. 5.2 at 2-5). The only dispute is whether Ameritech must provide free transport to and from that SPOI but, AI maintains, the FCC has consistently ruled that it will not address this issue in the context of a 271 proceeding. Pennsylvania 271 Order, ¶ 100 and n.341; Georgia & Louisiana 271 Order, ¶ 208. Equally significant, AI observes, is that the Commission's Order in Docket 01-0614 requires Ameritech to provide free transport to the SPOI and, while reserving all rights to challenge that decision, Ameritech has filed a compliance tariff to implement that decision.

The Staff's Transiting Claim

140. The Company notes Staff to allege that Ameritech does not accept local traffic from an interconnected CLEC when the CLEC is delivering local traffic that originated on some third party's network (a service Staff calls "transiting"). (Staff Ex. 3.0 at 47-52). While there is no requirement under Section 271 that Ameritech provide this specific service, it does accept such traffic and, in reality is unable distinguish it from direct traffic. (Am.Ill. Ex. 5.1 at 13).

141. In AI's view, Staff's real concern is directed toward form, and not substance. As such, Staff complains that Ameritech does not have an interconnection

agreement with any CLEC that "explicitly" requires it to accept such traffic. (Staff Ex. 20.0 at 66). But even if it wanted to, AI asserts, it would likely not be able to prevent CLECs from transiting traffic originated by a third party, because "realistically [Ameritech] would never know it was happening." (Tr. 196). Moreover, AI asserts, the Commission has already declined to require Ameritech to include such language in an interconnection agreement. Order at 35, Docket 01-0007. The Commission noted that Verizon Wireless (the carrier seeking such language) did not actually ask the Commission for authorization to transit, and had no concrete plans to transit traffic in Illinois. Similarly here, AI contends, Staff has not shown that any CLEC has plans to transit traffic in Illinois; and, in the event one did, Ameritech could not prevent it from doing so.

Collocation

142. In accordance with Section 251(c)(6) and the rules set out in 47 C.F.R. § 51.321, and 47 C.F.R. § 51.323, Ameritech maintains that it makes available, to CLECs, collocation of telecommunications equipment necessary for interconnection and access to unbundled network elements. ("UNEs") (See Am. Ill. Ex. 1.0 Sch. SJA-1, ¶ 13; Am. Ill. Ex. 5.0 Sch. WCD-1, ¶ 26). The Ameritech terms and conditions for collocation, the Company asserts, are provided in binding interconnection agreements and through its effective collocation tariff i.e., Ill. C.C. Tariff 20, Part 23, Section 4. (Am. Ill. Ex. 1.0 Sch. SJA-1, ¶ 13).

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

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

145. Where Ameritech must deny a CLEC's request for physical collocation because space is not available, it informs the CLEC by letter within ten days. (Id. ¶ 16). The Company also has modified its internal procedures to ensure that, if it denies collocation on the grounds that a CLEC's equipment fails to meet applicable safety standards, the FCC-required affidavit will contain all the information required by the Advanced Services Reconsideration Order, ¶ 57 (revising 47 C.F.R. § 51.323(b)). (Am.

Ill. Ex. 1.0 Sch. SJA-1, ¶ 47). Further, if space is not available to accommodate the CLEC's request, the CLEC may request a tour of the premises. (Id. ¶ 37). Consistent with 47 C.F.R. § 51.321(f), AI maintains, this tour is scheduled within five business days from the date that the CLEc's written tour request is received. (Am. Ill. Ex. 1.0 Sch. SJA-1, ¶ 37).

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

Space Reservation

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

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

149. "Virtual collocation", AI maintains, is available to CLECs regardless of the availability of physical collocation. (Am. Ill. Ex. 1.0 Sch. SJA-1, ¶ 48). Ameritech uses the same engineering practices for virtually-collocated equipment as it does for similar equipment of its own. (Id. ¶ 49). And, AI asserts, it will maintain and repair virtually-collocated equipment at the direction of the collocator using the same standards that it uses for maintaining and repairing its own equipment. (Id. ¶ 50).

Access to the Main Distributing Frame ("MDF")

150. According to AI, the CLECs have access to their physically collocated equipment 24 hours a day, seven days a week. Further, CLEC physical collocation space may be physically separated from Ameritech's equipment as contemplated by the FCC's collocation rules and orders. (Am. Ill. Ex. 1.0 Sch. SJA-1, ¶¶ 24-35, 46; Am. Ill. Ex. 5.0 Sch. WCD-1, ¶ 5). The "MDF," AI explains, is the facility within Ameritech's CO on which every customer line, trunk and circuit is terminated as it enters the CO. (Am. Ill. Ex. 1.1 at 19-20). These lines, trunks and circuits are then cross-connected to either Ameritech's switch (for switched services), an Ameritech interoffice facility (for dedicated services) or to a facility which connects them to a CLEC's collocation equipment. According to the Company, the MDF is owned by Ameritech, is located in its space in the CO, and essentially constitutes the "heart" of the network. (Am.Ill. Ex. 1.1 at 20).

151. AI observes AT&T, McLeodUSA/TDS and RCN to contend that their technicians should be permitted to access the MDF directly, on grounds that such access is required to perform necessary maintenance functions, to test their lines, to verify dial tone and perform other functions. (MTSI/TDS Ex. 1.0 at 16-18; AT&T Ex. 6.0 at 26-29; RCN Ex. 1.0 at 3-5). The CLECs view Ameritech's policy, requiring them to use approved third party vendors to perform work in its space in the CO, as cumbersome and as causing CLEC customers to be without service for an extended period of time. (Id).

152. Ameritech maintains that it has no obligation to provide collocating CLECs access to the MDF. The FCC, it notes, has made clear that "protection of their [ILECs'] equipment is crucial to the incumbents' own ability to offer service to their customers." ASO, ¶ 48; See also Advanced Services Remand Order, ¶ 102. In the Texas 271 Order, AI asserts, the FCC found that SWBT's collocation tariff satisfied the checklist, even where that tariff expressly prohibited CLEC access to the MDF. (Am. Ill. Ex. 1.1 at 17).

153. Since access to the MDF is not required, Ameritech maintains that its third party vendor policy is a necessary, practical and reasonable way to give CLECs the ability to perform work such as testing and maintenance functions outside their collocation space. According to AI, third-party vendors must be certified by the Company. In this way, Ameritech ensures that all technicians who work on its network facilities are properly trained and insured, and will not harm the facilities of Ameritech or other CLECs whose facilities terminate on the MDF. (Am. Ill. Ex. 1.1 at 19; Tr. 1332-33, 1424-25). This approach also limits the absolute number of people working in confined CO space, which further reduces the potential for trouble reports and service outages for all customers. (Am. Ill. Ex. 1.1 at 14; Tr. 1424, 1427).

154. Contrary to the CLECs' contentions, AI asserts, the third-party vendor policy is not overly cumbersome and does not result in excessively long service outages. Ameritech's technicians will assist CLECs in troubleshooting service outages

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

Path Star Equipment

155. AI notes McLeodUSA's complaint that Ameritech improperly denied its request to collocate certain equipment known as "Path Star" in Ameritech's CO. (McLeodUSA Ex. 3.0 at 2-3). Ameritech, however, has been unable to locate any records of an actual application by McLeodUSA to collocate such equipment. (Am. Ill. Ex. 1.1 at 25). In any event, it asserts, the FCC made clear in its Advanced Services Remand Order (¶ 48) that ILECs are not required to allow collocation of "traditional circuit switching equipment." According to AI, the Path Star equipment constitutes traditional circuit switching equipment. (Am.Ill. Ex. 1.1 at 25-26).

Adjacent Collocation Intervals

156. AI sees McLeodUSA to allege that Ameritech is obligated to provide adjacent collocation within a 90-day time frame. (McLeodUSA Ex. 3.0 at 3-4).[3] Adjacent collocation, AI maintains, is not subject to standard provisioning intervals. In the Collocation Waiver Order (¶ 14), it notes, the FCC concluded that a New York collocation tariff was generally consistent with its goals, even though that tariff did not establish standard intervals for adjacent collocation. According to AI, adjacent collocation is a sufficiently unique arrangement such that additional engineering work is likely to be required beyond what is contemplated by the standard 90-day collocation interval for physical collocation. Thus, AI contends, it should be dealt with in the same manner as "Raw Space." This Commission, AI notes, approved provisions for raw space preparation in Ameritech's collocation tariff in Docket 99-0615. (Am. Ill. Ex. 1.1 at 26-27).

157. Under the FCC's rules, AI observes, adjacent collocation is essentially a "last resort" physical collocation arrangement. That is, an ILEC is required to provide adjacent collocation only when physical collocation space is legitimately exhausted

[3] When space is legitimately exhausted, CLECs may physically collocate in adjacent controlled environmental vaults or similar structures outside of the CO that Ameritech uses to house telecommunications equipment, to the extent technically feasible. Am. Ill. Ex. 1.0 Sch. SJA-1 at 18-19.

(*e.g.*, where the office is "closed" to physical collocation and posted on the Company's website as such). No Illinois CLEC, including McLeodUSA, has ever requested adjacent collocation, according to Ameritech Illinois. (Am. Ill. Ex. 1.1 at 26).

Collocation Pricing

158. AI observes both Staff and AT&T to contend that Ameritech's prices for collocation are not permanent and, therefore, do not comply with the FCC's TELRIC pricing rules. (Staff Ex. 5.0 at 6-7; AT&T Ex. 3.0 at 13-15). In the Company's opinion, Staff and AT&T are incorrect. Ameritech's tariffed collocation rates were investigated in Docket 99-0615 where the tariffed rates in effect today were ordered by the Commission. Order at 23, 27, Docket 99-0615. And, AI notes, these were affirmed on appeal. Illinois Bell Telephone Co. v. Illinois Commerce Comm'n, 327 Ill. App. 3d 768 (3d Dist. 2002).

159. While the Commission originally designated certain of these rates as "interim," pending review of revised cost studies which the Company was ordered to file, such have now been in effect for more than two years without further Commission action. As a result, and according to AI, the Company considers them to be de facto permanent rates. (Am.Ill. Ex. 10.1 at 8-9). Even if one where to accept Staff's characterization of the rates as "interim," AI notes that the FCC accepts interim rates in Section 271 application proceedings.

160. Staff also expresses concern that the collocation rates in Ameritech's Generic Interconnection Agreement ("GIA") differ from those in the tariff. (Staff Ex. 5.0 at 10-11). This is not a Section 271 issue, AI contends, in the Company's opinion, it is not under any FCC obligation to conform the rates in its GIA to the rates in its tariffs. The GIA is simply an "offer," AI asserts, that CLECs are not obligated to accept. A CLEC that wishes to obtain collocation under the rates ordered by the Commission in Docket 99-0615 can take service under tariff or opt into those portions of another carrier's interconnection agreement that contains those rates. (Am.Ill. Ex. 1.1 at 27-28).

161. Under Section 252(a)(1), Ameritech asserts, parties may negotiate rates in an interconnection agreement without regard to filed tariffs or even TELRIC standards. In any event, the rates in the GIA reflect an updating and restructuring of collocation rates that took place in 2001. According to AI, these provide CLECs with an optional, consistent 13-state product offering and rate structure that may be of value to multi-state CLECs. This structure, AI maintains, also provides new provisions and rate elements that enable CLECs to manage more of their own collocation work (*e.g.*, designating vendors for the placement of cabling). (Am. Ill. Ex. 10.0 at 9-10). Nothing in the federal Act or any of the FCC's Section 271 orders, AI contends, precludes an ILEC from offering CLECs alternative terms and conditions for wholesale products.

b. WorldCom Issues/Position

Interconnection Pricing

162. With respect to pricing generally, WorldCom contends that Ameritech has failed to demonstrate that all of its prices are TELRIC compliant or that rates have been established for all of its offerings. Therefore, WorldCom argues, Ameritech is not in compliance with the pricing requirements of the Act. Further, WorldCom expresses its concern that Ameritech may attempt to change those rates in the near future. For this reason, as well as other reasons, WorldCom argues that Ameritech's existing UNE rates should be capped for a period of up to five years to ensure rate certainty. It notes that AT&T and Staff have taken similar positions.

163. According to WorldCom, the record here suggests that Ameritech will seek increases to those rates in the near future. WorldCom notes Ameritech witness Johnson to claim that under the existing TELRIC rates the Company does not recover all of its costs and to express a concern within Ameritech to ensure that it recover its costs. (Tr. 922). WorldCom also points out that Ameritech filed new cost studies supporting updated UNE rates in response to the Commission's order conditionally approving the SBC/Ameritech merger. Both WorldCom Late-Filed Exhibits 1 and 2, it claims, provide an indication of the magnitude of rate increases Ameritech considered appropriate as of April 6, 2000, when it filed the cost studies supporting its Post Merger rates.

164. According to WorldCom, the Commission can determine that existing TELRIC rates should be capped for a period of not less than five years on the basis that the telecommunications industry is a declining cost industry and the synergies from the SBC/Ameritech merger should further ensure that shared and common costs are going down. The five-year cap, WorldCom suggests, would be roughly commensurate with the time it took to complete the TELRIC Compliance Proceeding, Docket 98-0396, plus the time it will take to complete the new investigation of nonrecurring charges for new UNE combinations. It is also WorldCom's position that the Commission should require Ameritech to withdraw its appeals of the Commission's TELRIC Order and its TELRIC Compliance Order. These solutions, WorldCom argues, would provide certainty with respect to TELRIC rates for some time to come.

c. Staff Issues/Position

Third Party Terms and Conditions of Interconnection

165. Staff puts into issue Ameritech's policy of not accepting third party local traffic delivered to it by an interconnected carrier. Transiting service (or "transiting"), Staff informs, allows one party to send telecommunications traffic to a third party network through the other party's tandem or functionally similar facilities. (ICC Staff Ex. 3.0 at 47). An example that Staff puts forth is the situation where two CLECs are interconnected with Ameritech, but not with one another. If a customer of one of the

CLECs places a local call to the customer of the other CLEC, it is common for the calling party's carrier to deliver the traffic to an Ameritech tandem. Ameritech will then switch the call at its tandem and transport the call to the called party's carrier. In this case Ameritech does not originate or terminate the call, it merely provides "transiting" service. (Id. at 47-48).

166. According to Staff, neither federal nor state rules permit Ameritech to refuse traffic from or refuse to send traffic to a party if that traffic does not terminate or originate with that party. Section 251(a)(1) of the 1996 Act, Staff notes, requires Ameritech to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1). Nothing in the Act or FCC rules relieves Ameritech of this obligation to interconnect with telecommunications carriers that provide interoffice transport, including transiting of third party local exchange and exchange access service.

167. Staff notes Mr. Deere to clearly state that "Ameritech Illinois can and does" accept third party local traffic from interconnecting carriers." (Id.). In his surrebuttal account, however, Mr. Deere testified that "[t]his appears to be more of a theoretical issue and not the type of interconnection issue that should be part of a 271 checklist compliance docket." (Am.Ill. Ex. 5.2 at 9). According to Staff, Mr. Deere further confused the issue, stating that, regarding CLEC transiting of traffic, "[a]s far as I know no one does that. Just realistically we could never know it was happening." (Tr. 196). Staff expresses some confusion with this account.

168. In Staff's opinion, the only credible evidence regarding Ameritech's policy on accepting third party local traffic from interconnecting carriers in this proceeding is that Verizon Wireless attempted to include terms permitting it to send Ameritech traffic carried for third party providers and the Company effectively blocked it from including such terms. (*See* Staff Ex. 3.0 at 48). In Staff's view, this demonstrates that Ameritech does not provide interconnection in compliance with the requirements of Section 271.

Single Point of Interconnection

169. Under Section 251 of the Act, Staff contends, Ameritech is required to offer carriers a SPOI in each LATA that it serves. In the Texas II 271 Order, Staff sees the FCC to state:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. The incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible. Id. at para. 78.

170. Similarly, Staff notes Section 13-801(b)(1) of the PUA to provide, in relevant part, as follows:

> An incumbent local exchange carrier shall provide for the facilities and equipment of any requesting telecommunications carrier's interconnection with the incumbent local exchange carrier's network on just, reasonable, and nondiscriminatory rates, terms, and conditions:
> **...**
> (B) at any technically feasible point within the incumbent local exchange carrier's network; however, the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA. 220 ILCS 5/13-801(b)(1).

171. On June 11, 2002, Staff observes, the Commission ordered Ameritech to provide CLECs with the option of electing as little as one POI per LATA for the purposes of exchanging local traffic and permitting CLECs to elect a compensation scheme where each carrier is responsible for transport costs on its own side of the POI. Order at 105-106, Docket 01-0614. Ameritech has dutifully tariffed this option and, currently has tariffed POI rates, terms, and conditions consistent with those that Staff has recommended as necessary for Section 271 compliance.

172. According to Staff, however, Ameritech's GIA terms and conditions fail to comply with FCC requirements and Section 13-801(b)(1)(B) by requiring carriers to interconnect at multiple POIs in each LATA. In circumstances in which Ameritech permits carriers to physically connect at a SPOI, it imposes financial conditions on carriers that impair, if not preclude, then from providing their desired services using a SPOI. Thus, even where Ameritech permits carriers to physically connect at a SPOI, it imposes financial conditions that fail to comply with Section 13-801(b)(1)(B) by effectively requiring carriers, with respect to financial conditions, to interconnect at multiple POIs in each LATA.

Collocation – State Issues

173. Staff maintains that Ameritech had not adequately addressed the collocation issues that it views as pertinent to obtaining Section 271 approval, to wit:

> (a) Ameritech imposes inappropriate restrictions on the types of equipment permitted for collocation in its COs in contravention of Section 13-801;
>
> (b) Ameritech fails to make available adequate collocation restriction information in contravention of the Order in Docket 99-0615;

(c) Ameritech fails to permit cross-connections between collocated carriers and non-collocated carriers in contravention of Section 13-801(c); and

(d) Ameritech fails to comply with the Orders in Dockets 99-0615 and 01-0623 regarding "power cabling" for physical and virtual collocation sites.

174. With respect to certain collocation matters, Staff believes AI to contend that Section 13-801(c) should not be linked to Section 271 relief because it is not a federal requirement. More specifically, Ameritech is seen to argue that the FCC has not imposed the Section 13-801 collocation equipment requirements on Section 271 applicants and therefore, this issue is not appropriate for this proceeding. (Am. Ill. Ex. 1.2 at 31-32). Staff disagrees.

175. The collocation obligations addressed by Section 13-801(c) of the PUA are, in Staff's view, integral to the interconnection issues of the competitive checklist. According to Staff, collocation protections, even if state-imposed, are still appropriate to the Commission's investigation of AI's interconnection obligations under Section 271. Therefore, Staff recommends that Ameritech be required to amend its collocation provisioning procedures and processes to meet the requirements of the Commission's Order and Section 13-801.

Collocation Restrictions – Types of Equipment

176. In its ASO Order, Staff comments, the FCC revised its collocation rules to require ILECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings. Staff maintains that Ameritech's obligations have been modified by the requirements enumerated in Section 13-801(c) of the PUA. During the pendency of this Section 271 proceeding, Staff informs, the Commission considered the impact of Section 13-801(c) upon Ameritech's collocation restrictions and, on May 8, 2002, entered its Order in Docket 01-0614. This order, Staff contends, mandates that Ameritech satisfy the requirements of Section 13-801(c) by allowing CLECs to collocate "any type of equipment for interconnection or access to network elements at the premises of the incumbent local exchange carrier on just, reasonable and non-discriminatory rates." Id. (emphasis added).

177. The Docket 01-0614 Order, Staff informs, also required Ameritech to file a compliance tariff "within thirty days of its service." Id. at 178. And, Ameritech filed a compliance tariff that Staff is currently reviewing. Assuming that Ameritech agrees with Staff's interpretation of the *Order*, the only remaining concern is the Company's compliance with its terms

Cross-Connections

178. The Order in Docket 01-0614, Staff maintains, implements the PUA's Section 13-801 collocation requirements. Ameritech must comply with the Commission's findings in that docket which, it explains, sets out new collocation requirements that are in addition to, the FCC's requirements.

Collocation Rates

179. It is settled, Staff contends, that Ameritech must offer collocation at TELRIC-compliant rates. In Staff's view, the Company has just barely done so, even as it would not be difficult. Staff recognizes Ameritech to have indeed filed collocation tariffs in Illinois. (Am. Ill. Ex. 10.0 at 2; Staff Ex. 5.0 at 5). According to Staff, however, the Commission determined that rates contained in those tariffs did not comply with TELRIC principles, inasmuch as the cost studies supporting them substantially overstated costs. (Staff Ex. 5.0 at 7). Consistent with this finding, Staff observes, the Commission ordered Ameritech to "file new cost studies based on an efficient, forward-looking environment consistent with our conclusions herein within 60 days of the effective date of this Order." Id. at 26.

180. Ameritech filed a cost study to comply with this directive, Staff notes, but did not revise its tariffs, and therefore the investigation contemplated by the Commission did not occur. (Staff Ex. 5.0 at 7). Thus Staff observes that interim rates remain in effect. According to Staff, however, the FCC has determined that, for Section 271 purposes, TELRIC compliant rates need not be permanent:

> Consistent with the Commission's precedent, the mere presence of interim rates will not generally threaten a section 271 application as long as the (1) an interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to the Commission's pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set. Verizon Connecticut 271 Order, App. C, ¶22

181. In Staff's view, Ameritech's collocation rates are in technical compliance with the letter, if not the spirit, of Section 251. Full compliance, in Staff's view, would require that Ameritech file rates based upon its cost study as this will enable the Commission to evaluate its rates and cost study, and establish permanent rates.

d. AT&T Issues/Position

Rates

182. As Ameritech's current tariffed rates for cageless and shared cage collocation are only interim in nature, such are not, in AT&T's view, TELRIC-compliant. In Docket 99-0615, it notes, the Commission considered Ameritech's pricing proposals for cageless and shared cage collocation, stating in the end that, "while we realize they are not perfect, we will adopt Staff's recommended rates." Order, Docket 99-0615.

183. While having adopted the interim rates proposed by Staff, AT&T observes that the Commission's anticipation of another docket "to more fully examine the cost studies relating to the pricing of services supporting collocation." Id. As such, AT&T argues, it cannot be maintained that AI's rates for all of its collocation services, including the numerous rate elements for shared cage and cageless collocation, are TELRIC-compliant.

Opt In Requirements

184. Section 252(i) of the Act, AT&T explains, sets out what has come to be known as the "opt in" rule. It allows CLECs to "opt in" to particular provisions of other carriers' interconnection agreements. AT&T focuses on two instances showing Ameritech's noncompliance with Section 252(i).

185. At the outset, AT&T contends, Ameritech refuses to allow CLECs to opt in to the reciprocal compensation provisions of existing interconnection agreements entered into even after the date the FCC issued its ISP Order. (Staff Ex. 3.0 at 33-34; AT&T Ex. 3.1 at 13). Ameritech does not dispute this fact, AT&T contends, and its witness Alexander clearly admitted that CLECs cannot opt in to reciprocal compensation provisions in other carriers' agreements in Illinois, even if those provisions post-date the FCC's ISP Order. (Tr. 1604).

186. Another example of Ameritech's failure to allow CLECs to opt in to the provisions of other carriers' agreements came to light, AT&T contends, when Mr. Alexander was asked whether a CLEC could opt into Section 5.7.2 of the Ameritech Illinois/McLeodUSA interconnection agreement pursuant to Section 252(i). According to AT&T, Section 5.7.2 provides that if Ameritech has approved tariffs on file for interconnection or wholesale services, solely in its discretion, a CLEC may purchase Ameritech services from its interconnection agreement and/or the approved tariffs. AT&T notes Ameritech to have submitted an on-the-record data request response (see WorldCom Late-Filed Ex. No. 3) indicating that a CLEC could not opt in to Section 5.7.2. This position, AT&T argues, is in direct violation of Sections 252(i), and 251(c)(2) of the Act.

Access to the CFA - Collocation

187. The record in this proceeding, AT&T contends, establishes that Ameritech does not provide CLECs access to the CFA at parity with the manner in which Ameritech may access it. Moreover, AT&T argues, Ameritech discriminates against CLECs in approving vendors for access.

188. CFAs, AT&T explains, are the basic interconnection points where ILECs connect their wires to a CLEC's network. In the Ameritech region, the CFAs for individual end users refer to wire cross connects on wiring blocks at the Main Distribution Frame ("MDF") in the local CO. The MDF is where all the wires from the street terminate within the CO. In order for a CLEC to order a UNE loop, the CLEC must have a wiring block on the MDF with copper wires connected back to its collocation space.

189. Mr. Noorani testified that the key to addressing many CFA problems is testing the wiring between the AT&T collocation space and the MDF. In the Ameritech region, there are significant restrictions on completing such tests because CLECs generally are responsible for completing such testing themselves, and Ameritech severely limits CLEC access to the MDF.

190. AT&T's experience has been that DSLAM to MDF testing is the key to resolving a majority of problems. This requires the ability to test the wiring between the collocation space and the MDF, i.e., from the back of the DSLAM where the wires from the MDF are hard wired to the back of the MDF connection block. Without the ability to conduct such tests, it is difficult, if not impossible, to determine the root cause of a CFA problem, even though that cause may prove to be unrelated to the wiring.

191. Testing is often the only way to understand what the CFA problems are, but, AT&T contends, Ameritech imposes strict limitations on CO-CFA testing. Generally, the CLEC is responsible for fixing any defects in the wiring between the CLEC's collocation cage and the MDF. While CLECs have 24-hour/7 day access to their collocation space, they have no right to access the MDF. AT&T can request an escort ticket to look at the MDF, but it is not permitted to conduct tests or touch any of the wiring. In order to test the wiring between the MDF and its DSLAM, AT&T asserts, a CLEC must hire a third party Ameritech approved contractor to arrange an appointment at the CO to conduct the tests.

192. It takes time, AI complains, to hire an approved contractor and to schedule a acceptable time to conduct the tests. In the meantime, AT&T may be forced to stop ordering service at the affected CO because of a bad CFA. By contrast, Ameritech has full access to COs and can conduct such tests as the need arises. The requirement to hire outside third parties to remedy a situation that an in-house AT&T technician could

resolve is an unnecessary expense. This is particularly true when contrasted to Ameritech's ability to use its own technicians when it needs to do so, AT&T contends.

POI Policy

193. One difficulty with Ameritech's POI policy, AT&T asserts, is that in order for a CLEC to serve a LATA, the CLEC must first interconnect with Ameritech and establish a POI in the Ameritech *serving area* of the LATA. Specifically, Ameritech witness Deere states "if a CLEC only desired to compete in the operating area of another ILEC within a shared LATA, it would not make sense for Ameritech Illinois to request that CLEC to also interconnect with Ameritech Illinois." (Am. Ill. Ex. 5.0 at 5). When a CLEC offers service in a LATA, however, it may get customers that sign up for its services in any geographic portion of the LATA. The geographic location of the CLEC customers in the LATA should not force the CLEC to interconnect with multiple service providers in the LATA and to establish multiple POIs in the LATA.

194. AT&T does not dispute that each carrier is responsible for delivering its originating traffic to the POI. Between the originating customer and the POI, it notes, the costs of delivery are identified as the origination costs, and the facilities that bring the traffic to that point are the interconnection facilities. From the POI to the terminating customer, the other carrier must assume operational responsibility to take that traffic to the designated end user and the originating carrier must pay the terminating carrier for the costs of that carriage. These costs associated with the terminating side of the POI are generally known as the termination costs.

195. If the call is local, AT&T comments, the originating carrier compensates the terminating carrier for that delivery pursuant to reciprocal compensation obligations as set forth in Section 251(b)(5). If the call is not local, then access charges rather than reciprocal compensation charges apply. The issue here involves the carrier's obligations with respect to local calls. Thus, by selecting a particular POI location, a carrier affects both the amount of reciprocal compensation it pays the other party and its own network costs.

196. The Act and FCC orders AT&T argues, provide that new entrants may interconnect at any technically feasible point. Specifically, Rule 51.305(a)(2) obligates Ameritech to allow interconnection by a CLEC at any technically feasible point. In its *Local Competition Order* AT&T observes, the FCC explained:

197. The interconnection obligation of section 251(c)(2)… allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic. Id. at para 172.

> Thus, AT&T observes, Section 251(c)(2) gives the CLEC the right to select where it wants to interconnect, thereby enabling it to establish, if it wishes, as little as one POI per

> LATA. This rule allows a single switch presence per LATA and enables new entrants to grow their business economically without having to duplicate the ILEC's existing network.

198. According to AT&T, the FCC has been clear in its support of a CLEC's right to choose where it wants to interconnect. It has consistently applied Section 251(c)(2) to prevent ILECs from increasing CLECs' costs by requiring multiple POIs. In its Texas 271 Order at ¶ 78, the FCC emphasized, that this provision gives competing local providers the option to interconnect at even only one technically feasible point within each LATA.

199. Moreover, the FCC has found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, so sufficiently clear and compelling that the FCC has itself intervened in court reviews of interconnection disputes to make that very point. For example, in an interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires a competing carrier to "interconnect in the same local exchange in which it intends to provide local service." The FCC, AT&T notes, stated that:

> Nothing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition. Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (No. CV 97-1575-JE) (D. Or. 1998).

200. In sum, AT&T argues, the FCC and numerous state commissions have consistently interpreted the Act to allow CLECs to interconnect at a single technically feasible POI chosen by the CLEC.

Direct End Office Trucking

201. AT&T takes issue with Ameritech's position on direct end office trunking - that every time the traffic between a CLEC switch and an Ameritech end office reaches the level of "1 DS1" the CLEC should establish direct end office trunking to that end office. Ameritech's rationale, AT&T notes, is that this helps avoid tandem exhaust in its network and the need to establish additional tandems due to the volume of CLEC traffic. (Am. Ill. Ex. 5.0, at 3-4). AT&T objects to Ameritech's position because it is contrary to AT&T's' right to select the locations at which it interconnects with Ameritech's network.

202. There are limits on a CLEC's ability to request interconnection, AT&T acknowledges, but the burden is on the ILEC, to prove that such limits should be imposed. The applicable standard, AT&T asserts, is the technical feasibility standard and this standard sets the bar very high. The FCC has stated that in order for an ILEC to justify refusal to provide interconnection or access at a point requested by another carrier, it ". . . must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access." Local Competition Order, ¶ 203.

203. According to AT&T, Ameritech has made no such showing of a "significant adverse impact" in this proceeding. Moreover, its position requiring AT&T to forfeit its right to interconnect at any technically feasible point on Ameritech's network if the traffic volume reaches "1 DS1's worth of traffic" is an extreme solution for a single spike in traffic volume.

204. In AT&T's view, proper forecasting and the deployment of additional tandem switching capacity can avoid tandem exhaustion. Even if Ameritech must bear the cost to deploy additional tandem capacity in its network to accommodate interconnection at its tandem switches, that increased cost does not meet the "significant adverse impact" standard established by the FCC. Indeed, AT&T notes, the FCC has acknowledged that ILEC interconnection obligations may require ILECs to modify their network to accommodate interconnection in its *Local Competition Order*, ¶ 202:

> Thus, it is reasonable to interpret Congress's use of the term "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely "practical" or similar to what is ordinarily done. That is, use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. *If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated.*

205. The FCC has allowed CLECs the right to interconnect at any feasible point in the ILEC's network. By forcing them to go to the end office rather than terminate at the tandem, AT&T contends, Ameritech is placing arbitrary limits upon this important CLEC right.

Transit Traffic

206. AT&T notes Ameritech to take an almost identical position on transit traffic as it does on direct end office trunking. (Am. Ill. Ex. 5.0, at 4). When traffic between a CLEC and another third party carrier reaches one DS1, Ameritech demands that the CLEC establish direct trunking to that third party carrier rather than using the already established trunking between Ameritech's tandem and such other carrier for transiting.

207. The transit service at issue here AT&T contends, is the tandem switching and common transport provided by Ameritech for the exchange of local and intraLATA toll traffic between AT&T and LECs other than Ameritech, such as other CLECs and ICOs. Ameritech claims that is not required to carry transit traffic. Therefore, if AT&T does not implement direct trunking with certain carriers after a particular traffic threshold is met, Ameritech proposes to terminate the provision of tandem services between AT&T and that carrier. To the contrary, Ameritech has an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers.

208. According to AT&T, Ameritech is required, pursuant to Section 251(c)(2)(A), to interconnect with carriers for transit and routing of telephone exchange service and exchange access. The statute does not limit this duty solely to traffic between AT&T and Ameritech. Moreover, the imposition of a capacity restriction violates Ameritech's obligation to interconnect under the Act because it takes away AT&T's right, pursuant to Section 251(a)(1), to interconnect indirectly with the facilities and equipment of other carriers. In addition, the Commission has already ordered Ameritech to tariff and provide transiting in its Order in Dockets 96-0486/0569, and without the DS1 restriction Ameritech desires to impose. So too, AT&T contends, the imposition of a capacity restriction also violates Ameritech's Section 251(c)(2)(B) obligations to provide interconnection at any technically feasible point.

209. To the extent there is any merit to its concerns, AT&T suggests that Ameritech can avoid tandem exhaustion through proper forecasting and deployment of additional tandem switching capacity. Even if Ameritech must bear the cost to deploy additional tandem capacity to its network to accommodate indirect interconnection at its tandem switches, that does not meet the "significant adverse impact" established by the FCC. Ameritech's rates for tandem interconnection fully compensate it for its forward-looking costs to deploy additional capacity, AT&T argues.

e. RCN Issues/Position

Access to the CFA

210. According to RCN, Ameritech has refused to provide the CLECs with nondiscriminatory, direct access to the Connecting Facility Assignment ("CFA") for purposes of testing their lines, verifying dial tone and performing other necessary

functions. Ameritech does not dispute this fact, RCN notes, but relies on unsupported security concerns and further states that because the FCC and other state commissions have not required access to the CFA, it is not required to provide such access. Section 251(c)(6), RCN contends, requires Ameritech to provide CLECs with nondiscriminatory access to collocation, including access to the CFA.

211. The CFA, RCN explains, is the Ameritech-designated connection point between the CLEC and Ameritech networks. As Ameritech witness Scott J. Alexander stated, "[t]he CFA is a term used to describe the arrangement whereby a terminal block on Ameritech Illinois' main distributing frame (MDF) is assigned as the point of connection for CLECs' collocation cable." In other words, the CFA, located on the MDF, is the designated demarcation point. Thus, while Ameritech and other parties might not agree on the precise term, they do agree that there is a point on the network at which Ameritech's facilities and the CLEC's facilities connect.

212. RCN and other parties (including AT&T and McLeod) provided evidence of the importance to CLECs of access to the CFA. As RCN noted, a CLEC requires access to the CFA in order to properly test its facilities connected to the CFA, to verify dial tone, and, when a trouble event arises, to identify in whose network the trouble resides in order to determine who is responsible for fixing the end user's line. The ability to perform these functions is essential in order for a CLEC to provide adequate service to its customers and to ensure proper allocation of the costs of maintaining the facilities.

213. RCN maintains that CLEC access to the CFA is imperative for trouble resolution. According to RCN, the location of trouble in a circuit determines which party is responsible for the costs of identifying, isolating and correcting the problem and testing at the CFA is a necessary part of this process. For example, if testing indicates that the trouble originates on Ameritech's side of the CFA, Ameritech is responsible for repairing the problem. On the other hand, if the problem exists on the CLEC side of the CFA, the CLEC is responsible for correcting the problem. Without the ability to test at the CFA, a CLEC must rely on Ameritech's judgment, not only to perform the testing, but also to determine in whose network the trouble resides. A CLEC that cannot perform its own testing is left without any independent means to assess whether Ameritech's analysis of financial responsibility is correct.

214. RCN notes Ameritech to suggest that certain unspecified security concerns weigh against providing CLECs with direct access to the CFA. If security is really an issue, RCN contends, Ameritech has not adequately demonstrated its concerns.

215. According to RCN, if Ameritech is concerned with the "security" of its networks, access to network and connections, it should have the same concerns with allowing "escort" tickets to CLECs in virtual collocation arrangements: Yet, it apparently does not. Because Ameritech permits such access with respect to virtual collocation arrangements, RCN notes, its security concerns with respect to direct access to the

CFA, are not warranted. Indeed, RCN argues, Ameritech could and should be required to adopt the escort processes it utilizes for virtual collocation arrangements for visits to the CFA. This would enable Ameritech to address its alleged security concerns while at the same time permitting CLECs critical access to the CFA for testing and other purposes.

216. According to RCN, Ameritech conceded that its decision to not permit access to the CFA does not arise from any new or previously unknown security concerns, but on a strengthening of its existing security policies, where, at least in some circumstances, Ameritech had previously allowed CLECs to directly access the CFA/MDF. In RCN's view, Ameritech has not demonstrated that there are new security concerns that would warrant prohibiting CLECs access to the CFA.

217. RCN sees Ameritech to also claim that its CFA reports are an adequate substitute for direct access to the CFA. In RCN's view, these CFA reports do not serve the same purpose as direct access to the CFA. According to RCN, these reports only provide confirmation of the location of the CFA and nothing more. They do not enable a CLEC to test the line, verify dial-tone or isolate trouble in the line. Only direct access to the CFA can provide these functions, RCN maintains.

218. RCN further sees Ameritech to assert that it should be not required to provide CLECs with access to the CFA because the FCC and other state commissions have not required it to do so. The absence of a mandate to provide access is not in RCN's view, a legal basis for refusing to provide access. Ameritech has a general obligation to provide nondiscriminatory access to collocation, which necessarily includes access to the CFA. RCN maintains that the Commission should not accept such a no one else has ordered us to do itso it must not be necessary, argument.

Accurate Wholesale Bills

219. RCN submitted evidence of inaccuracies and other problems with Ameritech's wholesale bills, including improper charges for high-capacity circuits and failure to process disconnect requests and cease billing for disconnected circuits. RCN sees Ameritech to claim that these matters are not properly raised in this proceeding as they concern special access issues, which is not part of the Section 271 analysis. The issues RCN raised in its testimony point out deficiencies in Ameritech's billing systems that cover the facilities used for both UNE and special access services. At least one state commission has addressed similar issues in the context of Section 271 proceedings, and RCN argues this Commission should also do so in this case.

220. In this regard, the Commission should consider its obligation to ensure that Ameritech's filing meets not only the Checklist requirements, but that grant of its application would also be in the public interest.

f. McleodUSA Issues/Position

Negotiation Process

221. McLeod complains of the difficulties it experienced in agreement negotiations with Ameritech. Its witness, Joy Heitland, testified that the negotiations were delayed owing to Ameritech Illinois' lead negotiator being unfamiliar with McLeod's existing Resale Agreements. So too, there was confusion as to whether a Hosting Agreement was necessary, causing more time to be wasted.

222. Another problem, McLeod contends, arose because the Ameritech negotiator had little discretion to deviate from the template agreement and no authority to make final decisions on law, policy, or operations. To the extent that Subject Matter Experts (SMEs) need to make final decisions, McLeod believes AI should have these individuals present at the negotiations. Finally, McLeod argues, the version of the agreement filed by Ameritech for the arbitration had large numbers of language changes that were not made known to McLeod during the negotiations. This experience leads McLeod to contend that AI has no processes in place to enable good faith CLEC negotiations.

5. The Reply Positions

a. Ameritech Illinois Reply Position

Location of Point of Interconnection

223. AI notes AT&T to assert that "one glaring problem" with Ameritech Illinois' interconnection agreements is that they require a CLEC to establish a point of interconnection "in the Ameritech Illinois *serving area* of the LATA." (AT&T Br. at 60 (emphasis in original)). This assertion has no merit, AI contends, because as AT&T itself notes, section 251(c)(2)(B) states that an ILEC is to provide interconnection "at any technically feasible point *within the carrier's network*." 47 U.S.C. Section 251 (c)(2)(B). (Emphasis added.) Similarly, AI points out, the relevant FCC rule, 47 C.F.R. § 51.305(a)(2), requires that the point of interconnection be established at "any technically feasible point *within* the incumbent LEC's network." (Emphasis added).

224. Ameritech Illinois' interconnection agreements, the Company maintains, implement this requirement. AI further emphasizes that a point of interconnection located outside the ILEC's service territory is not "within" the ILEC's network, and thus, there is no basis for requiring Ameritech Illinois to establish a point of interconnection outside of its service territory.

Direct End Office Trunking

225. AI responds to AT&T's assertion that Ameritech Illinois' policy of requiring CLECs to establish direct trunks to end offices whenever the level of traffic to a

particular end office reaches a "DS1" level is justified only if Ameritech Illinois can show that "significant adverse impacts" would otherwise result. (AT&T Br. at 65-66). According to AI, it has already made the showing AT&T wants – and the Commission has found that showing to be sufficient. In the Ameritech Illinois/Verizon Wireless arbitration, it asserts, the Commission found that "tandem exhaust is a significant problem in Illinois," and found that Ameritech Illinois had justified a threshold level of one DS1 for the establishment of direct end office trunking. Order at 6-7; Docket 01-0007, May 1, 2001.[4] According to AI, AT&T provides no reason for the Commission to depart from its previous decision.

226. While it sees AT&T as continuing to muddle the concepts of direct trunking and a single point of interconnection, AI points out that the FCC confirmed that direct trunking does not entail establishing a new or different point of interconnection because the physical point of interconnection does not change (and may still be chosen by AT&T). See, Verizon Virginia Arbitration, ¶ 91 ("[I]mplementing direct end office trunks does not entail changing the location of a tandem office point of interconnection."). All direct trunking means, AI explains, is that calls destined for the Ameritech Illinois end office in question are routed or trunked directly through the POI to that end office instead of being switched at the tandem office. In other words, the physical point of interconnection does not change.

Transit Traffic

227. The same analysis, AI contends, defeats AT&T's allegation that Ameritech Illinois has not supported its requirement of direct trunking with a third party carrier when the level of traffic that Ameritech Illinois "transits" between AT&T and that third party carrier reaches the DS1 level. (AT&T Br. at 67-68). On this issue as well, AI notes, the Commission's Order in Docket 01-0007 already contains the showing that AT&T concedes would justify the DS1 threshold. (Am. Ill. Br. at 19 n.2).

228. Further, AI sees AT&T to contend that Ameritech Illinois "has an obligation to provide transit service to AT&T for the exchange of local traffic with other carriers, regardless of the level of traffic exchanged between AT&T and the other carriers." (AT&T Br. at 67). No such obligation exists, AI argues. In the recent Verizon Virginia Arbitration (¶ 117), it points out, the FCC held that "the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under [section 251(c)(2)], nor do we find clear Commission precedent or rules declaring such a duty." (Likewise, AI observes, in the 1996 arbitration with AT&T, this Commission specifically found that transiting is not required by federal law. See, Order at 10-11, Docket Nos. 96 AB-003/004, Nov. 26, 1996)). Given that there is no obligation to even *provide* transit service, AI notes, the FCC rejected AT&T's transiting arguments

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[4] This Commission's factual finding with respect to tandem exhaust in Illinois distinguishes the current situation from that considered by the FCC in the recent Verizon Virginia Arbitration. There, the FCC found that direct trunking was unnecessary only because, on the record before it in that arbitration, Verizon had failed to prove that CLEC traffic was causing tandem exhaust in Virginia. Verizon Virginia Arbitration, ¶ 89.

(the same arguments offered here), and approved Verizon's proposed requirement of direct trunking for transit traffic at the DS1 level – which is identical to the threshold being challenged in this instance. (Id. ¶ 115).

Staff's Issues Re: Single Point of Interconnection (SPOI)

229. As a result of the August 23, 2002 Stipulation to Eliminate Issues (¶ 2(c)), Staff's issues concerning Ameritech Illinois' SPOI offering have been resolved. See Exhibit

Staff's Transiting Claims

230. AI notes Staff to question whether Ameritech's policy, to not accept third party local traffic delivered to it by an interconnected carrier, constitutes a violation of its duty to provide interconnection in accordance with the Act. In AI's view, Staff asks the wrong question. The real question is: Given the uncontested evidence that Ameritech Illinois *does* accept such traffic and could not prevent carriers from delivering such traffic even if its "policy" were otherwise, should the Commission address the theoretical question of whether or not section 251(c)(2) requires Ameritech Illinois to accept such traffic. It should not, AI contends. In AI's view, the Commission should adhere to its decision in the Verizon Wireless arbitration and decline to find that Ameritech Illinois is legally obligated to accept such traffic. (Am. Ill. Br. at 22-23).

231. In any event, AI notes, Staff is wrong in asserting that it is Ameritech Illinois' "policy to not accept third party local traffic delivered to it by an interconnected carrier." (Staff Br. at 54). Ameritech Illinois maintains that it has no such policy, does accept such traffic, and, in reality, could not prevent a carrier from delivering it anyway. (Am. Ill. Ex. 5.1 at 13; Tr. 196). Indeed, Staff admits that the only evidence supporting its position is Ameritech Illinois' opposition to transiting language proposed by Verizon Wireless in their arbitration.

232. But, AI observes, Staff leaves out the punch line. The Commission ruled *in favor of* Ameritech Illinois in that arbitration, finding Verizon Wireless' language unnecessary given that it had no concrete plans to perform transiting. Order at 35, Docket 01-0007 (May 1, 2001). Here too, AI observes, no CLEC has claimed that it is now or soon will be transiting traffic, or that Ameritech Illinois' "policy" has prevented or in any way impaired its ability to "compete in the local exchange market," as Staff would contend.

Access to the Main Distributing Frame ("MDF")

233. AI notes that AT&T, McLeodUSA/TDS and RCN continue with the argument that their technicians should be allowed to access the MDF directly. AI observes, however, that they provide no legal basis for the position other than some generic references to Ameritech Illinois' obligation to provide collocation on a nondiscriminatory basis. (AT&T Br. at 52; RCN Br. at 3-4). The critical point, as Ameritech Illinois has explained, is that this Commission has already concluded that direct access to the MDF is not required. (Am. Ill. Br. at 27).

234. AI observes AT&T to complain specifically about the problems it encountered with the NorthPoint assets it acquired. (AT&T Br. at 53). These problems, AI contends, appear to be unique to the NorthPoint arrangements and, as explained by Mr. Alexander, Ameritech Illinois is willing to work with AT&T to resolve them. (Am. Ill. Ex. 1.1 at 17-18). In any event, AI points out, existing alternatives, including use of CFA reports to validate CFA assignments, would allow AT&T to ensure working lines. (Id. at 18). Further, AT&T's complaint as regards the too cumbersome nature of the third party vendor process is not well-founded, according to AI. (Am. Ill. Br. at 27-28).

235. In AI's view, McLeodUSA/TDS want to return to the "good old days" prior to September 11, 2001, when some Ameritech Illinois employees apparently failed to enforce Company security policies and allowed occasional access by McLeodUSA technicians to the MDF when escorted by Ameritech Illinois' central office technicians. (McLeodUSA/TDS Br. at 5). AI notes their claim that unescorted access by authorized third party vendors presents more of a security risk than escorted access by Ameritech Illinois personnel. McLeodUSA/TDS are incorrect. AI explains that the certification program for third party vendors ensures that they are knowledgeable and can be trusted to work unescorted at the MDF. (Am. Ill. Br. at 27). It also keeps the total number of technicians working in a central office to a manageable level, which would not be the case, AI asserts, if every CLEC with a collocation arrangement could send its technicians in at will. (Am. Ill. Br. at 27). Furthermore, much as McLeodUSA may have liked the escort process, Ameritech Illinois' central office personnel have their own jobs to do. The reality, AI contends, is that time spent escorting CLEC technicians is time *not* spent on Ameritech Illinois' own central office work.

236. So too, the Ameritech Illinois' requirement that third party vendors be willing to work on its own equipment that McLeodUSA/TDS complain of, is necessary, the Company contends, so as to keep the total level of technicians in the office at a reasonable level. (McLeodUSA/TDS Br. at 5). As of February, 2002, AI notes, CLECs had 858 physical and 201 virtual collocation arrangements in 150 Ameritech Illinois wire centers. (Am. Ill. Ex. 14.0.Sch. DOH-2 at 15).

Collocation Pricing

237. AI observes Staff to contend that Ameritech Illinois "just barely" offers collocation at TELRIC-compliant rates. Staff Br. at 90. Staff bases its position on the fact that the Company filed updated cost studies, but not revised tariffs, in compliance with the Commission's Order in Docket 99-0615. According to Staff, Ameritech Illinois "ought to have filed a tariff based on the new costs." Id. at 91.

238. AI views Staff's position to be untenable. According to AI, the Commission's order was very specific on when and how new rates would be developed, to wit:

> . . . While Ameritech notes that this Commission will have a further opportunity to review Ameritech's collocation costs, we find that future compliance is not an acceptable answer.

> While we realize they are not perfect, we will adopt Staff's recommended rates. *Upon conclusion of the general investigation into the costing methodology used to price collocation services, Ameritech will be instructed to file tariffs with prices based on the costs approved therein*.
>
> * * *
>
> (10) . . . Ameritech shall file new cost studies based on an efficient, forward-looking environment consistent with our conclusions herein within 60 days of the effective date of this Order. In the interim, we adopt Staff's recommendations; Ameritech's prices, as adjusted by Staff are accepted as interim rates until the outcome of the upcoming docket examining the entirety of rates to be charged for collocation. Order at 23, 27, Docket 99-0615, (Aug. 15, 200) (emphasis added).

239. Ameritech Illinois asserts that it has complied *fully* with the Order in Docket 99-0615, by filing the updated cost studies. (Am. Ill. Ex. 10.1 at 9). According to the language of the Order, AI contends, the Commission clearly contemplated that *it* would initiate the investigation into these studies and would set permanent rates *after* the investigation was complete. For reasons unknown, Ameritech Illinois contends, this investigation was never initiated. Given these circumstances, however, it is wrong to try to shift the onus to Ameritech Illinois.

240. AI also observes Staff to complain that the rates set out in the GIA are different from those in the tariff. (Staff Br. at 92-93). These rates, AI contends, were developed to offer CLECs 13-state collocation arrangements and expanded capabilities, and they are strictly optional. According to AI, any CLEC may take collocation under tariff at the rates approved by the Commission. And, there is no legal basis for requiring inclusion of the tariffed rates in the GIA. (See Am. Ill. Br. at 190-193). Finally, AI sees Staff to contend that the changes made to the Company's website that provide a hotlink between the GIA and its tariffs is an "improvement," but is still not good enough. (Staff Br. at 94). Staff's assertion, AI notes, is not based on testimony or on its cross-examination of Mr. Alexander. Indeed, he was not questioned at all on this issue. As such, AI contends, Staff's opinion is extra-record, improper and should not be relied upon for any findings in this Phase I order.

Interconnection Agreement Negotiations

241. Noting that the Ameritech Illinois/McLeodUSA interconnection agreement negotiations did not go as smoothly as it could have, AI nevertheless maintains that the surrounding facts do not support either the argument that Ameritech Illinois violated its duty to negotiate in good faith or the more expansive allegation that Ameritech Illinois violates that duty, or Checklist Item 1, with respect to every CLEC. See McLeodUSA Br. at 9.

242. At the outset, AI believes it necessary to maintain a sense of perspective. The Ameritech Illinois/McLeodUSA interconnection agreement, it notes, is a complex document that is approximately 1,000 pages in length. (Am. Ill. Ex. 12.1 at 6). In these matters, parties are bound to have some disagreements about some points. And, while McLeodUSA listed 85 issues in its petition for arbitration,AI contends that the parties resolved 70 of the issues prior to the hearing. (Id. at 3). Further, AI asserts, McLeodUSA agreed to two extensions of the statutory negotiation period, so it cannot claim the process was improperly delayed. (Id. at 2). In the final analysis, the remaining disagreements were arbitrated, the arbitration results were incorporated into the agreement, and the agreement was filed for approval with the Commission. In short, McLeodUSA got an interconnection agreement using the very process established by the Act for reaching such agreements.

243. Further, AI views McLeodUSA's characterization of the negotiation events to be incorrect. Noting McLeodUSA complaints that the lead negotiator was not familiar with the existing resale agreement, AI observes that the resale agreement was ultimately concluded to McLeodUSA's satisfaction. (Am. Ill. Ex. 12.1 at 3). So too, McLeodUSA complains that it did not need a new hosting appendix, yet it ultimately agreed to one and included same in the interconnection agreement. (Am. Ill. Ex. 12.1 at 4). Whereas McLeodUSA complains that a working draft of the agreement had over 100 errors, it ultimately concedes that most of these discrepancies were not material, and all were corrected to McLeodUSA's satisfaction (Tr. 682). Finally, McLeodUSA contends that the Ameritech Illinois negotiators had little authority to deviate from the SBC template agreement, but this observation, AI contends, does not bear on the issue of good faith. AI witness Thompson explained that while Ameritech Illinois' negotiators do have authority to make binding representations and decisions throughout the negotiation process, they are not free to unilaterally create new provisions for interconnection agreements. (Am. Ill. Ex. 12.0 at 4). This is as it should be, AI maintains, given that multi-state "MFN" obligations require Ameritech Illinois to coordinate its position with affiliates.

244. In any event, Ameritech Illinois asserts, it has implemented significant changes in the negotiation process. As such, Ameritech Illinois negotiators now do more preliminary analysis before the negotiation begins so that they can better understand both the existing agreements of the CLEC and the specific issues of importance to the CLEC. (Am. Ill. Ex. 12.0 at 3). Ameritech Illinois negotiators also do more detailed project management planning so that internal SBC workgroups (*e.g.*, Regulatory, Contract Management, etc.) can better coordinate their activities. (Id). And, individual negotiators also receive training in order to increase their overall effectiveness. (Tr. 680-81).

b. Staff Reply Position

245. Staff observes Ameritech to contend that while there is no requirement under Section 271 to accept transiting traffic, it nevertheless "does, in fact, accept such traffic". (Ameritech IB at 22). Staff views both of these assertions to be incorrect.

246. In Staff's view, Ameritech's attempt to artificially limit its duty to provide interconnection for telephone exchange service or exchange access to those instances where such services are provided directly by the interconnecting carrier to an end user, is not supported by the language of Section 252(c)(2). According to Staff, Section 252(c)(2)(A) only requires that the interconnection be used "for the transmission and routing of telephone exchange service and exchange access", and it is not disputed that the transiting services at issue are being used for such services.

247. Staff considers Ameritech's assertion that it accepts transiting traffic and thereby complies with an obligation that it disputes, as equally unpersuasive. own showing, Staff maintains, it has demonstrated that Ameritech has blocked at least one CLEC from incorporating "terms" for transiting in its interconnection agreement. (Id. at 57 – 58).

Single Point of Interconnection

248. Subsequent to the filing of initial briefs, Staff and Ameritech entered into a Stipulation to Eliminate Issues ("Stipulation") filed with the Commission via e-docket on August 23, 2002 and entered into the record as AI/Staff Joint Stipulation No. 2. The Stipulation provides that certain issues raised by Staff and Ameritech have been addressed adequately in Docket 01-0614 and in the 01-0614 Compliance Tariff (as defined in the Stipulation) (the "01-0614 Stipulation Issues") and, except as specifically provided in the Stipulation, need not be addressed again in this docket.

249. According to Staff, the terms and conditions under which Ameritech Illinois offers a single point of interconnection or "SPOI" (the "SPOI Issue") is one of the 01-0614 Stipulation Issues. The Stipulation reserves Staff's right to address the SPOI issue if it is raised by other parties to this proceeding, and to raise the issue of Ameritech Illinois' compliance with the 01-0614 Compliance Tariff in Phase II of this proceeding.

250. Staff takes no position on SPOI Issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

Collocation Provisions of Section 13-801 of the PUA

251. Subsequent to the filing of initial briefs, Staff reviewed Ameritech's compliance tariff on collocation in Docket 01-0614 and found it adequate. Stipulation at 2. The Stipulation reserves Staff's right to address the collocation issues resolved in Docket 01-0614 if any are raised by other parties to this proceeding, and to raise the issue of Ameritech Illinois' compliance with the Section 13-801 Order Compliance Tariff in Phase II of this proceeding.

252. In accordance with and subject to the terms and conditions of the Stipulation, Staff's current position is that the issues Staff raised with respect to these issues have been addressed adequately in the *Order* for Docket 01-0614 and in the Compliance Tariff, and need not be addressed again in this docket except as provided

in the Stipulation. Staff takes no position on collocation issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

253. Staff's current position with respect to these issues is that Ameritech should comply with its tariff under the Docket 01-0614 *Order* and that such compliance should be monitored and confirmed during Phase, II of this proceeding.

c. AT&T Reply Position

Point of Interconnection Policy

254. AT&T believes Ameritech to acknowledge that AT&T has a statutory right to select the POI, subject only to technical feasibility. (See Ameritech Initial Br. at 18). This means, for example, that AT&T may establish the POI at its own switch. Ameritech maintains, however, that each party should bear the costs of transport of traffic it originates to the other party's end office switching. The requirement that AT&T bear financial responsibility for establishing transport to each Ameritech end office switch is indistinguishable, AT&T contends, from requiring AT&T to establish multiple POIs at each Ameritech switch. As such, it asserts, Ameritech has effectively deprived AT&T of its statutory right to select the POI. See Virginia Arbitration Order ¶53 (finding that only contract language in which "each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC" is consistent with the statutory right to interconnect at any technically feasible point).

"Direct End Office Trunking" Policy

255. According to AT&T, however, it should not be required to establish a point of interconnection for its traffic at an Ameritech end office when the traffic to that end office reaches an arbitrary threshold (i.e., one DS1) established by Ameritech.

256. The FCC, AT&T contends, has stated that in order for an incumbent LEC to justify refusal to provide interconnection or access at a point requested by another carrier, it ". . . must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access." Local Competition Order at para. 203. According to AT&T, Ameritech made no such showing of a "significant adverse impact" in this proceeding. As such, Ameritech's proposal requiring AT&T to forfeit its right to interconnect at any technically feasible point on Ameritech's network if the traffic volume reaches "1 DS1's worth of traffic" is an arbitrary, if not extreme, solution for a single spike in traffic volume. In AT&T's view, a temporary spike in traffic volume that later falls under the DS-1 threshold does not rise to the standard set by the FCC of a "significant adverse impact" to Ameritech's network.

"Transit Traffic" Policy

257. Ameritech is required, AT&T contends, pursuant to §251(c)(2)(A) of the Act, to interconnect with carriers for transit and routing of telephone exchange service and exchange access. The statute does not limit this duty solely to traffic between AT&T and Ameritech. Moreover, the imposition of a capacity restriction (i.e., one DS1) also violates Ameritech's obligation to interconnect under the Act because it takes away AT&T's right, pursuant to §251(a)(1) of the Act, to interconnect indirectly with the facilities and equipment of other carriers. In addition, AT&T contends, Ameritech ignores the Commission's order requiring it to tariff and provide transiting without the DS1 restriction Ameritech now desires to impose. See Order, Dockets 96-0486/0569, (February 17, 1998). Finally, and again, the imposition of a capacity restriction also violates Ameritech's §251(c)(2)(B) obligations to provide interconnection at any technically feasible point.

Opting Into Interconnection Agreements

258. Staff is correct, AT&T observes, in asserting that Ameritech refuses to allow CLECs to opt in to provisions of existing Ameritech/CLEC interconnection agreements, even those that are unrelated to reciprocal compensation. (Staff Initial Br. at 111-113). For example, Ameritech indicated in WorldCom Record Data Request 15 that a CLEC could not opt in to the provision in the recently approved Ameritech/McLeod interconnection agreement. This is directly contrary to AI witness Alexander's testimony on cross-examination that "all provisions from an existing agreement would be eligible for 252(i) with the exception of reciprocal compensation provisions that are legitimately related to reciprocal compensation." (Tr. 1522). Ameritech's policy is at odds with the sworn testimony of one of its main witnesses in this proceeding AT&T asserts.

Access To The Connecting Facility Arrangement (CFA)

259. According to AT&T, Ameritech does not dispute its obligations to provide non-discriminatory access to collocation, but asserts that its obligation does not extend to access to the CFA. Indeed, Ameritech's current policies do not permit CLECs reasonable access to perform necessary maintenance related to the CLEC's collocation. Instead of responding to the evidence of CFA problems provided by the CLECs (including AT&T, RCN, and McLeodUSA/TDS), Ameritech raises unsubstantiated "security claims" to support its failure to comply with its collocation obligations.

260. AT&T suggests that the CLECs presented compelling evidence that direct access to the CFA is required to perform necessary maintenance functions, to test their lines, to verify dial tone and perform other functions. Ameritech responds to the CLEC evidence by suggesting that its policies and practices are necessitated by "security" concerns. (Ameritech Initial Br. at 27). With no evidence of actual security problems on record, AT&T considers Ameritech security concerns to be speculative. According to AT&T, Ameritech's current refusal to permit CLEC access to the CFA stands in stark

contrast to its previous practice with CLECs to make the point of demarcation a common point accessible by both parties to test and isolate problems in each direction to determine a course of action for the necessary repair. Ameritech does not dispute that CLECs had previously been permitted access to perform such maintenance. (Tr. 1411-1412).

261. According to AT&T, Ameritech acknowledges that it will permit a third party vendor access to the CFA *without* an escort. (Tr. 1418-19) Yet, Ameritech is unwilling to permit a CLEC the same access to the CFA *with* an Ameritech escort. There is simply no basis for concluding that there is a greater security risk when a CLEC accesses the CFA escorted by Ameritech personnel than when a third party vendor accesses the CFA without an escort.

262. In sum, AT&T's experience, indeed one that is shared by other CLECs, has been that DSLAM to CFA testing is the key to resolving a majority of the CFA-related problems. Without the ability to conduct such tests, it is difficult if not impossible to determine the root cause of a CFA problem, even though the problem may prove to be something unrelated to the wiring.

Collocation Of Any Type Of Equipment

263. AT&T sees Ameritech to contend that it complies with all federal collocation requirements because it "makes available to CLECs collocation of telecommunications equipment *necessary* for interconnection and access to unbundled network elements." (Ameritech Initial Br. at 23) (emphasis supplied). According to AT&T, however, one of the requirements imposed by Section 13-801(c) of the Illinois PUA it that Ameritech allow CLECs to physically or virtually collocate *any type* of equipment for interconnection or access to network elements. Order, at 18-19, Docket 01-0614, (June 11, 2002).

264. According to AT&T, the tariff Ameritech filed in "compliance" with the Commission's Order in Docket 01-0614 is unclear regarding whether Ameritech is in compliance with this requirement. AT&T is much less reluctant than Staff to interpret this language in the light most favorable to Ameritech.

265. For example, AT&T notes, the relevant collocation provision in Ameritech's July 11, 2002 compliance tariff states as follows:

Types of Equipment

> Requesting Carrier may physically or virtually collocate any type of equipment for interconnection with the Company as required by 47USC§251(c)(2) or access to the Company's unbundled network elements as required by 47USC§251(c)(3) and the rules and regulations of the Federal Communications Commission, the IL PUA and the rules and regulations of the Illinois Commerce Commission.

> ILL. C.C. NO. 20, Part 23, Section 4, 5th Revised Sheet No. 1.2.

266. AT&T contends that the Order in Docket 01-0614 requires Ameritech to collocate not just equipment "necessary" for access to UNEs and interconnection (as required by the FCC's rules), but to collocate any type of equipment for access to UNEs and interconnection. If the federal law reference as set out above, is an attempt to limit the type of equipment a CLEC can collocate to only that "necessary" for interconnection or access to UNEs, Ameritech's tariff fails to comply with Section 13-801 of the Illinois PUA, and the Commission's Order.

Adjacent Collocation As A Standard Offering

267. AT&T disagrees with Ameritech's position that "adjacent collocation is not subject to standard provisioning intervals." (Ameritech Initial Br. at 29). It is indeed, AT&T asserts, and Ameritech is required to provide it in order to comply with checklist item (i). This Commission has already ordered Ameritech to tariff adjacent collocation as a standard offering just as its affiliate, SWBT, has done in Texas, *including standard provisioning intervals.* In its Order for Docket 99-0615 the Commission ordered Ameritech to provide adjacent collocation as a standard offering, including standard intervals, expressly to cure the very CLEC uncertainty regarding timing and resources about which McLeodUSA now complains. Specifically, the Commission concluded that federal law requires Ameritech to provide adjacent collocation at standard intervals:

> As to requiring Ameritech to tariff adjacent on-site collocation as a standard physical collocation offering, ***we again defer – as we must – to the FCC's rebuttable presumption that unless Ameritech demonstrates why it is not technically feasible to offer it on a standardized basis as SWBT does, Ameritech must offer it here***. The uncontroverted evidence is that SWBT tariffed adjacent collocation as a standard offering. Ameritech has put forth no credible record evidence to convince us that it is not technically feasible to offer adjacent on-site collocation as a standard physical collocation offering in Illinois. While Ameritech argues that too many factors vary from CLEC to CLEC to allow it to standardize the offering, that did not impede SWBT's ***ability to tariff standard terms, conditions, intervals and prices***, both recurring and nonrecurring.
>
> We are also concerned that unless Ameritech is required to offer adjacent collocation on a standard basis, CLECs will lack any certainly as to how much time or resources it will take to implement an adjacent collocation arrangement. As the CLECs and Staff pointed out, the Non-Standard Collocation Request (NSCR) process that Ameritech proposes the CLECs use for adjacent collocation, interjects

> significant cost and delay into processing CLECs' collocation requests. Moreover, if the CLEC must ultimately resort to our complaint process, its collocation request could be "on hold" for a year or more. This is not the type of competitive "entry" we will condone here in Illinois. ***In addition, requiring Ameritech to provide adjacent on-site collocation as a standard offering will help eliminate the risk of discrimination since all CLECs will be paying the same amount of money and are subject to the same intervals, terms and conditions***. Order at 11-12, Docket 99-0615, (August 15, 2000). (emphasis supplied).

268. In sum, AT&T contends, this Commission has determined that Ameritech is required to provide adjacent collocation as a standard offering as a matter of federal law and that such a requirement is necessary to eliminate the risk of discrimination. AT&T sees Ameritech to admit that it does not. As such, Ameritech fails to comply with the requirements of Checklist Item 1.

Interim Collocation Rates

269. While interim rates may be acceptable on a case-by-case basis, AT&T argues, they are not *always* acceptable. For those situations in Illinois where interim rates exist, the FCC's assessment of reasonableness and other criteria cannot be predicted with certainty, AT&T contends, and Ameritech Illinois has not shown that the rates in question meet the FCC's criteria.

270. Despite the fact that these rates were affirmed on appeal and have been in effect for more than two years, Ameritech has failed to demonstrate (consistent with the FCC's view on the use of interim rates) that its interim collocation rates are reasonable. According to AT&T, the Commission adopted the Staff's rates as interim rates, but these did not result from any independent cost studies proposed by Staff. Ameritech's proposed rates by a factor of 50% across the board hardly results in a "reasonable" rate sufficient to satisfy Section 252(d)'s pricing requirements or the FCC's interim rate criteria. For the Commission to ultimately determine that these collocation rates are TELRIC-based would be a remarkable coincidence. Consequently, AT&T disagrees with Staff that Ameritech's interim rates are in technical compliance with Section 251. (Staff Initial Br. at 92).

271. In addition, AT&T asserts, there is no provision or requirement in place to true up these interim collocation rates, as the FCC's criteria require.

d. The AG Reply Position

Single Point of Interconnection

272. In its June 11, 2002 Order, the AG notes, the Commission found that AI's charges for transporting traffic to a single point of interconnection ("SPOI") violated

existing federal law and were contrary to the Commission's conclusion in a prior arbitration (Docket 00-0332). Order at 105, Docket 01-0614 (June 11, 2002). This Commission concluded that AI's practices violated its interconnection obligations, which implicate checklist item (i). To find this checklist item satisfied, the AG asserts, AI must demonstrate compliance with the Docket 01-0614 Order. In its Initial Brief, AI stated that it will comply with that order, but reserves "all rights to challenge that decision." (AI Initial Brief at 21).

273. The AG sees AI to rely on the Pennsylvania 271 Order and the Georgia & Louisiana 271 Order as authority for its position that the FCC will not address this issue in a 271 context. In both of those orders, the AG observes, the state commissions did not address the issue, leaving it solely a matter of federal law. In the Georgia & Louisiana 271 Order, CLECs did not refer to state authority. Georgia & Louisiana 271 Order at ¶¶ 201-208 (May 15, 2002). The FCC found it significant that BellSouth had "rescinded its policy that gave rise to these parties' complaint." Id. In the Pennsylvania 271 Order, the FCC noted that the state commission found that Verizon satisfied checklist item (i), and that its "policies do not represent a violation of our existing rules." Pennsylvania 271 Order at para. 99, 100 (Sept. 19, 2001). Again, state law was not raised by any party.

274. By contrast, the AG asserts, this Commission has directly addressed the issues associated with a single point of interconnection in Docket 01-0614. Order at 105 (June 11, 2002). Assuming AI complies with that order, and continues to comply despite any pending legal challenges, the FCC will be in the same position it was in in the Georgian & Louisiana 271 and Pennsylvania 271 Orders, i.e., with no need to address the issue.

e. McLeodUSA and TDS Reply Position

Reasonable Access to Collocation (CFA)

275. McLeodUSA/TDS Metrocom witness Mr. Cox explained that Ameritech is not permitting McLeodUSA and TDS Metrocom access to the back of the DMARC, which has been identified as the Connecting Facility Assignment ("CFA") for purposes of performing maintenance or troubleshooting on its collocation space. Previously, it was the practice between McLeodUSA and TDS Metrocom and Ameritech that the point of demarcation was a common point accessible by both parties to test and isolate in each direction to determine a course of action for the necessary repair. (MTSI-TDS Joint Ex. 1.0, at 16-17)

276. On grounds of "security" concerns, McLeod/TDS notes, Ameritech to argue that its obligation to provide interconnection does not require it to permit CLECs to access to the CFA. This concern for security the CLECs asserts, is belied by its acknowledgement that it permits third party vendors access to the CFA. Indeed, Ameritech acknowledged that it will permit a third party vendor access to the CFA without an escort, but it is unwilling to permit a CLEC access to the CFA *with* an Ameritech escort. (Tr. 1418-19)

277. Ameritech should certainly trust its own employees to adequately monitor the activities of a CLEC technician. So too, McLeod/TDS argues, Ameritech has not cited one instance where a CLEC technician has caused security problems when accessing the CFA. Although it would be reasonable for Ameritech to claim that it needs to maintain a certification or credentialing procedure for third parties to access the CFA (or other areas of its central offices), Ameritech has given no reason why CLEC employees, just like third-party vendor employees, cannot be certified and credentialed through such a process.

278. According to McLeod/TDS, Ameritech does not dispute that its own past practice permitted CLECs access to perform such maintenance at the CFA. (Tr. 1411-1412). Again, had there been problems under that policy that justified a true security concern, one would reasonably have expected Ameritech to provide proof to the Commission. It has completely failed to do so.

Good Faith Negotiation of Interconnection Agreements

279. McLeodUSA and TDS Metrocom outlined the evidence supplied by its witnesses that shows Ameritech to violate its obligation to negotiate interconnection agreements ("ICA") in good faith. (McLeodUSA/TDS In. Br. at 6-9). McLeodUSA's experience in its ICA negotiations with Ameritech manifests that Ameritech does not have in place processes and procedures that enable it to negotiate ICAs with CLECs in good faith.

f. WorldCom Reply Position

Opt-In Concerns

280. Federal law, WorldCom observes, mandates that a carrier may demand an ILEC make available to it "any individual interconnection, service, or network element arrangement" on the same terms and conditions the ILEC has made it available to anyone else in an agreement approved under Section 252 of the 1996 Act. See 47 U.S.C. Section 252(i); 47 C.F.R. Section 51.809; First Report and Order, paras., 1309-1310. In AT&T v. Iowa Utilities Board v. FCC, 525 U.S. 366 (1999), WorldCom notes, the United States Supreme Court upheld the FCC's so-called pick and choose rule over the objections of the ILECs.

281. WorldCom believes it obvious from the instant record that Ameritech takes an extremely narrow view of what the rule allows. On cross-examination, it argues, Ameritech witness Alexander was unable to answer the simple, straight-forward question of whether Ameritech would allow CLECs to opt-in to a single paragraph of the interconnection agreement between Ameritech Illinois and McLeodUSA Telecommunications Services, Inc. (Tr. 1546-1578). Consequently, Ameritech was asked to answer an on-the-record data request as to whether Ameritech Illinois would allow CLECs to opt-in to Section 5.7.2 of the General Terms and Conditions from the

McLeodUSA-Ameritech Illinois interconnection agreement without any reasonably related terms and conditions being attached to it. According to WorldCom, Ameritech's response to this request was marked, entered into the record and states as follows:

> Pursuant to Section 252(i) of the Act and FCC Rule 51.809, SBC Ameritech will make available to any requesting telecommunications carrier any individual "***interconnection, service, or network element arrangement"*** contained in any agreement to which it is a party that is approved by a state commission pursuant to Section 252 of the Act, upon the same rates, terms and conditions as those provided in the Agreement. In adopting an individual interconnection, service or network element arrangement from an existing Agreement that is available for adoption, the FCC and United States Supreme Court have found that an incumbent LEC can require that the requesting carrier accept all terms that are "legitimately related" to the desired term. (*See* the FCC's First Report and Order, Paragraph 1315 and *AT&T Corp. v. Iowa Utilities Bd.,* 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC,* 219 F.3d 744 (8th Cir. 2000).
>
> The General Terms and Conditions (GTCs) of an agreement do not constitute an individual "interconnection, service or network element arrangement" that is available for adoption under Section 252(i) of the Act. Rather, the GTCs of an Agreement typically contain provisions which are legitimately related to the actual individual interconnection, network element and service arrangements contained in an agreement that are available for adoption under Section 252(i) of the Act and are not, in and of themselves, individual arrangements that are available for adoption. For example, should a CLEC wish to adopt the UNE provisions of an Agreement, certain GTCs are legitimately related to the desired UNE provisions e.g., the Term, the Notice Provisions, Indemnity, Limitation of Liability and any other GTCs legitimately related to the desired UNE provisions. The provision which is the subject of WorldCom's inquiry is an isolated provision contained in the GTCs of the McLeod Agreement and is not an individual "interconnection, service, or network element arrangement" that is available for adoption pursuant to Section 252(i) of the Act. (WorldCom Late-Filed Ex. 3).

282. Ameritech witness Alexander's testimony and its response to the above-referenced data request make clear to WorldCom that the CLECs do not have the ability to make informed choices between Ameritech's tariffs and contract plans. It is unclear,

WorldCom argues, where within the many tariffs or more than 150 interconnection agreements that Ameritech may be relying upon to demonstrate compliance with Section 271 requirements. To the extent that such terms and conditions in its arguments comply with Section 271, Ameritech has not, WorldCom contends, made them available, which is at odds with the requirements of Section 271 of Act

6. Staff's Proposed Remedial Actions for Checklist Compliance

1 The Commission should require Ameritech to permit carriers to opt-into, without the need for negotiation or arbitration, reciprocal compensation rates, terms, and conditions, and, therefore, into entire interconnection agreements, particularly when such agreements contain rates, terms, and conditions that this Commission and the FCC require Ameritech to provide.

2 The FCC the Commission should require Ameritech to make it known that it does not plan to elect the FCC's reciprocal compensation rate caps or make an immediate election of the FCC's rate caps. Alternatively, the Commission should rule that Ameritech's decision to not offer to exchange all traffic subject to Section 251(b)(5) at the same ISP-bound traffic rates set by the FCC for more than a year following the FCC's ISP-Bound Compensation Order amounts to an election and precludes Ameritech from picking and choosing a different pricing scheme at this time.

3 The Commission should require Ameritech to permit interconnecting carriers to transit third party traffic flowing between Ameritech and the third party carrier.

4 The Commission should find that the rates, terms, and conditions, (related to Ameritech's point of interconnection ("POI") arrangement offerings), contained in the compliance tariff the Commission ordered Ameritech to file in Docket 01-0614 adequately address Staff's concerns regarding this issue.

5 AI's general interconnection agreement (GIA) should be amended to reflect its tariffed collocation rates.

6 AI should update its All Equipment List (AEL) either quarterly or as soon as new equipment is added as mandated by the Commission's Order in Docket 99-0615.

7 AI should provide power cable installation to CLECs in a virtual collocation arrangement. Also, if AI intends to change its policy contrary to what is in its tariff, it should file a change of tariff advising the Commission of its intention. This will allow the Commission to investigate and consider such a proposal.

8 In accordance with, and subject to, the terms and conditions of the Stipulation, the issues Staff raised pertaining to Section 13-801(c) (collocation issues regarding cross-connections and allowable equipment) have been addressed adequately in Docket 01-0614 and in the 01-0614 Compliance Tariff, and need not be addressed again in this Docket except as provided in the Stipulation.

Staff takes no position on collocation issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs. Staff recommends that, with respect to these issues, the Commission should direct AI to comply with its 01-0614 Compliance Tariff and the Order in Docket 01-0614, and direct that such compliance be monitored and confirmed during Phase II of this proceeding.

7. Commission Review and Conclusion.

283. This Commission needs to examine a variety of issues in order to assess Checklist Item 1 compliance.

Access to the MDF/CFAs

284. The record indicates that access to MDF is a matter of great concern to certain of the CLECs and they maintain that such access has only recently been curtailed. This Commission looks at this issue on two levels: (1) is the request founded on a matter of law or convenience; and (2) is there a reason for the Company's refusal of access or is it arbitrary and capricious.

285. Apparently, in times prior to September 11, 2001, Ameritech's employees were lax in enforcing the Company's security policy and would occasionally allow CLEC's access to the MDF with an escort. This did not, in our view, constitute a waiver such as would preclude AI from now reasserting its policy. Presumably, AI like many other companies, has reassessed and strengthened its security measures in recent times.

286. Most important to our decision, however, is that the FCC has not required BOCs to provide access to the MDF. Indeed, AI points out that, in the Texas 271 Order, the FCC found SWBT's collocation tariff to satisfy the checklist even though said tariff expressly prohibited CLEC access to the MDF (AI Reply Brief on Exceptions). As such, there is no compliance issue at stake.

Transiting

287. There is no Section 271 requirement, AI claims, for a BOC to accept local traffic from an interconnected CLEC when such CLEC is delivering local traffic that had originated on some third party network. In reality, however, AI admits that it accepts such traffic given that there is no way to distinguish it from direct traffic. According to

Staff, however, Ameritech should affirmatively take on this task by inputting language into its agreements.

288. At the outset, Staff's attempt to rely on the general interconnection language of Section 251 (a)(1) is unavailing in our view, if for no other reason that the FCC states that the transport and termination of traffic is excluded from the definition of interconnection. See. New Jersey 271 Order, Appendix C. Further, we note that, the entire evidentiary basis to support Staff's claim is that Verizon was unable to include transiting in its agreement. Yet, as AI informs, and Staff neither mentions nor disputes, this Commission in Docket 01-0007, declined to put the Company to this requirement where the requesting carrier did not ask the authorization to transit and had no concrete plans to transit. Order, Docket 01-0007 (May 1, 2002). As such, Staff's basis is no basis at all.

State Collocation Requirements

289. According to Staff, it would only recommend that AI compy with Compliance Tariff for Docket 01-0614 and that its compliance be monitored and confined in Phase II. Staff points out that the issues it raised with respect to State collocation requirements have been addressed in Docket 01-0614 and settled in the Compliance Tariff for that docket. Staff's representations are reasonable and its recommendations are convincing.

Adjacent Collocation

290. For the first time, and in this proceeding alone, it is being argued that SBC is non-compliant with our Docket 99-0615 order because it lacks any provision regarding "installation intervals" for adjacent collocation. To be sure, more than two years have passed since SBC-Illinois amended its collocation tariff to comply with our Order in Docket 99-0615. At no time in this period has this Commission been notified of any problem with said tariff relative to a provisioning interval.

291. In Staff's view, the Commission intended for AI to tariff provisioning intervals because it used the term at several points in its Order. This may be true but it does not go to the heart of the matter. If, as indicated, we simply directed AI to provide adjacent on-site collocation solely "as SWBT does in Texas", and the SWBT collocation tariff did not provide any installation intervals for adjacent collocation, AI cannot be deemed non-compliant. The Commission's intent cannot be carried forward when it is not reasonably and well articulated or based on record evidence.

292. AI informs that the FCC does not require a standard provisioning interval for adjacent collocation. The matter at hand thus does not impinge on our Section 271 review.

General Opt In Restriction

293. WorldCom and AT&T make much of a single opt-in data request put to Ameritech at the hearing and in the abstract, i.e., outside of a real-life negotiation. Neither party analyzes or discusses the matters set out in Ameritech's written response. They would, however, have this Commission infer that on the basis of this isolated and abstract instance, the Company denies CLECs important opt-in rights. The evidence does not support the intended conclusion.

294. Staff's opt-in arguments and recommendations are being moved and will be addressed under Checklist Item 13.

POI

295. This Commission's Order in Docket 01-0614 directs AI to provide CLECs with the option of electing as little as one POI per LATA (for the purpose of exchanging local traffic) and permits CLECs to elect a compensation scheme where each carrier is responsible for transport costs on its own side of the POI.

296. According to Staff, AI has dutifully tariffed this option and currently has tariffed POI rates, terms and conditions consistent with Staff's recommendations. Under the circumstances, we fail to see how AT&T's arguments with respect to the POI are not also addressed by the Compliance tariff under our Order in Docket 01-0614. Presumably AT&T would have, or should have, raised its arguments in that proceeding. Our intent here is to assess compliance and not to relitigate settled matters.

Direct End Office Trunking

297. AT&T complains of Ameritech Illinois' failure to show, in this very proceeding, that its one DS-1 standard is not arbitrary.

298. In the arbitration action between itself and Verizon (Docket 01-0007), SBC provided the requested showing which justifies the DS1 threshold to be used when exchanging traffic between the two companies. . AT&T apparently would have us adjudicate the matter anew here, rather than assess compliance. This we will not do. Since the DS1 threshold was established in an arbitration case between SBC Illinois and Verizon only, we view this issue as requiring fact-specific findings that are likely to vary depending on the companies involved. For purposes of this proceeding, however, we find SBC in compliance with the Direct End Office Trunking requirements.

Negotiation Process

299. McLeod's singular negotiation experience is not enough to indict Ameritech on a failure of good faith action. This is especially the case where the Company has taken steps to implement improvements at its end.

300. Improved training and preparation serves no purpose, McLeod argues in its exceptions, unless the negotiator is also given independent authority to actually negotiate a compromise on substantive issues. According to McLeod, its main concern is that SBC-Illinois' negotiators lack such authority.

301. SBC-Illinois maintains that its negotiators do have the authority to make binding representations and decisions during the negotiation process. The myriad of complex issues generally at stake in a negotiation, however, compels the negotiator to seek out the assistance of subject matter experts. Such consultations, AI claims, are reasonable and in line with good business practice. According to AI, CLEC negotiators also engage in these same practices.

302. The Commission remains convinced that training and proper activity coordination should and will make a difference in expediting the negotiation process. As such, we expect SBC-Illinois to continuously maintain and update the training of its negotiating staff.

Collocation Rates

303. Ameritech maintains that its tariffed collocation rates were investigated in Docket 99-0615 and further affirmed by the Appellate Court on appeal. Having been in effect for more than 2 years with no further action, the Company considers these to be de facto permanent rates. Staff agrees that AI's rates are compliant with Section 251, but suggests that the rates are interim. It well observes, however, that interim rates do not preclude a finding of Checklist Item 1 compliance. In AT&T's view, the rates at hand have not been shown to be reasonable despite the circumstances outlined by Ameritech and the tariffs lack a true-up provision that the FCC's interim standard requires.

304. Ameritech makes some valid points directed to the permanency of its collocation rates. It further supports, with authority, the proposition that SBC Illinois' collocation rates are not "interim" in the sense intended by the FCC, because they are not unreviewed rates that were allowed to go into effect pending the resolution of a rate controversy. (AI Br. on Exceptions). Rather, as indicated, those rates were fully investigated and established by the Commission in Docket No. 99-0615. We would agree that whereas the Commission may, in the future, establish new collocation rates based on updated or new cost studies, this does not make SBC Illinois' current collocation rates interim or temporary for Section 271 purposes.

305. Staff refers us to the Stipulation to Eliminate Issues ("Stipulation") of record in this proceeding, which among other things, addresses the issue of collocation rates. Stipulation at 2. In accordance with, and subject to the terms and conditions of the Stipulation, Staff's current position is that the issues Staff raised with respect to this matter have been addressed adequately in both the *Section 13-801 Order* and in the *Section 13-801 Order* Compliance Tariff, and need not be addressed again in this docket except as provided in the Stipulation.

306. Staff remains of the opinion that SBC should comply with its tariff and the Section 13-801 Order (Docket 01-0614) and that such compliance should be monitored and confirmed during Phase II of this proceeding. The Commission accepts this recommendation as reasonable.

Other Matters

307. The Staff's arguments and recommendation with respect to the AEL and the GIA, will be addressed under Part IV of this Order. Ameritech compliance with the tariff in 01-0614, a concern raised by Staff, and appears to be the only concern for satisfaction of Checklist Item 1. Unless there be issues raised relevant to this matter in Phase II, we would expect to find the Checklist Item I requirements to be met. As such, our final determination will come in Phase II.

B. CHECKLIST ITEM 2 – Unbundled Network Elements

1. Description

308. Section 271 (c)(2) (B) (ii) of the Act requires that a section 271 applicant provide:

Nondiscriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252(d)(1). 47 U.S.C. Sec. 271 (c)(2)(B)(ii).

2. Standards for Review

309. The FCC views Checklist Item 2 in terms of three main elements, i.e., OSS, UNEs and Pricing.

<u>Access to Operations Support Systems</u>

310. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers. The FCC has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements (UNEs) under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable. The FCC, therefore, examines a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv). The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent sufficient and reliable data on commercial usage, the FCC will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.

311. Although the FCC does not require OSS testing, a persuasive test will provides an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged.

312. To the extent the FCC reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities (particularly if they are isolated and slight), as dispositive of whether a BOC has satisfied its checklist obligations. Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

UNE Combinations

313. Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory." This same provision also requires incumbent LECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.

314. In the Ameritech Michigan Order, the FCC emphasized that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets. Using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market. Moreover, combining the incumbent's UNEs with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.

315. Because the use of combinations of UNEs is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, the FCC examines section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.

Pricing of Network Elements

316. Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47

U.S.C. Sec. 251(c)(3). Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.

317. Pursuant to this statutory mandate, the FCC has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements. The FCC also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.

318. The FCC has held that it will not conduct a de novo review of a state's pricing determinations and will reject an application only if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."

319. The Supreme Court, on May 13, 2002, upheld the FCC's forward-looking pricing methodology for determining the costs of UNEs and "reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act." Accordingly, the Commission's pricing rules remain in effect.

320. (Adapted from New Jersey 271 Order, Appendix C, with most cities and footnotes omitted).

Recent Developments

321. In United States Telecom Association v. FCC, 290 F3d 415 (D.C. Cir. 2002), ("USTA"), the Court reviewed two FCC orders: 1) the UNE Remand Order (referred to by the court as the "Local Competition Order") and 2) the Line Sharing Order.

The UNE Remand Order

322. In the UNE Remand Order the FCC made a second attempt to define the "necessary" and "impair" standards of 47 U.S.C. Section 251(d)(2) and to identify the unbundled network elements that ILECs are required to provide. The FCC found that, with certain exceptions applicable to local switching and OS/DA, its original list of seven (7) UNEs must be made available in every geographic market and customer class, without regard to the state of competitive impairment in any specific geographic or product market. USTA at 422. The Court remanded for further proceedings, for two basic reasons.

323. First, the Court held that the FCC had not justified its general adoption of a national list of UNEs with "[u]nvarying scope." USTA at 422-26. In particular, it found that the FCC had failed to consider certain "market specific variations in competitive impairment." USTA at 422. Second, the Court held that the FCC had applied an overbroad standard in determining when impairment can be found to exist based on the "cost disparities" between leasing an element as a UNE and obtaining it from sources other than the incumbent LEC. USTA at 426-28. The Court concluded that the FCC's standard had improperly relied in part on cost differences that are "universal as between new entrants and incumbents in any industry." USTA at 427.

Line Sharing Order

324. In the Line Sharing Order, the FCC determined that the high frequency portion of the cooper loop ("HFPL") is a network element that ILECs must provide on an unbundled basis to CLECs that wish to provide digital subscriber line ("DSL") service to their end users for high speed internet access. USTA at 421.

325. The Court found the FCC's analysis deficient because the FCC "completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite)". USTA at 428. The Court inferred from the FCC's brief that the FCC had focused solely on DSL providers because Section 251(d)(2)(B) of the Act defines UNEs in terms of services that a CLEC "seeks to offer" – and CLECs seek to offer DSL when they request line sharing. The Court rejected this position as "quite unreasonable" because the "unbundling is not an unqualified good." The Court found that the Commission must "apply some limiting standard, rationally related to the goals of the Act" and "cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network". The Court also observed that such "naked disregard of the competitive context" would allow the FCC to inflict costs on the economy under conditions "where it had no reason to think doing so would bring on a significant enhancement of competition". USTA at 429. The Court thus vacated and remanded the Line Sharing Order and stated a future "order unbundling the high frequency portion of the loop should not be tainted by the sort of errors" that had been identified in the UNE Remand Order. USTA at 429. The Court then rejected the ILECs' claim that "a portion of the spectrum of the loop cannot qualify as a 'network element.'" USTA at 429.

326. On September 4, 2002, the Court denied Petitions for Rehearing and rehearing en banc, but granted WorldCom's motion for a partial stay of the mandate to give the FCC time to complete the on-going triennial review of its unbundling requirements. With respect to vacating the UNE Remand Order and the Line Sharing Order, the Court stated that "[t]he vacatur of the Commission's orders is hereby stayed until January 2, 2003". See USTA v. FCC, Order, Nos. 00-1012 and 00-1015 (D.C. Cir. Filed September 4, 2002).

The State Perspective

327. The FCC considers this checklist item to covering three main elements: access to operations support systems (OSS), UNE combinations, and UNE Pricing.

328. "Operations support systems" are the systems, including software, hardware, personnel, and databases, that support the operation and provision of telecommunications services. OSS are broken down into the following functional groupings: pre-ordering, ordering, provisioning, maintenance and repair, and billing. OSS affects the ability of all three type of competitive entrant (competitor owned facilities, unbundled network elements, and resale) to compete in the telecommunications market.

329. This Commission has recognized the importance of Ameritech's OSS systems and has addressed those systems in Dockets 95-0458, 98-0555, and 00-0592. Order Docket 98-0555, SBC Communications Inc. et al., Joint Application for Approval of the Reorganization of Illinois Bell Telephone Company d/b/a Ameritech Illinois and the Reorganization of Ameritech Illinois Metro, Inc. in Accordance with Section 7-204 of the Public Utilities Act and All Other Appropriate Relief; (September 23, 1999); Order Docket 00-0592, Illinois Bell Telephone Company, et al., Joint Submission of Amended Plan of Record for Operations Support Systems ("OSS"). (January 24, 2001).

330. "UNE combinations" refers to the ability of CLECs to combine its network facilities with UNEs purchased from Ameritech as well as the ability to combine individual UNEs. The UNE-Platform is an example of a combination of individual UNEs (and consists of the loop, switching and transport UNEs).

331. "UNE Pricing" rules are set out in FCC's Local Competition First Report and Order and establish a Total Element Long Run Incremental Cost (TELRIC) costing methodology. TELRIC pricing is not based on imbedded or historical costs but on the cost of building a new most efficient network.

332. The main Commission proceedings at hand, and in discussion, are the Orders issued in Dockets 96-0486/96-0569 (TELRIC Order); Docket 98-0396 (TELRIC Compliance Order and Order on Reopening); Docket 00-0393 (Project Pronto Order); and Docket 00-0700 (TELRIC 2000 Order).

Evidence, Issues/Positions

a. Ameritech Illinois Showing of Checklist Compliance

333. In demonstration of compliance with Checklist Item 2, AI presented the testimony of witnesses Deere, Alexander, Smith, Cottrell, Ehr, Brown, Muhs, and Kagan.

1. Access to UNEs Generally

UNE Combinations

334. Section 251(c)(3) of the Act, AI comments, requires ILECs to provide UNEs in a manner that allows CLECs to combine them. The FCC's implementing rules further require ILECs to (i) not separate UNEs that are already combined with one another, unless the CLEC so requests, and (ii) combine UNEs at a CLEC's request, in certain circumstances. 47 C.F.R. § 51.31(b)-(f); Verizon Comms. Inc. v. FCC, 122. S. Ct. 1646 (May 13, 2002).

335. Ameritech meets all these requirements, it asserts, as confirmed by the fact that CLECs are actively obtaining and using combinations of UNEs to compete. Indeed, as of April 2002 CLECs were using 352,000 UNE Platforms (combinations of UNE loop, switching, and shared transport). (Am. Ill. Ex. 14.1 at 19). According to AI, AT&T has made the platform a cornerstone of its entry strategy. (See Am. Ill. Cross Ex. 26-27; Tr. 1676.)

CLEC Combinations

336. Ameritech asserts that it provides UNEs in a manner that allows CLECs to combine them by offering various collocation arrangements. (Am. Ill. Ex. 1.0, Sch. SJA-1, ¶69.) No party and no evidence, the Company claims, disputes that Ameritech Illinois provides UNEs in a manner that allows the CLEC to combine them.

Existing Combinations

337. Ameritech also provides existing combinations of UNEs; meaning that, it does not separate UNEs that are already combined, unless the CLEC so requests. (Id. ¶ 63.) The most commonly provided existing combination involves a "migration" of an end-user's existing retail service to a combination of UNEs. Such a migration might occur if an Ameritech retail end-user switched to a CLEC for local service, and that CLEC elected to serve the customer through the UNE-P. Ameritech has an effective tariff that enables CLECs to request such UNE-P migrations, which includes prices that comply with the Commission's initial Order and Order on Reopening in Docket 98-0396. (Am. Ill. Ex. 1.0 at 25-26; Am. Ill. Ex. 1.1 at 30; Am. Ill. Ex. 1.2 at 33; Tariff Ill. C.C. No. 20, Part 19, § 15.)

338. AI sees Staff to contend that the Company's offerings are unclear with respect to what types of "migrations" are available, what the cost for each type is, and what provisioning intervals will apply. (Staff Ex. 3.0 at 123.) According to AI, however, no CLEC disputes that Ameritech provides existing combinations. In fact, it contends, many CLECs have taken full advantage of those offerings and are obtaining UNE combinations in substantial commercial volumes. As such, Ameritech is providing the required combinations and migrations.

339. So too, AI notes Staff to criticize the alleged lack of detail regarding the provision of existing combinations *other than* the UNE-P and Enhanced Extended Links ("EELs"). But, the Company observes, neither Staff nor any CLEC has identified any other existing combination in which CLECs might be interested, which again would indicate that Ameritech is providing the combinations CLECs actually desire. Furthermore, if a CLEC did desire other existing UNE combinations, AI contends, it could request them through the Bona Fide Request ("BFR") process. (Am. Ill. Ex. 5.0 Sch. WCD-1, ¶¶ 83-87.)

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

New Combinations

341. Ameritech also provides new UNE combinations that are sufficient to meet (if not exceed) the requirements of federal law. Ameritech makes these available through its tariff (which was updated to comply with the Commission's Order implementing Section 13-801) and through interconnection agreements where the CLEC has adopted a contract amendment based on Section 13-801.

342. AI notes Staff to complain that Ameritech has not implemented everything necessary to meet its view of Section 13-801 or its preferred pricing for combinations (at least as Staff's view existed prior to the Order on Reopening in Docket 98-0396). (Staff Ex. 3.0 at 132-139.) Putting aside the fact that an affirmative showing of compliance with every nuance of state law, i.e., Section 13-801, is not required for purposes of Section 271, Staff's concern is now moot. The Commission has issued an order on UNE combination issues under Section 13-801 (Docket 01-0614), and Ameritech has already filed a compliance tariff. Similarly, with respect to pricing, Ameritech also has filed a compliance tariff, which was proposed by and agreed to with Staff, based on the Order on Reopening in Docket 98-0396 (the TELRIC Compliance case). (Tr. 1722-24.)

Pricing

343. Ameritech provides UNEs and interconnection to CLECs at rates that comply fully with all FCC and statutory requirements. Section 252(d)(1) requires that a "just and reasonable rate for network elements" is one that is "based on the cost . . . of providing the interconnection or network element." To implement this requirement, the

FCC determined that UNEs prices are to be based on the TELRIC of providing those elements. First Report and Order, ¶¶ 674-79; 47 C.F.R. § 51.501 et seq. Ameritech's cost studies, and the rates ultimately approved by the Commission, adhere to these principles.

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

345. This Commission, AI asserts, has demonstrated a consistent commitment to investigating Ameritech's wholesale rates fully, and has required the Company to establish rates that do not exceed what strictly applied TELRIC principles would dictate. Actually, the Company believes that the rates imposed by the Commission are lower than those that a proper application of TELRIC principles would generate. Staff too recognizes that, "[i]t is entirely safe to assume that this Commission has demonstrated its commitment to TELRIC principles, so that particular requirement is met in all cases." (Staff Ex. 6.0 at 16.) According to AI, AT&T officials have praised the Commission's pricing decisions. AT&T's Chairman, C. Michael Armstrong, recently applauded the state commissions in the Ameritech region – including this Commission – for "tak[ing] steps in recent months to cut the rates AT&T and others pay to lease portions of the Bell companies' networks – making it economically feasible to offer competing local service." (Am. Ill. Cross Ex. 29 at 1.0). Another AT&T senior official similarly applaud[ed] the Commission for approving UNE prices that "mak[e] Illinois one of the lead states in recognizing the value of competition among local service providers." (Am. Ill. Cross Ex. 27 at 1.)

346. The great majority of Ameritech's UNE rates, AI contends, were reviewed in extensive, contested proceedings (wherein major CLECs and Staff played active roles), to wit:

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

2). The Commission confirmed compliance with the TELRIC Order in its TELRIC Compliance Order in Docket 98-0396. (Am. Ill. Ex. 10.0 Sch. 2, ¶¶ 12-13.) The Commission also issued an Order on Reopening in that same docket, which adopted interim rates for certain nonrecurring charges ("NRCs") associated with the provision of UNEs. Ameritech filed compliance tariffs on May 10, 2002. (Am. Ill. Ex. 10.0 Sch. 2, ¶¶ 11-14, 36; Am. Ill. Ex. 1.0 Sch. SJA-1, ¶¶ 134-135.)

3). The Commission established rates for the high-frequency portion of a loop ("HFPL UNE") and related products and services in Docket 00-0393. These rates are, the Company contends, in all cases lower, than what Ameritech proposed. Indeed, the Commission set the monthly recurring charges for the HFPL UNE and certain other items at zero. (Am. Ill. Ex. 10.0 Sch. 2, ¶¶ 16-17.)

4). The Commission also approved permanent rates for unbundled local switching and unbundled local switching-shared transport in Docket 00-0700.

347. AI asserts that the Commission's aggressive application of TELRIC is confirmed by the fact that the currently available rates are among the very lowest in the country. (Am. Ill. Ex. 15.1 Sch. RJJ-2 at 8.) The national average loop rate of $14.18 is nearly 50% higher than the Illinois average. (Id.) Further, the rate for an entire UNE platform (loop, switching, and transport) in Illinois is significantly less than the rate for a stand-alone loop in many states. So too, the Illinois average loop rate is much lower than the rates for ILECs that have recently received approval under Section 271, such as the rates for Georgia and Louisiana, and Missouri, and it is comparable to the rate recently approved by the FCC in its New Jersey 271 Order.

Possible Future Rates

348. Much of the argument on pricing, AI notes, has nothing to do with the current Commission-approved rates. The complaints center on the possibility that Ameritech might someday propose higher rates. But, new rate proposals have been submitted as of yet. (Tr. 942-945.) More importantly, no rate proposals take effect without interested parties having an opportunity to respond, and no rate changes result unless the Commission approves them. Given past experience, AI contends, the Commission does not approve rates until it is satisfied that they comply with TELRIC.

349. AI sees Staff and WorldCom to propose that Ameritech's UNE rates be capped for five years. (Staff Ex. 6.0 at 39-41; Staff Ex. 23.0 at 24; WorldCom Ex. 6.1 at 16-17.) Indeed at the nearing, the CLECs sought to cross-examine Ameritech witnesses as to what rates might be developed. (Tr. 307-318; 920-930; 1582-83, 1594-96.) The FCC, AI contends, has held that the rates to be reviewed for assessing compliance are those in effect, and it rejects the theory that post-approval rate changes are a barrier to section 271 approval. In the Georgia 271 proceedings, AI observes, CLECs opposed BellSouth's application on the ground that BellSouth had opened a new cost docket to establish new UNE rates. The FCC, however, held that "we do not believe that the existence of a new Georgia cost docket, without more, should affect our

review of the currently effective rates submitted with BellSouth's Section 271 application." As the FCC went on to explain:

> States review their rates periodically to reflect changes in costs and technology. As a legal matter, we see nothing in the Act that requires us to consider only section 271 applications containing rates approved within a specific period of time before the filing of the application itself. Such a requirement would likely limit the ability of incumbent LECs to file their section 271 applications to specific windows of opportunity immediately after state commissions have approved new rates to ensure approval before the costs of inputs have changed. Georgia & Louisiana 271 Order, ¶ 96 (internal citations omitted).

350. Similarly, AI notes in its Massachusetts 271 Order the FCC wrote that "the fact that a state may conduct a rate investigation and change the rates in the future does not cause an applicant to fail the checklist item at this time. Indeed, rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions." (Id. para 36.) As such, AI contends, the possibility of future rate changes bears no relevance on checklist compliance. To the extent Staff contends the Commission should impose such restrictions under the "public interest" inquiry, AI argues, its proposal falls outside public interest concerns.

Interim Rates

351. The vast majority of Ameritech's wholesale rates have been approved by the Commission on a permanent basis after active and detailed investigation, the Company asserts. (Am. Ill. Ex. 10.1 at 2.) These include all of the components of the UNE-P (loops, switching, and shared transport). So too, Ameritech's loop rates are among the lowest (if not the lowest) in the nation, and with the conclusion of Docket 00-0700, its switching and transport rates are likewise among the lowest in the nation. Order, at 21-24, Docket 00-0700. Ameritech's collocation rates, also have been set by the Commission, and affirmed on appeal. Most NRCs are permanent, as a result of substantial reductions to the Company's proposed charges with the adoption of various WorldCom proposals in Docket 98-0396. See, Order Docket 98-0396 at 39-43. Finally, the recurring UNE rate for the HFPL has been set at zero on a permanent basis, as have rates for line sharing OSS modifications and xDSL manual loop qualification. Order at 84-88 Docket 00-0393.

352. A handful of rates, however, are interim according to AI. These include the charges associated with the "end-to-end Broadband UNE" established in Docket 00-0393, and certain NRCs associated with UNE combinations (UNE-P and EELs). AI notes Staff to argue that Ameritech's Section 271 application should be stalled until permanent rates for these products are approved by the Commission or at least until the Commission determines whether these rates fall within a "zone of reasonableness."

(Staff Ex. 6.0 at 18; Staff Ex. 3.0 at 85-86.) AT&T joins in this argument. (AT&T Ex. 3.0 at 10-11.) These positions are wrong, in AI's view.

353. According to AI, the FCC already has rejected the position taken by Staff and AT&T, and made clear that Section 271 does not require that permanent rates be in effect for each and every UNE at the time of a Section 271 application. To the contrary, interim rates may be acceptable in the situation where: 1) the interim solution to a particular rate dispute is reasonable under the circumstances; 2) the state commission has demonstrated its commitment to our pricing rules; and 3) provision is made for refunds or true-ups once permanent rates are set. Arkansas & Missouri 271 Order, ¶ 64; see also Kansas & Oklahoma 271 Order, ¶ 238. If it were otherwise, AI comments, Section 271 applications would be unnecessarily held hostage:

> [T]he section 271 process could not function as Congress intended if we adopted a general policy of denying any 271 application accompanied by unresolved pricing and other intercarrier disputes. Our experience has demonstrated that, at any given point in time at which a section 271 application might be filed, the rapidly evolving telecommunications market will have produced a variety of unresolved, fact-specific disputes concerning the BOC's obligations under sections 251 and 252. . . . If uncertainty about the proper outcome of such disputes were sufficient to undermine a section 271 application, such applications could rarely be granted. Congress did not intend such an outcome. Texas 271 Order para 87.

354. AI asserts that its interim rates for the "end-to-end Broadband UNE" (Docket 00-0393) and the NRC for Special Access-to-EEL conversions (Docket 98-0396) satisfy all three of the FCC's factors. Indeed, AI points out, Staff proposed these interim rates. See Order on Second Rehearing at 25, Docket 00-0393 (approving the interim end-to-end Broadband UNE rate proposed by Staff witness Koch); Order on Reopening at 11, Docket 98-0396 (approving Staff's proposed $1.02 interim rate for EEL conversions). The second of the FCC's factors also is satisfied: there is no question that the Commission has "demonstrated its commitment to [the FCC's] pricing rules," as Staff itself concedes. (Staff Ex. 6.0 at 16.) Finally, these interim rates are subject to true-up once permanent rates are approved. Order on Second Rehearing at 25, Docket 00-0393; Order on Reopening at 15, Docket 98-0396.

355. One other NRC associated with UNE combinations is also interim in nature; namely, that for new UNE-P. The Order on Reopening in Docket 98-0396 (at 11) set this NRC at an interim rate level proposed by Staff. As such, Staff cannot claim that this rate is unreasonable. And again, there is no question that the Commission has "demonstrated its commitment to [the FCC's] pricing rules." (Staff Ex. 6.0 at 16.) Admittedly, the NRC for new UNE-P is not subject to true-up. But this is immaterial under the circumstances, given that only Ameritech could possibly be hurt by the lack of a true-up. New UNE-Ps clearly entail additional provisioning and installation costs, for

which the interim rate does not account. Order on Reopening at 5-6, Docket 98-0396. Further, Ameritech "agreed to forego the opportunity for a true-up with respect to" the new UNE-P NRCs "[a]s a concession to Staff and the CLECs." Id. at 10.

Net-Yet-Approved Rates

356. AI notes Staff and AT&T to contest Ameritech's rates for subloops, dark fiber, and CNAM queries, on the grounds that the Commission has not yet opened an investigation into these rates. There are rates, however, reflected in tariffs that have been on file for nearly a year and a half, AI notes, during which time no party has formally requested a Commission investigation. In any event, AI points out, the FCC has made clear that a few unresolved pricing disputes will not "undermine a section 271 application." Texas 271 Order, ¶ 87. AI sets out additional reasons why the position of Staff and the CLECs lacks merit.

357. At the outset, AI observes that, subloops, dark fiber, and CNAM queries are relative newcomers to the unbundling scene. Rates for these products were not developed and investigated during the initial round of cost investigation in Dockets 96-0486/96-0569 because they were not even designated as UNEs until the FCC issued its UNE Remand Order in 1999. Accordingly, the status of these rates is hardly unusual in the industry. The FCC has approved the Section 271 applications for all five SWBT states even though none of them have permanent subloop rates. (Am. Ill. Ex. 10.1 at 13.) The FCC approved SWBT's application for Texas even though it did not (and still does not) have permanent rates for subloops, dark fiber, or DS3 loops. (Id.)

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

359. AI sees Staff to assert that the NRCs are higher than those approved in Michigan, based on a surface comparison. (Staff Ex. 23.0 at 15.) But, Staff's view fails to consider the differences in how Illinois and Michigan wholesale rates are structured, AI maintains. In Michigan, NRCs are generally segregated into separate installation and disconnect charges, while the NRCs in Illinois are not segregated as such. (Am. Ill. Ex. 1.2 at 46.) Accordingly, Ameritech Illinois asserts, its NRCs for subloops cannot be directly compared to those in Michigan, unless one first adds the Michigan installation and disconnection charges. The comparison that results from this process reveals that Ameritech Illinois' subloop NRCs fall within a "zone of reasonableness" and are in all instances lower than their Michigan counterparts. (See Am. Ill. Ex. 1.2 Sch. SJA-4.)

Sub-loop Rates

360. Staff also argues that Ameritech's subloop rates are not TELRIC-compliant because they are higher than the rates for the whole loop. (Staff Ex. 23.0 at 11-12.) Ameritech's subloop cost study was performed much later than the loop cost study. Although the subloop study used the same Commission-ordered inputs from the TELRIC docket (*i.e.*, fill factors, depreciation rates, and cost of capital), the subloop cost study had the benefit of using updated cable cost and installation information, and appropriately included premises termination investment that had been improperly omitted from the original loop cost study. (Am. Ill. Ex. 10.2 at 7.)

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

2. Non Discriminatory Access to OSS

362. The term "operations support systems" or OSS refers generally to the "systems, databases, and personnel used by incumbent LECs to provide service to their customers." Kansas & Oklahoma 271 Order, ¶ 104. The FCC requires a BOC to provide requesting carriers nondiscriminatory access to its OSS so they can "formulate and place orders for network elements or resale services, . . . install service for their customers, ... maintain and repair network facilities, and . . . bill customers." Id. For OSS functions "that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that permits competing carriers to perform these functions in 'substantially the same time and manner' as the BOC." Id. Where there is "no retail analog," the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete." Id.

363. The FCC takes a two-step approach to analyzing OSS compliance. The first step is to determine whether the BOC has made its OSS available to requesting carriers i.e., whether the BOC "has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions." Id. ¶ 105. The second step is to determine whether the OSS are operationally ready, as a practical matter; *i.e.*, "whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes." Id. The "most probative evidence that OSS functions are operationally ready is actual commercial usage in the state for which the

BOC seeks 271 authorization." Id. In addition, the FCC may consider "the results of carrier-to-carrier testing, independent third-party testing, and internal testing." Id.

364. Ameritech follows the FCC's two-step approach here. In this Phase 1-A of the proceeding, the electronic and manual interfaces Ameritech offers for each OSS function are described, along with its extensive efforts to address operational concerns and ensure operational readiness. In Phase II, the results of commercial performance and of the third-party test of OSS that is now underway will be described. Thus, AI asserts, the issue at present is: Whether Ameritech "has developed sufficient electronic. . . and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions", (subject to review of the results of "actual commercial usage" and "the results of carrier-to-carrier testing, independent third-party testing, and internal testing" in Phase II). (Id. ¶ 105)

365. The answer to that question AI asserts, is a clear "yes." Ameritech presented extensive evidence documenting (i) the electronic and manual interfaces offered for each of the five OSS functions (sections a – e), (ii) the supporting resources it provides to CLECs (section f), and (iii) the agreed "change management" process it has in place to implement OSS updates and enhancements (section g). And, throughout each section, appear the extensive efforts Ameritech has made to address CLEC concerns. There is little real dispute as to that *prima facie* showing. Quite the contrary: in the business world, CLECs themselves have already tested – and are making ample commercial use of – the interfaces and resources offered to them.

366. AI offers up, for example, the AT&T situation. In June 2001, AT&T trumpeted plans to enter the local Michigan market, where it would use OSS interfaces substantially similar to those offered in Illinois. (Tr. 1648-50; Id. at 1649 ("It's my experience that Ameritech's systems . . . [are] generally set up on a regional basis"). AT&T's Chairman promised that "AT&T would not enter on a large scale until it can assure customers that Ameritech's systems will allow customer data to be exchanged quickly and accurately." (Am. Ill. Cross Ex. 25.) AT&T then subjected those systems to a thorough test, which it called the "Michigan Market Entry Trial." At the hearing for this matter, AT&T Witness Willard described that trial as "a test drive of Ameritech's OSS where AT&T essentially built the major portions of the electronic data interchange platform . . . and attempted to send certain order types and activity types that are critical to entering the market over that interface." (Tr. 1656.) This test lasted from September through December 2001. (AT&T Ex. 8.0 at 39.)

367. Plainly, AI asserts, AT&T's testing confirmed that it *could* "assure customers that Ameritech's systems will allow customer data to be exchanged quickly and accurately," as its Chairman pledged, because in February 2002 AT&T announced that it *had* entered on a large scale and had "begun offering Michigan consumers currently served by SBC Ameritech a new choice for residential local phone service." (Am. Ill. Cross Ex. 25, 26.) And, it did so using Ameritech Michigan's OSS to order UNEs. (Tr. 1650.) Within two months, AT&T announced that it "already has more than 50,000 households using its local service plans" and, by June 2002, AT&T's Chairman announced that the figure had topped 100,000 (Am. Ill. Cross Ex. 27, 29).

368. AT&T repeated the exact same pattern – a high-profile announcement of plans to enter the market, followed by thorough OSS testing, followed by active commercial use – in Illinois. On April 22, 2002, AT&T's senior vice president announced that it planned to enter the Illinois local service market by using UNEs, and that it was "aggressively testing systems interfaces with SBC Ameritech" to that end. (Am. Ill. Cross Ex. 27.) As Mr. Willard elaborated, AT&T was then testing the LSOG 4.2 version of the ordering interface. (Tr. 1666.) As in Michigan, AT&T must have been satisfied with the results, because less than two months later AT&T "fulfill[ed] the promise we made in April to enter the residential local phone market in Illinois." (Am. Ill. Cross Ex. 28.) Once again, AT&T's entry strategy was founded on Ameritech's UNEs, obtained via Ameritech's OSS interfaces. (Tr. 1676-77.) At the same time, AT&T announced that it was "up and running in Ohio" using Ameritech Ohio's OSS interfaces to obtain UNEs (Am. Ill. Cross Ex. 29) (Tr. 1676-77).

369. According to AI, multi-national companies like AT&T do not develop – and then publicly unveil – business plans that depend on another company's OSS interfaces, unless they have confidence that those interfaces are both available and reliable. Indeed, AT&T's own witness – who participated in the decisions to enter the Ameritech markets – testified that "reliable OSS are critical to market entry" and are thus an "important" consideration in AT&T's entry decisions (AT&T Ex. 8.0 at 7) (Tr. 1702-03) (Tr. 1650). Thus, before entering, AT&T conducted aggressive testing of the OSS interfaces and, it chose to enter the market using those interfaces. Further, AI comments, AT&T is not alone as numerous other CLECs have done the same, using Ameritech's OSS.

370. Given the CLEC's real-world use of the interfaces and OSS functions that Ameritech Illinois currently provides, the commenters really cannot contest that Ameritech "has developed sufficient electronic . . . and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions" (Kansas & Oklahoma 271 Order, ¶ 105), subject to review of the results in Phase II. As such, they complain about its performance (usually its speed) in performing those services. Many of those complaints AI contends, either (i) relate to issues that have already been addressed by improvements to systems or corrections to procedures; (ii) are anecdotal accounts about a few unspecified orders that lack the specificity required to investigate or substantiate their existence and impact; or (iii) simply take observations and exceptions noted during the BearingPoint test process and attempt to transform them into "conclusions" before the Commission has the benefit of seeing Ameritech's response or corrective action. The most relevant data, i.e., commercial entry and use of OSS, show that the CLEC complaints have not affected market entry, AI asserts.

371. All such complaints are premature, AI contends, in that they largely relate to issues that will be addressed in Phase II. At the present, complaints about performance lack *context*. The standard for OSS is nondiscrimination, not perfection. So too, "[t]he determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before us." New York 271 Order, ¶ 60.

372. According to AI, the FCC has explained that, a proper examination of performance looks at individual complaints in the context of performance as a whole and over time Kansas & Oklahoma 271 Order, ¶¶ 31-32, and must also consider the BOC's efforts to investigate and resolve the issues. See New Jersey 271 Order, ¶ 109 ("[W]e emphasize that our approval is based not only on the substantive explanations that Verizon has determined through detailed investigation, but also the thoroughness of the investigative process itself, which demonstrates Verizon's commitment to ensuring nondiscrimination"). Thus, the FCC has repeatedly rebuffed CLECs that sought to pronounce an entire group of OSS (which perform a wide range of functions for a large number of wholesale and retail customers, thousands or even millions of times every month) deficient, on the basis of vague complaints about a single order or small group of orders. Id. ¶ 50 ("Mere unsupported evidence in opposition will not suffice."). As the FCC has confirmed, "isolated and marginal" disparities "are not competitively significant and do not indicate systemic discrimination." Connecticut 271 Order, ¶ 13.

373. Much of the testimony, AI notes, focuses on the LLNs that Ameritech issues to CLECs (or to itself) when a competing carrier takes customer. Ameritech does not dispute that it experienced problems in delivering those notices. But, it is equally indisputable that Ameritech conducted a thorough investigation, implemented corrective actions, kept CLECs and state commissions informed of progress, achieved significant improvement, and continues even now to monitor the situation. The Company believes that the line loss issues have now been resolved, but does not contend, and the Commission need not find, that LLNs are now perfect for all time. Considering the efforts made to date, the ongoing supervision of this issue by Ameritech, CLECs and the Commission for Phase II, and putting LLNs in the context of all the other services Ameritech performs, that the issue is not of such a nature as to warrant a finding of noncompliance now.

Pre-Ordering

374. Pre-ordering AI informs, "includes those activities that a carrier undertakes to gather and verify the information necessary to place an order." Kansas & Oklahoma 271 Order, ¶ 120. According to AI, it offers CLECs two main electronic interfaces for pre-ordering. The first is EDI/CORBA, an industry standard gateway that can understand inquiries submitted in either of two languages (EDI or CORBA) promulgated by technical industry bodies. (Am. Ill. Ex. 4.0 Sch. MSC-1, ¶ 75.) EDI/CORBA is an "application-to-application" interface: it allows a CLEC's electronic systems and software applications to communicate with their counterparts at Ameritech. (Id.) A CLEC can integrate the interface with its own electronic systems and with the ordering interface described below. (Id.) The majority of CLEC activity comes through this interface. (Tr. 1259) (describing EDI as "the primary driver for all traffic . . . for both pre-order and order").

375. Ameritech' second pre-order gateway is Enhanced Verigate, which was introduced in March 2001, and is modeled on the Verigate (Verification Gateway) interface used by Southwestern Bell. (Am. Ill. Ex. 4.0 Sch. MSC-1, ¶ 79.) Enhanced Verigate is a Graphical User Interface ("GUI"). Instead of communicating with a CLEC's

electronic systems the way an application-to-application interface would, Enhanced Verigate accepts commands from CLEC representatives working on computer screens, just as well-known pc programs do. (Id. ¶ 78.) It uses plain-English displays and is based on the same design that is used for Internet web browsers. (Id.) This interface is thus suited for carriers (typically, smaller or newer CLECs) that do not have or wish to develop their own electronic applications for pre-ordering. (Id.) At the same time, it gives CLECs access to the same information that is available through EDI/CORBA. (Id. ¶ 74.)

376. According to AI, both interfaces respond in "real time" and allow requesting carriers access to the same information and functions available to Ameritech's retail representatives (id. ¶¶ 72-74), and to the same functions identified by the FCC in prior orders under Section 271. A requesting carrier can thus verify the customer's address, look up the customer's service record and directory listings, find out what features and services are available to the customer, pick and reserve a telephone number, determine the need for a field dispatch to install service, obtain a due date for installation, and obtain information (such as the Network Channel Interface) for ordering unbundled access. Id. ¶ 70. Requesting carriers can also determine on-line whether the end user's loop will support DSL service (*i.e.*, obtain information on the loop's characteristics) Id. ¶ 74.

Integration

377. As part of its assessment, the FCC considers whether a BOC allows carriers to integrate pre-ordering information into the ordering process and into their own systems. Texas 271 Order, ¶ 152. "[A] BOC has enabled 'successful integration' if competing carriers may, or have been able to, automatically populate information supplied by the BOC's pre-ordering systems onto an order form . . . that will not be rejected by the BOC's OSS systems." Id. Ameritech's EDI/CORBA pre-order interface is designed to be integrated with the EDI order gateway to form a seamless pre-order/order system, and it can also be integrated with CLEC systems that use either one of the two industry standard formats, EDI and CORBA. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 75.) Moreover, at WorldCom's request, Ameritech modified EDI/CORBA to provide address information in a "parsed" format (divided into individual data fields) that corresponds to the order form. (Id. ¶¶ 98-99.) Ameritech also has modified its pre-ordering and ordering systems and formats to synchronize fields common to both interfaces. (Id. ¶ 101.) These features go above and beyond the systems the FCC found compliant in Texas. Texas 271 Order, ¶ 154.

GUI Issues

378. AI responds to a number of CLEC comments that relate to the performance of the Verigate GUI. AT&T claims the GUI was slow and unstable when first deployed in March 2001 (AT&T Ex. 4.0 at 4-7). Those issues were resolved and Ameritech implemented additional corrective measures after the April 2002 OSS release (Tr. 1257-58) (Am. Ill. Ex. 4.1 at 39-40). Vertex alleged that the GUI was not integrated with the ordering interface, as customer service records did not reflect recent

order activity. In reality, AI notes, the interfaces *are* integrated, and the issue is merely one of timing (a short delay in updating records for certain orders that require error correction in the billing process). (Am. Ill. Ex. 4.1 at 41-42.) McLeodUSA alleged that the GUI did not provide address validation for Centrex (MTSI Ex. 4.0 at 4.) Actually, address validation was and is available, AI comments, but McLeod was trying to perform that function via the Customer Service Inquiry ("CSI"). In any event, it asserts, the CSI issue was resolved with the April 2002 release. (Am. Ill. Ex. 4.1 at 38-39.)

379. The GUI, AI points out, is only one option for pre-ordering. Most pre-order inquiries today go through the separate, industry standard EDI/CORBA interface, and allegations about the GUI have no bearing on the majority of commercial activity. (Tr. 1259); See also Texas 271 Order, ¶ 180, n.489 ("We place greater weight on the flow-through capability of [the] EDI interface than we do on the less-sophisticated LEX graphical user interface because EDI is an industry-standard application-to-application interface").

Ordering

380. As with pre-ordering, Ameritech contends, it offers two alternative interfaces to submit local service requests. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 112.) The first of these is an application-to-application interface based on EDI, which can be used either on a standalone basis or coupled with the EDI/CORBA pre-order interface. (Id. ¶ 114.) In March 2001, Ameritech Illinois updated the EDI interface in accordance with LSOG 4, promulgated by the industry's Ordering and Billing Forum. (Id. ¶¶ 114-115.)

381. The second order interface is Enhanced Local Exchange (Enhanced LEX), a GUI modeled on Southwestern Bell's LEX system but enhanced so that CLECs can access it using a commercial Internet Web browser program. (Id. ¶¶ 120-21.) Some carriers submit orders manually (*e.g.* by facsimile) through the LSC. (Id. ¶ 112; Am. Ill. Ex. 2.0 Sch. JWB-1,¶ 29.)

Firm Order Confirmations

382. Ameritech reviews carriers' orders for completeness, proper content, and format. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 131, 135.) Once a valid, firm order is accepted for processing, Ameritech issues a Firm Order Confirmation ("FOC") to the requesting carrier. (Id. ¶¶ 135, 146-148.) The Commission AI notes, can review the timeliness of these notices in Phase II. AT&T's allegations about FOC performance, AI comments, illustrate why such allegations are premature. AT&T notes that BearingPoint issued an exception in its third-party test that stated FOCs were not timely for 12 UNE-P orders that were submitted in March 2002. (AT&T Ex. 4.0 at 8.) But, AI would observe, nine of these orders were submitted on March 19, when an isolated error caused several late FOCs, and that error was corrected on the same day. (Am. Ill. Ex. 4.2 at 18.)

Rejections

383. AI explains that CLEC orders that are incomplete, inaccurate, or improperly formatted are returned to the requesting carrier electronically, along with a

notice that identifies the reasons for rejection so that the carrier can correct and resubmit its request. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 134, 136, 149.) The FCC has properly recognized that "we will not hold a BOC accountable for rejects that occur for reasons within a competing LEC's control" (Kansas & Oklahoma 271 Order, ¶ 143). Ameritech informs that it offers extensive training and assistance to help CLECs submit accurate requests and thus avoid rejection in the first place. Further, to help CLECs avoid errors due to their submission of an order with an invalid end user address, Ameritech changed its ordering systems such that carriers can submit most orders "without an address", using alternative means to identify the location at which Ameritech is to install service. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 151.)

384. AI observes that the sole criticism regarding order rejections at this stage of the proceedings, comes from WorldCom, which claims that Ameritech improperly rejected orders to migrate a "line sharing" arrangement into a "line splitting" arrangement.

Jeopardy Notices

385. Ameritech issues electronic "jeopardy" notices to CLECs if a condition in scheduling might cause it to miss the due date for installation. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 155.) There is no dispute here regarding such notices, and the Commission can review performance data – and the rate of actual missed due dates – in Phase II.

386. Ameritech issues electronic notices of order completion ("service order completions" or "SOCs") to the requesting carrier once the physical work is complete and the order is registered as complete in its ordering and provisioning systems. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 145, 156.) WorldCom claims that SOCs for some orders are "missing." (WorldCom Ex. 3.0 at 3, 5-11.) WorldCom uses the term "missing" to refer to any situation in which it placed an order, does not have a record of receiving a SOC, and has asked Ameritech to investigate.

387. At any rate, WorldCom's own witness acknowledged that Ameritech has achieved significant improvement. (See Id. at 10.) In particular, Ameritech devoted extensive time and effort to determine whether, and to eliminate any possibility that, there was a systemic problem in the OSS software, and to investigate WorldCom's theory that orders were falling out in the translation process as occurred in New York. (Am. Ill. Ex. 4.1 at 26; Am. Ill. Ex. 2.1 at 7.) The problem did not occur in the translation process, AI contends, but instead occurred because certain errors were mistakenly not sent to the LSC for review and correction. (Id.) Upon identifying the cause, Ameritech Illinois corrected it. and the errors are now reported to the LSC for resolution. (Id.) Throughout the process of investigation and resolution, Ameritech Illinois provided WorldCom frequent updates on its progress via conference calls and correspondence. (Id.; Tr. 1646-47). It bears noting, AI contends, that the "missing" SOCs for March 2002 constituted less than 0.2 percent of WorldCom orders, and that current data show less than seven missing SOCs per day, a far different scenario from WorldCom's assertion that the issue affects 200 orders per day. (Am. Ill. Ex. 4.1 at 27 & Sch. MC-4; Am. Ill. Ex. 4.2 at 13-14.)

"Line Loss" Notices (LLNs)

388. The notices that Ameritech provides to the carrier that places an order for local service, occur because that carrier has "won" a new customer or because it wants to provide some new service to an existing customer. One carrier's win may be another carrier's loss. A CLEC's end user might leave its existing carrier for another CLEC (described as a "CLEC-to-CLEC migration") or for Ameritech (often called a "win-back"). If the losing carrier served the end user solely by using Ameritech's facilities (by resale or the UNE-P), Ameritech provides that carrier with a LLNs, also called an "836" after the winning carrier's order has been processed. (Am. Ill. Ex. 4.1 at 2.) That notice informs the losing carrier of its loss.

389. The MOR/Tel system, AI informs, generates LLNs. This system interacts with the electronic interfaces through which CLECs place orders with and receive notices from Ameritech. (Am. Ill. Ex. 2.1 at 2-3; See also Am. Ill. Ex. 4.0, Sch. MJC-1, ¶¶ 132-136 (for general information on MOR/Tel and the related system "MOR.") MOR/Tel matches completion notices for installations against "disconnect" orders. If it finds a match, MOR/Tel knows that the disconnection resulted from an end user's decision to change carriers and thus, determines that an LLN should be sent. (Am. Ill. Ex. 2.1 at 2-3.) The process for issuing LLNs is nondiscriminatory. As a result of Docket 02-0160, AI contends, its retail operations now rely exclusively on LLNs for their line loss information.

390. In the latter half of 2001, Ameritech and its affiliates learned that they were not providing some notices (most of them related to activity in 2001) on a timely basis. They assembled a "cross-functional team" to investigate, address, and resolve LLN issues. This team undertook an "end to end" analysis of the entire ordering process (both the relevant electronic systems and manual procedures) in order to identify the source of the problem. (Tr. 1252-1253; Am. Ill. Ex. 4.1 at 3-4.)

391. According to AI, the cross-functional team also monitored (and continues to monitor) day-to-day LLN performance in detail. The team consists of four groups: (1) a "Re-flow" group that corrects and re-sends any individual notices that contain errors; (2) a "Resolution" group that develops and implements corrective measures to prevent a recurrence of such errors; (3) an "Analysis" group that categorizes errors to identify any process issues; and (4) a group held responsible for overall supervision of the LLN function. (Am. Ill. Ex. 4.1 at 4.) The team members, AI asserts, review reports of service order and LLN activity on a daily basis. (Id.) These reports include a "Happy Report" of LLNs issued within 24 hours of order completion and an "Unhappy Report" of LLNs issued over 24 hours after completion. (Id. at 3-4 and Sch. MC-2 Part 5 at 5-6; Tr. 1076-1077.)

392. Ameritech's investigation revealed that some employees had not properly followed methods and procedures in two situations. Ameritech asserts that it took action on this discovery and: (1) immediately re-instructed the appropriate personnel on proper procedure on an interim basis; (2) identified and issued LLNs that had not previously been issued; and, (3) enhanced its electronic systems or procedures so as to

resolve the matter permanently. In addition, having identified a situation in which LLNs were properly issued, but did not provide complete or accurate information, AI corrected the situation. Although all of these enhancements were implemented, and current data show that they are working, Ameritech maintains that the cross-functional team remains in place until resolution of the LLN issue is verified by the various state commissions.

393. The first situation arose solely for "winbacks" by Ameritech Illinois, LLNs are generated when MOR/Tel finds that a disconnect order matches the completion notice from the service order system and the disconnect results from an end user's decision to migrate to another carrier. In a CLEC-to-CLEC migration, the MOR/Tel record is automatically created as part of processing the winning carrier's order (which typically goes through one of the electronic ordering interfaces), so MOR/Tel automatically has a record to match with disconnects. (Am. Ill. Ex. 2.1 at 3.) Retail orders, AI explains, do not pass through the interfaces that CLECs use; thus, the retail organization would fax its winback orders to the LSC, which was then supposed to enter an electronic placeholder that MOR/Tel could use to match with the related disconnect. (Id.) In some cases, however, the LSC did not create the placeholder prior to the completion of the order. (Id.) The order was still processed in accordance with the wishes of the end user and the winning carrier (Ameritech), and service to the end user was not affected. But there was nothing to tell MOR/Tel to send an LLN to the end user's previous carrier. (Id.)

394. As soon as this issue was identified, the LSC immediately instructed its staff to establish the MOR/Tel placeholder records on a timely basis. (Id. at 3-4.) Ameritech then developed electronic programs to locate all previously unmatched disconnect orders, and issued appropriate LLNs. (Am. Ill. Ex. 4.1 Sch. MC-2 Part 1 at 4.) On April 24, 2002, Ameritech implemented a permanent solution: a systems enhancement that allows the electronic systems to generate LLNs automatically, without need for the previous placeholder. (Id. at 5; Am. Ill. Ex. 4.2 at 2.)

395. The second situation concerned CLEC-to-CLEC migrations and, in particular, those where the losing carrier used one product (*e.g.,* resale) to serve the end user while the winning carrier used a different product (*e.g.*, the UNE-P). (Am. Ill. Ex. 2.1 at 4.) The LSC AI notes, assigns staff to specialized work groups that focus on orders for a particular product or service (for example, one group handles resale while another handles the UNE-P). (Id.) Thus, one representative would enter the "disconnect" order for the existing service while a representative from a different group would enter the "new service" order for the winning carrier. (Id.) The procedures for coordinating these activities were unclear, AI admits, and in some cases, the representatives did not enter all of the information that MOR/Tel uses for matching disconnect and new service orders. (Id.) This did not affect processing of the order: the end user got the service it requested, the winning CLEC got the end user it had won, and it received a completion notice to tell it the order was complete. (Id. at 4-5.) The losing CLEC did not receive an LLN. (Id.) As soon as this issue was identified, all interested employees received additional instruction as to proper order entry. (Id. at 5.) Ameritech then developed and implemented new procedures so that the same LSC representative would handle both halves of these orders: the request for new service

and the disconnection of the old. (Id.) As with the win-backs, Ameritech used computer programs to locate unmatched disconnects and issued the LLNs. (Am. Ill. Ex. 4.1 Sch. MC-2 Part 1 at 5.)[5]

396. A third situation, AI asserts, did not affect the actual issuance of the LLN, but its content. In some cases, an end user might transfer some but not all of its lines to another carrier, an event that is described as a "partial migration." Ameritech's systems processed a partial migration as if it were a disconnect for all the existing lines coupled with two new service orders: one for the lines going to the new carrier, and one for the lines that will remain with the old carrier. (Am. Ill. Ex. 4.1 Sch. MC-2 Part 5, at 2-3.) In such cases, MOR/Tel issued an LLN to the losing carrier, as it should, but incorrectly informed the losing carrier that it had lost all of its lines. (Am. Ill. Ex. 4 at 9.) In effect, MOR/Tel recognized the disconnect portion of the order and provided an LLN reflecting that portion, without considering the portion of the order that established a new account for the lines remaining with the existing carrier. (Id. Sch. MC-2 Part 5, at 2-3.) Ameritech asserts that it implemented a programming change in May 2002, so that MOR/Tel would consider the order as a whole and issue an LLN only for those lines that actually changed carriers. (Id.)

397. The final LLN enhancement (a follow-up to an earlier programming change), was implemented by Ameritech on June 3, 2002. (Am. Ill. Ex. 4.2 at 2.) Data for the two weeks following that enhancement, the Company maintains, shows that Ameritech is now issuing over 99 percent of LLNs within 24 hours of order completion. (Tr. 1069.)

398. Throughout this process, the Company asserts, Ameritech and its affiliates provided frequent, detailed updates to CLECs and state commissions regarding the issue's status and AI's progress towards a full resolution. These updates included a two-day regional workshop on LLN issues hosted by Ameritech in March 2002, an Accessible Letter posted on the CLEC website to summarize the workshop presentation and a series of progress reports filed with the Michigan Public Service Commission (copies of which are provided at Am. Ill. Ex. 4.1 Sch. MC-2). (AT&T Cross Ex. 4.)

399. While there may be some disagreement or uncertainty among the other parties as to whether all LLN issues have been completely or permanently resolved Ameritech maintains that its cross-functional team continues to monitor the process and will stay in place until the various state commissions are satisfied that LLN issues have been adequately resolved. (Tr. 1211.) Further the Commission will assess OSS performance in Phase II.

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[5] So too, as WorldCom points out (WorldCom Ex. 3.0 at 13), Ameritech Illinois identified a scenario under which an LLN would not be sent, or would be sent to the wrong carrier, if an LSC service representative incorrectly entered certain ordering codes on a UNE Platform order. (Am. Ill. Ex. 2.1 at 5-6). Ameritech Illinois' data shows that this occurs for less than 0.05 percent of CLEC orders (Am. Ill. Ex. 4.2 at 6). At any rate, the LSC has reviewed proper coding with its service representatives and has dedicated a group of representatives to quality control reviews of UNE Platform orders, including the specific codes at issue. (Am. Ill. Ex. 2.1 at 5-6).

400. The FCC does not require perfection, AI contends, nor does it require that all corrective actions be complete and their results verified with certainty for any particular period of time prior to the application date. See, e.g., Texas 271 Order, ¶ 284, 358; New Jersey 271 Order, ¶ 958, n.263 (finding that Verizon complied with checklist even though its reconciliation of completion notice data with one carrier was still in progress: "our finding of checklist compliance for OSS is based in part upon Verizon's procedures for working with competitors to address notifier and other OSS issues"). Taken in its proper context – that is, considering Ameritech's efforts to investigate and resolve the issue, considering OSS access as a whole, and considering the procedures that Ameritech and this Commission have in place to monitor the issue going forward in Phase II – the LLN issue should not be viewed to negatively effect the Company's *prima facie* showing that it "has developed sufficient electronic . . . and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions."

Flow-through

401. AI informs that CLECs may access Ameritech's OSS electronically via interfaces that use standard formats. Flow-through refers to the translation of CLEC orders from the standardized format to the internal format used by Ameritech's downstream systems. (Am. Ill. Ex. 2.0 Sch. MC-1, ¶ 135.) For some order types, the interface is designed to translate the entire request electronically and send it downstream for processing; these orders are said to "flow through." (Id. ¶ 133.) For other order types, a complete electronic translation has not yet been developed. (Id.) In those cases, the carrier's request is sent to the LSC, where it is typed directly into the downstream systems. (Id.; Am. Ill. Ex. 2.0 ¶ 29.) This is the same method, the Company contends, that it uses to enter its own retail orders. (Tr. 535.)

402. According to AI, the FCC does not require a BOC to "flow through" 100 percent of CLEC orders. Indeed, the FCC has stated that it does not even "specifically require [a Section 271 applicant] to provide data on its achieved flow-through rate to determine that [its] OSS are capable of offering high flow-through." Pennsylvania 271 Order, ¶ 48. Indeed, the FCC has recognized that flow-through rates "are not so much an end in themselves" because a BOC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems is more relevant and probative for analyzing [its] ability to provide access to its ordering functions than a simple flow-through analysis." New York 271 Order, ¶¶ 162, 163.

403. Nevertheless, AI notes AT&T and WorldCom to contend that current flow-through rates are inadequate, while Vertex appears to complain that orders for two specific products (DS1 and DS3 loops) are not currently designed to flow through. (AT&T Ex. 4.0 at 20-24; WorldCom Ex. 3.0 at 3, 11-14; Vertex at 4-6.) While these complaints can be reviewed with overall OSS performance in Phase II, AI observes that, the parties have already agreed upon, and the Commission has approved, a collaborative process to determine – as a group – the orders to receive priority in future

flow-through improvements. (Am. Ill. Ex. 4.0 Sch. MC-1, ¶ 143.) Vertex offers no reason to attempt to bypass that process, in AI's view.

Orders for Specific Products

404. In a few instances, AI notes, the CLECs would contend that the systems and processes are inadequate to support ordering for specific products or services. As such, AT&T argues that the LSOG 4 and 5 versions do not permit an "as-is migration" from retail service to the UNE-P, i.e., a scenario in which the end user wants to retain all his existing features and change only the carrier. (AT&T Ex. 8.1 at 20.). It is impossible, AI asserts, to seriously contend that CLECs are unable to obtain such migrations. The sheer volume of platforms that the CLECs and, in particular AT&T, have obtained in recent months would conclusively refute any such assertion.

405. In AI's view, AT&T's real complaint is about format; i.e., that the LSOG 4 and 5 order forms do not have a single box to check for an as-is migration, and that the CLEC must, instead, check off the individual services requested. This is the case, AI contends, because Ameritech cannot migrate *all* the services on an end user's account "as is". Some services (such as voice mail or the Linebacker maintenance plan) are not telecommunications services, not part of the UNE-P, and thus would not be transferred. (Tr. 1260.) The order format used by Ameritech was developed on a collaborative basis as part of the Plan of Record for Illinois and the FCC, and it is designed to follow industry standards. AT&T does not contend that the current format for as-is migrations departs from industry standards or the Plan of Record, and given current order volumes, it cannot contend that the format prevents ordering.

406. In the same vein, AI observes Z-Tel to allege that it had difficulty in ordering "blocking," a service that allows end users to prevent calls to "900" or "976" numbers from being made on their lines and thus avoid the charges associated with such calls. (Z-Tel Ex. 1.0 at 13.) In February 2002, however, Ameritech implemented a system enhancement to resolve this difficulty. (Am. Ill. Ex. 4.2 at 20.) Since then, Ameritech has reviewed several Z-Tel orders, and found no further systems barriers to processing orders so long as they were correctly submitted. (Id.) On April 12, 2002, Z-Tel tendered a list of orders for investigation, and "blocking" worked on all but one of them. While Ameritech is investigating the sole exception using standard follow-up procedures, it appears to represent an isolated occurrence, not any systemic problem. (Id. at 20-21.) At any rate, AI observes, the Commission can review this performance issue in Phase II.

Provisioning

407. "Provisioning" AI explains, refers to the process of completing a CLEC's order and providing the requested product or service. According to AI, provisioning of many CLEC services is coordinated by the Local Operations Center ("LOC"), which has almost 600 employees, where more than 300 are assigned to provisioning activities. (Am. Ill. Ex. 2.0 Sch. JWB-1, ¶¶ 20, 60.) The FCC, AI notes, requires that "[a] BOC must provision competing carriers' orders for resale and UNE-P services in substantially

the same time and manner as it provisions orders for its own retail customers," and it also examines the timeliness and the quality of a BOC's provisioning efforts for other products and services that have no retail analog. New Jersey 271 Order at App. C, ¶ 37. The Commission, AI notes, will review provisioning performance in Phase II.

Special Services

408. "Special services," AI explains, are telecommunications circuits that require specific transmission parameters over and above those required for "plain old telephone service" or "POTS." They include, but are not limited to, high capacity UNEs and services (*i.e.,* DS1 and above). (Am. Ill. Ex. 17.0 ¶ 7.) Ameritech has a dedicated group in its Network Organizations that is responsible for the installation, repair and maintenance of these high capacity telecommunications circuits. (Id. ¶ 12.) Ameritech uses the same procedures and systems for Special Services provided to CLECs as it uses for those provided to its own retail unit. (Id. ¶¶ 22, 27.) No party to this Phase I A proceeding, AI contends, raised any issue concerning Special Services.

Repair and Maintenance

409. Ameritech asserts that it provides CLECs with nondiscriminatory access to its repair and maintenance functions, which they may use to report trouble and request maintenance. As with the other OSS functions, Ameritech Illinois offers two alternative methods to electronically report trouble: (1) EBTA, an industry standard application-to-application method, and (2) an EBTA GUI. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 184, 186, 191.) According to AI, CLECs may also contact a technician at Ameritech's LOC (which is responsible for receiving maintenance trouble reports). (Id. ¶ 183.) The technician will then enter the trouble report into its electronic systems. (Am. Ill. Ex. 2.0 Sch. JWB-1, ¶ 88.)

410. The EBTA GUI allows carriers to perform the same functions that Ameritech's retail operations perform. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 184-85.) Requesting carriers can (1) issue trouble reports, (2) conduct a Mechanized Loop Test ("MLT"), (3) determine the status of a previous trouble report, (4) view a list of open trouble reports, and (5) view a list of reports closed within the last 30 days. (Id. ¶ 185.) The alternative interface, i.e., EBTA, AI informs, enables carriers to perform all but the last two functions. (Id.)

Trouble Closure Codes and Trouble Identification Charges

411. Upon completing the necessary repair work, AI explains, the technician fills out a "ticket" with a "closure code" that indicates what the trouble was, what he or she did, and how the trouble was resolved. (Id.; Am. Ill. Ex. 16.0 at 3-4.) If the technician cannot find any service trouble, or finds that the end user's own premises equipment or a CLEC's equipment (as opposed to Ameritech's equipment) is responsible, the end user (or the CLEC serving that end user) is assessed a "trouble identification charge," to compensate Ameritech for time and labor. (Am. Ill. Ex. 16.0 at 4.)

412. Ameritech relies on trouble closure codes to help manage its business, and takes such codes very seriously. (Am. Ill. Ex. 2.1 at 15-16.) Thus, the Company has processes in place to help ensure their accuracy. At the outset, AI explains, employees are required to read, understand and sign the Code of Business Conduct, which states that "Fraudulent or illegal conduct committed on or off the job" – including "oral or written misrepresentation of facts" – "may be grounds for disciplinary action, up to and including dismissal." (Id.) So too, CLECs can request a "vendor meet," where a CLEC representative and an Ameritech technician meet at the end user's location to investigate and resolve the trouble. (Am. Ill. Ex. 2.1 at 14.) A CLEC that is using EBTA can also "deny closure" of the trouble ticket, which keeps the ticket open and requires Ameritech to investigate. (Id.) Ameritech further offers a "Close But Dispute" process, where a CLEC can allow the trouble ticket to close (because the trouble has been repaired), but can dispute the closure code and any associated charges. (Am. Ill. Ex. 2.2 at 8.)

413. Notwithstanding these controls, AI sees McLeod and TDS to allege that Ameritech technicians are mis-coding repair work, resulting in unwarranted trouble identification charges. (McLeod/TDS Joint Ex. 1.0 at 6-8.) While they admit to no hard evidence to support these claims, they would suggest that the increase in such charges after mid-2001 provides "circumstantial evidence" of a problem. (Id. at 6-7.)

414. Ameritech maintains that it itself mistakenly *failed* to assess charges for certain trouble reports before mid-2001. Hence, the increase in such charges thereafter only reflects a return to accurate coding. (Am. Ill. Ex. 16.0 at 4-6.) The situation arose with respect to certain repairs completed shortly after installation. Ameritech explains that it connects service only as far the Network Interface Device ("NID"), because the NID marks the end of Ameritech's facilities and the limit of its direct responsibility. (Id. at 5.) According to AI, telephones and other "premises equipment," and the wiring inside the end user's home or business that connects that equipment to the NID, belong to the end user. In some situations, AI contends, it received a trouble report after the initial installation indicating that the end user was out of service or that certain jacks did not work. (Id.) Some repair technicians were under the mistaken impression that Ameritech was required to perform installation work beyond the NID and thus, incorrectly coded the reports. (Id.)

415. This means that Ameritech technicians were doing *more* work than required and were doing it for free. The Company has now retrained its technicians on proper coding and requires them to obtain specific managerial authorization to close trouble reports associated with resale or the UNE-P. (Id. at 5-6.) The consequence is a system with *more* accurate repair and maintenance billing, which ensures that CLECs were billed in some instances where they had previously not been billed. According to AI, McLeod and TDS do not dispute this explanation for the increase in trouble identification charges in mid-2001. See McLeod/TDS Joint Ex. 1.2 at 16 ("I accept Mr. Muh's explanation as to the timing of the change in trouble ticket coding policy.").

416. While McLeod and TDS also allege that repair technicians close trouble reports without really finding or fixing the problem, there is no evidence, AI contends, to

show any systemic problem, nor do they provide any specific incidents for the Company to investigate. While some isolated mistakes are inevitable, AI argues, carriers may take full advantage of the procedures Ameritech has established to investigate any suspected mistakes, i.e., by re-opening the trouble report, using the "Close But Dispute" process, requesting a joint "vendor meet," or raising the issue with the LOC service manager. (See Am. Ill. Ex. 2.1 at 13-14; Am. Ill. Ex. 16.1 at 5.) Further, if a technician did incorrectly report trouble as resolved (an action that may very well lead to his for dismissal), the end user or the CLEC would inevitably report trouble again, thus requiring Ameritech to make a second visit. Ameritech maintains that it has no incentive to waste time and money in that manner. In any event, closing trouble reports without really fixing the problem would lead to an increase in the rate of "repeat" trouble reports, which will be addressed in Phase II. (Am. Ill. Ex. 16.0 at 7.)

417. In claiming that technicians assign closure codes that do not accurately reflect the problem associated with a trouble report, AI believes the CLEC to be referring to a past misunderstanding regarding "vendor meets." (Am. Ill. Ex. 2.2 at 8-10.) Before April 2002, AI explains, notes taken during such meets were not automatically used to change original trouble closure codes, because Ameritech viewed them as only part of an informal, informational process. (Id.) As of April 2002, however, Ameritech enhanced the vendor meet process so it could be used as a formal mechanism to dispute and seek changes to closure codes. (Id.) Thus, the closure code problem raised by RCN has already been addressed, as is evidenced by the fact that RCN took the issue off "open" status in the CLEC User Forum. (Id. at 10.)

EBTA Issues

418. As already indicated, Ameritech offers CLECs two electronic methods, EBTA and EBTA GUI, to issue trouble reports. A CLEC can also use these methods to conduct an MLT (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 184-195), the same software product Ameritech's retail organization uses to test lines. (Am. Ill. Ex. 4.1 at 45.) AI sees WorldCom to claim that it is "frequently" unable to run MLT. (WorldCom Ex. 3.0 at 28.) WorldCom, however, gives no hint as to what it means by "frequently," and has failed to show that its experiences represent any sort of systemic problem or discrimination. In some cases AI suggests a high demand for testing resources in the switch could prevent an MLT from completing. (Am. Ill. Ex. 4.2 at 18.) In such instances, AI explains, the user should simply resubmit the MLT. (Id.) In any event, AI notes, WorldCom's claim concerns a performance issue that will be addressed in Phase II (thus far, AI notes, BearingPoint has not issued an observation or exception, despite having completed a volume stress test of EBTA). (See Am. Ill. Ex. 4.1at 45; Am. Ill. Ex. 4.2 at 18.)

419. WorldCom also claims that EBTA does not "deliver the best available commitment date to repair out of service issues," because WorldCom can get faster appointments by calling the LOC. (WorldCom Ex. 3.0 at 29.) Even if true, AI contends, WorldCom's complaint does not affect checklist compliance. EBTA provides WorldCom repair appointment dates that are based on the same scheduling "clock" Ameritech uses for its own retail commitments, and nondiscrimination is all that the checklist requires.

(Am. Ill. Ex. 4.2 at 19.) To be sure, if a CLEC contacts the LOC, the LOC will do its best to provide an earlier commitment date, but that just means that WorldCom receives *better* treatment than the checklist requires. (Id.)

420. Finally, AI observes, WorldCom complains that it has experienced problems entering certain "codes" into EBTA which identify the type of trouble experienced. It alleges that when it enters the code that indicates a feature failure (like call waiting or 3-way calling not working), the code is then changed in Ameritech's downstream systems. (WorldCom Ex. 3.0 at 30.) The EBTA interface AI notes, uses codes established by an industry standards body. (Am. Ill. Ex. 4.1 at 46.) Ameritech Illinois' systems use a different code, such that the code entered by WorldCom into EBTA must be translated. (Id.) This conversion process, AI contends, should not affect WorldCom. (Id.) If WorldCom is concerned, however, it can add comments in the "Additional trouble info" field to eliminate any ambiguity: According to AI, its technicians are trained to read that additional information in resolving the customer's trouble. (Id.)

Billing

421. There are two principal functions involved in billing, AI explains. The first relates to CLECs billing end users for telephone usage, and the information that Ameritech provides to assist in that billing. The second relates to Ameritech billing of CLECs for wholesale products and services.

422. When an end user makes a phone call, AI informs, the switch that routes the call also records the information for billing, such as the time, type (local, intraLATA toll, interLATA long distance) and length of the call. The end user's local carrier accumulates this information, bills the end user for the services the carrier provides itself (local and local toll calls), and bills other carriers (*i.e.*, long-distance carriers like AT&T) for access to the local network, as applicable. In some cases, the switch belongs to Ameritech, but a CLEC uses that switch to serve its own end users (as when the CLEC is reselling Ameritech service or leasing the UNE platform). In such situations, Ameritech passes the usage information to the CLEC so it can bill other carriers or its own end users. (See Am. Ill. Ex. 7.0 Sch. DK-1, ¶¶ 3, 16, 20.)

423. The FCC requires a BOC to demonstrate "that it provides competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that a BOC provides such information to itself." New Jersey 271 Order at App. C, ¶ 39. Ameritech provides nondiscriminatory usage reports almost by definition, as it uses a single, integrated regional system to process usage data for retail, resale, and UNE-P end users. (Am. Ill. Ex. 7.0 Sch. DK-1, ¶ 17.) That system provides Daily Usage Files ("DUFs") to CLECs for use in billing their end users and other carriers. (Id. ¶ 20.) CLECs can choose to receive the file via magnetic tape or electronically over data lines in the industry-standard format. (Id. ¶ 21.)

424. Ameritech also issues monthly bills to carriers. The FCC requires a BOC to provide "wholesale bills in a manner that gives competing carriers a meaningful

opportunity to compete." New Jersey 271 Order at App. C, ¶ 39. Monthly bills, AI asserts, are subject to quality control and testing procedures that go beyond those used for retail bills. (Am. Ill. Ex. 7.0 Sch. DK-1, ¶ 40.) On each billing date (there are at least ten monthly billing cycles) representatives review bills for completeness and format. (Id. ¶¶ 28, 29, 40.) Monthly, Ameritech tests a sample of items to ensure that the rates for each product or service have been properly applied. (Id. ¶ 40.)

425. Ameritech's electronic systems it explains, also subject retail and wholesale orders to edit checks at the billing stage, to help ensure bill accuracy. (Am. Ill. Ex. 7.0 Sch. DK-1, ¶¶ 36-38.) The LSCs have devoted a special Error Corrections team to resolve errors identified in this editing process, so that orders are posted before the billing cut-off (thus preventing double-billing, the concern expressed in the Michigan 271 Order, ¶¶ 200-203. (Am. Ill. Ex. 2.0 Sch. JWB-1, ¶¶ 42-43.) Team members review summaries of orders in this error status daily to identify priorities and ensure timely resolution. (Id.)

Billing Issues

426. While several CLECs have raised issues related to the performance of certain aspects of Ameritech's billing systems, especially related to billing for intraLATA toll calls, Ameritech has addressed those issues. Billing systems and processes, AI notes, will be and are least evaluated as a whole in Phase II. See Pennsylvania 271 Order, ¶ 26 (evaluating CLEC bills in dispute as a percentage of the whole rather than discussing individual disputes); Massachusetts 271 Order, ¶ 99 (emphasizing importance of the results of the OSS test as opposed to individual CLEC claims).

Switch Translation Issues

427. AI sees that three issues, identified by the CLECs, concern switch "translations", i.e., the programming within each switch that determines how to route and record a call. (Am. Ill. Ex. 16.0 at 11-12.) *Routing* translations AI explains, determine what kind of call is passing through the switch (whether it is a local, intraLATA toll, or long distance call). *Line* translations it further explains, determine the appropriate carrier for each kind of call. (Id. at 9-10, 13-14.)

428. According to AI, the line translation issues at hand arose in two narrow situations. In the first situation, an end user would request a change in his intraLATA toll carrier, or LPIC. If the end user happened to report trouble in the window of time after the change was processed, but before Ameritech's billing records were updated, a verification process (known as Verify and Fix) that is conducted during maintenance would conclude that the line translation did not match the billing record, and it would automatically (but mistakenly) change the translation back to the previous carrier. Ameritech asserts that it fixed this problem in October 2001. (Id at 11.)

429. The second line translation issue, AI informs, related to the processing of certain UNE-P orders. In the course of processing, a message was mechanically added to some orders, in error. The message did not affect provisioning of the order (which

flowed through electronically), but it interrupted the processing of the portion of the order designating a change in the line translation tables. (Id. at 11-12.) After being informed of the problem, in September 2001, Ameritech and its affiliates implemented a region-wide solution. The ordering systems were revised so as not to generate the erroneous message. In the interim, the provisioning systems were revised to process the line translations despite the erroneous message; and all line translation changes that had been interrupted before these system enhancements were reviewed and processed manually. All work was complete by April 2002, AI contends, and the line translation problem is now resolved. (Id. at 11-13; Am. Ill. Ex. 16.1 at 5.)

430. In the same time, however, Ameritech also identified routing translation problems. It determined that these errors likely arose in the course of processing extensive changes to the routing tables as a result of splitting formerly unified area codes, opening new area codes, and in other changes to local calling areas. (Id. at 14.) Due to these routing table errors, some calls were classified incorrectly (*i.e.*, a local call was identified as a toll call), and thus routed incorrectly. (Id. at 13-14.) The errors were neither systemic nor material, and affected only about one percent of the routing table entries. (Id. at 14.) Nevertheless, these errors were resolved through a complete check of the entire network in the five-state Ameritech region. (Id.) Further, Ameritech has conducted additional training on routing procedures, and it plans another regional check of every switch in order to ensure that there are no other routing translation issues. (Id. at 14-15.) Several switches have already been reviewed, AI asserts, and no routing table problems have been found. (Am. Ill. Ex. 16.1 at 5.)

431. None of these switch translation problems was inherently discriminatory, AI suggests, in that Ameritech would have been affected in the same way when customers were transferring local or local toll service from a CLEC to Ameritech, or when its customers made a call that was affected by the translation error). (Id. at 15.) Further, none of these problems affected service to the end user, who was still able to complete calls. (Id.) Nonetheless, the issues have been resolved, and the Commission can make its final assessment of the situation in Phase II.

IntraLATA Toll Usage Information

432. AI sees WorldCom to complain that, in early 2001, Ameritech sent it DUFs for UNE-P end users that showed local usage information for calls that should have been handled as intraLATA toll calls. According to AI, switch translation problems had resulted in the mistaken classification and handling of some local toll calls as local, and in the incorrect identification of the intraLATA toll provider. (Am. Ill. Ex. 7.0 at 8-9.) These switch translation problems it contends, have been corrected. (See Am. Ill. Ex. 16.0 at 13-15.) WorldCom and Ameritech, through standard billing dispute procedures, continue to work on the incorrect usage records that resulted from these switch translation problems.

433. WorldCom is seen to assert that, even after these corrective measures, it continues to be billed for some intraLATA toll calls. (See WorldCom Ex. 2.1 at 2.) This is as it should be, AI explains, for in some situations WorldCom is supposed to be billed

in connection with intraLATA toll. When WorldCom serves an end user via UNE-P and the end user has designated an IXC as the end user's intraLATA toll provider, Ameritech will bill WorldCom for the switching and transport costs incurred in delivering intraLATA calls to the IXC. (Am. Ex. 16.1 at 6-7.) When WorldCom serves an end user via UNE-P, and the intraLATA toll provider is designated as "9999"; WorldCom is the intraLATA toll provider (and will bill its end user for such calls), but, as is using Ameritech's network to carry the calls, so Ameritech will bill WorldCom for using its network. (Id. at 7-8.) When WorldCom's end user has not chosen any intraLATA toll provider, AI informs, but places such calls using "dial-around" (such as 10-10-220), Ameritech will route intraLATA toll calls to the IXC to whom the dial-around is assigned, and will bill WorldCom for the costs involved in delivering the call to the IXC. (Id. at 8-9.)

Billing Format

434. The Company notes WorldCom to allege that Ameritech has not converted UNE-P billing from the Reseller Billing System ("RBS") format to the Carrier Access Billing System ("CABS") format, as required by the Order in Docket 00-0592, and that the "jurisdictional indicator" on CABS bills (which shows whether a call was local or local toll) is incorrect. (See WorldCom Ex. 2.1 at 6.) Both allegations are incorrect, according to AI. First, as WorldCom itself notes, the CABS format is supposed to be used only for calls that do not involve the use of OS or DA; the disputed calls were operator-assisted calls, not direct-dialed calls, and thus were properly billed using RBS rather than CABS. (Am. Ill. Ex. 7.2 at 6-7.) Second, Ameritech implemented an enhancement in April 2002 to correct the "jurisdictional indicator" so that calls are properly classified as local or local toll calls. (Am. Ill. Ex. 7.1 at 6.) As WorldCom admits, however, that this issue did not "result in erroneous or inflated billing." (WorldCom Ex. 2.1 at 7.) The correct rates were billed notwithstanding the incorrect indicator, and WorldCom could still determine which calls were local by using the DUFs. (Am. Ill. Ex. 7.2 at 5.)

435. In the same vein, the Company notes, Z-Tel alleges that Ameritech sent it DUFs that failed to distinguish local calls from local toll calls. (See Z-Tel Ex. 3.0 at 7.) As with WorldCom's claim, AI contends, the classification did not affect billing (as Ameritech's billing systems correctly separated local from local toll calls, even if the usage records did not); did not affect Z-Tel's ability to audit the bills (other data elements in the usage files enabled Z-Tel to separate local from local toll usage); and has been resolved (by an October 2001 systems enhancement). (Am. Ill. Ex. 7.2 at 3-4.)

Billing Rate Issues

436. WorldCom also alleges that Ameritech has billed it in excess of the tariffed rates for certain local toll and DA calls. As for the local toll calls, Ameritech insists that it has examined the bills in question, and determined that WorldCom incorrectly assumed

that the calls were direct-dialed toll calls, when in fact the calls were operator-assisted calls. (Am. Ill. Ex. 7.2 at 7-8.) Additional charges apply to OS calls, AI explains, making the average per-minute charge for operator-assisted calls much higher than the average per-minute charge for direct-dialed calls. (Id.) In the course of this investigation, however, Ameritech discovered that, for all UNE-P CLECs using Ameritech's OS, retail rates instead of wholesale rates were mistakenly being applied to all of the OS rate elements. (Id.) Ameritech claims that it is in the process of fixing this problem, and will recalculate all UNE-P CLECs' OS charges and issue appropriate credits. The Company will update the Commission as to the status of this issue in Phase II.

437. With respect to DA calls, Ameritech discovered that some of these calls were in fact being billed incorrectly. (Id. at 9-10.) Part of the error (where Local DA calls were treated as National DA calls) it contends, has been corrected. (Id. at 10.) The remaining problem (the application of an incorrect rate element) is currently being addressed, AI comments, and the affected charges will be recalculated and credits will be issued as appropriate. (Id. at 10-11.) AI would note, however, that billing for UNE-P CLECs spans four operating systems and thousands of rate elements, (of which OS and DA are a minor subset), such that these do not represent any systemic problem with Ameritech's billing systems. (Id.)

Training Carrier Assistance and Help Desk Support

438. Having increased the quantity and quality of electronic methods to access OSS, Ameritech maintains that it has given equal attention to the human side of OSS access, all the way from the CLEC's initial start-up to its mature operation. It dedicates a separate Account Manager to each CLEC to serve as its principal contact and as a guide to the various services and options available. (Am. Ill. Ex. 12.0 Sch. DAT-11, ¶¶ 8-12.) A group of technical experts provides OSS demonstrations and assists CLECs in the initial development of interfaces. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 34-38.) Ameritech contends that it offers a wide selection of training courses that cover a variety of business and technical subjects associated with OSS use. (Id.) These courses are supplemented by an interactive CLEC website (Am. Ill. Ex. 12.0 Sch. DAT-1, ¶¶ 25-27), along with specialized groups and call centers that offer technical assistance (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 39, 57-63). Region-wide service centers staffed by hundreds of trained specialists handle manual provisioning and maintenance activities for individual orders or trouble reports. The LSC handles ordering issues, AI explains, while the LOC tackles provisioning and maintenance. (Am. Ill. Ex. 2.0 Sch. JWB-1, ¶¶ 6-12.) Expert support teams handle global questions about OSS access as they arise. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 57-63.) And, for all areas of OSS, Ameritech has instituted a CLEC User Forum that enables CLECs to meet regularly to exchange ideas and provide input to Ameritech.

Call Center Response Times

439. AI notes AT&T to allege that it experienced long "hold times" for calls to Ameritech's Mechanized Customer Production Support Center ("MCPSC") and IS Call Center. (AT&T Ex. 8.0 at 54; AT&T Ex. 8.1 at 24.) As AT&T notes, however, the issue

occurred only in the three weeks following the release of the LSOG 5 enhancement. (AT&T Ex. 8.1 at 24.) At that time, AI points out, the volume and length of calls to the MCPSC increased, primarily due to CLEC questions regarding LSOG 5. (Am. Ill. Ex. 4.2 at 11.) Ameritech added additional resources to address the increased volume, it asserts, such that the average hold time decreased to less than 10 minutes. (Id.) Further, the MSPSC has been using "call backs" so that CLECs need not stay on hold while the MSPSC researches an issue. (Id.) Ameritech also has offered to establish dedicated "single points of contact" with CLECs to handle redundant questions from representatives of the same carrier, and has been analyzing the nature of calls from frequent callers to offer on-site support. (Id.) The Commission will review call center performance in Phase II AI observes.

440. The MCPSC, AI explains, assists CLECs by addressing questions related to the business processes and rules for pre-ordering and ordering transactions, analyzing error codes, and other OSS-related business process issues. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶¶ 57-58.) The IS Call Center addresses questions related to OSS access, system connectivity, and system availability. (Id. ¶¶ 59-63.) AI would emphasize that these Centers are not the only support mechanisms available to CLECs. The on-line CLEC Handbook contains OSS "how to" documentation. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 39.) The IS Call Center maintains a location on the CLEC web site that provides system status messages and troubleshooting guides. (Id.)

Account Ownership Changes

441. AI notes McLeod's testimony on the consolidation of accounts when one CLEC acquires or merges with another CLEC. Currently, AI maintains, the "purchasing" CLEC will receive all the information (including usage information for billing customers) that was previously sent to the purchased CLEC. (Am. Ill. Ex. 2.1 at 12.) All records are sent to the address designated by the purchasing CLEC, and service to the end user is not affected by the merger or acquisition. (Am. Ill. Ex. 2.2 at 7; Tr. 599.) According to AI, however, the end users' customer service records, are not automatically integrated under the name of the purchasing CLEC, but retain the name of the purchased CLEC. (Am. Ill. Ex. 2.1 at 12-13.) In order to change the name of the carrier listed on those records, AI explains, the purchasing CLEC must submit a separate order for each affected telephone number, just as Ameritech does to change such information for its own end users' records. (Id.) McLeod urges that Ameritech should develop some sort of "mass conversion" process to convert all affected end user records at once. (McLeodUSA Ex. 1.0 at 20-21.)

442. McLeod's claims are not relevant to this proceeding, AI contends. McLeod itself admits that it "do[es] not believe that this issue has been raised in a Section 271 proceeding before," and that "prior Section 271 approvals were granted without imposing such a requirement on an RBOC." (MTSI Ex. 1.2 at 13.) Indeed, the FCC has held that such "fact-specific, carrier-to-carrier dispute[s]" are not appropriately resolved in Section 271 proceedings. New Jersey 271 Order, ¶ 128.

443. In AI's view, there is not valid "discrimination" charge being stated by McLeod. It would argue that Ameritech has "processes in place to effectuate a seamless change in ownership for a retail customer when they acquire another retail customer," and that Ameritech must offer McLeod a similar process. (MTSI Ex. 1.2 at 13.) But, the Company maintains, Ameritech and McLeod are already treated equally. When Ameritech converts a retail end user's lines from one account to another, a representative must issue a service order for each individual end user account that needs to be converted, just as McLeod must do. (Am. Ill. Ex. 2.2 at 6.) There is no "mass conversion" process on either side of the aisle. (Id. at 6-7.) Ameritech, however, is investigating methods to develop such a process. (Am. Ill. Ex. 2.1 at 12-13.) The issue here is not service, but convenience, AI argues, and given McLeod's own admission that "developing a process to permit consolidation of various CLEC accounts into one account is a complex task" its singular request must be balanced against other priorities and the needs of Ameritech and other carriers. (Am. Ill. Ex. 2.1 at 12-13.)

Change Management Plan

444. "Change management" AI informs, refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes to, the BOC's OSS system. New York 271 Order, ¶ 103. Periodic changes to OSS, AI explains, "may include operations updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities." Id. According to AI, the FCC has identified the following elements of a change management plan ("CMP") that give an efficient competitor a meaningful opportunity to compete: (1) evidence of competing carrier input in the design and continued operation of the change management process; (2) memorialization of the change management process in a basic document; (3) a separate forum for change management disputes; and (4) a stable testing environment that mirrors production. Id. para 111.

445. There is no dispute, AI maintains, as to the satisfication of the first three elements. Ameritech's CMP reflects competing carrier input, as it was developed in 13 months of negotiations with CLECs throughout the 13-State SBC/Ameritech service area, conducted pursuant to the FCC's merger conditions. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 199.) It was submitted to the FCC without any disputed issues at the conclusion of the Uniform and Enhanced OSS collaborative. (Id.) It also was approved with some Illinois-specific modifications in Docket 00-0592. The 13-state CMP has been memorialized in a comprehensive document that was filed in the FCC Uniform and Enhanced OSS collaborative, is included in the Plan of Record reviewed in Docket 00-0592, and is posted on the CLEC web site. (Id. ¶ 199.) It contains detailed timelines and procedures for changes, including walk-through, comment, and testing phases for further CLEC input. (Id. ¶ 202.)

446. To the extent any issue is not resolved in this process, AI informs, the CMP contains its own mechanism for dispute resolution: an Outstanding Issue Solution procedure that allows a CLEC or CLECs to call for a discussion and vote – by CLECs alone (Ameritech does not have a vote) – through which CLECs can vote to delay, modify or even block the release. (Id. ¶¶ 208-212.) This "go-no go" vote is substantially identical to the procedure the FCC endorsed in its Texas 271 Order ¶¶ 112, 116. As an added layer of protection, Ameritech notes, it has implemented "versioning" – a feature that allows requesting carriers to continue using an existing version of OSS software even after Ameritech issues a new version. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 218.) The FCC has found "that versioning enhances [a BOC's] change management plan by providing significant additional assurance that changes will not disrupt competing carriers' use of [the BOC's] OSS." Kansas & Oklahoma 271 Order, ¶ 167.

Testing Environment

447. The sole disputed element of the FCC's four criteria for a CMP AI notes, is the last, i.e., the availability of a secure testing environment. Such an environment, AI maintains, is a set of programs that allows Ameritech and CLECs jointly "to test" proposed OSS changes before the changes are implemented for commercial use. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 56.) The testing environment is designed to process orders and transactions, in the same way that the real-world OSS will, once the proposed change is implemented. (Id.) Ameritech contends that its testing environment is consistent with the modified Plan of Record, approved in Docket 00-0592.

448. The Company disputes the merit of AT&T's allegations that Ameritech's testing environment is inadequate because "Ameritech limits the number of CLEC test orders it will discuss with CLECs to just five orders a day." (AT&T Ex. 8.0 at 45-47.) The five-order "limit" AT&T describes is not absolute, AI contends, as CLECs can review more test cases if they ask in advance. (Am. Ill. Ex. 4.1 at 28.) Further, AT&T has not shown that is has been adversely affected by this policy. Between October 16, 2001 and February 28, 2002, AI notes, AT&T submitted four or fewer test orders on half the days that it submitted orders, meaning that AT&T was not even taking advantage of the full testing resources made available. (Id.) And, on many of the days that AT&T submitted more than five test orders, Ameritech reviewed all of those orders with AT&T. (Id.) AT&T's own actions show that this requirement is met where it publicly announced that it was "aggressively testing" Ameritech's interfaces, namely LSOG 4.2, and where AT&T apparently deemed the testing adequate, because it implemented version 4.2 and is using it to place orders to support its mass entry into the Illinois market. (Am. Ill. Cross Ex. 27.)

Implementation of LSOG4

449. AT&T is also seen to contest the process by which Ameritech implemented LSOG4. AT&T appears to change that implementation was "haphazard" because it was done "without regard to change management." (AT&T Ex. 8.0 at 16, 20.) Ameritech disagrees. There *was* an identified CMP, and a timetable for the guide's release in place AI contends, the one Ameritech spent months negotiating with

the CLECs. Although that process had not been formally approved at the time, AI claims that the CLECs had agreed to the process and its timetable, and Ameritech followed through. The Plan of Record, AI contends, specified exactly how the process would apply to the March 2001 enhancements. (Am. Ill. Ex. 4.1 at 16-18.) Consistent with the change management process, Ameritech: provided a Release Notification six months before implementation, followed by a 7-day comment period; issued Initial Requirements over five months before implementation, followed by a month-long comment period and a two-day walk-through; and issued Final Requirements, reflecting agreed changes from the previous comments and walk-throughs, four months before implementation, followed by two more walk-throughs.

450. To the extent AT&T had a problem with these procedures, AI asserts, it had the opportunity to request a "go- no go" vote (a procedure endorsed by the FCC in its Texas and Kansas & Oklahoma 271 Orders) to delay or block implementation. (See Am. Ill. Ex. 4.1 at 20.) Neither AT&T nor any of the CLECs, AI points out, sought to invoke this dispute resolution mechanism. (Id.) Moreover, AT&T has since implemented and tested LSOG 4.2, so any complaints about version 4.0 are moot.

Implementation of LSOG5

451. In AI's view, AT&T's complaints concerning the implementation of LSOG 5, are irrelevant. (AT&T Ex. 8.0 at 24-25.) Ameritech is relying on LSOG 4, not LSOG 5, to show its compliance with the Section 271 checklist. (Am. Ill. Ex. 4.1 at 35.) While the FCC has never required that any particular version of the LSOG standards be used, AI asserts, it has approved Section 271 applications in a dozen states where LSOG 2, 3, or 4 (but not 5) had been implemented. (See Id. (listing the relevant states)). AT&T is using LSOG 4.2 AI notes, and it can continue to do so. (Id.)

452. Ameritech informs that it delayed the release date for LSOG 5 one month because it had discovered unanticipated problems during testing and wanted additional time to resolve them before it went into commercial use. (Am. Ill. Ex. 4.1 at 36-37.) This is the very purpose of the CMP – to work out the inevitable issues surrounding systems changes and minimize possible negative impacts. So too, the release of LSOG 5 was administered under the FCC-required Uniform and Enhanced Plan of Record. (Tr. 1688-1689.) The FCC expressly approved SBC's request to delay the implementation of LSOG 5, finding that there was good cause. (Tr. 1689.)

453. AI sees McLeod to assert that Ameritech's testing environment for LSOG 5 was flawed because "McLeodUSA could not even get past the pre-order test scenarios for weeks because of basic connectivity problems." (McLeodUSA Ex. 4.1 at 2.) According to Ameritech, it has worked with McLeod to address the problems it encountered, and believes that this issue was resolved. (Tr. 1197.) And, to the extent McLeod wants further clarification, Ameritech is willing to continue discussions on the same business-to-business basis. Ameritech points out, however, that the issue here is not one of connectivity. McLeod's difficulties with the LSOG 5 testing environment, AI maintains, stemmed from confusion over the appropriate field in which to place one particular piece of data (out of thousands). (Am. Ill. Ex. 4.2 at 12; Tr. 1254-1254.)

Ameritech realizes that this issue is important to McLeod, and is committed to working with McLeod to address its concerns. This kind of non-systemic, carrier-specific issue however, AI argues, does not bear on checklist compliance. E.g., New Jersey 271 Order, ¶ 128.

Miscellaneous UNE Issues

454. AI notes that Staff would have it adopt a new BFR process, to meet Staff-created criteria of "cost," "timeliness," "quality," and "transparency." (Staff Ex. 3.0 at 90-105.) There is no such requirement under federal law, AI asserts, or, for that matter, under state law. To the contrary, Ameritech informs, its established BFR process has been in place since 1996, and the Commission has upheld that process as reasonable. See Arbitration Decision, Dockets 96-AB-003/96-AB-004, at 50 (upholding 30-day period for Ameritech to respond to a BFR with a preliminary analysis); Arbitration Decision, Docket 96-AB-006, at 30 (upholding 120-day maximum interval for final response to BFR); Arbitration Decision, Docket 01-0338 at 23 (finding that BFR process was appropriate); Arbitration Decision, Docket 00-0769, at 15-16 (same).

Network Outage Notifications

455. AI sees RCN to question whether Ameritech's network outage notification process gives CLECs non-discriminatory access to UNEs. According to AI, it is required to provide CLECs with access to UNEs in a manner that is at least equal in quality to that which Ameritech provides to itself. 47 U.S.C. § 271(c)(2)(B)(iii); 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.311(b); Pennsylvania 271 Order, ¶ 11.

456. While RCN would claim that Ameritech does not provide timely notifications of service outages or estimated restoral times, the Company notes that it established a process that promptly notifies CLECs of outages and estimated restoral times. (Am. Ill. Ex. 5.0 at 19-21; Am. Ill. Ex. 5.1 at 17-19.) This process AI contends, was developed with input from CLECs during the Performance Measurement Collaboratives in 2000 and has been in place since October 2000.

457. Ameritech notes RCN to allege that it receives too many network outage notices such that Ameritech should perform a screening function so that each CLEC receives only those notices that will impact that CLEC's network. (RCN Exhibit 1.0 at 8.) This screening makes no sense, the Company argues, since it would require Ameritech to make judgments about which outages would affect each CLEC's operation – judgments that it is ill-equipped to make (as it does not know what equipment each CLEC has deployed within its own network.) Moreover, it would significantly delay the notification process and frustrate the ability of all CLECs to get timely information on outages. (Am. Ill. Ex. 5.1 at 17.)

458. Ameritech answers RCN claims, that it experienced "several" power outages in Ameritech's central offices in 2001 without getting any notification, by noting that, RCN did not register to receive network outage notifications until July 26, 2001, such that (it would not have received any notifications before that date). (Am. Ill. Ex. 5.1

at 18.) Subsequent, thereto, AI notes, there was only one power outage in Illinois. AI admits that the proper notifications were not sent on that occasion but, it asserts, the work groups responsible for issuing the notifications have been re-trained on the proper procedures and the correct notification process is currently working. (Id.)

459. With respect to RCN allegations that Ameritech notifies its internal workforce of scheduled outages but, does not provide the same information to CLECs, AI disagrees. The testimony shows that Ameritech has a working process to notify all CLECs of service-affecting network outages within very tight time intervals – some as short as 30 minutes. (Am. Ill. Ex. 5.0 at 19-21.) AI would point out that no CLEC, other than RCN, challenged the efficiency of this process, and RCN itself offered no facts to support its allegation.

Use of UNEs

460. AI sees Staff to question whether a CLEC can use UNEs in combination with, and in conjunction with, its own facilities to provide telecommunication services to other carriers. (Staff Ex. 20.0 at 73-74, 82.) Section 251(c)(3) requires that unbundled access be provided "to any requesting telecommunications carrier for provision of a telecommunications service." CLECs can purchase UNEs from Ameritech and use them in conjunction with other facilities or inputs provided by the CLEC in order to create a telecommunications service. Thereafter, the CLEC can sell the resulting service to other carriers and to retail end users. CLECs are doing this today AI informs. (Am. Ill. Ex. 1.2 at 34-35.) Ameritech has not created the usage restriction that it believes to concern Staff.

461. Contrary to what Staff would propose, AI maintains, that there is no federal requirement that BOCs "tariff" a CLEC's ability to use UNEs in conjunction with their own facilities to create telecommunication services which CLECs can provide to other carriers. (Staff Ex. 3.0 at 88.) Nor would such a tariff be necessary. Ameritech imposes no restrictions along these lines and there is no evidence to suggest any problem in this area. To the contrary, data CLECs commonly purchase the HFPL UNE from Ameritech and combine it with other inputs (*e.g.*, their own DSL equipment, transport and packet switching) to create a DSL transport service which they sell to others. (Am. Ill. Ex. 1.2 at 34-35.) According to AI, this is not a proper subject of tariffing because it would, at best, be a gratuitous statement about some of the uses that a CLEC could make of a UNE.

462. There was some discussion, AI notes, about whether CLECs could obtain UNEs and merely "resell" them to other CLECs. (Am. Ill. Ex. 1.1 at 31-32; Staff Ex. 20.0 at 73-74.) No CLEC has raised this issue and neither Ameritech nor Staff is asking the Commission to make any determination on this topic (nor would it be proper). An inquiry into this issue AI maintains, would involve complex issues of federal law and policy and would fall squarely under the category of "new and unresolved interpretive" issues that should not be addressed in Section 271 proceedings. Kansas & Oklahoma 271 Order, ¶ 19.

b. WorldCom Issues/Position.

463. By introduction, WorldCom notes that the FCC has consistently found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. WorldCom contends that Ameritech's OSS does not meet either prong of the test the FCC has established to evaluate OSS: (i) it has not deployed the necessary systems and personnel; and, (ii) its OSS is not operationally ready. (New York 271 Order, ¶87.

464. WorldCom witness Lichtenberg explained that Ameritech's OSS systems are still flawed. In her testimony, she addressed SOC notices; flow through; line splitting; inaccurate provisioning; switch translation problems; trouble handling process problems and the EBTA system. (WorldCom Exs. 3.0, 3.1.) WorldCom witness Chapman addressed the issue of missing and untimely LLNs (WorldCom Exs. 1.0, 1.1). In addition, WorldCom witness Hurter addressed billing. The problems identified in their respective testimonies, WorldCom argues, clearly indicate that Ameritech's OSS fails to meet the requirement that CLECs be allowed access to OSS on a nondiscriminatory basis. According to WorldCom, Ameritech acknowledges these problems but, either disputes their gravity, or claims to have implemented solutions. WorldCom believes that the problems continue to exist and urges the Commission to decline to provide a positive Section 271 recommendation unless, and until, each of the problems is resolved in a satisfactory manner.

OSS Service Order Completion Notices ("SOC's")

465. The missing SOCs, WorldCom contends, is a smaller scale version of the "meltdown" that happened shortly after the FCC granted Verizon Section 271 authority in New York. There, several hundred thousand orders for local service (among several CLECs) did not receive SOCs.

466. The result of missing SOCs, WorldCom informs, is that orders become mysteriously lost in Ameritech's systems and are neither confirmed, nor completed. When SOCs are missing, residents who chose WorldCom local service are either awaiting local service from WorldCom, or have such service but continue to be billed by Ameritech. In addition, some customers may have WorldCom service, and Ameritech may have ceased billing these customers, but WorldCom is not yet billing them because of the failure to receive the SOCs.

467. According to WorldCom, Ameritech has claimed on several occasions, to have "solved" this problem. While the situation has certainly improved, Ameritech's apparent inability to find the root cause, indicate, leaves WorldCom concerned that Ameritech has chosen to claim premature success on this issue.

468. WorldCom explains that when it receives an electronic acknowledgement, followed by an electronic Firm Order Confirmation ("FOC") and an electronic SOC, there is no manual intervention — the entire process is automated, efficient and allows the

processing of a significant number of orders per day. The electronic notifiers permit WorldCom to update systems in a near real-time manner with the current status of the orders. This, in turn, allows for the relaying of accurate information to customers, should they call to inquire about the status of their order. If, however, WorldCom does not receive these notifiers from Ameritech seriatim— acknowledgement, FOC, SOC — manual intervention is required. Such intervention is required where WorldCom receives an acknowledgement, but no FOC, within at least three days. In that scenario, WorldCom brings these records to Ameritech's attention via the help desk/trouble ticket process. These trouble tickets remain open until an appropriate electronic response is received for each purchase order number.

469. Manual intervention, WorldCom contends, increases its operating costs and inhibits its ability to serve commercial volumes. The receipt of a timely SOC is equally important as it closes out the pending order and initiates service and billing upon the provisioning date. Once this occurs, the customer becomes "active" in WorldCom's systems. The impact of Ameritech's failure to send electronic SOCs WorldCom contends, is both lost revenue and customer dissatisfaction. It means that customers are either being billed by Ameritech or are not being billed at all. In either case, the customer will ultimately receive a bill from WorldCom several months after the service. A single bill of that magnitude, however, is likely to cause significant customer complaints or refusals to pay, and perhaps, disconnections.

OSS – Flowthrough Failures

470. Many of the orders that WorldCom places, it asserts, do not flow through the Ameritech systems. This results in Ameritech relying on manual intervention, which has led to a deteriorating and inconsistent backlog of missing SOC notices. Yet, Ameritech asserts that a large percentage of the orders which have been submitted do to flow through.

471. While Ameritech has certainly made improvements since this problem peaked, it is still having detrimental impacts. One major cause is the existence of errors or mismatches in the Ameritech back end databases, such as the information in its SAG ("Street Address Guide") not matching the address on the CSR (Customer Service Record). Ameritech's failure to add the proper CLEC ownership information to orders during its manual processes also has led to difficulties.

OSS Provisioning Errors

472. WorldCom claims to have discovered that the receipt of a SOC is no guarantee that an order has been provisioned properly. This has resulted in the failure to add services such as call waiting, and in completing smooth migrations of customers from Ameritech to WorldCom. Ameritech's back-end systems often do not reflect the account and billing changes that should have resulted from a customer migration. At times, WorldCom claims, this has led to WorldCom's customers being disconnected (once five separate times) for "failure" to pay an Ameritech bill, even though the customer is not an Ameritech customer.

OSS Switch Translation Problems

473. According to WorldCom, Ameritech has failed to implement properly the switch translations that allow a customer to be "PIC'd" to its local toll carrier in the UNE-P environment. Switch translation errors are also the cause of Ameritech's failure to carry the customer's local toll traffic on the WorldCom network. This is an ongoing problem, WorldCom argues, despite Ameritech's assertions to the contrary.

OSS Electronic Bonding Trouble Administration Problems

474. Ameritech's EBTA system is seriously deficient in at least three areas WorldCom asserts. There are problems with MLT, with assigning due dates for repairs, and with accepting trouble reports concerning features. (WorldCom Ex. 3.0 at 27). WorldCom's trouble handling group has frequently been unable to run an MLT to determine where the problem is on a customer's line – e.g., whether it is in the switch, in the outside plant, or within the inside wiring of the customer's premises. The Ameritech EBTA system, part of its Web GUI, also is deficient because dates for clearing troubles are routinely pushed out five days. In addition, the system mishandles trouble reports for features, routinely inaccurately classifying the troubles when they are entered into the system. Further, WorldCom argues, the Web GUI continues to be unstable and prone to significant outages.

OSS Line Loss Notification (LLNs)

475. Where WorldCom is providing local service via UNE-P in Illinois, Ameritech is supposed to send a LLN to WorldCom in the event that a customer has migrated to another CLEC (a CLEC-to-CLEC Migration) or to Ameritech (a winback). The LLN lets WorldCom know that the customer is no longer with MCI, and that MCI should stop billing the customer for local service. When a LLN is not sent, WorldCom will likely keep on billing the customer. Without a LLN, a final WorldCom end user bill may still be rendered, but only after the former customer has called to complain that the local service is now being provided by a different carrier and that he/she is receiving local phone bills from two different carriers. Without a LLN, however, the exact date of the switch likely will not be known by the customer, so the billing to the customer is not likely to match the actual date he/she terminated service with the previous carrier. The record in this proceeding WorldCom contends, indicate that line loss is a continuing problem. (Tr. 1621-30).

OSS Billing Problems

476. WorldCom witness Hurter testified to billing problems related to OS/DA and intraLATA toll. With respect to intraLATA toll, he described that, at a high level, there are four main issues with respect to Ameritech's billing of WorldCom for local toll usage. First, Ameritech should not be billing WorldCom for local toll usage. Second, even if there were circumstances in which such billing would be appropriate, the billing format is improper. Local toll usage should be in the CABS format, as opposed to the CRIS billing which Ameritech is presently utilizing. Third, the rate that Ameritech is

charging WorldCom for local toll usage -- 42.3 cents per minute -- is entirely improper. And finally, the way in which Ameritech lists the jurisdiction of the calls on its CABS billings is entirely improper. (WorldCom Ex. 2.0 at 2).

477. For OS/DA calls, WorldCom contends, its bill averages exceeds the tariffed rates in Illinois. Ameritech acknowledged the billing problems, but claimed that those related to incorrect billing for intraLATA toll had been fixed. An examination of several bills WorldCom contends, will be necessary to analyze whether bills are decreasing, either in dollars or minutes billed, and whether the translations problems have been resolved with respect to all of Ameritech's switch translations for all of its switches and in all of its end offices. There is no evidence at this time WorldCom maintains, that would indicate that Ameritech has fully resolved its avowed translation and routing problems.

478. WorldCom witness Lichtenberg pointed out that translation and routing problems continue unabated. While AI witness Muhs claims that the routing translation problem was fixed in March 2002, testimony shows that in April 2002 WorldCom had over 220,000 new errors of this nature in Illinois alone. WorldCom has sent these records to Ameritech for research, but Ameritech has yet to explain why this problem persists, or to offer a root cause analysis of the problem or a description of exactly how and when the problem will be fixed.

c. Staff Issues/Position

479. Staff claims to have identified specific Ameritech actions and policies that in its view, effectively impede competition by failing to provide UNEs under terms and conditions that are just, reasonable and nondiscriminatory. (Staff Ex. 3 at 58-138.) These actions and policies, Staff contends, restrict CLEC access to UNEs in general and, with respect to new UNEs, migrations, and new combinations, materially impair or preclude carriers from providing their desired services.

UNE Availability in General

480. Staff would emphasize that, because Ameritech elects to interpret the FCC's national list narrowly, items that are, in fact, on the FCC's national list may be treated as though they are not on the list. Therefore, its processes and procedures applied to requests for UNEs, not on the national list, are all the more important in assessing its compliance with the UNE Remand Order.

481. Staff believes that the Commission should increase monitoring of the Company's provisioning processes. As such, the Commission should monitor each step of the BFR process to determine whether the Company is requiring carriers to submit BFR requests for UNEs that the carrier should be provided outside the BFR process. It also would enable the Commission to monitor whether Ameritech is provisioning UNEs in a manner consistent with the FCC's current necessary and impair standards. Continued monitoring would identify any deficiencies in Ameritech's current or future processes.

482. Even if the processes and procedures Ameritech includes in its tariffs are Section 271 compliant, Staff contends that it must provide carriers with interconnection agreements access to these tariffed processes and procedures. Otherwise, in Staff's view, Ameritech will fail to meet general accessibility criteria for UNE availability.

Newly Defined UNEs (Ameritech's BFR Process)

483. Staff raised a number of issues with respect to Ameritech's provisioning process for newly defined UNEs, i.e., the BFR process. In Staff's view, Ameritech had not provided evidence that the charges it assesses carriers for requesting UNEs through the BFR process are reasonable. Staff also noted that Ameritech had provided no evidence that its BFR processes and procedures result in timely provision of UNEs of sufficient quality to ensure that CLECs are able to use them to provide their desired services.

484. The Order in Docket 01-0614, Staff observes, addressed Ameritech's BFR process as it relates to provision of ordinary combinations of UNEs, concluding that:

> "… until such time as the parties have had an opportunity to engage in the process in the context of ordering new combinations, the Commission is willing to allow its use." Order at 150.

485. With few exceptions, Staff notes, carriers have not engaged in the BFR process for newly defined UNEs. While this may or may not be cause for concern, Staff recommends that the Commission adopt a single, consistent approach toward all of Ameritech's BFR processes.

486. Consistent with the "spirit" of the Order in Docket 01-0614 Staff recommends that the Commission increase monitoring of Ameritech's provisioning processes, and at each step of its BFR process. This will enable the Commission to determine whether Ameritech is provisioning UNEs in a manner consistent with its Section 271 obligations. With continued monitoring Staff believe that the Commission can identify any deficiencies in Ameritech's current or future processes and, if necessary, take remedial action. Ameritech can address Staff's issues regarding its provisioning of newly defined UNEs by making its BFR process transparent to Staff and the Commission.

UNE Combination Migrations

487. Staff sees Section 51.315 of the FCC rules to state that, "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 CFR § 51.315(b). Section 13-801 (a) of the PUA, Staff asserts, imposes an almost identical requirement. 220 ILCS 5/13-801(a). Therefore, if network elements are physically assembled in Ameritech's network, it may not disassemble those elements if a carrier requests the assembled elements as a combination of UNEs. For example, if a current customer elects to switch to a CLEC, the CLEC may request that Ameritech provide the network elements currently being

used by Ameritech to serve the customer to the CLEC as a combination of UNEs. That is, the CLEC may request a "migration" to a combination of UNEs.

488. All of its earlier concerns, on these matter, Staff points out, have been resolved by Ameritech's compliance filing in response to the Order in Docket 01-0614.

489. The tariffs that went into effect on July 12, 2002, Staff notes, make explicit provision for migrations of special access and other Ameritech-provided services to combinations of UNEs. Ameritech lists specific UNE-P and EELs combinations in its tariff. According to Staff, these combinations and the rates, terms, and conditions included in its tariff filing clarify Ameritech's current migration offerings. In addition, Ameritech has adopted a BFR process for ordinary combinations (the BFR-OC process) that provides for additional combinations not listed in the tariff. The BFR-OC process includes provisions that enable the Commission to monitor the process.

490. Staff notes that the Commission ordered Ameritech to adopt Staff-proposed interim rates for certain UNEs and UNE combinations. TELRIC II Order on Reopening at 11. Ameritech revised its tariffs and thus, in Staff's opinion, has complied with the Order. According to Staff, however, the Commission further stated that it:

> "… agrees with Staff and Ameritech that the pressing need to finalize rates for UNEs and EELs compels us to immediately open a new docket to examine those issues." Id.

491. As such, Staff asserts, Ameritech's rates for these items remain interim in nature. Further, Staff comments, the Commission noted deficiencies in Ameritech's rates for UNEs and/or UNE combinations:

> The nonrecurring charges a CLEC is expected to pay when it places an order for UNEs and/or UNE combinations were ordered to be clear and easily ascertainable. They are not. TELRIC II Order at 73-74.

492. Staff indicates that Ameritech's compliance tariff filing reduces the confusion surrounding its UNE combination rates. As the *Order* in Docket 01-0614 recognizes, however, Ameritech does not yet have finalized rates for its UNE or UNE combination offerings.

493. Further, Staff notes, Ameritech does not have any established interval for provisioning conversions of special access circuits to combinations of UNEs. Nor does it have performance measures to track its provisioning of migrations. Thus, the Company has not demonstrated that it has a binding commitment to provision such circuits in any reasonable time period. Similarly, it does not have any standard, or performance measurements that track the quality of, for example, loop transport combinations provisioning. Ameritech must demonstrate that these shortcomings are remedied in Phase II, Staff recommends.

New UNE Combinations

494. Sections 51.315(c), through 51.315(f) of the FCC's rules, Staff notes, require Ameritech to assemble UNEs for requesting carriers. While the lower Court, vacated these rules, the Supreme Court recently reversed the Eighth Circuit's decision in this regard. Verizon Communications, Inc. v. FCC, 535 U.S. --, 2002 U.S. Lexis 3559 (2002) ("Verizon").

495. Staff notes Ameritech to have taken the position that "under current federal law, the FCC does not require an ILEC to combine UNEs for CLECs that are not currently, physically assembled." (Staff Ex. 3.0 at 153-154.) As such, Staff contends, Ameritech has done little in the way of providing evidence that it does the work to combine UNEs. Nonetheless, Staff recognizes that (in response to the Order in Docket 01-0614), Ameritech has tariffed new combinations. Ameritech lists specific UNE-P and EELs combinations. These specific combinations and the corresponding rates, terms, and conditions clarify Ameritech's current new UNE offerings. In addition, Staff observes, Ameritech has adopted in its tariff a BFR process for ordinary combinations (the BFR-OC process) that provides for additional combinations not listed in the tariff. As with its provision of migrations, Staff contends, Ameritech's compliance tariff filing reduces the confusion surrounding UNE combination rates. Yet, as the *Order* in Docket 01-0614 indicates, Ameritech does not have finalized rates for its UNE combination offerings.

496. Staff also notes the lack of quality standards for Ameritech's provisioning of new UNEs. As with migrations, Ameritech does not have any established interval for provisioning new combinations of loop and transport. Nor does it have performance measures to track provisioning of such new combinations. Thus, in Staff's view, Ameritech has not demonstrated that it has a binding commitment to provision such UNEs in any reasonable time period.

Pricing

UNE Rate Requirements

497. The Federal Act, Staff notes, does not define specifically how nondiscriminatory pricing is to be developed. The FCC sought to provide that definition in its *First Report and Order* by determining that UNEs must be priced at their TELRIC, and may be marked-up to recover a reasonable portion of joint (in Illinois joint costs are synonymous with shared costs) and common costs. *See, generally*, First Report and Order, ¶672 *et seq*. After a series of appeals and remands, Staff notes. the US Supreme Court determined that the FCC's use of the TELRIC methodology, is consistent with the provisions of the federal Act. Verizon. (slip. op. at 25 *et seq*.)

498. According to Staff, Congress and the FCC left the determination of nondiscriminatory UNE rates to state commissions. 47 U.S.C. § 252(d)(1); *see, also, e.g.*, First Report and Order, ¶¶632, 693. The FCC prescribed only the "methodology"

that must be used in determining these rates. Accordingly, it follows that the Commission determines whether a rate is TELRIC-compliant.

State Requirements

499. Staff notes the Commission to have issued several decisions relating to UNE pricing. The first of these was the TELRIC Order, which prescribed the general UNE rates. After Ameritech filed tariffs in compliance, the Commission ordered an investigation. See Docket 98-0396 (hereafter "TELRIC II proceeding"). In addition, the Commission initiated a proceeding to determine whether Ameritech's tariffs for pole attachment and conduit occupancy terms and conditions complied with the *TELRIC Order*.

500. This Commission, Staff informs, initiated several other dockets to examine Ameritech's UNE rates:

> Docket 00-0393 (line sharing and line splitting);
>
> Docket 00-0700 (unbundled local switching with shared transport);
>
> Docket 00-0538/0539 (Consolidated) (dark fiber and sub-loop unbundling); and
>
> Docket 01-0614 (compliance with Section 13-801).

501. The Commission's *Order on Reopening* in the TELRIC II Proceeding, adopted the Staff's proposed NRCs. Order at 11. In addition, the Commission adopted on an interim basis certain other non-recurring rates subject to a true-up if one should prove necessary. (Id. at 15.) The Company has, in Staff's view, filed tariffs consistent with this Order.

502. Staff notes that several parties had expressed concern regarding whether ULS cost studies were submitted in compliance with Docket 98-0486/0396 (Consolidated). The Commission's Order in Docket 98-0396 addresses the ULS cost study requirements set out in the *TELRIC Order:*

> By agreement of the parties, Ameritech did not file a new ULS study in this proceeding because a new ULS study was submitted with its updated TELRICs as part of its April 2000 filing in connection with the SBC/Ameritech Merger Order. Further, the Commission may evaluate such study in Docket 00-0700. Accordingly, the Commission agrees with Staff that no ruling on this issue is necessary in this proceeding, and finds that Ameritech Illinois has complied with the TELRIC Order's directives concerning ULS. TELRIC Order at 49.

503. This language Staff contends clearly shows that the Commission does not have any concerns regarding ULS issues that stem exclusively from the *TELRIC Order*.

504. Line sharing rates Staff informs, were among the issues that the Commission addressed in Docket 00-0393. The Commission issued an *Initial Order*, an *Order on Rehearing*, and an *Order on Second Rehearing* in this proceeding. It addressed those line sharing rates that are germane for the purpose of checklist item 2 compliance. *See* Initial Order at 84 *et seq*. Ameritech filed rates for these services which are, in Staff's opinion, compliant with the initial order and can be considered Commission-approved permanent rates. Staff has no checklist item 2 concerns with these rates.

505. The rates at issue in the *Orders on First and Second Rehearing* in Docket 00-0393 for Ameritech's Next Generation Digital Loop Carrier UNE Platform ("NGDLC UNE-P") and line splitting, however, appear to be defective in Staff's view.

Dark Fiber/Sub-Loop Unbundling Rates

506. Staff points out that dark fiber and unbundled sub-loop rates were originally under investigation in Docket 00-0538/0539 (Consolidated). (Staff Ex. 6.0 at 13, 30.) This docket was dismissed, however, subject to an agreement by the parties that a modified tariff would be filed. But, Staff informs, no agreement was reached regarding cost issues. (Id.) Although the modified tariff has been passed to file by the Commission, Staff notes that an investigation of the UNE pricing for these services has not yet ensued. (Id.) Until such time as Ameritech satisfies the requirements of the imminent investigation of these rates, it cannot be determined whether they are TELRIC compliant. (Id.)

Staff Rate Concerns

507. There are four significant concerns that Staff sets out regarding network elements. (Staff Ex. 23.0 at 11-15.) First, there are discrepancies between Ameritech's tariffed sub-loop rates and existing UNE rates for loops. In several instances, Staff notes, Ameritech proposes that the unbundled sub-loop rate should be higher than the rate for the entire loop. *See, generally*, Staff Ex. 23.0 at 17 *et seq*. This runs counter to the logical presumption that a portion of a loop ought to cost less than the entire loop.

508. Second, Staff contends, there are major discrepancies between the line conditioning charges set for *sub-loops* as compared to *loops*. (Staff Ex. 23.0 at 13.) This is due, in part, to the fact that the respective costs for line conditioning of loops and sub-loops were determined in separate proceedings. In the Staff's opinion, these three activities should have identical pricing structures, regardless of whether they are performed on loops or sub-loops. (Id. at 13-14.) Since the loop conditioning charges are TELRIC-compliant it therefore appears highly unlikely that the much higher sub-loop conditioning charges are TELRIC compliant. (Id.)

509. Third, Staff believes that the underlying cost model, the Loop Facility Analysis Model ("FAN"), used to develop sub-loop and dark fiber UNE rates may not produce TELRIC-compliant rates. (Staff Ex. 23.0 at 14.) Staff relies on the Proposed Order in Dockets 98-0252/98-0335/00-0764 (Consol.) as having identified several deficiencies of the LFAM model. Ameritech subsequently withdrew its rate-rebalancing proposal on exceptions to the Proposed Order. Id. While it is true that the Commission did not examine or rule on the acceptability of LFAM in Dockets 98-0252/0335/00-0764 (Consol.), Staff believes that the impact of the deficiencies in LFAM as they relate to the UNE rate development in this proceeding should be explored. (Id.)

510. Fourth, Staff maintains that Ameritech's Illinois rates compare *unfavorably* with its rates in Michigan. (Staff Ex. 23.0 at 14-15; *see also* Sched. SJA-3; Tr. 1496.) Staff recognizes that it is difficult to compare rates for UNEs across states. Demographic, cost, and regulatory environments affect these rates vary considerably. (Staff Ex. 23.0 at 14-15.) To be sure, Staff contends, Congress and the FCC acknowledged this reality when they left it to the state commissions to establish rates for UNEs under the TELRIC guidelines. 47 U.S.C. § 252(d)(1); *see, also, e.g.*, First Report and Order, ¶¶632, 693. Given the similarities in rate structures in Ameritech's Illinois and Michigan territories, however, Staff believes that the rates in these two states lend themselves to comparison. (Staff Ex. 23.0, Sch. 1). Of the 92 comparable rates, Staff maintains, 67 (73%) of them are higher in Illinois. (Id. at 15.) Indeed, as Mr. Alexander conceded, most Illinois subloop rates are higher than their Wisconsin counterparts as well. (Tr. 1496.)

511. Further, Staff asserts, the reasonableness of sub-loop rates necessarily includes a comparison with loop rates. (Staff Ex. 23.0 at 16.) Staff performed an analysis of sub-loops versus loops comparing Ameritech's tariffed sub-loop rates as a percentage of its tariffed loop rates in Illinois and Michigan. (Id.) Half of the Illinois sub-loops sampled exceed loop rates, Staff maintains, while all of Michigan's sub-loop rates are lower than loop rates. Further, as a percentage of the total loop cost, Michigan rates are lower than Illinois rates in every case. This analysis, Staff comments also shows that Ameritech's sub-loop and dark fiber rates are not TELRIC compliant, such that the Company does not satisfy Checklist Item 2 requirements. It further indicates that an investigation into the Illinois rates for these services is necessary, and Staff recommends that it commence immediately. (*See* Id. at 19-20).

The Zone of Reasonableness Analysis

512. Staff notes that Ameritech provided what it terms a "zone of reasonableness" analysis as a means of showing that sub-loop and dark fiber rates are sufficiently TELRIC compliant. (Am. Ill. Ex.15.0 at 25.) According to Staff, AI does not make clear just what information in its analysis leads to this conclusion. (Staff Ex. 23.0 at 16.)

513. In Staff view, Ameritech's "zone of reasonableness" analysis is incomplete. (Id. at 15 – 19.) At the outset, many rates for services are excluded from this analysis. (Id.) Specifically, sub-loop rates are represented as a range, rather than

in an enumerated list that can be compared side-by-side. (Id.) Further, several Illinois rates that would be germane to such analysis, but that compare unfavorably to Michigan rates, are omitted. According to Staff, Schedule 1 to Staff Ex. 23.0 is a comprehensive comparison of these rates, and provided a more accurate analysis. It shows that rates for 73% of dark fiber, sub-loop and CNAM UNEs are higher in Illinois than in Michigan. This alone demonstrates, in Staff's view, that the Commission should give this issue careful scrutiny.

OSS – Line Loss Notifications (LLN)

514. Staff explains the LLN to be a message sent from Ameritech Illinois to a carrier, notifying the carrier that one of its end users has switched to another carrier. In the telecommunications industry, such loss notifications are commonly referred to as 836 transactions or 836 reports. Ameritech Illinois provides loss notifications to carriers that use Ameritech Illinois' facilities to offer service to its end users. One purpose of the loss notification is to notify the carrier to cease billing the end user for the service that was switched. (Staff Ex. 11.0 at 10). Staff argues that AI's LLN problems are systemic, since AI has experienced LLN problems from December 2000 (*Order* Docket No. 02-0160 at 5) through at least June 2002 (Tr. 1628), and potentially 83 CLECs were affected by the LLN problems (Staff Cross Ex. #22; Order, Docket No. 02-0160 at 24).

515. Staff relies on previous 271 orders, in which the FCC has evaluated LLNs. In the *Georgia/Louisiana 271 Order* (¶¶163-64) Staff notes, the FCC evaluated LLNs to see whether the problem is systemic or was an isolated incidence. Staff argues that because this problem has continued in one form or another, since December 2000, this problem is systemic. As such, Staff argues that the chronic problems with AI's LLN process has adversely affected the competitive environment in Illinois, and Staff is not reassured that the problems have been addressed or corrected such that they will not occur in the future. Staff Rev. IB at 128-29.

516. As proof that the LLN process is not operating correctly and has systemic problems, Staff recites the system and process changes that Ameritech has needed to make during the filing of testimony:

> In March 2002, AI sent LLNs that were missing specific fields in the LLN that the CLECs needed. AT&T Ex. 8.1 at 3. AI fixed that problem within a few weeks, however, the correction changed the formatting of the LLN so that AT&T could not use it. *Id*. at 4. On March 26, 2002 AI stopped sending LLNs to AT&T. *Id*. This problem was corrected on April 4, 2002. On April 24 AI modified its system in an

> attempt to reduce the amount of manual processing performed on service orders. AI Ex. 4.1 at 13. On May 3, 2002 AI implemented a fix for partial migration[6] problems identified by AT&T, WorldCom and Staff. AI Ex. 4.1 at 13. Between May 3 and May 29, 2002 AI experienced another problem with LLN. Tr. 1693. This problem affected customers switching multi-line accounts between carriers. AI Ex. 4.2, Sched. MC-1 at 3. AI implemented a correction for this problem on June 3, 2002. There is no evidence demonstrating that the LLN problems are fixed and that new problems will not emerge. In fact, the repetition of problems that started in December 2000 demonstrates just the opposite. Staff Rev. IB at 129.

517. Staff notes Ameritech to assert that there were no problems with the systems since the last modification made on June 3, 2002. (Tr. 1014). According to, Staff there are two reasons why this is not correct. First, Ameritech's position had no real basis since it takes at least two months for CLECs to determine whether or not a system modification AI has made for line loss notices has had any effect on the problems they have experienced, and the evidentiary hearings were held in July. Staff Rev. IB at 130. Staff explained that there is at least a one month lag between the time when services are received and payment is made for those services, and a subsequent month for CLECs and AI to process complaints for improper billing. Tr. 1695; 1639 (Z-Tel witness Walters stating that there is a significant amount of time between the issuance of a bill and the time in which a customer will complain about that bill). Second, CLECs stated that they still were experiencing a significant level of LLN problems, or that they do not have sufficient information at this time to determine whether the changes that AI has made since March 2002 has improved their LLN problem. Tr. 1624 (Z-Tel), 1692 (AT&T), 1714 (WorldCom). Therefore, the effectiveness of AIs June 3, 2002 changes according to Staff is indeterminable at this time.

518. In Staff's view, another indication that the LLN problems are not resolved is the fact that AI's cross-functional team is still in operation. The cross-functional team was formed to resolve "the end business processes for the line loss notifiers." Tr. 1208, 1210. Further, Ameritech witness Cottrell stated that the cross-functional team is still looking into the system to find problems, and that there may be problems found in the future. Tr. 1211-12. Therefore, Staff argues that the natural conclusion is that since the cross-functional team is currently in place and functioning, that the LLN process continues to have problems, to cause harm to CLEC's reputations, and that the cross-

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[6] Partial migration is when some, but not all, lines on an account are being moved to another carrier. *See* Staff Ex. 11.0 at 11-12 (describing partial migration problems AI is experiencing).

functional team's purpose is to ensure problems do not reoccur and that new issues do not arise. Tr. 1073. Furthermore, Staff expresses a concern that there will be no mechanism in place to quickly identify and address LLN failures or issues, once AI plans to remove the cross-functional team. *Id*.

519. Further, Staff contends that the LLN problem cause two types of harm to a CLEC's reputations, where AI does not send accurate and timely loss notifications to its wholesale customers. In one instance, the wholesale customer does not know to stop billing the end user for the service that AI has switched to itself or to another provider. Staff Rev. IB at 127; Staff Ex. 11.0 at 10. This typically results in an end user being billed by two separate providers for the same service. Staff Ex. 11.0 at 10. The second situation occurs, when an end user calls to complain to the wholesaler who originally provided service to the end user, the wholesaler may still not know that the end user is no longer its customer. In the end user, this situation would raise definite questions about the credibility of the wholesale provider. It is also possible that when an end user experiences this type of problem with a competitive local exchange carrier that the reputation of all local competitive carriers may be tarnished in the end user's mind, thereby causing the end user to not choose an alternative local carrier in the future. Staff Rev. IB at 127-28; Staff Ex. 11.0 at 10.

520. Staff argues that AI has not yet implemented the changes to the LLN performance measurement -- MI 13 – that the Commission ordered be completed, in Docket No. 02-0160. In that docket, the Commission found "the performance measure needs to be redesigned to address the problems identified by Staff." *Order*, Docket No. 02-0160 at 24. Staff argues that AI has not corrected, or redesigned the MI 13 performance measure at this point in time. Staff Ex. 25.0 at 9, 11.

521. According to Staff, MI 13 is currently a diagnostic performance measurement that measures "the percentage of loss notifications (which AI provides to the carrier that "loses" a customer) issued within one hour after the related completion notice is sent to the new carrier." Staff Ex. 11.0 at 15-16. Staff provided several reasons why performance measure MI 13, as it exists today, does not reflect, or reveal, that there are problems associated with AI's LLN.

> First, the business rule definition states that MI 13 reports the percentage of loss notifications sent to the losing carrier within 1 hour of the service order completion notice being sent to the end user's new carrier. Therefore, if Ameritech never sends a service order completion notice to the new carrier, then the loss notification would never be sent to the

> losing carrier, and the error would not be reported as part of MI 13.
>
> Second, if service order completion notices are sent late, or are delayed, then MI 13 will not account for the delay. MI 13 does not account for the delay since it only measures the time from when the service order completion notice is sent to the new carrier and not from when the actual work to disconnect the line was completed.
>
> Third, the partial migration problems identified by SBC/Ameritech, that I noted earlier in my testimony, would not be reflected in MI 13 because the loss notifications that should never have been sent are actually included in MI 13 (when they shouldn't be). Further, the loss notifications that are never sent are not included in MI 13 because the measure does not include loss notifications that are never sent.
>
> Lastly, the loss notifications involving manual process handling, that SBC/Ameritech failed to send, also would not be reflected in MI 13. For the foregoing reasons performance measure MI 13, as it is designed and calculated today, does not and cannot accurately report Ameritech Illinois' performance related to loss notifications. Accordingly, it should not be used as an indicator of Ameritech Illinois' performance in providing loss notifications. Staff Rev. IB at 134 (citing Staff Ex. 11.0 at 17-18).

522. Since AI has not yet revised the MI 13 performance measure in compliance with the Commission's order in Docket 02-0160, Staff recommends that the Commission condition its approval of AI's 271 application upon AI's agreement to perform five actions.

523. First, AI needs to change the business rule for MI 13 so that the LLN "interval is measured from the completion of the disconnect work (instead of being measured from the generation of the service order completion notice to the winning

CLEC) to the time that the loss notification is transmitted to the losing carrier." Staff Ex. 25.0 at 8.

524. Second, AI should modify the business rule as follows:

> "The percentage of customer loss notifications sent to carriers where the elapsed time from the completion of the disconnect provisioning work to the time that the loss notification (EDI 836 message) is transmitted to the losing carrier is less than one hour". Staff Ex. 11.0 at 22.

525. Third, LLNs that are not sent by AI are not included in the performance measure MI 13. A change should be incorporated into the business rule document so that it clearly provides an exclusion or clarification that loss notifications that are supposed to be generated but are never sent to the losing carrier for whatever reason are not included or reflected in the performance measurement. Staff Ex. 11.0 at 23.

526. Fourth, Staff contends, this Commission has found that AI has provided LLN's in a discriminatory manner, therefore, the LLN performance measure – MI 13 – should be included as a remedied performance measure in the performance remedy plan and given a medium weighting. Staff Ex. 25.0 at 7. In Docket 01-0120, the Commission ordered that remedied performance measure reflects a weighting based on importance, such as impact on end user or if it is a subset of another measure. Order, Docket No. 01-0120 at 47 (Ameritech's Position), 48. Staff suggests that this be given a medium weighting since it primarily protects the CLECs reputation. A medium weighting is equitable given that the performance measure is not a submeasure, and it affects the end user, but it effects them to a lesser degree than it affects the CLECs reputation. The benefit of making MI 13 a remedied measure is that it will encourage AI to work towards preventing any backsliding on this performance measure.

527. Fifth, Staff sees AI to state that the changes to MI 13 should occur in the six month review collaborative. AI Ex. 6.1 at lines 373-76. While changes to MI 13 are being discussed in the six month review process, the changes to MI 13 should not be left to the six month collaborative process, but should be implemented as ordered by the Commission. All changes made as a result of the six month collaborative are based on consensus. If consensus is not reached then the disputed issues must be brought to the Commission for resolution. Staff. Ex. 25.0 at 11. If the Commission follows AI's proposal, and allows the changes to MI 13 to occur through the six month collaborative process no changes are likely. The Commission has already found that AI's LLN process is discriminatory, Docket and that the current MI 13 needs to be redesigned.

The 02-0160 Order, however, did not set a date by which it should be implemented. Further, it is unlikely, in Staff's view, that the six month collaborative will reach a consensus on the redesigned MI 13. According to Staff, Ameritech has not agreed to the modifications it suggested, and therefore, the unresolved issue will need to be presented to the Commission, for resolution.

528. To ensure that performance measure MI 13 is modified in a timely manner, and is not revisited in another hearing, Staff recommends that the Commission should condition its approval of AI's 271 application on AI redesigning and implementing the changes (described above) to MI 13's performance measures and business rules within 45 days of the issuance of the Phase I order.

529. Staff recommends that Phase II of this proceeding review AI's LLN performance to determine if it is complying with the order in Docket 02-0160, and with Staff's recommendations in this proceeding. This additional time allows AI to create a record of LLN performance that could demonstrate the changes AI has implemented have cured the LLN problems.

530. Staff also recommends that the Commission condition its positive recommendation to the FCC on AI's compliance with Staff's recommendation set forth in the Systemic Problems with Line Loss Notifications section, infra, and the five conditions stated in the Performance Measure MI 13 section, as discussed infra. Prior to the Commission giving AI a positive recommendation on its 271 application, AI should implement the recommendations/conditions stated herein, and provide written documentation to Staff proving that the recommendations contained here have been complied with. This documentation Staff contends, should be verified by a corporate officer.

d. AT&T Issues/Position

Nondiscriminatory Access To OSS

531. It is not AT&T's intent, it claims, to litigate in Phase I of this proceeding (which deals with Ameritech's specific checklist obligations) issues more appropriately dealt with in Phase II of this proceeding (which will examine Ameritech's OSS and performance measurement compliance following the conclusion of the third-party OSS). Indeed, AT&T recommends that before making any conclusions on Ameritech's OSS, the Commission should await the results of the third-party testing and CLEC commercial experience on Ameritech's operating systems.

532. As a basis for its recommendation, AT&T relies on the evidence it produced showing the problems with: (1) Ameritech's OSS "releases" and Change Management Processes (CMP) in providing a stable OSS platform; (2) Ameritech's OSS Joint Testing Environment being inadequate for migrating to new release versions of Ameritech's OSS; (3) Ameritech's failure in issuing timely and accurate Line Loss Notifiers; and (4) Ameritech's Directory Listing interfaces failing to provide nondiscriminatory access to directory listing functionality.

Line Loss Notifiers

533. AT&T contends that it has, at times, failed to receive Line Loss Notifiers (also known as 836 records) from Ameritech. AT&T witnesses Willard and Van de Water described the problems AT&T has encountered. These notifiers are critical, AT&T asserts, in that a UNE-P provider must rely upon Ameritech's line loss reports to alert it when a customer has switched carriers. The failure of Ameritech to provide timely and accurate line loss notifiers results in former customers being double billed. (AT&T Ex. 8.0 at 36). The former customer receives a bill from its new provider, as well from its former provider. Ameritech's failure to provide line loss notifiers has serious negative effects on the reputations of competitive providers. Even worse, a CLEC can be accused of slamming or cramming if it does not receive a notifier in a timely manner.

534. AT&T is concerned about the manual intervention that Ameritech's current systems rely upon for generating line loss notifiers. Any time that human intervention is relied upon to generate an OSS response, AT&T contends, errors will necessarily increase. As CLEC UNE-P volumes increased in Michigan, AT&T comments, so too did the errors of Ameritech's service representatives relied upon to generate line loss notifiers. Thus, the Commission should investigate whether increased levels of UNE-P orders in Illinois have produced increased levels of Line Loss errors.

535. Despite what AI would argue, AT&T maintains that there is insufficient experience to conclude that that Ameritech has identified and fixed all of the problems associated with Line Loss Notifiers. According to AT&T, the only way the Commission will be able to determine if the problem of Line Loss Notifiers has been fixed will be to examine Ameritech's performance over a relevant time period to see if during that time period there are an impermissible number of errors and mistakes. In other words, the Commission should let Ameritech's systems prove themselves out over time. Only in this fashion will the Commission be able to determine if Ameritech's systems have stabilized. Given the "off-again, on-again" history of this issue, AT&T recommends that Ameritech be required to show compliance with measurement criteria for at least 6 consecutive months before this issue can be considered resolved.

UNE-P migration "as-is"

536. Pursuant to Section 13-801 (d)(6), AT&T contends, Ameritech is required to offer carriers the ability to migrate customers "as is" meaning that it will migrate "an end user that has such existing local exchange service without changing any of the features previously elected by the end user." 220 ILCS 5/13-801(d)(6). Although it

sees Ameritech to claim to have a tariff to offer migration "as is" capability, AT&T maintains that the ordering processes simply do not support UNE-P migration as is. (AT&T Ex. 8.1 at 18). The reality, AT&T claims, is that Ameritech only supports UNE-P migrations "as-specified".

537. From an OSS/ordering perspective, the "as-is" migration type is defined by OBF as Activity type "W". (AT&T Ex. 8.1 at 18). An Ameritech's witness admitted during hearing that Ameritech's OSS do not incorporate OBF Activity type W. Mr. Cottrell testified that Ameritech's OSS do not support orders that migrate retail Ameritech end users to CLEC "as is":

538. According to AT&T, Ameritech's failure to offer UNE-P migration "as is" capability is significant for at least two reasons. First, Illinois law requires that Ameritech offer "as-is" migrations. To comply with this requirement, Ameritech must do more than tariff the option to order UNE-P via a migration – the OSS must allow a carrier to specify that the migration will be "as is" – meaning that all of the end users current features will be retained when the CLEC becomes the provider. Ameritech must modify its OSS processes to allow a CLEC to actually place an "as is" order.

539. Second, migration "as is" is a powerful ordering functionality/tool for a competitive carrier. (AT&T Ex. 8.1 at 19). Allowing a carrier to place migration "as is" orders gives the competitive carrier the option of telling the customer that he or she can transition their service to the new carrier simply and without modification from the old service. It relieves the competitive carrier from confirming the customer's current set of features, etc. (Id*).* Currently, with only migration "as specified" available, if the customer says, "just give me what I have now," the competitive carrier either must confirm each and every feature with the customer or manually read the customer's CSR. (Id.) In this situation, mistakes can and will be made either by the end user themselves or by the CLEC representative and the customer may not receive the exact set of services he or she is currently receiving. (Id). Migration "as is" solves much of this type of problem. According to AT&T, this Commission should enter an order requiring Ameritech to implement UNE-P migration "as is" and confirm Ameritech's compliance with such a directive.

Nonrecurring charges for all network element combinations

540. Important to CLEC local entry, AT&T asserts, is the nonrecurring charges applicable to the UNE-Platform and the loop/dedicated transport combination commonly known as the Enhanced Extended Link, or EEL. This issue, it claims, arises from a complex interplay among three dockets:

(1) Docket 01-0614, which examined the requirements of Section 801 of the Illinois Public Utilities Act;

(2) Docket 98-0396, which considered nonrecurring charges, or NRCs, applicable to UNE-P and EELs and set interim nonrecurring charges that CLECs

must pay for new UNE-P combinations and to convert special access circuits to EELs and

(3) a yet to be opened docket to consider the nonrecurring charges applicable to various "engineering scenarios" associated with network element combinations, including providing new UNE-P capability, new EELs and the conversion of special access circuits to EELs. (AT&T Ex. 3.0 at 14).

541. The Commission's Order on Reopening in Docket 98-0396, AT&T observes, established interim nonrecurring charges for new UNE-Platform combinations and EELs conversions, but also in realizing the need to establish permanent, TELRIC-based nonrecurring rates for UNE combinations and EELs, mandated that a new docket be opened immediately to do so.

542. As such, AT&T claims, only interim rates have been established for new UNE-P combinations and the conversion of special access circuits to EELs. (AT&T Ex. 3.0 at 13). Those interim rates, however, were not established upon a thorough investigation and analysis of the underlying cost studies, but informally agreed to by the parties as a result of several workshops, where consensus was reached in an effort to have some rates in place while the Commission conducts a future investigation.

543. AT&T summarizes its concerns by noting that Ameritech's nonrecurring charges for new UNE combinations, including new UNE-Platform combinations, are interim in nature only and not TELRIC-compliant; the nonrecurring charges for new EEL combinations have not been investigated and, as such, have not been deemed TELRIC-compliant; and the nonrecurring charges for converting special access circuits to EELs are interim in nature only and are not TELRIC-compliant.

5. Reply Positions

a. Ameritech Reply

Access to UNEs Generally

544. There are abundant rules, AI contends, implementing the statutory provisions, incorporated within Checklist Item 2 and the FCC took much of the First Report and Order and the UNE Remand Order to explain them. It also addressed compliance with Checklist Item 2 on numerous occasions, and most of its recent section 271 orders contain "statutory appendices" that succinctly state these requirements.

545. Ameritech Illinois has demonstrated, the Company contends, both its legal obligation to provide all of the UNEs identified by the FCC and that the terms and conditions of those obligations reflect the FCC's rules. Ameritech Illinois showed that its rates for those UNEs comport with the FCC's "TELRIC" rules. Ameritech Illinois'

offering of interfaces to access its operations support systems ("OSS") for ordering UNEs and other wholesale products and services is described on brief. Compliance with the Act's nondiscrimination principles, AI notes, is to be demonstrated in Phase II.

546. In AI's view, Staff would have the Commission now adopt a whole new set of rules for UNEs. Staff's own admission that its rules *are* new, and its inability to show that its new rules appear anywhere in any section 271 order AI contends, support their revelation. (Staff Br. at 96). Further, the FCC has repeatedly held that section 271 proceedings are not the place to create or modify rules but to examine compliance with existing rules. Kansas & Oklahoma 271 Order, ¶¶ 18-19; Arkansas & Missouri 271 Order, ¶ 82.

UNE Combinations

547. AI sees Staff to admit that the tariff Ameritech Illinois filed to comply with the Commission's April 30, 2002 Order on Reopening in Docket 98-0396 has mooted Staff's original concerns regarding the availability of UNE combinations migrations and new UNE combinations. See also Aug. 23, 2002 Stipulation to Eliminate Issues, ¶ 2(g)-(h). Now, however, AI sees Staff to allege that Ameritech Illinois lacks provisioning intervals and performance measures for UNE combinations. (Staff Br. at 116.) While Ameritech Illinois did not present any record evidence of such measures, their existence is not in question. Rather, as Staff knows full well, performance measure issues have been deferred to Phase I(b). But just so there is no misunderstanding, Ameritech Illinois comments that its existing tariff contains numerous standards and measures (including installation intervals) for UNE combinations See Ill. C.C. Tariff No. 20, Part 2, Sec. 10, Sheets 101-140.1. And, AI notes, the parties are supplementing those measures in the current "six-month review."

548. AI observes AT&T to assert that the Company does not offer or support "as is" UNE-P migrations. As an initial matter, AI attempts to make clear what is and is not being alleged. According to AI, AT&T does not allege that Ameritech Illinois fails to offer UNE-P migrations where the CLEC can retain all the end user's service features. Ameritech Illinois indisputably does offer such migrations, as Staff itself notes at 114-115 of its brief. At issue, the Company contends, is only the "order form" for such migrations i.e., – whether Ameritech Illinois must overhaul its systems so CLECs can check an "as is" box on the order form, instead of the current process where a CLEC lists the end user's current services. (Am. Ill. Br. at 72.)

549. In that regard, AT&T does not allege that the current ordering process is discriminatory, or that it differs from industry standards, or that AT&T ever asked for an "as is" box during the change management process. In fact, Ameritech Illinois' current ordering processes reflect months of negotiations with the CLEC community in state-supervised collaboratives. See Am. Ill. Response to ALJ On the Record Data Request 16. (Tr. 1260-1261.) Further, AT&T does not allege that the current order form has hindered the ordering or provisioning of UNE-P in any competitively significant way. Indeed AI asserts, AT&T could not make any such allegation, given the sheer volume of UNE-Ps that it and other CLECs have ordered in recent months. (Am. Ill. Br. at 11.)

550. So too, AI notes, AT&T does not allege that any federal law, FCC rule, or FCC order requires the use of an order form with an "as is" box. AT&T's sole support is a reference to Section 13-801(d)(6) of the PUA. (AT&T Br. at 102.) That state law, AI asserts, only refers to the substantive provisioning of the end user's existing features and does not require the use of any particular order form.[7] In AI's view, AT&T is improperly attempting to graft on a requirement that Ameritech Illinois use AT&T's desired order form for that product. Not only are AT&T's allegations irrelevant and inappropriate to compliance with the federal checklist, AI argues, but they evidence an attempt to use this Section 271 proceeding to expand the requirements of state law.

Pricing

551. Ameritech Illinois asserts that it provides hundreds of wholesale products and services to CLECs, and the rates for many of them consist of several different sub-elements. According to AI, rates for the vast majority of wholesale products and services have been aggressively reviewed by the Commission, and the resulting rates are among the lowest in the country – and in certain significant cases (*e.g.*, the loop and the UNE Platform) *the absolute lowest*. (Am. Ill. Br. at 42-43;) The rates that have been approved, AI contends, cover the elements that are most in demand, such as the local loop in all its flavors, as well as the elements of the UNE Platform.

552. AI sees Staff, AT&T and WorldCom to focus on the rates for a few components or products that are interim, or otherwise have not yet been investigated by the Commission – even when these rates were not developed by Ameritech Illinois but by Staff or the CLECs. For instance, AI sees AT&T to allege that uninvestigated and interim prices cause uncertainty that "hampers competitive activity" and that without more "certainty" competitors cannot decide "whether or not to enter the local service business." (AT&T Br. at 33-34.) Ameritech Illinois demonstrated that its interim rates are reasonable and do not affect checklist compliance. Overall, AI would note that AT&T and several other CLECs already *have* decided to enter the local service business – on a large scale – and AT&T has expressly cited the existing prices as a very important factor in that decision. (Am. Ill. Br. at 41).

Possible Future Rates

553. According to AI, the focus being put on pricing is not whether current rates are *correct* but whether they are "certain." The "certainty" being demanded, however, would mean that no BOC could ever receive section 271 approval as long as there was

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[7] Ameritech Illinois' tariff describes an "as is" conversion, and compares it to an "as directed" conversion, as follows: "Conversion of an existing Ameritech Illinois access line to UNE-P with loop and line port combinations 'as is,' (i.e. conversion to UNE-P with the same features and functions the line had when it was provided by the Company to the end user) or 'as directed,' (i.e., with different, additional, and/or fewer features and functions [than] the line had when it was provided by the Company to the end user)." Tariff Ill. C. C. No. 20, Part 19, Section 15, 3rd Revised Sheet No. 9. This language (which previously appeared on 4th Revised Sheet No. 2) was originally proposed by Staff and adopted by the Commission in Docket No. 98-0396. April 30, 2002 Order on Reopening, Docket No. 98-0396.

any possibility that rates could change. Indeed AT&T and WorldCom argue that even Commission-approved permanent rates are insufficient for section 271 purposes, merely because Ameritech Illinois might propose higher rates or prevail in obtaining higher rates on judicial review. (AT&T Br. at 36-37; WorldCom Br. at 15-16.) In the "rapidly evolving telecommunications market" (Texas 271 Order, ¶ 87), AI maintains, the kind of "certainty" the intervenors seek is not feasible, reasonable – or lawful. The 1996 Act does not require prices that are set in stone, but prices be based on cost.

554. As such, AI maintains, the FCC has conclusively rejected the intervenors' attempts to elevate certainty over accuracy. When the FCC considered Verizon's application for Massachusetts, AI notes, that state's commission was in the process of reviewing (and potentially changing) *all* UNE rates. Massachusetts 271 Order, ¶¶ 19, 35-36. The FCC emphatically rejected arguments that this potential uncertainty had any bearing on section 271 approval in general or on checklist item 2 in particular, stating that:

> We find the concerns of the commenters regarding the pending UNE cost proceeding before the Massachusetts Department to be unwarranted. As discussed above, the fact that a state may conduct a rate investigation and change the rates in the future does not cause an applicant to fail the checklist item at this time. Indeed, rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions. The Massachusetts Department has expended an extraordinary amount of effort in its *Consolidated Arbitrations* and other rate-making proceedings. We applaud the Massachusetts Department for the tremendous amount of work it has done, and we expect that it will adopt appropriate cost-based UNE rates in its current proceeding. Id. para 36.

555. One thing *is* certain, AI contends. Despite what Ameritech Illinois might propose, the Commission-approved rates will remain in effect until the Commission or a court decides to establish new rates. That order will come at another time and in another proceeding. For this reason as well, the FCC has rejected the intervenors' position. In the Maine 271 proceedings, AT&T and WorldCom argued that Verizon's prices did not comply with the checklist because Verizon would likely propose a new rate for daily usage files ("DUFs") in the near future. There, as here, AT&T and WorldCom predicted that the proposal would be too high, citing the BOC's past filings in other states. See AT&T Br. at 40-46; WorldCom Br. at 16; Maine 271 Order, ¶¶ 23-24. The FCC first found that the potential uncertainty associated with a future proposal was irrelevant, given that any actual proposal would not be imposed unilaterally by the BOC but would instead be subject to the review of a state commission that had demonstrated its commitment to TELRIC principles (a commitment that this Commission indisputably shares):

> We do not credit AT&T's contention that there is "nothing to stop Verizon from proposing another DUF rate at any time in the future." If Verizon adopts a DUF rate in the future, that rate will be submitted to the Maine Commission for consideration and approval, which, as we have stated, has demonstrated a commitment to TELRIC principles. Thus, Verizon may not unilaterally propose another DUF rate and charge competing LECs accordingly, as AT&T suggests. Maine 271 Order, ¶ 23 (footnotes omitted).

556. The FCC further refused to consider WorldCom's prediction that the new proposal would be too high, finding such allegations to be premature and holding that it would be improper to make a finding of non-compliance based on rates that were not even in existence:

> We also conclude that WorldCom's concern regarding Verizon's anticipated DUF rate is premature. WorldCom presumes that Verizon will file a tariff containing a DUF rate that is excessive and non-TELRIC based, as WorldCom claims Verizon has done in other states, such as Rhode Island, Massachusetts, and Vermont. WorldCom claims that Verizon's DUF rates in other New England states contain TELRIC errors and presumes that the future Maine rate will have similar errors. Obviously, however, we are unable to assess a rate that does not exist during the period that we review the section 271 application, much less make a finding of checklist noncompliance based on such a rate. Moreover, as we stated above, to the extent Verizon proposes a DUF rate that is excessive and non-TELRIC based, WorldCom will have an opportunity to challenge that rate at the state level. Id. para 24.

Interim Rates

557. AI notes AT&T and WorldCom to complain about the existence of a few interim rates. Neither party, AI observes, acknowledges, much less addresses, the FCC's standards for evaluating interim rates. Rather, they would assert that the mere existence of any interim rates bars a finding of checklist compliance because it creates "uncertainty" and because interim rates have not been found "TELRIC-compliant." (AT&T Br. at 106-108; WorldCom Br. at 16.) According to AI, however, the FCC applies a reasonableness standard for interim rates, and this standard has been met.

558. Staff is the only party, AI observes, to mention the FCC's three-part interim rate test and to correctly note that the FCC "has determined that, for Section 271 purposes, TELRIC compliant rates need not be permanent." (Staff Br. at 90-91.) As such, the one time that Staff expressly applies the FCC's test, AI comments, it concludes that Ameritech Illinois' interim collocation rates comply with the checklist.

(Id.) In AI's view, Staff apparently concedes that Ameritech Illinois' other interim rates (like those for certain UNE combinations) also comply with the checklist. (The Staff "rate uncertainty" arguments, AI contends, comes into play under the public interest analysis. See Staff Br. at 102, 238-245). The FCC AI notes, has already rejected the intervenors' position, holding that interim rates can be acceptable and that "uncertainty" about the outcome of "unresolved, fact-specific disputes" does not undermine a section 271 application. Texas 271 Order, ¶ 87; See also Kansas & Oklahoma 271 Order, ¶ 222 (holding that interim prices and the "uncertainty" they may create do not affect section 271 compliance because "carriers should expect to be affected by future resolutions of disputed issues").

Non-recurring Charges for New UNE Combinations

559. AI sees WorldCom and AT&T to assert that Ameritech Illinois should not receive section 271 approval because it uses interim rates for the nonrecurring charges ("NRCs") on "new" UNE combinations. AT&T goes so far as to assert that these rate elements are so bad that they cause Ameritech Illinois to fail all four checklist items that relate in any way to the UNE Platform; i.e., not just UNE combinations (item 2 – UNEs), but the constituent elements of the platform (item 4 – loops, item 5 – transport, and item 6 – switching). AI attempts to put this issue into perspective.

560. At the outset, AI contends, no party disputes the existing, Commission-approved prices for the constituent elements of the UNE Platform, i.e. the loop, switching, and transport. Nor could there be any legitimate dispute, AI asserts, in that the monthly rate for a loop in Chicago (Access Area "A") is $2.59; the rate for switching is approximately $2.10-$2.15; and the rate for transport is 16 cents.[8] Adding the rates for providing customer usage files (45 cents) and cross-connect charges (14 cents), AI comments, and the recurring charge for Chicago UNE Platforms (existing or "new") is approximately $5.49 – *by a wide margin the lowest rate in the country*.[9]

561. Further, AI notes, no party raises any dispute concerning the Commission-approved "non-recurring rates for UNE Platforms" that are comprised of pre-existing combinations of UNEs. According to AI, this is the most common and familiar context for UNE-P, in which a customer "migrates" his or her existing service from Ameritech Illinois to a CLEC. The lack of any dispute here too, is not surprising, given that the one-time charge to set up an existing UNE-P is only $1.02.

562. The dispute, AI contends, centers on the "one-time charges" that recover the costs Ameritech Illinois incurs to combine elements that are not already combined

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[8] See Am. Ill. Ex. 15.1 Sch. RJJ-1 and RJJ-2. The rates for switching and transport are based on the Commission's July 10, 2002 Order in Docket No. 00-0700, and assume 1400 minutes of use per month. Note that the recurring rate for a loop in Access Area B, which covers most metropolitan areas outside of Chicago in the Ameritech Illinois service area, is $7.07. Thus, the rate for a UNE Platform in that area is less than $10.

[9] See Am. Ill. Ex. 15.1 Sch. RJJ-2 at 7 (showing the next lowest UNE-P rate to be New Jersey's $12.89).

and create a *new* UNE-P (*e.g.*, for a new or additional line). But here too, it argues, there is no room for any serious dispute. AI maintains that those charges consist of (i) the same, Commission-approved $1.02 service order charge that applies to "existing" UNE-P; and (ii) a Commission-approved line connection charge of $20.21. See Order on Reopening, at 10, Docket 98-0396, April 30, 2002. (Am. Ill. Ex. 10.2 at 2.) According to AI, Staff proposed that these numbers (developed by CLECs, not Ameritech Illinois) be used; the Commission agreed; and "Ameritech dutifully revised its tariffs to comply with the Commission's Order and thus, in Staff's opinion, has complied with the Commission's Order on Reopening."[10] (Staff Br. at 102.) Order on Reopening, Docket 98-0396.

563. In AI's view, the only thing "interim" about the rate is that the Commission recognized that it did not address some costs (principally, those associated with port connection), and it allowed for the possibility that Ameritech Illinois might furnish cost studies for those missing elements in the future. Order on Reopening, at 10-11, Docket 98-0396. In substance, AI asserts, the Commission has investigated and approved the rates that are now in effect, and it has established an interim rate of *zero* for certain rate elements. Any additional rate for those elements will be investigated and approved before going into effect, and will be applied only prospectively. There is no basis for the CLECs to dispute the Commission's approach. AI contends, as the only possible deviation from TELRIC is that the current rates are too low. Indeed, the Company points out, Ameritech Illinois' non-recurring charges for new UNE-P are nearly three times lower than analogous rates that the FCC found reasonable for Oklahoma ($64), Kansas ($62), and Arkansas ($62), and they are nearly twice as low as the rates for Missouri ($46) and Texas ($39). Arkansas & Missouri 271 Order, ¶¶ 71 & 75.[11]

564. Further, AI asserts, the only party that is disadvantaged by the lack of a true-up is Ameritech Illinois. See Order on Reopening, at 10, Docket 98-0396, (noting that "[a]s a concession to Staff and the CLECs," Ameritech Illinois "agreed to forego the opportunity for a true-up"); See also Maine 271 Order, ¶ 5 ("[W]e find that a zero rate is reasonable under the circumstances because it affords competitors the benefit of the doubt on the rates, subject to the possibility that the Maine Commission will approve a . . . rate of greater than zero in the future. . . . The zero rate also eliminates the need for refunds or true-ups once permanent rates are established.").

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[10] Contrary to AT&T's suggestion (at 105-108), the Order on Reopening approved interim rates for new EELs, as well as special access to EEL conversions and new UNE-Ps. The Commission adopted Staff's and Ameritech Illinois' proposal that "the company's currently effective non-recurring charges, as amended in the manner proposed by Staff' serve as interim rates for UNE combinations, including EELs. April 30, 2002 Order on Reopening, Docket No. 98-0396, at 11. In fact, "all parties were in agreement that the prices in section 15 and 22 of Ameritech's tariff [where EEL-related charges are found] . . . , as modified by Staff's revised Exhibits 2 and 5, would serve as interim prices until a case deciding permanent rates was finished." Id.

[11] The non-recurring rates in Arkansas are identical to those in Kansas. Id. ¶ 75.

Rates for the end-to-end "Broadband UNE"

565. While Staff asserts that the interim rates established in Docket 00-0393 "appear . . . to be defective," AI notes that it does not explain the basis for this assertion much as the interim rates for the end-to-end "Broadband UNE" were all proposed by Staff, not Ameritech Illinois (Order on Second Rehearing at 25, Docket 00-0393) as was the rate of zero for OSS modifications (Order on Rehearing at 48, Docket 00-0393). In any event, AI observes, Staff does not allege that these rates affect checklist compliance.

566. AI sees AT&T to complain that rates for the end-to-end "Broadband UNE" are only interim, and that cost-based rates have not yet been established. (AT&T Br. at 127.) But, AI believes AT&T is put in a hard position to argue that the interim rate is not reasonable, given that AT&T supported Staff's proposed interim rate and, urged the Commission not to allow for any true-up. Order on Second Rehearing at 22-24, Docket 00-0393 (March 28, 2002).

Not-Yet-Approved Rates

567. AI sees Staff, RCN and AT&T to complain about the rates for three relatively new products that the Commission has not yet investigated, i.e., rates for dark fiber, subloops, and CNAM queries, and to further assert that Ameritech Illinois cannot receive 271 approval until these rates have been investigated and approved. These arguments, AI contends, ignore the FCC's holdings that section 271 applications should not be held hostage by a few unresolved rate disputes. See Texas 271 Order, ¶ 87; Kansas & Oklahoma 271 Order, ¶¶ 222, 238. Even if the Commission decides to open an investigation concerning these rates, they do not affect checklist compliance.

Subloop and Dark Fiber Rates

568. AI notes Staff and AT&T to assert that section 271 approval can not be granted until rates for subloops and dark fiber have been investigated and approved. Ameritech Illinois respond by noting that the rates being challenged now were filed nearly a year and a half ago, and in that time no investigation has been opened. A likely reason for the inaction, AI points out, is that there has been virtually no demand for subloops anywhere in the country (Am. Ill. Ex. 10.2 at 5), and demand for dark fiber has been similarly low (Am. Ill. Ex. 1.1 at 50), so that concerns over their pricing are little more than theoretical.

CNAM Query Rates

569. Like subloop and dark fiber rates, AI observes CNAM query rates have been on file for nearly a year and a half such that the Intervenors' attempt to challenge CNAM rates now is unfounded. Claiming that Ameritech Illinois' CNAM query rates are too high, AI notes RCN to point at rates in New York, Maryland, and Massachusetts. (RCN Br. at 22-23.) As Staff noted, however, this type of comparison may not be particularly useful given that the "[d]emographic, cost, and regulatory environments that affect these rates vary considerably from state to state." (Staff Br. at 148.) AI observes

that Staff chose to compare Ameritech Illinois' rates with those in Michigan, because of the "similarities in rate structures" in those two states. (Id.) AT&T also indicated that Ameritech Illinois has a "comparable rate structure" to Ameritech Michigan's, and that the Michigan "CNAM rates have been investigated by the Michigan Commission." (AT&T Br. at 132.) But upon advocating such a comparison, AI points out neither party actually follows through to set out the numbers. Those numbers, AI contends, show that, although Staff and AT&T are technically correct that CNAM rates are higher in Illinois, the rates are substantially the same. According to AI, the CNAM query rate in Michigan is $0.0093985, while the rate in Illinois is $0.009942. (Am. Ill. Ex. 1.2 Sch. SJA-4 at 3).

Non-Discriminatory Access to OSS

570. Ameritech Illinois and its affiliates, the Company argues, have made extensive efforts to enhance operations support systems ("OSS") and to address CLEC concerns in this area. While most of the intervenors comment on OSS, AI notes, that they barely try to dispute Ameritech Illinois' *prima facie* evidentiary showing, which demonstrates that Ameritech Illinois offers sufficient interfaces to provide CLECs access to the same OSS functions Ameritech Illinois provides for its own use. See Kansas & Oklahoma 271 Order, ¶ 105. Indeed, Staff and AT&T would overlook that half of the FCC's analysis, to claim that the only question is one of performance i.e., whether the OSS are operationally ready, as a practical matter, based on results of "actual commercial usage" and "the results of carrier-to-carrier testing, independent third-party testing, and internal testing." Kansas & Oklahoma 271 Order, ¶ 105. True enough, AI maintains, that is the only *disputed* half of the OSS coin, and that dispute is for the Commission to address in Phase II. But, AI also maintains that the Commission should not ignore the undisputed fact that Ameritech Illinois provides the required OSS interfaces.

571. Ameritech Illinois agrees that OSS performance issues are important, and shows that it has investigated and appropriately addressed the issues raised by the CLECs. (Am. Ill. Br. at 60-71, 77-91.) AI would note that the CLECs themselves acknowledge those efforts. See WorldCom Br. at 21 (recognizing that the issuance of completion notices "has certainly improved"); Id. at 23 ("Ameritech has certainly made improvements to its systems"); See also RCN Br. at 18; McLeodUSA/TDS Br. at 9. But, AI asserts, a decision by the Commission on such issues cannot be made in this phase of the proceeding. It must await Phase II, where the Commission will have the benefit of examining commercial performance data and OSS testing as a whole. (Am. Ill. Br. at 52.) Staff and AT&T essentially agree: Staff points out that "[t]he majority of these [OSS] issues will be addressed in Phase II of this proceeding, as agreed upon by the parties at the outset of this proceeding," while AT&T disclaims any "intent to litigate in Phase I of this proceeding . . . issues more appropriately dealt with in Phase II." (Staff Br. at 124, AT&T Br. at 71.)

572. For present purposes, AI contends, it is worth noting that the FCC has held generally that commercial performance data, not OSS test results, are the "most probative" evidence of checklist compliance; it considers test results where "sufficient

and reliable data on commercial usage" are "[a]bsent." Georgia & Louisiana 271 Order, App. D, ¶ 15. As such, AI asserts, the FCC has held that the pendency of an OSS test (or the existence of open exceptions, "valid" or no) do not in and of themselves affect compliance. Id. ¶¶ 19, 106.

573. So too, AI notes that certain CLECs dwell on past OSS offerings rather than the current OSS interfaces and functions. The FCC however, evaluates OSS as of the date of the BOC's application, not as of the 1997 date that AI sees WorldCom to suggest New Jersey 271 Order, App. C, ¶ 14. Under WorldCom's theory, the FCC would not have given Section 271 approval for Louisiana as it did, because in 1998, the FCC found twice that BellSouth did not provide nondiscriminatory access to OSS (Louisiana 271 Order, ¶ 22; Second Louisiana 271 Order, ¶ 91). The FCC, however, assessed BellSouth's OSS, as of 2002, and found that it satisfied the checklist. Georgia & Louisiana 271 Order, ¶ 101.

574. AI sees AT&T to complain about the OSS prior to the March 2001 implementation of Local Service Ordering Guide version 4 ("LSOG 4"), by contending that until those enhancements were implemented, the OSS "provided virtually the same functionality that was in place in August of 1997 when the FCC rejected [Ameritech's] 271 application for Michigan." (AT&T Br. at 76.) That allegation is both irrelevant (because the purpose of this proceeding is to address OSS as they exist now, not as they existed years ago), and incorrect, according to AI.

575. Ameritech Illinois asserts that it implemented enhancements before March 2001, including (1) a series of new pre-order functions like DSL loop qualification (implemented April 2000); (2) additional ordering methods (such as direct ordering via the TCP/IP Internet protocol); (3) improvements to streamline the ordering process (such as a feature that allows CLECs to order a loop with long-term number portability in a single order, implemented June 1999); and (4) electronic ordering of new products, such as the UNE Platform (implemented October 1999). (Am. Ill. Ex. 4.1 at 14-16.)

576. In AI's view, AT&T's real complaint is one of formality; namely that, the Company did not specifically number its releases using the industry nomenclature "LSOG 2" or "LSOG 3" and so forth. In terms of substance, however, Ameritech Illinois did not lag behind industry standards. Many of the pre-2001 enhancements were implemented *before* the related industry standard took effect, AI explains, and that is why they were not tied by number to a specific LSOG version. (Id. at 15-16.) According to AI, AT&T itself acknowledges the implementation of LSOG 4 and the extensive other OSS commitments entered into by Ameritech Illinois as a condition of this Commission's approval of the SBC/Ameritech merger in 1999. (AT&T Br. at 77-78.)

577. AT&T's complaints about the implementation of LSOG 4 in 2001 are also obsolete AI argues. It implemented LSOG 4 over a year ago. At the time of the implementation, neither AT&T nor any other CLEC invoked its right to seek dispute resolution under the agreed change management plan that governs OSS updates. (Am. Ill. Ex. 4.0 Sch. MJC-1, ¶ 205.) And, after the implementation of LSOG 4.0, AT&T

has tested and is actively using LSOG version *4.2* in at least three Ameritech states. (Am. Ill. Br. at 53-55.)

Ordering: Line Loss Notices (LLNs)

578. Having already addressed the disputed issues and corrective actions taken regarding line loss notifications ("LLNs") Ameritech Illinois brings to focus the areas where there is at least some agreement:

1. Ameritech Illinois and its affiliates have devoted extensive resources to resolving line loss issues, and performance has improved. (Am. Ill. Br. at 65-69; Z-Tel Br. at 7; Tr. 1635-36).

2. Ameritech Illinois and its affiliates have kept CLECs apprised of the status of these efforts. (Am. Ill. Br. at 69; Tr. 1629-30); Tr. 1699 (affirming that there "[a]bsolutely" is dialogue with Ameritech Illinois on the issue).

3. The Commission's final review of line loss performance – as with performance of other ordering functions – should come in Phase II. (Am. Ill. Br. at 63, 70; Staff Br. at 124-125; AT&T Br. at 71).

579. Given the extensive effort that Ameritech Illinois and its affiliates have made to investigate the ordering process, to correct any problems identified, and to communicate the status and findings to interested parties, Ameritech Illinois does not understand Staff claim that "there seems to be a general lack of recognition by AI representatives of the significance of the LLN problems and that it must be corrected." (Staff Br. at 130). Ameritech Illinois asserts that it created, and maintains to this day, (i) a cross-functional team devoted solely to LLN issues; (ii) performed an "end to end" analysis of the entire ordering process over several months; (iii) implemented several enhancements to electronic systems and several revisions to human processes; (iv) compiles and reviews daily reports summarizing LLN activity; (v) located and "re-flowed" LLNs affected by past problems; (vi) submitted detailed progress reports; (vii) held a two-day workshop for all interested parties to discuss LLN issues; and (viii) maintains open lines of communication for CLECs to present new information. (Am. Ill. Br. at 65-69).

580. Over and above its efforts of the past few months, Ameritech Illinois' active monitoring continues. As Mr. Cottrell explained at the hearing, the Company asserts, Ameritech Illinois' data, (following the final systems enhancement of June 2002) show that 99 percent of LLNs are being issued within 24 hours of the completion of work on the related orders; nevertheless, Ameritech Illinois is keeping the cross-functional team in place as a precaution, until the various state commissions have a chance to review the data. (Am. Ill. Br. at 69). Staff would portray even that sensible precaution as an admission of continued problems. Staff takes the view that, "[a]nother indication that the LLN problems are not resolved is the fact that AI's cross-functional team is still in operation." (Staff Br. At 131). Had Ameritech Illinois disbanded the

cross-functional teams, however, the Company has no doubt that Staff and the CLECs would have accused Ameritech Illinois of acting unilaterally and prematurely.

581. Although there have been problems with LLNs in the past, these did not affect *all* LLNs, AI claims, and did not affect the other steps in the ordering and provisioning process (the provision of service to the end user, and the issuance of notices to the "winning" carrier). Whereas the parties either take no position on, or actively dispute, Ameritech Illinois' testimony that the issue has been fully resolved, AI sees no one to dispute that the problem has been reduced. As such, AI argues, Staff's assertion that "potentially" 83 CLECs are affected by LLN problems – an assertion that is based on a raw count of the number of CLECs using the order interface, rather than any evidence of real impact – simply illustrates why the Commission should wait for Phase II to come to any final conclusions on this issue. (Staff Br. At 130.)

582. AI notes that Z-Tel tries to submit new evidence on brief, without requesting leave to support its view that Ameritech Illinois has not solved the line loss issue. (at 6-7 & Tabs A, B and E) Z-Tel's submission is both tardy (because it comes after the close of the Phase I record) and premature (because it comes before the opening of the Phase II record). More on point, AI argues, Z-Tel's "evidence" does not prove its intent. Taken at face value, it merely shows that some Z-Tel customers are complaining about double billing (*i.e.*, being billed by Z-Tel and a competitor). Billing complaints AI points out, do not reflect current performance but past performance. Z-Tel's own witness Walters acknowledged, that there is a time lag between the line loss and the related bill, and another time lag between the end user's receipt of a bill and its complaint to Z-Tel. (Tr. 1639.) A complaint that is received today may relate to a bill sent some time ago, AI explains and that bill may in turn relate to a line loss some time before that. Even Staff acknowledges that "due to the time lag in billing customers and receiving complaints, [customer complaints] may not account for the June 3, 2002 correction that AI implemented." (Staff Br. at 129). Moreover, AI argues, Z-Tel is operating on the assumption (i) that the complaints are valid (the end user may be complaining in error about valid bills for services rendered at different times), and (ii) that Ameritech Illinois (rather than Z-Tel or its competitor) is at fault.

583. AI sees both Staff and AT&T to claim that the Commission should require Ameritech Illinois to demonstrate six consecutive months of satisfactory performance before the Commission can reach a conclusion on the line loss issue. (Staff Br. at 132; AT&T Br. at 98). The six-month figure is entirely arbitrary, AI contends, and the Commission should not decide how much evidence is sufficient *until* Phase II, at which point it sees just what the evidence is.

584. According to AI, Staff's and Z-Tel's argument on the performance measure for line loss is similarly premature. (See Staff Br. at 132-138; Z-Tel Br. at 10). Performance measurement issues, AI contends, are being addressed in a collaborative separate from this proceeding. To set the record straight, however, Ameritech Illinois does not agree with Staff's and Z-Tel's view that it has failed to comply with the Commission's order in Docket 02-0160. In the collaborative Ameritech Illinois proposed a performance measure that addressed that order, Staff responded, and Ameritech

Illinois believes the matter will be resolved. In particular, the Company notes, it agreed to Staff's 97% benchmark. To the extent any issues remain, AI asserts that there is a dispute resolution procedure already in place.

Ordering: Single Order Processes

585. According to AI, the testimony of XO generally noted that converting a special access circuit to an individual unbundled loop requires a CLEC to submit two orders, instead of one as is used for converting special access to an Enhanced Extended Link ("EEL"), a combination of loop and transport. (XO Ex. 1.0 at 3-4.) Now, AI observes, after the record has closed, XO's would claim, on brief, that the two-order process results in "increased confusion and inefficiencies" and causes competition to suffer. (XO Br. at 6). There is no record evidence to support this assertion, AI contends.

586. XO's only testimony as to the *impact* of the existants two-order process, AI asserts, was the allegation that, early on, it received conflicting instructions regarding the proper code for one field on the order forms. (See XO Ex. 1.0 at 5-6). But, there was no evidence that the "confusion" stemmed from the two-order process (the same field appeared on both order forms, so XO's problem would have been encountered even if its "single order" process were in place) and XO did not dispute Ameritech Illinois' testimony that the issue had been resolved. (Am. Ill. Ex. 1.1 at 17-19). Further, AI asserts that the FCC has rejected arguments like that being advanced by XO and, it has specifically upheld the use of a two-order process for special access conversions. (Am. Ill. Br. at 74 (citing Kansas & Oklahoma 271 Order, ¶ 176).

Change Management Plan

587. On opening brief, Ameritech Illinois asserts, it both described its "change management plan" for implementing OSS revisions (a plan that was developed through 13 months of negotiation with CLECs) and, demonstrated that it satisfies the four criteria considered by the FCC in evaluating such plans. (Am. Ill. Br. at 94-96). AI maintains that three of the four criteria are undisputed: The plan provides for competing carrier input in the design and continued operation of the change management process; it is memorialized in a basic document accessible to CLECs; and it provides CLECs with a separate forum for change management disputes. (Id. at 94).

588. AI notes AT&T to challenge the fourth FCC criterion – the "testing environment" that is used to test OSS changes before they go into commercial "production." AT&T complains that Ameritech Illinois' joint testing environment does not precisely mirror the actual production environment. (AT&T Br. at 89-91).[12] The two deviations that AT&T refers to, are immaterial in AI's view.

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[12] AT&T also complains (at 91-92) that Ameritech Illinois' general policy of limiting the number of test orders it will discuss each day to five has "severely restricted AT&T's ability to 'confirm and understand' Ameritech's business rules." That claim lacks merit. AT&T did not dispute Ameritech Illinois'

589. First, AT&T complains that the testing environment rejected orders when AT&T used form "860" to resubmit previously rejected orders, whereas such orders were accepted in actual production at the time of testing. (Id. at 90). The testing environment was right, AI asserts, the commercial production environment at the time should not have accepted the 860 forms either, because Ameritech Illinois' business rules required form "850." (Id.; Am. Ill. Ex. 4.1 at 29). As such, AI contends AT&T misunderstands the process, i.e.,. The testing environment is not intended to precisely mirror the production environment *as it exists today*; rather, it is supposed to reflect the production environment that *will* exist upon implementation of the change being tested. (Am. Ill. Ex. 4.1 at 28). If the testing environment always mirrored the current environment, CLECs would never be able to test improvements. It would be illogical, AI claims, to make the testing environment mirror a feature of the production environment that was about to be corrected. See Id. at 29.

590. AI considers AT&T's other complaint – that on one occasion Ameritech Illinois asked AT&T to begin populating a certain field with numbers like "01" and "02" instead of "1" and "2" – to also fail. (AT&T Br. at 91 n.79). According to AI, the FCC has already held that "for purposes of demonstrating compliance with the requirements of section 271" a BOC need not provide a testing environment that is *identical* to its production environment. Texas 271 Order, ¶ 138 (emphasis added). Rather, AI puts forth, the testing environment must "adequately" mirror the production environment such that "the testing and production environments perform the same key functions" and "carriers are able to achieve production status and test new releases without substantial difficulty." Id. AT&T has not presented any evidence that those differences implicated any "key functions" or caused any "substantial difficulty" in testing. Nor could it, AI argues, because AT&T completed testing of the LSOG version 4.2 order interface earlier this year and is now using that interface to support mass entry into the residential market. (Am. Ill. Br. at 96).

591. AT&T's other comments do not concern the change management plan itself, AI notes, but the method by which that plan was carried out in the implementation of LSOG 4 (March 2001) and LSOG 5 (April 2002). (See AT&T Br. at 78-84). Ameritech Illinois reasserts that the change management plan contains numerous opportunities for CLEC input: comment periods on Ameritech Illinois proposals, technical walk-throughs, joint testing, and a dispute resolution process. AI sees AT&T to complain about the changes made to the LSOG 4 and LSOG 5 documentation as a result of CLEC input, but it does not say that any of the changes were inappropriate, or conversely that Ameritech Illinois refused to implement any changes proposed by the CLECs. Rather, AT&T would claim that the mere existence of such changes means that the documentation provided by Ameritech Illinois was inadequate and that the change management plan is not working. (AT&T Br. At 78-83.)

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testimony that on most days AT&T only submitted four or fewer test orders, that carriers may submit more than five orders with proper advance notice, and that on many of the days when AT&T did submit more than five orders, Ameritech Illinois reviewed all of those orders with AT&T. See Am. Ill. Br. at 96.

592. AI explains that OSS changes are not evaluated in the middle of development, because it is impossible for any party to anticipate every preference of every user (and every feature of that user's electronic systems) and develop perfect documentation that every user understands. The purpose of obtaining CLEC input during the change management process is to make changes that accommodate their preferences. In AI's view, the fact that such changes were made on a collaborative basis, without need for Commission intervention, demonstrates that the change management plan is working.

593. With respect to LSOG 4, AI notes that AT&T did not timely invoke the plan's dispute resolution procedure and its current complaints were rendered obsolete when AT&T implemented LSOG version 4.2 earlier this year. (Am. Ill. Br. at 96). With respect to LSOG 5, AI observes that AT&T *did* raise issues, but they have already been resolved. As AT&T stated on brief, Ameritech Illinois asked the FCC for leave to delay implementation of LSOG 5, and AT&T expressed its "questions" about the matter to the FCC. (AT&T Br. at 83-84). But AT&T leaves out the FCC's response that its own witness acknowledged on cross, i.e., the FCC granted Ameritech Illinois' request. (Tr. 1689).

Miscellaneous UNE Issues

594. Pursuant to the Stipulation to Eliminate Issues filed August 23, 2002, Staff and Ameritech Illinois agree that Staff's issue with respect to the bona fide request ("BFR") process has been resolved and need not be addressed by the Commission in this proceeding.

595. AI points out that Staff also raised an issue with respect to the Company's policy concerning the "resale" of UNEs by CLECs. (Staff Br. at 103-105). In response, Ameritech Illinois stated that "it would be permissible for a CLEC to obtain UNEs as inputs to finished products that it would sell to providers that would provide this service directly to a consumer." (Tr. 1389); (Staff Br. at 105.) Staff would admit that this policy satisfies its concern, but worries that Mr. Alexander's testimony "may not accurately represent the company's position on this issue" in light of Ameritech Illinois' Application for Rehearing in Docket 01-0614. (Staff Br. at 106).

596. AI makes clear that Mr. Alexander's testimony does represent the Company's position. The rehearing application objected to the "standalone" resale of UNEs "as is," not to the policy that Staff finds to be 271-compliant: "that Ameritech will provide UNEs as inputs to CLEC finished products that the CLECs may sell to providers that would provide this service directly to consumers." (Staff Br. at 106). At any rate, AI informs, the Commission has denied Ameritech Illinois' application for rehearing in Docket 01-0614.

b. Staff Reply Position

UNE Availability in General (Ameritech's BFR Process)

597. In the instant proceeding, Staff explains, it has raised a number of issues regarding Ameritech's general UNEs offerings and Ameritech's BFR process. In light of the confusion surrounding Ameritech's actual polices and practices, Staff recommended that the Commission increase monitoring of Ameritech's UNE provisioning processes. (Staff IB at 110). Through such increased monitoring, Staff maintains, the Commission will be able, on a going forward basis, to determine whether Ameritech complies with its checklist requirements and provides all UNEs consistent with the Acts necessary and impair standards. Such an approach is consistent with that adopted by the Commission in the *Order* for Docket 01-0614 with regard to Ameritech's provisioning process for UNE-combinations. In its *Order* the Commission found that:

> [b]y remaining involved in the process of compiling a record of its [the BFR-OC's] facility, the Commission will be in a better position to determine whether it should be allowed to continue in the event that Staff or another party suggests that it should not. Order at 150, Docket 01-0614.

598. Staff acknowledges that Ameritech Illinois has agreed to amend its BFR process as set forth in ICC Tariff No. 20, Part 19, Section 1, 5th Revised Sheet No. 3. The Stipulation filed with the Commission, and now of record, provides that the general UNE availability issues concerned with ubiquity, provisioning and usage flexibility, and transparency criteria and all issues related to Ameritech's provision of new UNEs that were raised by Staff and Ameritech have been addressed adequately by the Company's agreement to amend its BFR process in accordance with Schedule 1 of the Stipulation.

599. The Stipulation reserves Staff's right to address general UNE availability issues concerned with ubiquity, provisioning and usage flexibility, and transparency criteria and issues related to Ameritech's provision of new UNEs if it is raised by other parties to this proceeding.

Availability of UNE Combinations

600. Ameritech asserts that it "provides existing combinations of UNEs, i.e., it does not separate UNEs that are already combined, unless the CLEC so requests." (Ameritech IB at 36.) Ameritech also asserts that it provides "New combinations of UNEs that are at least sufficient to meet (if not exceed) the requirements of federal law." (Ameritech IB at 38.) As Staff previously indicated, the tariff the Commission has ordered Ameritech to file in compliance with the *Docket 01-0614 Order* addressed many of Staff's concerns. (Staff IB at 115, 117-118).

601. Staff and Ameritech entered into a Stipulation filed with the Commission on August 23, 2002. The Stipulation provides that the "01-0614 Stipulation Issues"

raised by Staff and Ameritech have been addressed adequately in Docket 01-0614 and in the 01-0614 Compliance Tariff and, except as specifically provided in the Stipulation, need not be addressed again in this docket. Whether CLECs are entitled to purchase new combinations of "ordinarily combined" unbundled network elements ("New UNE Combination Usage and Accessibility Issues") and whether CLECs are entitled to purchase existing combinations of unbundled network elements ("UNE Conversion Usage and Transparency Issues") are included within the 01-0614 Stipulation Issues.

602. In accordance with and subject to the terms and conditions of the Stipulation, Staff's current position is that the issues Staff raised with respect to the New UNE Combination Usage and Accessibility Issues and the UNE Conversion Usage and Transparency Issues have been addressed adequately in Docket 01-0614 and in the 01-0614 Compliance Tariff, and need not be addressed again in this docket. Staff takes no position at this time on any New UNE Combination Usage and Accessibility Issues and UNE Conversion Usage and Transparency Issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

603. Staff contends that the Stipulation does not resolve cost, timeliness or quality issues for UNE conversions and new combinations, thus leaving some issues regarding combinations unresolved. The unresolved issues Staff notes, include Ameritech's failure to demonstrate that its rates are within a range that can reasonably be considered TELRIC compliant (or alternatively, to obtain Commission approval for final rates), and also Ameritech's failure to prove that it has well defined, concrete, and binding terms and conditions that define "provisioning intervals" or "quality standards for UNE combinations", in particular loop/transport combinations, both those provided as pre-existing and new combinations. (Staff IB at 115-117, 118-119). In Staff's view, Ameritech has provided no comprehensive, systematic, or credible evidence to indicate that its interim UNE combination rates are reasonably within a range of TELRIC compliance and has not addressed the remaining Staff issues of rate clarity, provisioning intervals and provisioning quality.

604. With respect to the issue of rate clarity, Staff notes, Ameritech does make a general assertion that:

> …with respect to pricing, Ameritech Illinois also has filed a compliance tariff, which was proposed by and agreed to with Staff, based on April 30, 2002 Order on Reopening in Docket 98-0396 (the TELRIC compliance case). (Ameritech IB at 39).

605. This statement, however, does not directly address Staff's concerns. Further, the company fails to note that both Staff and interveners in Docket 98-0396 questioned both the clarity and application of Ameritech's rates, and the levels of its combination rates. These outstanding issues remain unresolved, Staff observes, and are to be (as ordered by the Commission), addressed in a follow up proceeding to Docket 98-0396. TELRIC II Order on Reopening at 11. Thus Ameritech's compliance

filing has not yet Staff contends, resolved all of the problems with Ameritech's UNE combination rates.

606. Staff asserts that Ameritech has complied with the Commission's directives in its *TELRIC II Order on Reopening*, and its filing has, at least in the interim, clarified some rate level and rate application issues, particularly those associated with the provision of UNE-P. Staff maintains that it demonstrated, however, that, Ameritech's rates, in particular its rates for new loop/transport combinations and reconfigurations of such combinations, are confused and appear to be outside the range of rates that could reasonably be considered TELRIC compliant. (Staff Ex. 3.0 at 127-130).

607. Although usage, transparency, and accessibility issues for UNE conversions and new combinations have been resolved pursuant to the Stipulation, (subject to any tariff compliance issues raised in Phase II). Staff maintains that Ameritech has not resolved the cost, timeliness and quality issues for UNE conversions and new combinations.

OSS - Line Loss Notifications (LLN)

608. In Staff's view, AI has not proven that the LLN problems are resolved. Staff acknowledges however, that AI should be able to resolve these problems even as AI has not proven, as yet, that it has cured all problems and put in place sufficient safeguards to prevent new problems or old problems from reoccurring. Only sustained performance "over time and use" Staff asserts, will demonstrate if the changes AI has made to its OSS have cured all the problems. As such, Staff recommends that Ameritech continue to monitor line loss notifications on a daily basis, make the necessary changes to its line loss performance measure and revisit this issue in Phase II of this proceeding. This will allow AI sufficient time to address its LLN problems, modify Ameritech's performance measure which reports on LLNs and allow for continued review of Ameritech's performance in providing LLNs.

609. Staff notes the Company to acknowledge that it implemented changes to the LLN system, as recently as June 2002. The timing of these changes precluded AI from presenting any evidence at the hearing to prove that the changes it implemented has cured the LLN problems. (Staff Rev. IB at 129-31).

610. According to Staff, AI needs to provide data collected over a period of time that demonstrates that the LLN problems are resolved by the time testimony is submitted in Phase II. This is a troubleshooting project, Staff alerts, wherein implementing one solution may generate new problems. (Tr. at 1207-08). To be sure, Staff notes, Ameritech asserts that the cross-functional team will remain in place until the problems are resolved to the satisfaction of each state. (Ameritech IB at 69). In Staff's view, however, this assertion alone is an admission that the problem is not

resolved, since AI has not come before the Commission to inform of the resolution. (Tr. at 1215-16) (indicating that AI has not yet had conversations on when to approach state commissions on the status of LLN and what "the next steps should be.")

611. In the instant case, Staff contends, a number of carriers complain about LLN problems, and to prevent a misinterpretation of standards, Ameritech needs to demonstrate compliance with the redesigned standard i.e., performance measure MI13, since the Commission, found that the current performance measure inadequately measures LLN failures. Order Docket 02-0160 at 24.

612. Staff sees Ameritech to incorrectly asserts that "the process for issuing LLNs is nondiscriminatory." (Ameritech IB at 65). This assertion cannot stand, Staff argues, in light of the Commission finding that Ameritech provides LLN to Z-Tel in a discriminatory fashion. Order at 15-17, Docket 02-0160 . And, it argues, Ameritech has not complied with all of the remedies ordered by the Commission in Docket 02-0160. (Staff IB at 133-34.)

613. Staff also relies on the FCC's findings in the Michigan 271 Order (FCC 97-298, CC Docket 97-137 (rel. Aug. 19, 1997)), in which end-users were being double-billed, similar to the problem occurring in Illinois. In the Michigan 271 Order the FCC rejected Ameritech Michigan's preliminary data that it provided to explain "the extent of the problem and the impact of the changes it has made to correct the problem." Michigan 271 Order, para 203. Further, Staff contends, the FCC also found that "Ameritech cannot rehabilitate its deficient showing on the[double billing] issue merely by elaborating further in its reply on the solutions it has implemented." Id. Staff argues that these findings are directly applicable to the instant case, since Ameritech Illinois has not proven that the problems are resolved, it simply argues that it has implemented a number of changes through the cross-functional team, and that the cross functional team will remain in place until the problem is resolved. Staff RB at 60. Furthermore, Staff argues that this is different than situations when the FCC has accepted promises of future performance. In those instances, the promise was "detailed, well developed, and subject to a prioritized time frame." (Pennsylvania 271 Order, paras. 62-63. Staff argues that the instant case is different from those situations since Ameritech Illinois "has not set timeframe in which this problem will be cured; no party knows when this will be completed", there is no "clear sequence of tasks that need to be performed to achieve a finished product." Staff RB at 60-61.

Network Interface Devices (NIDs)

614. According to Staff, Ameritech is incorrect to argue that network interface devices ("NIDs") are part of the local loop. Staff contends that the FCC has clearly designated the NID as a network element to be unbundled. 47 CFR 51.319(b); UNE Remand Order, ¶ 235 (stating that, "We decline to adopt parties' proposals to include the NID in the definition of the loop."). As such, Staff asserts, it is to be analyzed under the nondiscriminatory rules for Checklist Item 2 – unbundled network elements, and not Checklist Item 4, as Ameritech argues. Checklist item 2 evaluates UNEs to see if they are provided in a nondiscriminatory manner. Texas 271 Order, ¶91.

615. In the UNE Remand Order, Staff contends, the FCC found access to NIDs vitally important to competition, stating that "we find that the availability of unbundled NIDs will accelerate the development of alternative networks, because it will allow requesting carriers efficiently to connect their facilities with the incumbent's loop plant." UNE Remand Order, ¶240. Staff observes that Ameritech has NIDs that are inside a building, or are completely absent from a building, and it does not intend to install those NIDs by the end of 2002. (Tr. at 784.) According to Staff, NIDS found inside, or absent from a building likely, prevent CLECs from being able to connect. In light of the FCC's unbundling of NIDs, Staff argues, AI's failure of action results in an anticompetitive impact on CLECs. Increased competition creates the need for the new providers to access the NID, most easily accomplished by placing the NID on the outside of the building.

616. In Docket 86-0278 and 94-0431, Staff observes, the Commission stated that external NIDs need to be installed on all new construction and all old installations that do not have a NID. Order at 5, Docket 86-0278; Order at 4, Docket 94-0431. Not providing a UNE is a *per se* violation of these Orders, Staff argues, and results in a discriminatory provision of NIDs to CLECs.

Pricing

617. Staff notes Ameritech to argue that its rates are TELRIC-compliant. *See* Ameritech B at 39, *et seq*. The Company contends that its UNE rates are significantly lower than those prevailing in certain other states and further asserts that inquiry into the company's future rates is not proper at this stage, and that the Staff's UNE rate cap proposal should be rejected. (Id. at 41-45.) These contentions in Staff's view, do not bear scrutiny.

618. It is difficult, Staff contends, to compare rates for UNEs across states. Ameritech's Table 3 comparison of its loop rates to rates in several other states, (states that Ameritech does not serve) is irrelevant, Staff asserts, given the Company's own arguments that rates must be based on its own costs. If Ameritech's loop rates are indeed low compared to those in other states, Staff suggests that its loop costs are also low compared to other states. To the extent that Ameritech's UNE rates are low, this is not in any way attributable to Ameritech, since the Commission has repeatedly found

that Ameritech has included costs in its studies that improperly inflate rates. *See, e.g.*, TELRIC II Docket Order at 40-42 65, 65.

619. Staff asserts that a comparison of Ameritech's Illinois rates to those in other "Ameritech" states (the most apt comparison given the similarities in rate structures in Ameritech's Illinois and Michigan territories) reveals that Ameritech's Illinois rate structure to be curious. According to Staff, Ameritech's Illinois rates compare *unfavorably* with its rates in Michigan. (Staff Ex. 23.0 at 14-15). *See also* Ameritech Sched. SJA-3; Tr. at 1496. Staff suggests that of the 92 comparable rates, 67 (73%) are higher in Illinois. (Staff Ex. 23.0 at 15). Indeed, as Ameritech witness Alexander conceded, most Illinois subloop rates are higher than their Wisconsin counterparts as well. (Tr. at 1496). Accordingly, Staff comments, it is difficult for Ameritech to argue that its rates are indeed low in Illinois compared to other Ameritech states.

620. Staff notes Ameritech to assert that while the Commission has not approved a number of its UNE rates as TELRIC-compliant, this should not hinder its Section 271 approval. (Ameritech IB at 48.) Ameritech contends that subloop and dark fiber UNEs are "relative newcomers to the unbundling scene[,]" (Ameritech IB at 48). It further contends that no one has objected to, or requested a Commission investigation of, these rates. (Id.). According to Staff, the parties potentially interested in these rates have, been challenging other Ameritech rates in other dockets. It should not be construed, as Ameritech suggests, that no CLEC is interested in subloops or dark fiber. It simply indicates, in Staff's view, that CLECs and the Staff consider rates for other elements, to be relatively more important.

621. Staff notes AI to assert that:

> Staff's suggestion that 271 approval requires that all rates be permanent, rather than interim, to eliminate "uncertainty" (Staff Ex. 3.0 at 85-86, 70-72), has been rejected by the FCC. (Ameritech IB at 35).

622. Staff believes Ameritech to misunderstand its position. While indicating that the Commission could require Ameritech to eliminate rate uncertainty prior to recommending approval of Ameritech's Illinois Section 271 application, Dr Zolnierek actually recommended the following:

> …alternatively, the Commission should employ the approach adopted by the FCC - specifically, the Commission can evaluate whether Ameritech's rates fall within a zone of reasonableness when compared to rates in other states that have been found to be TELRIC compliant. While obviously this approach is not as definitive as the result of a complete Commission investigation of Ameritech cost studies, I believe this approach, under the following circumstances, is sufficient.

> The Commission should require Ameritech to reduce all its rates, both recurring and non-recurring, to levels that are clearly within a range that can be shown to be TELRIC compliant. While I recognize that some of Ameritech's long-term recurring rates and interim rates might currently adhere to this standard, others do not.
>
> Given the Company's lack of compliance with Commission and FCC TELRIC guidelines, the burden to prove that its adjusted rates fall within this range is squarely on the company. Thus, the Company must submit state to state UNE rate comparisons, retail rate to UNE rate comparisons, and any other evidence that would support a finding that Ameritech has, subsequent to the initiation of this proceeding, brought each of its rates within a range that can be considered by any reasonable standard to be within the range of TELRIC compliance. (Staff Ex. 3.0 at 86-87).

623. As such, Staff specifically states that the Commission and the FCC could find that Ameritech meets cost criteria when making UNEs available, even in the absence of permanent UNE rates. Staff's position is consistent with the FCC's pronouncements. See Bellsouth GA/LA 271 Order, Appendix D, ¶ 24.

Rate Caps

624. Staff notes Ameritech to take issue with the Staff's proposed UNE "rate cap" arguing that the federal Act "does not require that rates be fixed for any particular period of time: what it does require is that the rates be *right*, that is, based on cost." (Id.) Ameritech further contends that, in the event that it proposes changes in wholesale rates, interested parties will have an opportunity to contest those changes in Commission proceedings. (Id.) According to Staff, however, Ameritech clearly ignores the necessity of a rate cap in Illinois to assure that, upon Section 271 approval, UNE elements remain TELRIC-compliant.

625. Staff does not challenge the requirement that rates should be based on cost and actually endorses it. It claims however, that Ameritech's interpretation of "cost" has been quite expansive in the past, such that, the Commission has repeatedly found that Ameritech has included costs in its studies that improperly inflate rates.

626. Staff further observes that Ameritech would propose to introduce no fewer than six new cost models, intended to use to develop costs for loops, switch ports and other switching inputs, transport, signaling, usage, and operator service. (Tr. at 336, *et seq).* While Staff sees Ameritech's cost witness to be disconcertingly vague about what effect the introduction of these new models might have on rates, she was compelled to

admit that one of these new models, the LOOPCAT model, resulted in Ohio loop rates more than doubling. (Tr. at 313).

627. Ameritech's contention that parties aggrieved by any forthcoming rate proposal will have recourse to this Commission, while true, leads Staff to take a different perspective. According to Staff, while parties can, at great expense and over an extended period, litigate the propriety of Ameritech's rate proposals this is not a useful remedy. As the dominant carrier in its service territory, Staff argues, it is to Ameritech's advantage to continuously litigate its UNE rates. This, however, is a drain on competing carriers resources that could otherwise be employed in the marketplace. Further, Staff contends, the uncertainty of litigation introduces a high degree of business uncertainty into the market, thereby undermining the business plans of competitors. In Staffs view, a five-year cap on wholesale rates is the only solution to this problem.

c. AT&T Reply Position

Pricing of Unbundled Network Elements

628. AT&T agrees with Staff's recommendation that Ameritech Illinois be required to relinquish its ability to apply for rehearing in specific cases; that it file TELRIC compliant rates in specific dockets; and that it "cap" existing Commission approved UNE rates and not introduce new or modified cost models without prior Commission approval. Absent these actions by Ameritech Illinois, AT&T agrees with Staff that the Commission should not approve Ameritech Illinois' Section 271 application.

Dark Fiber, Subloop And CNAM Rates

629. To demonstrate that its dark fiber, subloop and CNAM rates are reasonable, AT&T observes, the Company compares Ameritech Illinois' tariff rates for certain sub-loop, CNAM and dark fiber rates with Michigan tariff rates for those same offerings. (Am. Initial Br. at 49; Am. Ill. Ex. 1.1, at 50; Sch. SJA-2.) As AT&T witness Mr. Henson noted, however, the business of making comparisons with other states is tricky. While useful in some circumstances, it does not always capture differences between the states and it can provide misleading results when small numbers of comparisons (such as the one state selected by Ameritech) are made. For example, AT&T contends, Ameritech assures that its CNAM pricing is reasonable yet, the record shows examples where CNAM rates in other states are a fraction [New York at 1/100th of Ameritech's rate] of that on file with the Commission." (Staff Ex. 23.0, at 6, AT&T Ex. 3.1 at 7-8.) On this basis, AT&T sees, Staff witness Koch to have concluded that: "This evidence supports my position in direct testimony that CNAM rates must be examined by the Commission, and therefore, the Commission cannot conclude that the Company has met the pricing requirements under Checklist Item 10." (Id.)

630. While state-to-state comparisons are not always appropriate, a comparison of subloop rates in Illinois to subloop rates in Michigan, i.e. an Ameritech sister state, is appropriate, in AT&T's view, and such a comparison was complied by

Staff. As Staff witness Koch noted, the Ameritech Illinois rates for subloops, dark fiber and the CNAM database are higher than the rates for the same rate elements in Ameritech Michigan territory (which has a comparable rate structure) in 73% of the instances. That is, rates for 73% of dark fiber, subloop and CNAM UNEs are higher in Illinois than in Michigan, where subloop and CNAM rates have been investigated by the Michigan Commission and where ***all*** Michigan subloop rates are lower than the rates for the entire loops of which they are a part. (Staff Ex. 23.0, at 15-17; Schedule 23.01.) This scenario, AT&T argues, casts suspicion as to whether these rates here are, TELRIC-based.

631. In any event, AT&T argues there is no question that all parties, and including Ameritech, fully expected the Commission to investigate these rates. Contrary to the assertions of Ameritech Illinois' witness Smith, the Commission has neither elected not to review Ameritech's tariffed rates for subloops and dark fiber, nor have the CLECs elected to forego that opportunity. AT&T's understanding is consistent with the statements made by Ameritech's counsel at the most recent status hearing in Dockets 00-0538/0539 wherein she stated the parties' unanimous view that these rates would, in fact, be investigated by the Commission. (AT&T Initial Br. at 131-132.)

632. AT&T notes Ameritech to contend that there is not much demand for subloops and dark fiber anyway such that the Commission's having not approved rates, terms and conditions for Ameritech's provisioning of these products is a relatively insignificant issue. (Am. Ill. Ex. 10.2, at 56; Tr. 280.) AT&T responds by noting that price is a primary factor in determining whether to purchase a particular UNE, so that any lack of demand could be due the rates being too high, as much as to the undesirability of the UNE. (Tr. 281-282.) Moreover, AT&T contends, demand for subloops and dark fiber is likely to increase significantly to the extent that AI "rolls out" its Project Pronto fiber-fed loop network. The roll out, to date, has been limited, with the bulk of it to occur in the future. (Tr. 793-795.)

<u>The Interim Rates For The Broadband UNE</u>

633. With respect to the interim rate set by the Commission for the end-to-end Broadband UNE resulting from the unbundling of its Project Pronto network, AT&T sees Ameritech to contend that this rate is "reasonable." (Am. Initial Br. at 47.) But, AT&T contends, the Commission agreed that Ameritech had not yet had "its full day in court on the issue of the cost based rates that shall apply to the UNE in question here." <u>Order on Second Rehearing</u>, at 25. In adopting the interim rates for Ameritech's end-to-end Project Pronto UNE, AT&T argues, the Commission acknowledged that it was doing so pursuant to its Section 13-801(g) authority to establish interim rates for UNEs "where cost based rates have not been established. The rates established remain in effect until such time as cost based rates are established or the rates are otherwise modified by the Commission." <u>Order on Second Rehearing</u>, at 25. These rates, AT&T contends, are not cost-based and do not comply with the Act's UNE pricing standards or the FCC's interim rate criteria.

Nonrecurring Charges For New Combinations

634. On brief, AT&T notes, Ameritech candidly concedes that the nonrecurring charges associated with new UNE-Platform and Enhanced Extended Links (EELs) are interim rates only. (Am. Initial Br. at 47-48.) Ameritech further concedes that the nonrecurring charges for new UNE-P are not subject to "true up", but further contends that "only Ameritech could possibly be hurt by this lack of true-up." (Id. at 48.) AT&T disputes these assertions. The CLECs contended, in both phases of Docket 98-0396, AT&T argues, that the nonrecurring charge of $20.21 ought not apply to new UNE-P combinations. AT&T expects that the interim $20.21 line connection charge that applies to new UNE-Platform combinations on an interim basis, will not withstand Commission scrutiny. If this charge is ultimately reduced or eliminated, AT&T and other CLECs would have paid more in the interim, thus being hurt by the lack of a "true-up". Whereas the interim nonrecurring charges for new UNE-Platform combinations are not subject to true up, AT&T argues, Ameritech's interim nonrecurring charges fail to satisfy both the pricing requirements of Section 252(d) and the FCC's interim rate criteria.

635. AT&T agrees with Staff that Ameritech's application should be rejected until Commission-approved permanent nonrecurring charges are established. AT&T informs that workshops to determine the scope of this new nonrecurring charge investigation for new unbundled network element combinations (which the Commission has ordered be initiated immediately) have already commenced. *See* Order on Reopening at 11, Docket 98-0396, April 30, 2002).

Rates Applicable To Line Splitting

636. AT&T witness Henson explained the complete state of confusion regarding nonrecurring charges that apply in line splitting applications, as well as how Ameritech *Michigan* and the CLECs operating there have been engaged in an ongoing, intensive collaborative effort to consider this topic. (AT&T Ex. 3.1, at 8.) With respect to Illinois, AT&T argues, Ameritech Illinois appears to eschew the idea that there should be any "special pricing" for line splitting. (Am. Ill. Ex. 3.1, at 34.) According to Ameritech witness Chapman, a CLEC need only order the established network elements at the already established prices. Given that Ameritech is heavily engaged in collaborative sessions on the subject in another state, belies the Company's apparent inability to understand the issue for this state. It only serves to highlight AI's failure to establish TELRIC-based pricing to allow CLECs to engage in line splitting. (AT&T Ex. 3.1, at 9.)

A Five Year UNE Rate Cap

637. AT&T sees Ameritech Illinois to acknowledge wanting to raise its prices for CLECs. (Am. Initial Br. at 40, 41.) AT&T points out, for example AI witness Smith view that "Actual fill factors do not overstate costs. Actual fill factors represent a forward-looking view of where fill levels would be for an efficient firm." (Am. Ill. Ex. 10.1, at 15.) This input adjustment alone, if allowed by the Commission, would severely damage the economic characteristics of the CLEC business opportunity.

638. AT&T notes that there are some UNEs for which just permanent rates are in place, or for which permanent rates are finally being established. In addition to Ameritech's subloop, dark fiber and CNAM rates (which have never even been investigated) AI notes that there has not yet been a permanent unbundled local switching rate put in place. As recently as July 10, 2002, the Commission issued an order reducing Ameritech's interim ULS rate. See Order Docket 00-0700 (July 10, 2002.) That permanent ULS rate will not become effective until next month, AT&T observes. Moreover, AT&T notes that the docket to establish permanent nonrecurring rates for new UNE combinations has not yet been initiated, so permanent nonrecurring rates will not be in place for quite some time.

639. AT&T overwhelmingly supports the five year UNE rate cap proposed by Staff. To the extent costs change and evolve over time, as Ameritech contends, the declining cost nature of the telecommunications industry dictates that costs should decrease, particularly in light of the scope and scale economies SBC and Ameritech expected to experience as a result of their merger. A rate cap of the type proposed by AT&T and Staff is entirely appropriate and warranted. At the same time, AT&T contends, it would continue to allow Ameritech to recover all of its forward looking, efficient costs.

Issues Concerning Ameritech's OSS

640. According to AT&T, many and varied OSS issues that have been raised in this case. While AT&T certainly agrees with Ameritech that these issues (and others) are properly considered in the next phase of this proceeding, it sees no reason for Ameritech to claim that CLECs have "equivalent access" to all necessary OSS at this time. As such, AT&T recommends, the Commission not make *any* findings regarding Ameritech's OSS until the second phase of this case is complete.

641. AT&T believes that it is premature to discuss the many and varied deficiencies in its OSS, and thus unnecessary to give a point-by-point response to Ameritech's contentions regarding its preorder, order, installation, maintenance, repair, and billing interfaces. AT&T submits that this docket contains credible evidence establishing that Ameritech's OSS contain significant flaws that materially effect a carrier's ability to obtain OSS functions at parity with what Ameritech's retail operations enjoy. In particular, Ameritech's haphazard OSS "releases," its flawed Change Management Process, its faulty Joint Testing Environment, its confirmed problems with Line Loss Notifiers, and its failure to provide nondiscriminatory access to a white pages listing interface, would each result in a finding that Ameritech's OSS fail to satisfy the § 271 standard. *See* AT&T Initial Br., at 75-101.

642. AT&T sees Ameritech to point to statements by AT&T's management, AT&T's Market Entry Test ("the MET"), and other commercial entry *evidence,* to assert that the areas that CLECs complain about "have not affected market entry." (AI Br. at 56.) These claims are transparently thin and AI's evidence is nonexistent, AT&T contends. Ameritech presented no evidence of actual commercial experience in this phase of the case, and its witnesses could not respond to any questions regarding the

current volume of transactions affecting their OSS interfaces. (Tr. 513-514.) So too, AT&T asserts, neither of Ameritech's two OSS witnesses could testify at hearing regarding the *current* commercial volumes being handled by Ameritech's OSS.

643. In AT&T's view, Ameritech attempts to "create" evidence of commercial OSS experience by pointing to AT&T's mass market local entry in Michigan, Ohio and now Illinois. Ameritech cross examined AT&T witness Mr. Willard on several press releases indicating that AT&T had garnered in excess of 100,000 customers in these market entry efforts. Although Mr. Willard did not dispute the statements made in the press releases, he explained that they should be read in the context of the consideration given to the third-party test of Ameritech's OSS:

644. According to AT&T, the testimony of Mr. Williard shows that, AT&T's own Market Entry Test ("MET") did identify problems in Ameritech OSS. Based upon an expectation that Ameritech would cure the problems identified by the MET (and the problems discovered in the BearingPoint test as well), AT&T has begun to use Ameritech's OSS to enter local markets. Until it is confirmed that Ameritech has resolved these major deficiencies, however, and until the BearingPoint Third-Party test has been successfully completed, the adequacy of Ameritech's OSS for purposes of §271 remains an open issue. Ameritech concedes as much by seeking to defer to Phase II the many OSS issues raised in this phase of the proceeding.

d. WorldCom Reply Position

Availability of UNE Combinations

645. According to WorldCom, Ameritech makes various arguments about the availability of UNEs and combinations of UNEs, which rely upon extra-record evidence and thus, must be disregarded. For example, Ameritech claims that concerns raised by Staff about the conversion of private line and point-to-point circuits to Enhanced Extended Links ("EELs") were rendered moot because Ameritech filed a compliance tariff on July 11, 2002 in response to the Commission's Order in Docket 01-0614 that directs Ameritech to allow for the provision of such conversions. (Am. Br. at 39). Ameritech further indicates that it provides "new combinations" sufficient to meet the requirements of federal law offered through the same tariff that was filed on July 11, 2002 in compliance with the directives in Docket 01-0614.

646. WorldCom believes that Ameritech's reference to its July 11, 2002 tariff filing, made after hearings were held in Phase I of this proceeding, are extra-record, inappropriate and should be accorded no weight.

Future Pricing

647. WorldCom notes Ameritech to contend that the FCC has held that the rates to be used for assessing compliance with 271 are the rates that are in effect, such that post-approval rate changes are not a barrier to Section 271 approval. Ameritech fails to consider, WorldCom argues, that the DOJ regards an assessment of pricing

arrangements as an important consideration in determining whether a market is fully and irreversibly open to competition. See DOJ Evaluation of Louisiana II Application at 19. In addition to assessing current prices, WorldCom contends, the DOJ has stated that a market is not "irreversibly open" if there is a substantial risk that prices will be increased to inappropriate levels after section 271 entry. Such a risk can impair competition now. See DOJ Evaluation of South Carolina Application at 39-40; DOJ Evaluation of Louisiana I Application at 27. The DOJ's assessment, which itself must be given substantial weight by the FCC, defeats the claim that future rates are totally irrelevant to Section 271 evaluation, WorldCom asserts.

648. WorldCom submits that the substantial risk of post-entry increased rates, alluded to by the DOJ in its evaluation of the South Carolina and Louisiana applications, is exactly the risk that is apparent from the record in this proceeding.

Interim Rates

649. WorldCom notes Ameritech to concede that there are a number of interim rates for UNEs, including the end-to-end Broadband UNE, nonrecurring charges for combinations of UNEs and collocation rates. WorldCom sees Ameritech to downplay the importance of the interim rates, arguing that some are "*de facto*" permanent and that others are reasonable and should not prevent a favorable ruling on its 271 application. (Ameritech Brief, at 47-49). So too, Ameritech admits that the interim rate for nonrecurring charges for new UNE Platform orders is not subject to true-up but makes the unsupported claim it is the only party that could be hurt. Ameritech further acknowledges that there are various items for which rates have not yet been approved, including rates for subloops, dark fiber and Customer Name ("CNAM") database queries. (Id. at 49). Whereas Ameritech argues that it should be allowed to avail itself of interim rates for gaining 271 approval, WorldCom maintains that the CLECs are unfairly left to contend with interim rates.

Access to Operations Support Systems

650. According to WorldCom, Ameritech's arguments with respect to its OSS "performance," are without merit. The record in this proceeding demonstrates that WorldCom continues to experience fluctuating problems with Ameritech's Service Order Completion ("SOC") notices and serious problems with flow through; line splitting; inaccurate provisioning; switch translations; trouble handling process problems and Electronic Bonding Trouble Administration ("EBTA") system; and billing. While progress has been made to lessen line loss problems, WorldCom cannot say that the problem is fixed. Indeed, the record in this proceeding indicates that problems continue to exist with respect to line loss despite Ameritech's claims to the contrary. Further, there are several points raised in Ameritech's brief regarding OSS, WorldCom contends, that warrant a response.

Line Loss Notices (LLN)

651. Ameritech's claim of resolving the LLN problem WorldCom notes, is based on its assessment that Ameritech is now issuing over 99 percent of line loss notices ("LLNs") within 24 hours of order completion. (Am. Br. at 57, 70.) This revelation (that the LLN problem appears to have been resolved) came on the day that Ameritech witness Cottrell testified such that, no party had an opportunity to test the veracity of his assertion. In any event, WorldCom asserts that the record also reflects that CLECs continued to have LLN problems up through the time of the hearing. (Tr. at 1624-28). (Tr. at 1714-15). Thus, WorldCom contends, Ameritech's unsupported claims that the line loss problem is resolved, should be rejected.

652. WorldCom sees Ameritech to make the extra-record and unsupported claim that, as a result of the Commission's order in Docket 02-0160, Ameritech Illinois' retail operation now relies exclusively on LLNs for its line loss notification. (Am. Br. at 65). This claim is unsupported and cannot be relied upon to support a finding that Ameritech provides LLNs in a nondiscriminatory manner WorldCom argues.

Single Order Processes

653. WorldCom sees Ameritech to contend, that it is in the process of implementing single order processes for certain products and services for which it currently requires CLECs to submit as many as three orders. (Am. Br. at 73-74). Ameritech's contention cannot be relied upon to support its Section 271 aspirations. This particular revelation came on the day that Ameritech witness Carol Chapman testified. (Tr. at 382, 485). As such, WorldCom argues, parties have not had an opportunity to respond or test the veracity of her claim. So too, the DOJ has said that mere "paper promises" are not sufficient to demonstrate compliance. *See* DOJ Evaluation of Louisiana I Application at 9, 14. Ameritech's mere contention that it is implementing a single order process should not be relied upon by the Commission WorldCom suggests, in reaching any conclusions with respect to whether the local market in Illinois is irreversibly open to competition.

Billing

654. WorldCom sees Ameritech to claim that it is "in the process of fixing" problems that caused it to charge WorldCom inflated OS/DA rates. Ameritech goes on to assert that it will recalculate all UNE-P CLECs' operator service charges and issue appropriate credits. (Am. Br. at 89-90). As with other extra-record assertions, WorldCom maintains that it and other parties have not had an opportunity to respond or to test the veracity this claim.

655. Ameritech's contention that it is fixing the problem and recalculating charges with the intention of issuing credits is merely a "paper promise" that it will do something in the future to respond to concerns that only came to light because they were raised by WorldCom in this proceeding. In WorldCom's view, whether the problem

actually gets fixed and whether Ameritech ever issues credits, much less appropriately calculated credits, remains to be seen. Regardless of what occurs, this extra-record claim should not be relied upon by the Commission in reaching any conclusions with respect to whether the local market in Illinois is irreversibly open to competition.

e. AG Reply Position

Existing UNE Combinations

656. The AG notes Staff to have criticized Ameritech for "not establish[ing] detailed processes for 'migrating' a private line service, or point-to-point data circuit, to UNEs, including whether Ameritech Illinois will enforce the FCC's requirement that CLECs use such migrations to provide a substantial amount of local service." (AI Initial Brief at 39.) According to the AG, Ameritech considers the concern "moot," as it claims to recognize and comply with its obligations pursuant to the Commission's Order in Docket 01-0614 to "perform certain migrations without applying the FCC's local usage restrictions." (Id.) Having not developed any arguments to show that specific state requirements are inconsistent with federal law, the AG contends, Ameritech cannot simply disregard them in this proceeding.

657. Further, the AG sees Ameritech to dismisses the parties concerns over any future UNE rates as unnecessary, given that all rates need Commission approval. According to the AG, Ameritech contends that "Past experience shows the Commission does not approve rates until it is convinced that they comply with TELRIC." (AI Initial Brief at 44.) To the extent, however, that Ameritech continues to challenge the validity of UNE rates ordered by the Commission, the AG argues, this reassurance is diminished. (Id. at 41 n.12.)

f. Z-Tel Reply Position

OSS Issues

658. Regarding the provision of OSS, Z-Tel sees Ameritech to allege that the relevant inquiry at this point in the proceeding is only "whether Ameritech Illinois has developed sufficient electronic and manual interfaces to allow competing carriers **equivalent access** to all of the necessary OSS functions, subject to review of the results of actual commercial usage and the results of carrier-to-carrier testing, independent third-party testing and internal testing." (AI Br. at 53.) In Z-Tel's view, an inquiry into "equivalent access" with these caveats, is no inquiry at all.

Line Loss Notification (LLN)

659. Z-Tel notes Ameritech's position on line loss notification, as set out on brief, to state:

> Ameritech Illinois does not dispute that it experienced problems in delivering [line loss] notices. But it is equally indisputable that Ameritech Illinois conducted a thorough investigation, implemented corrective actions, kept CLECs and state commissions informed of progress, achieved significant improvement, and continues to monitor the situation. We believe that the line loss issues have now been resolved, but we do not contend, and the Commission need not find, that line loss notices are now perfect for all time. It is clear, however – considering the efforts made to date, the ongoing supervision of this issue by Ameritech Illinois, CLECs and the Commission in Phase II of this docket, and considering line loss notices in the context of all the other services Ameritech Illinois performs – that the issue is not significant enough to warrant a finding of noncompliance now. (AI Br. at 57.).

660. In Z-Tel's view, Ameritech seems to believe that its "efforts" and not its performance, is what matters. Ameritech is wrong, Z-Tel argues.

661. According to Z-Tel, the provision of nondiscriminatory access to line loss information is a material OSS issue. Without timely and accurate Line Loss information, Z-Tel has no idea when to stop billing a customer that has migrated to another carrier. When a customer is double billed as a result of an Ameritech line loss failure, the customer tends to blame Z-Tel, even though the double billing results from a fault in Ameritech's OSS. In addition, without accurate identification of when customers disconnect from Z-Tel service, Z-Tel is unable to audit accurately the fees for UNEs it is billed by Ameritech.

662. According to Z-Tel, the data it compiled demonstrates that Ameritech's delivery of Line Loss information remains unacceptable. For June 2002, Z-Tel received 10% of line loss notifiers from Ameritech in Illinois more than six days after the line loss occurred. Z-Tel contends that Ameritech's discriminatory line loss reporting has caused it to process more double billing credits (due to missing, late or inaccurate line loss) in Illinois than in New York, even though Z-Tel has three times the number of customers in New York. According to Z-Tel, BearingPoint reported the existence of significant line loss problems for Ameritech Michigan as recently as August 22, 2002. See Ameritech OSS Test Exception Process, Additional Information Document, Exception Report: 74v2 (Aug. 22, 2002) (demonstrating that during a recent "retest" of Ameritech's line loss capability "SBC Ameritech performed at a success rate of 81.5 percent, and this performance failed to meet the applied accuracy benchmark of 95 percent.") (attached hereto as Tab A).

663. Z-Tel takes issue with Ameritech's claim that "ongoing supervision" by the Commission and others will improve matters. In Z-Tel's view, Ameritech is failing to take the steps necessary to implement the Commission's *Order* in Docket 02-0160.

The Commission should not find Ameritech compliant with its OSS obligations until such time as Ameritech demonstrates full compliance with the Commission's *Order*.

DUF information

664. The "DUF," Z-Tel explains, is a file that contains call records related to Z-Tel's end users. According to Z-Tel, the testimony of Ameritech witness Kagan shows that:

> "Ameritech Illinois Network staffs have been investigating this [DUF] matter and have instituted several internal attempts to identify and correct those problems. It is my understanding that [Ameritech] expect[s] to complete this process by April 2002."

665. This statement, that it is working to fix the problem, Z-Tel argues, is flatly inconsistent with Ameritech's checklist obligation. Further, Ameritech sent Z-Tel a letter, dated December 3, 2001, indicating that DUF records that had been sent by Ameritech to Z-Tel (beginning in January 2001) contained usage that was incorrectly identified as 100% intrastate/intraLATA. It is not known if the extent of this Ameritech-identified problem still exists today, but it has resulted in billing disputes in excess of $1 million between Z-Tel and Ameritech. As such, Z-Tel contends, it brings into question the overall reliability of the DUF process, essential to Z-Tel's business operations.

Wholesale billing information

666. Z-Tel maintains that Ameritech's wholesale bill is essentially impossible to accurately audit and reconcile. When it identifies clear overcharges, Z-Tel asserts, Ameritech's billing dispute process is also difficult to navigate. At present, Z-Tel contends that it has 195 official billing disputes open with Ameritech Illinois. Of these, 137 are more than 60 days old, and 69 are more than 120 days old. Two disputes, filed on February 21, 2002 and May 3, 2002, Z-Tel comments, specifically cover Ameritech charging Z-Tel for wholesale usage on lines that also appeared on the Line Loss report (*i.e.*, Ameritech reported to Z-Tel that the line was no longer a Z-Tel line, but still billed Z-Tel for the wholesale use of that line). This serves to show, Z-Tel contends, that Ameritech's wholesale bills, as well as the billing dispute process, are unacceptable. The inability to resolve timely billing disputes impacts Z-Tel's ability to account for its cost of goods sold, and hamstrings Z-Tel's ability to do business planning for Illinois.

667. Z-Tel claims that it is effectively unable to audit Ameritech's wholesale bill because of its form and lack of substance, but has run sample audits comparing disconnected orders from Ameritech's Line Loss reports to the Customer Service Record ("CSR") for October 2001 through January 2002. The results of this sample, it argues, demonstrate that Ameritech continues to bill Z-Tel for wholesale service even after the customer has migrated away from Z-Tel to another carrier. Indeed, for the period from October 2001 through January 2002, Ameritech billed Z-Tel incorrectly on at least 2,623 lines. Ameritech may not expect CLECs to make "duplicate payments"

for disconnected lines, however, resolving billing disputes with Ameritech is an exceedingly difficult task, Z-Tel asserts.

668. Without question, Z-Tel contends it has been overcharged for the 2,623 accounts referenced above. It is difficult to resolve billing disputes with Ameritech, however, without conclusive detail of the exact charges on a line-by-line basis. Ideally, Z-Tel contends, it should be able to identify all incorrect charges billed on any given invoice prior to making payment, and Z-Tel also should have the ability to file disputes for items determined to be incorrectly billed based on audits like the one Z-Tel recently conducted. According to Z-Tel, Ameritech, makes this process difficult, if not impossible.

669. The checklist mandates that Ameritech must provide timely and accurate bills to CLECs, such as Z-Tel. Doing so requires Ameritech to make such bills auditable by including clear cross references to the applicable tariff, call flow, and interconnection agreement so rate descriptions and rate amounts can be verified. Ameritech's failure to provide such a wholesale bill further demonstrates that Ameritech fails to provide nondiscriminatory access to the OSS UNE.

RCF Services

670. Z-Tel notes certain testimony provided by AI witness Alexander, to wit:

> Well, I know that the CLEC can request the ULS port and the RCF service as a feature. I am not familiar with the exact ordering process or any of that. (Tr. 1406).

671. Whereas Ameritech would professes "confusion" on this issue, Z-Tel contends that Mr. Alexander's statements are clear. Moreover, Z-Tel knows that it is possible to migrate RCF functionality to UNE-P carriers because other Bell companies do just that for Z-Tel and other CLECs. According to Z-Tel, Ameritech simply must develop a means of providing this functionality to CLECs on a migration basis.

g. McLeod/TDS Reply Position

Change of Ownership

672. It is undisputed, McLeod/TDS contends, that Ameritech does not have a process in place for CLECs to implement a change of ownership of other CLECs even while Ameritech has such a process in place for its retail customers. McLeod/TDS Metrocom witness Rod Cox explained that the lack of such a process causes significant operational inefficiencies for a CLEC such as McLeodUSA that has acquired several CLECs over time.

673. Just because such a process has never been required before in a Section 271 proceeding is no argument, McLeod/TDS contends. If the record establishes that Ameritech's systems do not provide a CLEC non-discriminatory treatment, whatever the

process, then Ameritech fails its Section 271 obligations. The fact that no carrier to date has identified this problem in the context of a Section 271 proceeding does not change the law with respect to Ameritech's obligation to provide non-discriminatory access to its network.

674. According to McLeod/TDS, Ameritech's focuses exclusively on what must be done to retail telephone numbers by the customer's carrier to implement a change of ownership. It argues that someone at Ameritech must reenter orders to convert telephone numbers for its retail end users and, thus, it is not discriminatory to require McLeodUSA to do this for its end users. Even if McLeodUSA were to accept the responsibility for doing that activity (which it does not believe it should be required to do), Ameritech's argument fails to address the real problem that the underlying pieces of the network ordered from Ameritech continue to have the outdated carrier identifiers associated with those pieces, which prevents McLeodUSA from doing anything for its retail customers.

675. Thus, in a downtown Chicago central office, McLeodUSA contends, it could not simply re-identify a telephone number of a customer of an acquired CLEC as now belonging to McLeodUSA, because Ameritech's network and databases continues to identify that collocation in that Ameritech central office as being that of the CLEC acquired by McLeodUSA. Ameritech has no like problem with its own carrier identification codes. Thus, Ameritech can easily resubmit an order for any end user because its central office switches, SS7, databases and so forth already recognize every single piece of network in service as Illinois Bell Telephone d/b/a Ameritech Illinois.

676. Given that Ameritech has never developed a process (since first requested in 1998) to facilitate the change of carrier identification codes of CLECs acquired by McLeodUSA means that McLeodUSA has been forced by Ameritech to order every network facility used to provide service to its end users since 1998 using the wrong carrier identification codes. But for the lack of such a process, McLeodUSA would not now be faced with the prospect of having to resubmit hundreds of thousands of orders to change the configuration of each and every network element, wholesale service and retail service (e.g., special access) ordered from Ameritech since McLeodUSA began acquiring CLECs.

677. Due to the lack of a change of ownership process, the problem simply continues to compound itself since McLeodUSA must continue to order service as separate operating entities (i.e., as the various CLECs it has acquired). The only other option is to simply stop selling service in those markets where Ameritech's network and databases continue to identify McLeodUSA by the outdated carrier identifiers of acquired CLECs. This discriminatory treatment by Ameritech makes McLeodUSA's operations less efficient because a McLeodUSA order writer must know which former CLEC Access Customer Name Abbreviation and Service Provider IDs to use to submit an order for a particular exchange. (See MTSI-TDS Joint Ex. 1.0, at 20-21)

OSS – Joint Test Environment for LSOG 5 EDI

678. According to McLeod, Ameritech minimizes the concerns with the LSOG 5 Joint Test environment identified by McLeod as "carrier-specific" concerns that do not affect checklist compliance. (AI. In. Br. at 99). McLeod notes, however, that Ameritech focuses on only one specific connectivity issue identified by McLeodUSA in support of its claim.

679. As such, McLeod argues, Ameritech completely ignores its own records showing that over 20 formal defects have been encountered in the LSOG 5 Joint Test Environment. Indeed, the LSOG 5 EDI Joint Test Environment has had so many defects that only one conclusion can be reached, i.e., Ameritech had not adequately developed the Joint Test Environment before declaring the Test Environment was "open" so that it could meet its change management obligation to have the Test Environment open for 67 days before the scheduled release date.

680. The issues raised by AT&T and McLeodUSA are for all intents and purposes identical in asserting that Ameritech's change management process fails to provide an adequate joint test environment for CLECs to adequately test a new OSS release in a timely fashion. Whereas AT&T argued this point in the context of the LSOG 4 release, and McLeod in the context of these LSOG 5 release, only means that Ameritech has a systemic problem in this regard.

681. According to McLeod, the Commission should conclude that Ameritech's OSS Joint Testing Environment fails to provide CLECs with an adequate means to migrate to new release versions of Ameritech's OSS, such that checklist item 2 has not been met in this regard.

h. Cook County Reply Position

Network Interface Devices (NIDs)

682. Cook County notes Staff to question Ameritech Illinois' failure to take action with respect to Network Interface Devices. To be sure, Staff points to Ameritech Illinois' violation of prior Commission orders with respect to NIDs (Dockets 86-0278 and 94-031) as evidence of this failure. (Staff Initial Brief at 125.) Ameritech Illinois argues in its brief that it allows non-discriminatory access to NIDs, which may be true. In the view of Cook County, however, Ameritech Illinois needs to comply with Commission orders to install NIDs and report annually on its efforts. Cook County agrees with Staff's argument that, this lack of compliance will have an adverse impact on opening the market to competition. If left unremedied, Cook County observes, it will inhibit a CLECs ability to access NIDs in a manner consistent with the FCC's requirements. (Staff Brief at 126.)

LLN

683. Cook County recognizes the OSS area is one of the keys to competition that also has a direct effect on consumers. According to Cook County, OSS can affect consumers in the areas of installation, billing and repair.

684. One of the OSS issues in this docket relates to line loss notification (LLN), i.e., the notice that lets a carrier know that it has lost a customer. Given the significance of this problem from both a consumer and CLEC viewpoint, Cook County recommends that the Commission take steps to ensure that this issue has indeed been resolved appropriately and that Ameritech's OSS is functioning properly. As noted by Staff, "The LLN problem harms CLEC reputations because AI does not send accurate and timely loss notifications to its wholesale customers." (Staff Initial Brief at 130.)

Pricing Issues

685. For there to be meaningful competition in Illinois, it is essential for carrier to know what products are available and at what prices. Cook County observes that a variety of pricing issues have been raised in this proceeding from Unbundled Network Element (UNE) prices to reciprocal compensation.

686. In one instance, Cook County would note, Staff indicates that Ameritech Illinois' prices for the various pieces exceed the price of the whole. As noted by Staff, there are instances where the sub-loop portions end up costing more than the loop. (Staff In. Br. at 149.)

687. Additionally, Ameritech Illinois has not made an election at the FCC as to whether it will be adopting a particular pricing approach for reciprocal compensation. Such pricing uncertainty Cook County argues, may inhibit competition in Illinois Local Markets, in the local market in Illinois inhibiting open competition. Ameritech Illinois also is seen to contend that Staff's attempt to impose limits on future rate changes is not relevant to check list compliance. (Am. Br. Illinois at 45.) Given the impact this issue can have on competition Cook County notes, the Commission may well consider such issue under the public interest standard.

688. Cook County also sees Staff to have suggested a five-year rate cap on UNEs to which. (Staff In. Br. at 244-248.) Ameritech Illinois objects. However this issue is resolved, Cook County believes that there must be compliance with approved pricing principles and some reasonable certainty regarding what elements are available at what price. If Ameritech Illinois has problems with the price cap, Cook County believes that it should offer a meaningful alternative.

6. Staff's Proposed Remedial Actions for Checklist Item Compliance

689. In order for the Commission to recommend to the FCC that Ameritech's Section 271 Application be approved, Staff recommends that:

1. Ameritech demonstrate that its "UNE offerings" are reasonably available, and prove that its UNE rates are clearly defined and can be considered reasonably within a range of TELRIC compliance

2. Ameritech demonstrate that it makes its Section 271 compliant rates, terms, and conditions available to all carriers in Illinois

690. Further, in order to prove that its UNE offerings are reasonably available:

3. Ameritech must demonstrate that its "UNE combination rates" are clearly defined and reasonably within a range of TELRIC compliance.

4. Ameritech must prove that it has well defined, concrete, and binding terms and conditions that define provisioning intervals for UNE combinations, in particular loop/transport combinations, both those provided as pre-existing and new combinations.

5. Ameritech must prove that it has well defined, concrete, and binding terms and conditions that define the quality at which Ameritech will provide UNE combinations, in particular loop/transport combinations, both those provided as pre-existing and new combinations.

6. Ameritech Illinois should do the following to correct its short comings with Line Loss Notifications:

(i) Correct the loss notification issues that SBC/Ameritech acknowledges exist, in MI Case No. U-12320, with partial migration of accounts.

(ii) Re-train Ameritech Illinois personnel to prevent loss notification problems arising from manual handling errors in the local service centers.

(iii) Determine if other situations exists that cause loss notifications to be inaccurate, or untimely, and correct those situations immediately.

(iv) Set out all problems that Ameritech Illinois has uncovered related to loss notifications since January 2001 and communicate these

situations in an Accessible Letter[13] to the entire CLEC community. The Accessible Letter should indicate when the problem was first identified, what versions of Ameritech's software the problem is applicable to, what action Ameritech Illinois has taken if any to correct each issue and when the action was taken, as well as any planned or future action Ameritech Illinois plans to take and an estimate of when the actions will be taken.

(v) On a CLEC-by-CLEC basis, Ameritech Illinois should determine the accounts for which loss notifications have never been sent or were sent incorrectly and communicate these instances to the affected CLECs. If problems continue to persist then Ameritech Illinois should be required to perform this reconciliation process on a monthly basis until all issues have been resolved.

(vi) Continue to meet with CLECs, on an as-needed basis, to discuss the problems associated with loss notifications and the actions Ameritech Illinois is taking to address the issues.

(vii) Modify the process Ameritech Illinois uses to notify its retail organization of a customer loss or the process Ameritech Illinois uses to notify its wholesale carriers of a customer loss to bring them into parity with one another.

(viii) Any changes Ameritech Illinois makes to its current processes and procedures regarding loss notifications or its performance measures that track loss notifications should be subject to review in Phase II of this proceeding.

(ix) Ameritech's cross-functional team should remain in place and continue to review the line loss notifications until AI provides six months of line loss notices without uncovering any new problems and without any of the old problems re-emerging.

(x) Staff proposes Changes to Performance Measurement MI 13. AI should modify the calculation, business rules and exclusions associated with performance measure MI 13 to accurately capture how long it takes Ameritech Illinois to send a loss notification, and to reflect the fact that MI 13 does not include loss notifications that are never sent. The modifications are as follows:

(xi) The calculation should be modified so that the clock starts when the work to disconnect the account from the losing carrier was

[13] An accessible letter is the primary vehicles by which Ameritech communicates to its wholesale customers. They are usually electronic documents sent by Ameritech via email.

completed as opposed to the date the service order completion notice was sent to the new carrier.

(xii) The business rule should be modified to the following: "The percentage of customer loss notifications sent to carriers where the elapsed time from the completion of the disconnect provisioning work to the time the loss notification (EDI 836 message) is transmitted to the losing carrier is less than one hour".

(xiii) An additional exclusion should be added to the business rule document to clearly delineate that loss notifications that are not sent by Ameritech Illinois are not included in the measure.

(xiv) If the time interval is moved to 24 hours (or one calendar day) from one hour as proposed by AI then the benchmark for MI 13 should be increased from 95% to 97%.

(xv) Include performance measure MI 13 in the Ameritech Illinois Performance Remedy Plan or whatever plan is determined to be its "Anti-backsliding Plan" as part of this 271 proceeding. A medium weighting should be tied to the measure for remedy purposes. Today, no remedy payments are tied to performance measure MI 13.

8. The Commission should order the opening of an investigation that would accomplish the following:

(a) Determine whether Ameritech's rates for Unbundled Sub-Loops, Dark Fiber, Access to the AIN Database, and Access to CNAM Database are in compliance with TELRIC principles and consistent with the Order in Docket 96-0486/0539 (Consolidated); and

(b) Investigate the impact of the LFAM model on the costs and rates for the services in these filings, and determine whether LFAM is acceptable to develop TELRIC costs.

9. AI also must file TELRIC compliant rates or demonstrate that the interim rates for the following are compliant with TELRIC principles: (i) non-recurring charges for UNE combinations; (ii) non-recurring charges for UNEs; (iii) recurring UNE charges; (iv) unbundled switching and interim shared transport rates (ULS-IST); (v) dark fiber; (vi) unbundled sub-loop rates; (vii) AIN routing of OS/DA charge; (viii) CNAM database access charge; (ix) NGDLC UNE platform charge; and (x) OSS modification charge for the HFPL UNE.

10. Based on AI's own admission it does not intend to comply with Commission orders in Dockets 86-0278 and 94-0431, and its non-compliance has adverse impacts on opening the market to competition.

691. In response to an ALJ notice issued on November 8, 2002, Staff clarified certain of its recommendations in a filing on November 27, 2002.

7. Commission Review, Conclusions

692. Our review of Checklist Item 2 compliance requires the Commission to consider the evidence, issues and the rules relevant to three separate elements: (1) OSS (2) UNEs; and (3) Pricing.

1. OSS Generally.

693. The bulk of our work with respect to assessing Ameritech's OSS will come in Phase II of this proceeding, such that, we carry forward much of the record on this extensive element. At present, Ameritech Illinois has in place and the CLECs are using AI's OSS systems. Some matters involving these systems were raised in this phase of our investigation, however, and we believe that certain issues might appropriately be addressed at this juncture.

<u>OSS - Line Loss Notifications</u>

694. Ameritech's work to address the LLN problem is ongoing. The evidence presented by the Company discusses the details of its efforts and progress, and further indicates that its cross-functional team, created exclusively for this purpose, remains in place. It is generally agreed by all parties that the Commission's final review of line loss performance should come in Phase II. The CLEC's testimony indicates that there have been persistent and significant problems which may not be resolved at this time, and indicates further, that the issue of an adequate LLN is material. For its part, Staff maintains, that AI has not yet satisfactorily proven that the LLN problem is fully resolved and it attaches a number of remedial actions to be put into effect at this juncture. Staff's recommendations are reasonable and Ameritech's actual implementation of those remedial actions (found on pages 5-8 of Appendix A attached to Staff's Reply Brief), will be given substantial weight when the Commission makes its final analysis of this matter in Phase II.

<u>OSS – Account Ownership Process.</u>

695. As we see it, McLeod seeks a new process to implement a change of billing information when a CLEC changes ownership because of a merger. The requirement it would have us impose, however, goes beyond Section 271 requirements and is unsupported by any authority.

696. In its exceptions brief, McLeod contends that each and every OSS used by SBC-Illinois to process orders, trouble ticket listings, call termination, line termination,

etc., continues to retain incorrect carrier identification codes because there is no process in place as would account for a CLEC being acquired by another CLEC. This lack of a process to implement changes of account ownership, it argues, causes McLeod to continue to order service as two separate operating entities, and check its records to verify which entity is operating in a central office according to SBC- Illinois' records. Recognizing that this issue has not previously arisen in the context of a Section 271 proceeding, McLeod nevertheless maintains that it still should be considered here on the basis of general non-discriminatory access to OSS.

697. According to AI' response, the Company does have a process in place for a CLEC being acquired by another CLEC. If McLeod desires to change the CLEC information listed on customer service record (after a merger or acquisition), AI explains that it need only issue service orders to that effect.

698. In reply to McLeod's call for a non-discriminatory process, AI asserts that the process that the Company has in place for its retail customers is the same process offered to the CLECs. In other words, no "mass conversion" process exists on the retail side such that SBC-Illinois must issue an individual service order for each end-user account that needs to be converted, the same and no different as McLeod is required to do.

699. Having considered all the arguments anew, the Commission still fails to find any Section 271 compliance problem.

OSS - Outage and Restoring Processes

700. The Commission directs AI to meet with and educate RCN on its network outage notification procedures, making sure RCN is included in AI's network outage notification systems and is well advised of network outages. The companies will report on the success of this assignment in a joint stipulation tendered to the Commission in Phase II of this proceeding.

OSS - Single Order Process

701. SBC Illinois explains that it offers a process whereby a CLEC can convert certain existing special access arrangements to an EEL or to a UNE loop. The latter process, it notes, requires two orders: (a) an Access Service Request to disconnect the special access circuit, coupled with (b) a Local Service Request to order the loop.

702. XO complains that SBC-Illinois' requires just such a two-order process for the presumably less complicated special access to UNE conversion orders as compared to its process for special access to EEL conversions. The result thereof, XO maintains, is increased confusion and inefficiency in the process (XO Ex.1.0 at 5, 6). In addition, XO argues, this increases the likelihood of failed orders, given the fact that if either the LSR or ASR gets rejected, the other form will also be rejected (after an approximate two-hour wait period). For these reasons, XO would have the Commission "require

Ameritech to consolidate into one order its current two-order process for converting special access to UNEs." (XO Reply Brief at 7).

703. According to SBC-Illinois, XO does not in any way establish that the use of a two-order process is, under the circumstances, unreasonable, discriminatory, or otherwise hindering competition in any significant way. Relevant to these matters, the Company maintains, XO is only seen to claim that there may be an "increased likelihood" of failed orders because two orders, instead of one, must flow through without rejection. (XO Br. on Exceptions at 4-5). Aside from this assertion, SBC-Illinois argues, there is no evidence to indicate that this "increased likelihood" has translated into any real-world impact.

704. To the extent that XO is suggesting that a two-order process, in and of itself, is non-compliant, the Company disagrees. SBC-Illinois points out that the FCC has repeatedly rejected that position and upheld the use of multiple order processes, even though *all* multiple order processes, as a matter of logic, would entail the increased likelihood of fallout that XO here alleges . See, e.g., Texas 271 Order, ¶¶ 198-200 (approving the use of a three-order process for UNE-P orders); New Jersey 271 Order, ¶ 135 (approving the use of a two-order process for line splitting). Most importantly, the Company observes, the FCC has specifically upheld the use of a two-order process in the precise context presented here: for special access to UNE conversions that, exactly like SBC Illinois' process, requires the submission of an ASR and an LSR. Kansas & Oklahoma 271 Order, ¶ 176.

705. There being no evidence in this proceeding to establish that the two-order process at issue has competitively significant impacts, the Commission is not compelled to do what XO is requesting.

Migration "As Is" Orders

706. The issue is whether Section 13-801(d)(6) of the PUA requires SBC-Illinois to provide a type of form or process allowing a CLEC to indicate a migration just "as is" without confirming all of the specifics of that migration. In its exceptions brief, AT&T asks that we consider this OSS issue in Phase I of this proceeding.

707. According to SBC-Illinois, however, AT&T has failed to show how its allegations are relevant to the federal checklist. SBC-Illinois points out that the FCC recently approved Qwest's application for nine states, and Qwest (like SBC Illinois), does not use an order form with an "as is" box; rather, Qwest requires CLECs to specify the existing features they wish to retain. Qwest Nine-State 271 Order, ¶¶ 58, 89. As such, the Company asserts that AT&T is only and improperly seeking to expand the requirements of state law.

708. To be sure, AT&T points to nothing in the 1996 Act or the FCC's rules to support its claim that checklist item 2 requires an ILEC to develop the kind of ordering

process that AT&T seeks. Thus, our discussion and analysis of this issue is properly deferred to the public interest section reviewing state law matters. See Part IV of this Order.

2. UNEs

709. The AI/Staff Joint Stipulation No. 2 sets out the agreement by which Ameritech Illinois will amend its BFR process. As such, Staff informs, all of its issues related to the Company's provision of new UNEs have now been adequately addressed.

710. In this same Stipulation, Staff avers, it is settled that the New UNE Combination usage and accessibility issues, and the UNE conversion usage and transparency issues were adequately addressed in Docket 01-0614 and by the Compliance tariff for Docket 01-0614 and thus, need not be addressed here.

711. The Commission is satisfied with Staff's representations in these premises, and the basis thereunder.

712. The tariffs Ameritech Illinois filed in Docket 01-0614 and 98-0396, the Company indicates, has put to rest Staff's initial concerns regarding the availability of UNE combination migrations and new UNE combinations. See Joint Stipulation.

Proposed Remedial Actions – (1)

713. Staff proposes that the Company supplement its showing as regards UNE access. In light of the arguments of record, and taking particular account of Staff's recommendations, we will require Ameritech to demonstrate in Phase II of this proceeding that:

a. the UNE offerings contained in its existing interconnection agreements or tariffs can generally be opted-into without unnecessary restrictions.

b. its UNE rates are clearly defined by providing examples of typically requested UNE arrangements and explaining how services and products are billed under tariffs, the GIA, or agreements.

c. its UNE rates fall reasonably within a range of TELRIC compliance, meaning that, for each "interim" and "not-yet-investigated" UNE rate, AI must demonstrate that the rate is either (a) at a level found to be TELRIC compliant by the Commission; or (b) that the rate falls within the "zone of reasonableness". This "zone of reasonableness" might be demonstrated by comparing AI's rates to comparable elements or

services that have been found to be TELRIC compliant in SBC states that have received Section 271 approval. Such comparisons would take into account cost differences between states.

d. its UNE "combination rates," i.e., UNE-P and EEL rates, are clearly defined. This might be accomplished by providing examples of typically requested UNE combinations (e.g., common special access to UNE migrations, common new UNE combination requests, common reconfigurations requests, and EELs scenarios that would allow users enough information to determine how Ameritech applies rates to alternative but similar combinations) and explaining how those services and products would be billed under its tariffs and/or interconnection agreements and GIA.

e. its UNE combination rates fall reasonably within a range of TELRIC compliance. This might be accomplished by demonstrating, for each UNE combination rate it charges, that the rate is at a level that has been found to be TELRIC compliant by the Commission or, if the rate is interim (either because the Commission ordered an interim rate or because the TELRIC compliance of the rate has never been explicitly addressed by the Commission), proving that the rate is in a zone of reasonableness by, for example, comparing those rates to rates in other comparable states whose have been found to be TELRIC compliant, as indicated above.

Proposed Remedial Actions – (2)

714. Staff also recommends that Ameritech Illinois prove that it has well defined, concrete, and binding terms and conditions that define provisioning intervals for UNE combinations, in particular loop/transport combinations, both those provided as pre-existing and new combinations. The issue here, it clarifies, is not compliance with provisioning intervals, but rather the establishment of a specific provisioning interval for UNE combinations such as EELs.

715. Similarly, Staff recommends, that AI demonstrate that it has well defined, concrete, and binding terms and conditions that define the quality at which Ameritech will provide UNE combinations, in particular loop/transport combinations, both those provided as pre-existing and new combinations. According to Staff, "quality" refers to performance measures and standards for all measures not related to provisioning, such

as maintenance and repair. The issue is not compliance with quality standards, but rather the establishment of specific measures and standards related to quality, such as maintenance and repair.

716. Staff would indicate that AI lacks provisioning intervals for UNE combinations. Performance issues, as such, were deferred to Phase 1 (B) and are premature for discussion here. Nevertheless, we see Ameritech to comment that its existing tariff contains standards and measures, including installation intervals for UNE combinations. Staff might examine Tariff No. 20, Part 2, Sec. 10, Sheets 101-140.1 to ascertain if it satisfies Staff's concern. Ameritech further indicates that parties are supplementing measures in the current "six month review" but does not inform the Commission when this event is expected to conclude. We will need this information in order to make an informed final decision on this issue.

3. Pricing

717. Staff includes a number of recommendations that it considers applicable to Checklist Items 4, 7, and 10 as well as to the instant review of Checklist Item 2.

718. These recommendations concern "interim" rates and the showing required for the matter. There is no dispute but that interim rates are in effect for certain items. The FCC, however, has set out a test for assessing whether this infirmity affects section 271 compliance. In its Texas 271 Order, the FCC reasoned that:

> Although we have an independent obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored our pricing jurisdiction and has thereby directed the state commissions (and the federal courts on review) to follow our pricing rules in their disposition of those disputes. For those reasons, the mere presence of interim rates will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set. Texas 271 Order, para. 88.

719. The Commission reads the FCC's Order to allow interim rates when the proposed rates are reasonable, the state commission has committed to the TELRIC pricing rules, and allowances for true-ups are made. Staff's recommendations appear consistent with the federal test for establishing the reasonableness of rates that is necessary for our consult with the FCC on this matter.

Having reviewed these recommendations, and taking full account of the arguments presented, we agree that Ameritech must demonstrate that the "interim" rates shown in Attachment A to Supplement to Updated Summary of Staff's Proposed Remedial Actions For Ameritech Illinois, (filed on Nov. 27, 2002) are reasonable (as discussed above). The arguments further persuade us, however, that SBC Illinois need not make any such showing with respect to the following rates: (1) those interim rates currently set at zero, (2) access to AIN database rates, (3) the "record work only" charge, (4) recurring COPTS port charges, and (5) Broadband UNE rates. The Commission finds that these rates are *prima facie* reasonable and further believes that no useful purpose would be served by requiring SBC Illinois to undertake a "zone of reasonableness" analysis for these rates.

720. The long record of TELRIC pricing dockets has established this Commission's commitment to the FCC's pricing rules. The only remaining requirement these rates require is the need for true-up provisions. In the interim we believe it prudent and consistent with our role in this proceeding to have Ameritech amend its tariffs or agreements, if necessary, so as to include language providing for true-up reconciliation effective as of the date of this Order.

721. We would note that Ameritech filed new ULS-ST rates in accordance with Docket 00-0700. Staff's position is that the determination of whether these rates are TELRIC compliant should be addressed in Phase II of this proceeding. We address Staff's comment in our review of Checklist Item 5. Relevant to this matter, we note that this Commission's Order for Docket 00-0700 may have resolved Staff's pricing concerns as regards AIN routing of OS/DA charges.

722. With respect to AT&T's arguments as regards the end-to-end Broadband rates, the Commission notes that SBC Illinois' interim Broadband rates are those proposed in Docket 00-0393 by Staff, and supported by the CLECs, to the extent that they argued against the allowance of any true-up. The Commission further observes that those rates are, in fact, subject to true-up, and concludes, as it did in Docket 00-0393, that the interim Broadband rates are reasonable. In the final analysis, no further showing is required of SBC Illinois in Phase II as to its Broadband rates.

Not Yet Investigated Rates

723. Whatever the reason for the lack of investigation on rates for subloop and dark fiber rates, the Commission believes it proper and necessary that such proceeding commence at the earliest opportunity. Hence, we direct our Staff to prepare a Report and Initiating Order to commence an investigation immediately with respect to dark fiber; subloops; and CNAM database query rates.

4. Other Matters

Future Rates and Rate Caps

724. No federal authority is cited for the rate cap proposal, that arises for the first time under Checklist Item 2 and is repeated again as a public interest concern. We address the proposal under Part IV of this Order.

NIDs

725. There is an issue with respect to Network Interface Devices, that surfaces in various different sections of the parties respective briefs. Believing the particular question at hand, is more a matter issue of state compliance than federal law compliance, we consider and address the concern under our public interest analysis.

C. CHECKLIST ITEM 3 – Access to Poles, etc.

1. Description of Checklist Item

726. Section 271 (c)(2)(B)(iii) of the Act requires that a 271 Applicant provide:

"[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224." 47 U.S.C. Sec. 271 (c)(2)(B)(iii).

2. Standards for Review

727. The key elements of Section 224 are directed to access and rates.

Access

728. Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." 47 U.S.C. § 224(f)(1). The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers, as well as cable operators (for whose benefit Section 224 was originally enacted), have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. Second BellSouth Louisiana Order, 13 FCC Rcd at 20706, n.574.

729. Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." 47 U.S.C. § 224(f)(2).

The FCC concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. Local Competition First Report and Order, 11 FCC Rcd at 16080-81, para. 1175-77.

Rates

730. Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for "pole attachments." Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

731. Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable." 47 U.S.C. § 224(b)(1). Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission [FCC] jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State." *Id*. § 224(c)(1). The 1996 Act extended the Commission's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. *Local Competition First Report and Order*, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction.

732. As of 1992, nineteen states, including Illinois, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments. See States That Have Certified That They Regulate Pole Attachments, Public Notice, 7 FCC Rcd 1498 (1992); 47 U.S.C. § 224(f).

733. (Adapted from New Jersey 271 Order, Appendix C with most cites and footnotes omitted.)

3. The State Perspective

734. Access to poles, ducts and rights of way gives a CLEC the ability to use Ameritech facilities such as telephone poles when building out its network. Obtaining rights of way is often difficult and time consuming; it is thought giving CLECs access to the incumbents poles, ducts, conduit and rights of way will encourage the development of facilities-based competitors. This access also reduces the need to build redundant facilities and encourages more efficient use of the present facilities. The Commission addressed the issue of pricing such access in Docket 98-0397. Order, Docket 98-0397, Illinois Commerce Commission On Its Own Motion Investigation into Rates,

Terms and Conditions Applicable to Poles. (August 14, 2001) The Commissions rules regarding pole attachments are found in 83 Ill. Administrative Code Part 315.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

735. AI asserts that the requirements of Checklist Item 3 help competing carriers to deploy their own facilities (*e.g.*, a cable or other pole attachment) by using the incumbent LEC's poles, ducts, conduits, and rights-of-way (collectively "structure"). Ameritech Illinois maintains that it has a long history of providing access to its poles, ducts and rights-of-way, and has been providing such access at least since the adoption of the Pole Attachment Act (47 U.S.C. § 224) in 1978. Am. Ill. Ex. 20.0 (Stanek Aff). ¶ 5.

736. According to AI, no party disputes that it meets the requirements of checklist item 3. As such, CLECs can access Ameritech Illinois' poles, ducts, conduits, and rights-of-way pursuant to an ICC-mandated tariff (the "Structure Tariff") or pursuant to Appendix ROW ("Rights-Of-Way"), which has been incorporated into several interconnection agreements approved by the Commission, including those with American Fiber Network, Inc. and MGC Communications, Inc. Id. ¶¶ 4,8. Both Appendix ROW and the Structure Tariff, AI asserts, fully comply with applicable federal and state regulations. Id.

737. Ameritech Illinois affords nondiscriminatory treatment to all CLECs requesting to attach to Ameritech Illinois' structures. This concept of nondiscrimination is present throughout the structure access process: For example, Ameritech Illinois gives CLECs access to the same structure maps and records that it uses to design its own construction projects (Am. Ill. Ex. 20.0 (Stanek Aff). ¶ 12), evaluates CLEC requests for access to structure by using the same standards that apply to its own use of those facilities (id. ¶ 14), and assigns pole attachment or conduit occupancy space on a nondiscriminatory basis (id. ¶ 15). AI's compliance showing is set out in the testimony of witness Stanek.

b. Staff Position

738. Based on all available information, the Staff is of the opinion that Ameritech Illinois appears to be in compliance with checklist item number 3. Specifically, it appears that Ameritech offers nondiscriminatory access at just and reasonable rates to the poles, ducts, conduits, and right-of-ways it owns or controls. (Staff Ex. 5.0 at 3). In Docket No. 98-0397, Staff observes, the Commission approved pole attachment rates for Ameritech Illinois. Ameritech Illinois filed tariff sheets implementing those rates on September 15, 2001. Staff Ex. 5.0 at13. Further, Staff notes that the Illinois pricing appendix located in Ameritech's General Interconnection Agreement has pole attachment rates that correspond to the rates found on Ameritech Illinois' tariffs. Id. For all these reasons, Staff is of the opinion that Ameritech Illinois has satisfied the "just and reasonable" rates requirements under Checklist Item 3. Id.

5. The Reply Positions

a. AT&T Reply

739. AT&T did not raise any issues in conjunction with poles, ducts, conduits and rights-of-way in Phase IA of this proceeding because at the time it filed its testimony, it was unaware of any noncompliance issues. Just recently, however, AT&T has discovered that beginning the end of May 2002, Ameritech has attempted to bill AT&T the $1.69 rate twice a year – or every six months. AT&T notes, however, that the Commission issued an order on August 15, 2001 in Docket No. 98-0397 adopting a just and reasonable rate in accordance with the requirements of section 224 of the federal Act of $1.69 per pole attachment per year.

740. Due to the newness of this discovery, AT&T has not yet determined whether this is an intentional violation of the Commission's Order, a billing problem, an OSS problem, or something else. If this matter leads to a dispute, AT&T will raise the issue in Phase II of this proceeding. Until this problem is resolved however, AT&T maintains that Ameritech Illinois fails to comply with checklist item (iii).

6. Staff's Proposed Remedial Actions for Checklist Compliance

None.

7. Commission Review and Conclusion

741. No party or Staff disputes AI's satisfaction of the statutory access requirements at issue. Staff further observes that the Company satisfies the rates standard. To be specific, AI has demonstrated that it is providing nondiscriminatory access to its poles, ducts, conduits and right-of-way at just and reasonable rates, terms, and conditions in accordance with Section 224 of the Act.

742. AT&T, however, believes there is some type of blunder in billing as based on its recent experience. As such, it asks that we put off a final verdict on this checklist item. The Commission prefers to pursue a different course noting that there is no evidence, only argument alluding to a potential dispute, that may or may not materialize. As such, we will find that AI is in compliance with this checklist item subject only to a contrary showing being provided in Phase II.

D. CHECKLIST ITEM 4 – Unbundled Local Loops

1. Description of Checklist Item

743. Section 271(c)(2)(B)(iv) of the Act, requires that a 271 Applicant provide:

"[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." 47 U.S.C. Section 271 (c)(2)(B)(iv).

2. Standards for Review:

744. The FCC defines "**the loop"** as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. (More simply put, it is the transmission path that extends from an end user's premises up to the incumbent LEC's central office). In its definition, the FCC includes the different types of loops such as, two-wire and four-wire analog voice-grade loops, and the two-wire and four-wire loops that are conditioned in order to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.

745. To establish compliance with Checklist Item 4, the FCC informs, a BOC must demonstrate that it has "a concrete and specific legal obligation" to furnish loops, and further, that it offers unbundled local loops in the quantities that competitors demand and at an acceptable level of quality. So too, a BOC must provide "nondiscriminatory" access to unbundled loops. More specifically, it must provide access to any functionality of the loop that is requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.

746. In order to provide the requested loop functionality (such as the ability to deliver xDSL services), the BOC may be required to take affirmative steps to condition existing loop facilities so as will enable competing carriers to provide services not currently provided over the facilities. The BOC also must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

747. The *Line Sharing Order*, released on December 9, 1999, introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL). "HFPL" is defined as "the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions." This definition applies whether a BOC's

voice customers are served by cooper or by digital loop carrier equipment. Competing carriers should have access to the HFPL at either a central office or at a remote terminal. The HFPL network element, however, is *only* available on a copper loop facility.

748. Checklist Item 4 also requires a BOC to make "line splitting" available to competing carriers so that competing carriers may provide voice and data service over a single loop. In addition, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer.

749. To make its showing, a BOC must demonstrate that:

(a) it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements; and

(b) it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.

750. (Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted.)

3. The State Perspective

751. The loop is the transmission path from the end-user to the telephone company's central office. The wires and equipment owned by the telephone company and the wires inside an end-users home are connected together in a small gray box caller a Network Interface Device (NID). This box or NID provides a demarcation between the end-users property and that of the telephone company.

752. When the transmission path of a loop is cooper, equipment can be added to both ends of the loop (or the cooper portion of the loop) to divide the transmission path into a high frequency path and a low frequency path. The high frequency path is used to transmit data, while the low frequency portion continues to provide voice service. This type of arrangement is called either line sharing or line splitting depending on who is providing the voice service over the loop. If the ILEC is providing the voice service over the loop the arrangement is called line sharing. If a CLEC is providing the voice service over the loop the arrangement is called line splitting.

753. The unbundling of the high frequency portion of the loop is addressed in Orders FCC 99-355 and FCC 01-026. The DC Circuit Opinion remanded the FCC's line sharing rules in May of 2002.

754. This Commission has addressed line sharing/line splitting in Dockets 00-0312/0313, 00-0393, and 00-0393. See Arbitration Decision, Docket 00-0312, Covad Communications Company, Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a (August 17, 2000). Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues, Arbitration Decision, Docket 00-0313 (Consol). Rhythms Links, Inc., Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues;

755. Order, Docket 00-0393, Illinois Bell Telephone Company, Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service (Tariffs Filed April 21, 2000) (March 14, 2001) ; Amendatory Order, Docket 00-0393 (May 1, 2001) ; Order on Rehearing, Docket 00-0393 (September 26, 2001); Amendatory Order on Rehearing (October 16, 2001), Docket 00-0393; Order on Second Rehearing, Docket 00-0393 (March 28, 2002).

756. Loops are made up of three types cable or wire called feeder, distribution, and drop. Feeder cables distribute hundreds of transmission paths over either fiber optic cable or cooper pairs from the central office out to different sections of the area serve by a central office. Feeders terminate to a feeder distribution interface (also called a serving area interface). Multiple distribution cables are connected to a feeder cable at the feeder distribution interface, these distribution cables fan-out to pass every potential customer in area. These distribution cables are connected to pedestals were drop wires are then run to the NID of each customer. Incumbent LECs must offer unbundled access to sub-loops, or portions of the loop, at any accessible point. Accessible points are conventionally thought of as points where these three types of cable connect to each other.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

757. Ameritech Illinois witnesses Deere, Muhs, Brown, Chapman, Cottrell, and Habeeb have all testified on some facet of this Checklist Item 4.

Furnishing Loops

758. Pursuant to its interconnection agreements, AI maintains, it has a binding legal obligation to make available all required kinds of loops, including 2-wire and 4-wire analog loops, 2-wire and 4-wire ISDN digital-grade loops, and various 2-wire and 4-wire

loops capable of supporting xDSL services. (See Am. Ill. Ex. 5.0 Sch. WCD-1, ¶ 91). AI claims that there is no dispute on this matter.

Nondiscriminatory Access to Stand-Alone Loops

The NID

759. A "Network Interface Device" AI explains, is the device set at an end user's premises, where the local loop ends. Ameritech Illinois contends that it provides CLECs the ability to obtain and use the Network Interface Device ("NID") under terms and conditions established in interconnection agreements. (Am. Ill. Ex. 5.0 Sch. WCD-1, ¶¶ 76-82). According to AI, a CLEC may connect to the customer's inside wire at Ameritech Illinois' NID at no charge, or it may pay Ameritech Illinois to perform any NID repairs, upgrades, disconnects, or rearrangements as desired. (Id. ¶ 78.) Ameritech Illinois contends that it also provides and connects the NID at no additional charge when CLECs order an unbundled loop. (Id. ¶¶ 79, 81.) There is no dispute, AI contends, with respect to these facts.

Subloop Unbundling

760. There is also no dispute, AI contends, but that CLECs can order sub-elements of the loop from Ameritech Illinois on an unbundled basis and access these sub-elements at technically feasible accessible points. (Am. Ill. Ex. 5.0, Sch. WCD-1, ¶¶ 95-98.) And, AI asserts, available sub-elements include all those required by the FCC. (Id. ¶ ¶ 95-118). See UNE Remand Order, ¶¶ 206-229.

Coordinated and Frame Due Time Conversions ("Hot Cuts")

761. AI defines "hot cut" as the process of transferring an "active" loop (one that is currently being used to serve an end user) from Ameritech Illinois to a requesting CLEC. See New Jersey 271 Order, ¶ 142 n.419. This process. It maintains, involves a coordinated effort taken to move the loop from Ameritech Illinois' switch onto the CLEC's switch. (See Id.; Am. Ill. Ex. 2.0 Brown Direct) Sch. JWB-1, ¶ 62.)

762. AI notes that to satisfy Checklist Item 4, a BOC "must demonstrate that it provides unbundled loops through hot cuts 'in a manner that offers an efficient competitor a meaningful opportunity to compete,'" and must offer hot cuts "in a timely manner, at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation." Kansas & Oklahoma 271 Order, ¶¶ 199, 201. According to Ameritech Illinois, it offers a "Coordinated Hot Cut" ("CHC") that meets with these requirements. It was developed after extensive negotiation with CLECs through collaborative workshops, AI contends, and was adopted by the Commission in its January 24, 2001 Order for Docket 00-0592. (AI Ex. 2.1 at 23).

763. AI notes XO to complain that Ameritech Illinois sometimes changes certain hot cut appointments from a specific time to an "all day" appointment. See XO Ex. 1.0 (Barstow Direct) at 11-12. At the outset, Ameritech Illinois points out that an "all

day" appointment only means that the hot cut will take place sometime during the specified day and not that the process will actually take all day to complete. (Tr. 491). And, a specific appointment is changed to an all day appointment, AI explains, only in the limited circumstances where (1) the end user is served over Integrated Digital Loop Carrier ("IDLC") facilities,and (2) the initial order did not indicate that such IDLC facilities are involved. (Am. Ill. Ex. 2.1 at 23; Tr. 606-607). Ameritech Illinois provides CLECs with a "DSL Tracking Tool" and Distribution Area information that allows CLECs to determine in advance which loops are served by IDLC. (Am. Ill. Ex. 5.0 Sch. WCD-1, ¶ 137). Using these tools, AI maintains, a CLEC can determine that the loop it has requested is not eligible for the normal CHC process.

764. Where the hot cut order does not indicate that IDLC facilities are involved, AI explains, a specific appointment time is assigned. When the Local Operations Center ("LOC") later reviews the order (at least two days before its due date) and discovers that IDLC facilities are involved, the LOC notifies the CLEC that an all day appointment is required. (Am. Ill. Ex. 2.1 at 23). This procedure is perfectly reasonable, AI contends, because (as XO does not even attempt to dispute), more work is required when IDLC is involved than is required under the normal CHC process. (Id. at 23-24.) The complication with IDLC, AI notes, is that the end user does not have a separate line from its premises to Ameritech Illinois' switch; rather, the line travels from the end user's premises to a remote equipment location. (Am. Ill. Ex. 2.1 at 23.) There, the end user's loop is integrated with other loops before extending to Ameritech Illinois' switch. (Id.) A loop that is integrated into an IDLC facility cannot be transferred directly to a CLEC, AI explains, because the IDLC includes other loops that are not being transferred. Ameritech Illinois must first transfer service to alternate copper facilities that are not on the IDLC. (Id.)

765. The requesting CLEC, AI explains, still receives reasonable notice of the provisioning timeframe. At the outset, Ameritech Illinois gives the CLEC advance notice of the day that the provisioning will occur. (Tr. 600-601). If such date is inconvenient for the CLEC, Ameritech Illinois will reschedule. (Id.) Further, the LOC calls the CLEC when Ameritech Illinois' technician is en route to the work location, thus giving the CLEC notice that work will soon begin. (Am. Ill. Ex. 2.1 at 24.) Finally, AI notes, the LOC notifies the CLEC when the technician has completed his or her work. (Id.)

766. While XO alleges that the use of an all day appointment can result in an out-of-service situation for an end user, AI notes that XO provided no examples of this situation actually occurring. It further explains that the use of an all day appointment as opposed to a specific appointment should have no effect on the end user. (Am. Ill. Ex. 2.2 at 14-15; Tr. 488-490.)

Facilities Modification

767. Sometimes, Ameritech Illinois notes, it finds that the facilities needed to provision an order are not readily available. The Facility Modification process ("FMOD") it employs, however, provides CLECs with ongoing notice as to the status of orders that require additional time or cost, due to the need to modify facilities. (Am. Ill. Ex. 2.0 ,

Sch. JWB-1, ¶ 53.) This process, AI notes, includes a series of intermediate notices provided after the initial order confirmation and was collaboratively designed by the CLEC community and Ameritech Illinois to ensure the nondiscriminatory treatment of wholesale and retail customers. (Id.; Am. Ill. Ex. 5.0, Sch. WCD-1, ¶¶ 138-148.)

768. On record, AI observes, is a relatively trivial complaint about the notice of the charges (sometimes termed "special construction charges") associated with "complex modifications." It notes that many facilities modifications are routine and are completed without additional cost. If, however, a complex modification is required, Ameritech Illinois notifies the CLEC of the work required, the time needed to complete that work, and any additional cost involved. (Am. Ill. Ex. 5.0 Sch. WCD-1, ¶ 143). When the charge for a particular complex modification is specified, as in the XO-Ameritech Illinois interconnection agreement, Ameritech Illinois' notice would refer XO to the pricing schedule in their agreement rather than providing an actual dollars and cents figure, as XO apparently wants done.

769. According to AI, it is as easy for XO to pull out its copy of the agreement and verify a price as it is for an Ameritech Illinois engineer to so verify. Arguably, it is easier, AI asserts, because XO has only a single contract to reference, while Ameritech Illinois' engineers would need to maintain a library of the many interconnection agreements to complete the task. (See Am. Ill. Ex. 2.1 at 20). Moreover, AI contends, a section 271 proceeding is not the place for this type of carrier-specific dispute. In support of this assertion, it cites to the FCC's language in the New Jersey 271 Order, ¶ 128 (holding that, a section 271 proceeding is an inappropriate forum to "resolve every individual factual dispute between a BOC and each competitive LEC regarding the precise content of the BOC's obligations to each competitor").

770. AI further notes Staff's assertions that the GIA should define when facilities are "available" and should contain a reference to the FMOD process. (Staff Ex. 3.0 at 73-74). According to AI, however, Staff does not cite any legal authority in support of its proposal.

Loop "Tagging"

771. AI notes McLeodUSA's testimonial allegations that Ameritech Illinois is not properly "tagging" unbundled local loops at the customer's premises. It is mistaken, AI contends, given that Ameritech Illinois has a well-established and detailed process for "tagging" loops at customer premises such that a CLEC knows which individual loop has been activated for its use. Am. Ill. Ex. 5.0 at 9-10. In particular, Ameritech Illinois notes, it provides "binding post" information that allows a CLEC to identify which of several loops present at a network interface device ("NID") or demarcation point at a customer premises is available for the CLEC's use. When an Ameritech Illinois technician is dispatched to the customer location, AI maintains, the technician physically "tags" the NID or demarcation point with a card that has the binding post information on it. And, AI explains, when no dispatch is made, Ameritech Illinois transmits the binding post information to the CLEC via fax. (Am. Ill. Ex. 5.1 at 15-16).

772. AI points out that McLeodUSA is the only CLEC to report any problems with this process and Ameritech Illinois has addressed McLeodUSA's concerns by two separate actions. First, on finding that Ameritech Illinois, for a time, had inadvertently used the wrong number to fax binding post information to McLeodUSA, it corrected that problem. (Id. at 16.) Second, Ameritech Illinois and McLeodUSA instituted a special process to ensure proper tagging. In particular, AI explains, McLeod USA was given a special contact to whom it might immediately report any tagging problems and, in addition, a series of bi-weekly meetings were convened to address this matter. These measures appear to have addressed McLeod's issue, AI contends, because as of May 8, 2002, McLeodUSA reported just one loop tagging problem to its special contact. (Am. Ill. Ex. 5.2 at 9-10).

Nondiscriminatory Access to xDSL-Capable Loops Used for Advanced Service

Pre-Ordering Loop Make-Up Information

773. "Loop qualification," AI explains, refers to the process of obtaining information about a loop's characteristics (such as its length) in order to evaluate whether the loop can support advanced services. (Am. Ill. Ex. 3.0 Sch. CAC-1, ¶¶ 16-17, 22).

774. AI notes that the FCC requires BOCs "to provide access to loop qualification information as part of the pre-ordering functionality of OSS." Kansas & Oklahoma 271 Order, ¶ 121. Specifically, AI observes, the BOC must "provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install." Id.

775. As part of the pre-order process for xDSL-capable loops and the HFPL UNE, Ameritech Illinois contends that it provides loop qualification information in full compliance with the UNE Remand Order. (Am. Il. Ex. 3.0 Sch. CAC-1, ¶¶ 12-30). Except for a single issue raised by Staff, AI notes that there is no dispute relative to loop qualification. According to AI, Staff requests Ameritech Illinois to demonstrate that its tariff requires loop qualification information to be provided within five (5) business days or within the interval such information is provided to Ameritech Illinois' affiliates, whichever is less. (Staff Ex. 1.0 at 44). Ameritech Illinois witness Chapman, the Company notes, explained that its tariff already meets that requirement by establishing an interval of three to five business days or the interval such information is provided to Ameritech Illinois' affiliates, whichever is less. (Am. Il. Ex. 3.0 at 3; Ill.C.C. No. 20, Part 19, Section 2, Part 2.5B.1).

776. Staff' proposal, AI observes, would have the Commission "consider" reducing this interval to three business days across the board, i.e., eliminate the range

of *three to five* business days. (Staff Ex. 1.0 at 44-45). The rationale driving this request, AI suggests, is that if Ameritech Illinois can in *some* cases provide loop qualification information within three business days, it should be required to do so in *all* cases.

777. AI maintains that the FCC has not established any minimum interval within which this information must be provided to the CLEC. The only standard is "parity"; i.e., the information must be provided to the CLEC within the same interval that it is provided to its own retail operations or its advanced services affiliate. Kansas & Oklahoma 271 Order, ¶ 121. Ameritech Illinois meets this standard, it asserts, and the Commission will assess compliance in Phase II. (Am. Il. Ex. Sch. CAC-1, ¶¶ 12-30). For the moment, however, AI views Staff's proposal as unreasonable. Staff has not suggested that there has been any evidence or change in circumstances that warrant a shortening of the period, AI contends, it merely believes the shorter interval to be better. To have the shorter interval become the standard for all cases, AI argues, effectively penalizes Ameritech Illinois for its attempts in meeting the shorter interval whenever possible.

Stand-alone xDSL-Capable Loops

778. Ameritech Illinois maintains that its ordering process for xDSL-capable loops is, and is shown to be, nondiscriminatory. (Am. Il. Ex. 3.0, Sch. CAC-1, ¶¶ 31-41). It notes, however, AT&T witness Fettig's complaint that Ameritech Illinois had not issued business rules associated with ordering different types of DSL loops. More specifically, AI observes, Ms. Fettig complained that a forthcoming accessible letter had not been issued by the date of her direct testimony on March 30, 2002. According to Ameritech Illinois, it issued this accessible letter on April 1, 2002, such that this issue is fully resolved. (Am. Il. Ex. 3.1 at 37). Even before the accessible letter was issued, however, Ameritech Illinois maintains that it had standard ordering procedures in place for ordering loops over which a CLEC could provision ADSL, HDSL, or IDSL. In addition, CLECs could provision other forms of DSL that were technically acceptable for deployment over DSL-capable loops. (Am. Il. Ex. 3.1 at 37).

Bridged Tap Conditioning

779. AI notes XO's complaint that it is difficult to discern Ameritech Illinois' rates for Bridged Tap Conditioning. (XO Ex. 2.0 at 7-8). It points out, however, that Ameritech Illinois is in the process of clarifying the language in the pricing appendix of its Generic Interconnection Agreement. (Am. Il. Ex. 3.1 at 46-47). In addition, and as its witness Thompson testified, a CLEC can use its Ameritech Illinois account manager as a resource to answer any questions relating to this, or any other, day-to-day issue. (Am. Ill. Ex. 12.0, Sch. DAT-1, ¶¶ 8-12).

Line Sharing

780. AI explains that a single copper loop can simultaneously provide voice service on the low frequency portion of the loop and data services on the high frequency portion of the loop (the "HFPL"). In order to gain access to the HFPL, AI continues, a

piece of equipment called a "splitter" is used to divide the data and voice signals moving across a loop, and, in the case of an all-copper loop, the splitter is installed in the central office. Splitters, AI notes, are commercially manufactured products that any telecommunications carrier- including any CLEC - can buy and install itself. See Order at 53, 55; Docket 00-0393, (March 14, 2001).

781. "Line sharing," AI observes, is defined by the FCC as the situation where an incumbent LEC provides voice service over a loop while a competing LEC provides data service over the high frequency portion of the same loop. In the now-vacated Line Sharing Order, the FCC required ILECs to provide access to the HFPL, which it defined as "the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions." 47 C.F.R. § 51.319(h)(1). According to AI, the FCC limited this obligation to the situation where the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting carrier seeks access. 47 C.F.R. § 51.319(h)(3); Line Sharing Order, ¶¶ 70, 72; Texas 271 Order, ¶¶ 324.

782. Ameritech Illinois and its affiliates developed their HFPL offerings in a collaborative "line sharing trial" that covered all 13 states served by SBC incumbents, AI contends. The terms and conditions of Ameritech Illinois' offering, it asserts, is identical to what is offered in Texas, Kansas, Oklahoma, Arkansas and Missouri (where section 271 approval was granted). (Am. Ill. Ex. 3.0, Sch. CAC-1, ¶ 52). Further, AI maintains, even though the FCC has expressly found that incumbent LECs need not provide splitters, Ameritech Illinois has "voluntarily" agreed to own, install and lease its splitters on a line-at-a-time basis to CLECs ordering the HFPL. (Id. ¶¶ 55-57).

HFPL-The Fiber-Fed Loops

783. There is only one situation, AI contends, where the CLECs claim that Ameritech Illinois is not meeting its pre-USTA obligation to provide access to the HFPL .[14] Specifically, AI notes, the CLECs assert that Ameritech Illinois has failed to provide "line sharing to CLECs on fiber-fed loops." (AT&T Ex. 3.0 at 27.) A "fiber-fed loop" AI explains, is one that consist of fiber facilities (such as the various forms of Digital Loop Carrier), extending from the central office to a remote terminal, and copper facilities extending from the remote terminal to the end user's home or business.

784. AI is unclear as to exactly what obligation the CLECs claim it was subject to under the now-vacated FCC rules. According to AI, AT&T witness Fettig testified during cross examination that AT&T's proposal speaks to the CLECs request for an end-to-end Broadband UNE. (Tr. 1831-1833) If this be the case, AI contends, the complaint is unwarranted because it will provide CLECs with access to the end-to-end

[14] While Staff originally raised an issue regarding Ameritech Illinois' compliance with the loop and HFPL provisioning intervals required by section 13-801 of the PUA, AI indicates that Staff now agrees that Ameritech Illinois has met the requirements of checklist item 4 with regard to those issues. (Staff/ Am. Ill. Stipulation No. 3.)

Broadband UNE that the Commission ordered in Docket 00-0393, to the extent the applicable facilities are deployed.

785. AI, however, believes that the CLECs might be suggesting that Ameritech Illinois was required to offer CLECs an "HFPL UNE" extending all the way from the central office to the end user premise on a fiber-fed loop. If this is the case, AI asserts, the CLECs propose a physical impossibility given that the HFPL is, by nature, limited to the high frequency portion of *copper* loop facilities. The FCC made clear, AI claims, that the HFPL exists (and can exist) only on copper facilities, not fiber facilities. As a matter of physical law, it contends, fiber does not provide and does not transmit information via a spectrum of different electrical frequencies.

786. To be sure, AI observes, the FCC's Rule 319 specifically defined the HFPL UNE as "the frequency range above the voiceband *on a copper loop facility* that is being used to carry analog circuit-switched voiceband transmissions." 47 C.F.R. § 51.319(h)(1) (emphasis added). The FCC also confirmed in the Line Sharing Reconsideration Order that "the high frequency portion of the loop network element is limited by technology, *i.e*., is only available on a copper loop facility." Id ¶ 10; See also Line Sharing Reconsideration Order ¶ 10,12.

787. And in the section 271 context, AI notes, the FCC has rejected a similar argument by CLECs that SWBT failed to meet its section 271 obligations because it did not offer CLECs the ability to "line share over fiber-fed loops," finding that such allegations did not affect checklist compliance. Arkansas & Missouri 271 Order, ¶ 105; see also Georgia & Louisiana 271 Order, ¶ 240 n.935.

788. Because line sharing over the "fiber" portion of a loop is impossible, AI contends that it permits CLECs to:

> (i) access the copper portion of the facility at an accessible subloop access point; and,
>
> (ii) purchase available dark fiber or subloop feeder facilities to transport data transmissions back to the central office a procedure, it notes, that is identical to that found adequate in the Arkansas & Missouri 271 Order (¶ 105). (Am. Ill. Ex. 3.0 Sch. CAC-1, ¶ 79) See also Am. Ill. Ex. 3.1 at 43-44 (citing letter from FCC General Counsel supporting procedure used by Ameritech Illinois.)

789. As to the rest of its HFPL offering, AI notes, the procedure for fiber-fed loops is identical to the offering that was approved by the FCC in each SWBT state. Accordingly, Ameritech Illinois asserts, it complies with its pre-USTA HFPL unbundling obligation. (See Am. Ill. Ex. 3.0, Sch. CAC-1 ¶¶ 52, 83, 92).

HFPL of Sub-Loops

790. There is no dispute, AI contends, but that it offers the HFPL of subloops. (Am. Ill. Ex. 3.1 at 46; Am. Il. Ex. 1.2 , Sch. SJA-3D, Section 4.1.5). Staff's sole contention on the matter, it notes, is that Ameritech Illinois must also tariff this offering in order to qualify for section 271 relief.

791. AI takes issue with Staff's position arguing, at the outset, that there is absolutely no section 271 requirement that the HFPL of subloops (or, for that matter, any product or service) be offered in tariffs. The only section 271-related requirement, AI maintains, is that the ILEC prove that it has a "concrete and specific legal obligation" to provide the item in question, and this requirement is shown to be satisfied.

792. AI points out that the GIA offers a standard HFPL subloop UNE offering (Am. Ill. Ex. 3.1 at 46) and further notes that at least one CLEC has accepted the GIA and entered into a binding agreement with Ameritech Illinois (Am. Ill. Ex. 1.1 at 5). In each of the five states where SBC operating companies have already won section 271 approval, AI contends, the "concrete and specific legal obligation" to provide UNEs was established by interconnection agreement, and not by tariff.

793. Further, AI continues, the Line Sharing Order (which is the source of the HFPL unbundling obligation) has been vacated by the USTA Court. There is little sense for this Commission to devote resources to address tariffing for a product whose legal basis has been eliminated, AI contends, at least until the FCC determines on remand whether the HFPL is to be provided at all.

Line Splitting

794. "Line splitting," as distinct from line sharing, AI explains, involves an arrangement where, a single CLEC or two partnering CLECs (one providing voice service and one providing data service) provide voice and data services to an end user over a single xDSL-capable unbundled loop. The loop is terminated to a splitter owned and installed by one of the CLECs, and the splitter in turn is connected to the CLEC's DSLAM equipment at the collocation area.

795. According to AI, line splitting is not a UNE - and was not a UNE even before USTA. The FCC, AI avers, limited the HFPL UNE to the situation in which the incumbent LEC continues to provide voice service over the low-frequency portion of the loop. That prerequisite is by definition, AI contends, inapplicable in line splitting, where CLECs provide both the voice and data service over the loop and the incumbent does not provision any service to the end user.

796. The incumbent's only obligation, AI claims, was to *permit* CLECs to *engage* in line splitting in the situation where the CLEC (or two partnering CLECs) purchases an unbundled loop and provides its own splitter – there was no actual UNE involved (other than the unbundled loop that the CLEC would lease from Ameritech

Illinois) and there were no other situations where ILECs were required to permit line splitting. Texas 271 Order, ¶¶ 324-325; Line Sharing Reconsideration Order, ¶ 19.

797. Ameritech Illinois contends that it complies with this pre-USTA requirement and, as with line sharing, permits line splitting in a manner identical to the offerings that already have been approved by the FCC for section 271 purposes. (Tr. 399) Texas 271 Order, ¶ 327; Kansas & Oklahoma 271 Order, ¶¶ 220-221; Arkansas & Missouri 271 Order, ¶ 106. Ameritech Illinois further asserts that it will voluntarily continue to permit such line splitting arrangements even though the Line Sharing Order (and as a result the Line Sharing Reconsideration Order, which elaborated on obligations created by the Line Sharing Order) has been vacated.

798. The issues with respect to line splitting, AI notes, do not really bear on compliance with any FCC order. In reality and by use of strawman argument, AI argues, the CLECs attempt to create new requirements that the FCC and this Commission have already rejected. There is a fundamental difference between line splitting as it was defined by the FCC, AI asserts, and the "line splitting service" that the CLECs contend Ameritech Illinois is required to provide.

799. AI notes that in the situation where it is engaged in a "line sharing" arrangement with a data CLEC (using a splitter provided by the data CLEC), and the end-user switches voice service from Ameritech Illinois to a voice CLEC desiring to use the "UNE-P," AT&T proposes that Ameritech Illinois be required to "migrate" the end-user's voice service to what it calls a "UNE-P" arrangement, with the data CLEC's splitter becoming a part of this so-called "UNE-P" arrangement. The UNE-P, AI explains, is comprised of the loop connected directly to the switch port – it is precombined with the splitter. UNE Remand Order, ¶ 12; Line Sharing Order, ¶ 72 n.161; Texas 271 Order, ¶ 218. As such, it is not technically possible to "line share" or "line split" with a UNE-P arrangement. Rather, in order to provide both voice service and data service on a loop that is part of a UNE-P combination, the loop and switch that make up the UNE-P must be disconnected and a splitter installed between the two.

800. The Commission recognized this technological fact in its Order in Docket 00-0393, AI contends, when it stated that: "Despite AT&T's assertion that Ameritech Illinois will 'rip-apart' a UNE-P end user's working service in order to enable the provision of both voice and data, the record indicates that a temporary physical disconnection is an unavoidable fact. Whenever DSL service is added to an existing voice line, the loop and switch port must be separated (or, as AT&T assets, 'ripped-apart') in order to insert the splitter. This is true regardless of whether the end user's voice service is currently provided through Ameriteh Illinois-provided POTS service or through a CLEC-provided UNE-P voice service." (Order at 54, Dkt. 00-0393, March 14, 2001.) (AT&T Ex. 5.0 at 39-40.)

801. There are numerous reasons, AI contends, why the CLEC's "line splitting service" proposal is contrary to law, even before USTA. It sets these out as follows:

802. The CLEC proposal, AI contends would require it to provide CLECs access to the low frequency portion of the loop, so as to provide voice service on any loop used by a data CLEC to provide data service. In other words, Ameritech Illinois contends, it would be required to unbundle the low frequency portion of the loop. But even prior to USTA, the FCC concluded that the low frequency portion of the loop need not be unbundled:

> "In the Line Sharing Order, the FCC unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, *but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes.*" Texas 271 Order, ¶ 330 (emphasis added).

803. The CLEC proposal also would require Ameritech Illinois to provide unbundled access to the high frequency portion of the loop in situations where Ameritech Illinois is no longer providing voice service on the loop. Prior to USTA, AI contends, the FCC repeatedly held that incumbents need offer the HFPL only in the situation where they provided the end-user's voice service:

? "[I]ncumbent LECs must make available to competitive carriers *only* the high frequency portion of the loop network element on loops on which the *incumbent LEC is also providing analog voice service*." Line Sharing Order, ¶ 72 (emphasis added).

? "[I]ncumbents are not required to provide unbundled access to carriers seeking just the data portion of an otherwise unoccupied loop, because line sharing contemplates that the incumbent LEC continues to provide POTS services on the lower frequencies while another carrier provides data services on the higher frequencies." Id.

? "[T]he record does not support extending line sharing requirements to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop." Id.

? "[I]n the Line Sharing Order, the Commission limited line sharing 'to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the [competing] carrier seeks access.' In other words, a competing carrier seeking to provide xDSL service using the unbundled high frequency portion of the loop can do so only if the same loop is used by the incumbent LEC to provide voice service to an end user." Line Sharing Reconsideration Order, ¶ 17.

? "[W]e deny AT&T's request for clarification that under the Line Sharing Order, incumbent LECs are not permitted to deny their xDSL services to

> customers who obtain voice service from a competing carrier where the competing carrier agrees to the use of its loop for that purpose. Although the Line Sharing Order obligates incumbent LECs to make the high frequency portion of the loop separately available to competing carriers on loops where incumbent LECs provide voice service, it does not require that they provide xDSL service when they are not [sic] longer the voice provider." Line Sharing Reconsideration Order, ¶ 26.

804. The FCC's rules, AI contends, only require incumbent LECs (where technically feasible), to perform the functions necessary to combine unbundled network elements with other unbundled network elements or with elements possessed by the requesting carrier, and even then, only when the requesting carrier is unable to combine the elements itself. 47 C.F.R. § 51.315(c)-(f); First Report and Order, ¶ 294; Verizon, 122 S. Ct. at 1685, 1687.

805. The CLEC proposal, AI contends, would require it to provide at least one type of "combination" that is outside federal law even prior to USTA. Specifically, AI asserts, the CLECs' proposal would require Ameritech Illinois to combine UNEs (namely, the loop, switch port, and shared transport comprising the UNE Platform) with something that is not a UNE (the splitter). In order for a CLEC leasing the UNE-P, to provide both voice and data service over the loop, AI explains, the switch port and copper loop that made up the UNE-P must be disconnected and recombined with the splitter and any other CLEC advanced services equipment (such as a CLEC DSLAM) to provide the "shared" use of the loop by both data and voice services. (Am. Ill. Ex. 3.2 at 14; Sch. CAC-6.)

806. Where the data CLEC provides the splitter in a line sharing arrangement, Ameritech Illinois observes, it has processes in place to migrate (without any service disruption) a line sharing arrangement into a line splitting arrangement so long as the data CLEC agrees to "line split" with the voice CLEC. WorldCom and the other CLECs however, AI notes, propose that it be required to migrate the service even though the data CLEC has not agreed to permit the requesting carrier to use its equipment. See WorldCom Ex. 3.1 at 20 (arguing that WorldCom should not be required to provide Connecting Facility Assignment with a showing that it has permission to use the data CLEC's splitter).

807. The CLEC proposal, AI contends, would require Ameritech Illinois to permit line splitting in situations beyond where a CLEC (or two partnering CLECs) purchases an entire unbundled loop and provides it own splitter, in conflict with the FCC's pre-USTA decisions in the Texas 271 Order ¶ 324 and Line Sharing Reconsideration Order (¶ 19).

808. The CLEC proposal, AI contends, would require a data CLEC (whether it be Ameritech Illinois' data affiliate, AADS, or another CLEC with whom Ameritech Illinois is line sharing) to continue providing data service over the HFPL when an end-user transfers its voice service from Ameritech Illinois to a CLEC (WorldCom Ex. 3.1 at 14 (stating that WorldCom "opposes the right of any data CLEC to drop the data merely

because the voice provider has changed"), in violation of the FCC's pre-USTA determination on the issue. Line Sharing Order, ¶ 72; Texas 271 Order, ¶¶ 324, 330; Line Sharing Reconsideration Order, ¶ 26. See Sections II.N and III.E for further discussion of AADS.

809. The CLEC proposal, AI asserts, would inappropriately put Ameritech Illinois in the position of managing the relationship between CLECs engaged in line splitting even though: the CLECs can perform (and are in a better position to perform) this function for themselves; even though Ameritech Illinois has no relationship with the end-user; and, even though the FCC's orders explicitly describe line splitting as a voluntary arrangement involving two CLECs, and coordinated by those CLECs. Line Sharing Reconsideration Order, ¶ 22 (noting that "a formerly line sharing data carrier also could enter into a *voluntary* line splitting arrangement with a new voice carrier," and that the FCC "expect[s] *competing carriers to cooperate* in such an arrangement in order to avoid service disruption for their shared end user customer"). (Am. Ill. Ex. 3.1 at 24-25.)

"Single Order" Processes

810. For some products or services, Ameritech requires CLECs to submit more than one Local Service Request ("LSR"), with each separate request devoted to a specific step in provisioning the order. WorldCom contests the three-LSR process that is currently used to convert a line sharing arrangement (ILEC provides voice service and CLEC provides data service on the same loop) to a line splitting arrangement (CLEC provides voice service and the CLEC, or a partnering CLEC, provides data service on the same loop). (WorldCom Ex. 3.0 at 15; Staff Ex. 1.0 at 51.) XO challenges the two-order process for converting a Special Access circuit to an unbundled loop (the first order is an Access Service Request to disconnect the existing circuit; the second is an LSR to install the loop). (XO Ex. 1.0 at 3-6; See also AT&T Ex. 8.1 at 20-21.)

811. According to AI, the FCC has never required incumbents to implement a single-order process for any product. To the contrary, it has approved Section 271 applications by applicants that used multiple-order processes, despite CLEC objections. Texas 271 Order, ¶¶ 198-200 (finding that SWBT provided nondiscriminatory provisioning of UNE Platform orders, notwithstanding use of a three-order process). In particular, AI notes, the FCC has upheld the use of multiple-order processes for Special Access and line splitting conversions. See Kansas & Oklahoma 271 Order, ¶ 176 ("E.spire argues that SWBT's two-step process for converting access circuits to UNE pricing, which requires a requesting carrier to complete both an ASR and LSR, violates the rules set forth in the Supplemental Order Clarification governing EEL provisioning. We disagree."); New Jersey 271 Order, ¶ 135 ("AT&T claims that Verizon's [two-step] ordering process for line splitting is burdensome . . . . In addition, AT&T charges that this two-step process is discriminatory . . . . We reject these challenges, and find that Verizon's ordering process for line splitting in New Jersey allows efficient competitors a meaningful opportunity to compete.").

812. AI acknowledges that the FCC has encouraged carriers to work together to resolve line splitting issues, including the CLECs' desire for a single order process. See Line Sharing Reconsideration Order, ¶ 21 ("[W]e encourage incumbent LECs and competing carriers to use existing state collaboratives and change management processes to address, among other issues: developing a single-order process for competing carriers to add xDSL service to UNE-platform voice customers"). To be sure, Ameritech has complied with that recommendation. It is in the process of implementing a single-LSR process for converting an existing UNE-P arrangement into the UNEs necessary for line splitting. (Tr. 382, 425.) This, of course, means that Ameritech's three-LSR process is only an interim solution that allows CLECs to engage in line splitting now, and that a single-order process will be in place by the time a Section 271 application is filed with the FCC. Likewise, while "converting access to a standalone loop" requires two orders, Ameritech has implemented a single-LSR process for converting Special Access to the loop-transport combination known as an EEL. (Am. Ill. Ex. 2.0 at 12-13; Am. Ill. Ex. 2.1 at 16-19; Am. Ill. Ex. 2.1 at 11-12.)

Rejection of WorldCom "Line Splitting" Orders.

813. The assertions regarding its rejection of WorldCom's "line splitting" orders are, in AI's view, just another facet of WorldCom's attempt to avoid obtaining a data CLEC's permission to use its facilities. According to AI, WorldCom asserts that Ameritech Illinois rejected 778 orders in early 2002 in which WorldCom sought to migrate the voice service in a line sharing arrangement (where Ameritech Illinois was providing voice service and a data CLEC was providing DSL service) to WorldCom, thereby creating a "line splitting" arrangement. (WorldCom Ex. 3.0 at 14). WorldCom further asserts that Ameritech Illinois refused "to allow customers to choose their voice carrier if they also want to have DSL on their line," and does not allow CLECs to engage in line splitting. (Id. at 15, WorldCom Ex. 3.1 at 14-15). AI maintains that WorldCom is incorrect on all counts.

814. The orders to which WorldCom refers, AI contends, were rejected because WorldCom did not follow the established ordering procedures posted on the CLEC Online website. (Am. Ill. Ex. 3.1 at 25-28). In each instance, AI maintains, WorldCom sought to provide voice service over a data CLEC's network (that is, by using the data CLEC's splitter), without the data CLEC's permission, which is evidenced on the order form by providing the Connecting Facility Assignment. (Id. at 22, 26, 36; Am. Ex. 3.2 at 20).

815. Not only did WorldCom seek (778 times) to use another CLEC's network facilities without that CLEC's permission, AI argues, but WorldCom also sought (778 times) to force Ameritech Illinois to violate its own contractual obligations to the data CLECs. (See Am. Ill. Ex. 3.1 at 27). Splitting a line, AI asserts, is inherently a consensual arrangement between CLECs. See Line Sharing Order, ¶ 73 n.163 (noting that if an end user "switches its voice provider from the incumbent LEC to a competitive LEC that provides voice services," the data CLEC "may enter into a voluntary" sharing arrangement with the voice LEC). Ameritech Illinois cannot be held responsible, it

argues, for WorldCom's failure to secure permission to use another CLEC's facilities or to follow the proper ordering procedures.

The "End to End Broadband UNE"

816. Project Pronto is an SBC initiative, AI explains, that is designed (among other things), to bring advanced services using DSL technology to millions of additional customers. On the "customer" side of the network (the portion of the SBC ILEC's network running from the central office to the end user's premises), Project Pronto involves the installation by SBC's ILEC subsidiaries of a new "overlay network consisting of fiber facilities connected to advanced services equipment (including packet switching equipment) and includes installation of such equipment in central offices as well as remote terminals located deeper into the residential neighborhoods of its ILECs' services areas." FCC Project Pronto Order, ¶ 4 and App. B.

817. Where it is deployed, AI notes, the relevant portion of the Project Pronto DSL architecture (from the central office to the end-user) involves use of the following facilities (Id.):

? Copper distribution pairs from an end-user's premises to a Serving Area Interface ("SAI");

? Copper feeder pairs between an SAI and a Project Pronto remote terminal ("RT");

? "Next Generation" Digital Loop Carrier equipment deployed within the RTs that, among other things, digitizes, packetizes, and aggregates data signals from the end-user customer and provides the capability to offer both voice and data services;

? An ADLU line card, installed in a slot of a Channel Bank Assembly in the NGDLC, which (in conjunction with other NGDLC hardware and software) separates the high-frequency (data) portion of the copper loop from the low-frequency (voice) portion;

? Separate fibers between the RT and the central office for voice and data traffic;

? Asynchronous Transfer Mode ("ATM") packet switches, also referred to as Optical Concentration Devices ("OCDs"), deployed in the CO, which provide packet switching functionality, including routing and aggregation, for directing DSL traffic to the appropriate CLEC; and

? Central Office Terminals ("COTs") used to provide POTS connectivity for voice traffic to the ILEC local switch and/or CLEC collocation equipment.

818. The CLECs suggest, Ameritech Illinois notes, that it is not in compliance with its section 271 obligations of providing unbundled access to the piece-parts of the Project Pronto DSL architecture or permitting CLECs to "collocate" their own line cards in the Project Pronto NGDLCs. The CLECs are wrong on these counts, AI asserts, because such "unbundling" and "collocation" are not required by either the FCC or by this Commission.

819. AI points out that the FCC reviewed the planned Project Pronto DSL architecture in a proceeding lasting almost nine months, after which it found that SBC's ILECs (as opposed to their separate data affiliates) could own key components of the new architecture, specifically the NGDLC line cards and the packet switch (or "OCD") in the central office. The FCC, AI contends, required SBC's ILECs to:

(1) make room in Project Pronto Remote Terminals so that CLECs could collocate their own packet switching DSLAMs, and

(2) provide CLECs with a wholesale end-to-end Broadband Service offering over the Pronto DSL architecture at TELRIC-based prices.

820. The FCC did not, AI maintains, require SBC's ILECs to unbundle the piece-parts of the Project Pronto DSL architecture or permit CLECs to collocate their own line cards in the Pronto NGDLCs. Indeed, AI notes, the FCC did not require any unbundling whatsoever in conjunction with the Project Pronto DSL architecture. It only required ILECs to provide an end-to-end Broadband *service*. To this end, AI maintains, the FCC explained that its decision was designed to balance the goals of the 1996 Act by "enabl[ing] competitors to provide advanced services in SBC's territory, while at the same time facilitating deployment [by SBC] of advanced services to the mass market." FCC Project Pronto Order, ¶ 1.

821. Thereafter, AI contends, the CLECs asked this Commission to require Ameritech Illinois to "unbundle" the integrated Pronto DSL architecture into piece-parts and permit CLECs to "collocate" their own line cards in the new NGDLC equipment. This Commission, however, declined the CLECs' request in Docket No. 00-0393. While its initial order imposed piece-part "unbundling" and line card "collocation" requirements, the Commission subsequently eliminated these requirements after conducting an exhaustive rehearing on the adverse impact such requirements would have on the deployment of new DSL facilities and on advanced services competition. See Order on Rehearing at 36-37, Docket No. 00-0393, Sept.26, 2001. In the end, AI maintains, the Commission ordered Ameritech Illinois to provide unbundled access to the end-to-end Broadband *service*.

822. Here and now, AI observes, the CLECs would contend that Ameritech Illinois is not in compliance with the checklist because it does not provide unbundled access to Project Pronto "UNEs." According to AI, however, the FCC's Project Pronto

Order and the Commission's Order On Rehearing in Docket 00-0393 mean that piece-part unbundling of the Project Pronto DSL facilities and NGDLC line card collocation are not a part of any section 271 checklist item and thus, are not viable disputes for this proceeding.

823. At most, AI contends, the only Project Pronto "UNE" that arguably could be relevant to the Commission's analysis here is the end-to-end Broadband UNE that it ordered in Docket 00-0393. While it disagrees with the Commission's decision in that docket, and has sought judicial review, Ameritech Illinois avers that it will comply with the Commission's decisions on the issues litigated in Docket 00-0393, to the extent that DSL-capable Project Pronto facilities are deployed.

b. WorldCom Issues/Position

Access to the loop for line splitting via UNE-P

824. The rule is, WorldCom asserts, that a BOC must demonstrate that it makes line splitting available to competing carriers so that they may provide voice and data service over a single loop. In addition, it claims, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer.

825. To make this showing, WorldCom contends, a BOC must demonstrate that it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport. (Penn 271 Order Appendix C, para 52).

826. Further, WorldCom observes, while a BOC may gain section 271 approval without a permanent OSS process for line splitting, the FCC expects that it will implement permanent OSS for line splitting within a short time after approval. (*Id.*, para 89). There are both FCC and Illinois rules, WorldCom notes, requiring that voice and data disruptions be avoided when customers are converted to services provided via line splitting arrangements. See, Line Sharing Reconsideration Order, para 22, and Order at 32-33; Docket 01-0614.

827. It is uncontested, WorldCom claims, but that Ameritech rejects Worldcom's orders for UNE-P voice service to an end user customer served by a line on which voice and data are provided over that line in a line sharing scenario. Undisputed too, WorldCom asserts, is that Ameritech takes the position that there will be disruption to a customer's service – both voice and data – if Ameritech would provision line splitting voice UNE-P. Finally, WorldCom argues, it is uncontested that Ameritech does not have in place a process or procedure that allows CLECs to order UNE-P voice

service provided via line splitting arrangements. For these reasons, WorldCom maintains that AI does not meet compliance with Checklist Item 4.

Line Splitting/Line Sharing

828. WorldCom contends that thousands of its line-splitting orders have been improperly rejected. In January and February 2002, it notes, Ameritech rejected 778 such orders. (WorldCom Ex. 3.0, at 14-15). These are orders where Ameritech is presently providing voice service to a customer that has DSL service provided by a data CLEC (which could include Ameritech's own data affiliate). WorldCom has issued orders simply to migrate the voice service (while leaving the data service intact) and to serve the customer for voice via UNE-P.

829. This Commission, WorldCom notes, has required line splitting over UNE-P, and the provisioning of the splitter as a UNE. See Order at 30-32, Docket 01-0614, (June 11, 2002). Thus, where Ameritech's data affiliate provides its own splitter, or where another data CLEC provides its own splitter, Ameritech must allow line splitting over UNE-P. Yet, WorldCom argues, Ameritech has flatly refused to do so.

830. According to WorldCom, Ameritech has conceded that its proposed version of line splitting would entail some "downtime," due to the requirement of contending with removal and reinstallation of the splitter. The WorldCom method of line splitting for migrations, it asserts, would involve no downtime or disruption of voice or data service. This method, WorldCom contends, complies with the FCC directive that migrations "avoid" voice and data service disruptions.

c. Staff Position and Issues

The Requisite Access to Sub-loops

831. The rule at hand, Staff notes, is the FCC's determination that a BOC's obligation to offer unbundled loops also includes subloops. (UNE Remand Order, ¶¶ 205, 206, 209 et seq.). As such, Staff contends, BOCs must offer such access to subloops on an unbundled basis, at any technically feasible point. (Id., ¶¶205, 223.) Further, Staff asserts, the rules establish a rebuttable presumption that unbundling of subloops is technically feasible, meaning that the incumbent has the burden of demonstrating that unbundling is not feasible. (Id., ¶223). Staff would note that state utility commissions are the final arbiters of technical feasibility issues, that are raised in Section 252 arbitration proceedings.(Id., ¶¶223-224, 229). As set out by the FCC, Staff observes, "subloops" are defined as portions of the loop that can be accessed at terminals in the incumbent's outside plant. Id., ¶206.

832. In addition, Staff observes, the FCC's Line Sharing Order requires that Ameritech Illinois unbundle the high frequency portion of the loop (HFPL) UNE where customers are served by DLC facilities, and more specifically, that it provide access to

the HFPL at the remote terminal as well as at the central office. See, Line Sharing Order, ¶91.

833. According to Staff, Ameritech's Tariff No. 20, Part 19, Section 2, 1st Rev. Sheet 14, ¶ 2.3(B), requires a CLEC to submit a bona fide request ("BFR") each time it seeks access to the HFPL UNE at any location other than the central office. (Staff Ex. 1.0 at 13; 46-47). This is inconsistent, Staff claims, with the requirement that Ameritech itself demonstrate technical infeasibility. In Staff's view, the BFR essentially shifts this burden onto a requesting CLEC. (Staff Ex. 1.0 at 47). Accordingly, Staff considers Ameritech's offering out of compliance with federal requirements. As a precondition for endorsement of Ameritech's Section 271 application, Staff recommends that the Commission require Ameritech Illinois to file tariff language providing CLECs access to unbundled sub-loops, at technically feasible points, in addition to the central office. (Staff Ex. 1.0 at 13).

A Single Order Process (for Line-splitting Applications)

834. Pursuant to the *Line Sharing Reconsideration Order*, Staff asserts, Ameritech Illinois must:

> make all necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. Thus, an incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a competing carrier's physically or virtually collocated splitter that is part of a line splitting arrangement. Line Sharing Reconsideration Order, ¶20

835. Moreover, Staff notes, incumbent LECs and competing carriers are urged to:

> work together to develop processes and systems to support competing carriers ordering and provisioning of unbundled loops and switching necessary for line splitting. In particular, we encourage incumbent LECs and competing carriers to use existing state collaboratives and change management processes to address, among other issues: developing a single-order process for competing carriers to add xDSL service to UNE platform voice customers; allowing competing carriers to forego loop qualification if they choose to do so (i.e., because xDSL service is already provided on the line); enabling competing carriers to order loops for use in line splitting as a "non-designed" service; and using the same number of cross connections, and the same length of

> tie pairs for line splitting and line sharing arrangements. Line Sharing Reconsideration Order, ¶21(emphasis added)

836. According to Staff, Ameritech does not yet employ a single order process for line splitting applications. (Staff Ex. 1.0 at 13-14). A sister state Commission however, Staff notes, recently determined that just such a requirement is proper. According to Staff, the Michigan PSC apprised Ameritech Michigan that it may determine "…that the company is not in compliance with the requirements of the Section 271 checklist..." unless a streamlined order process for line splitting is available.

837. In particular, Staff points out, the Michigan PSC directs that:

> Ameritech Michigan must take steps to streamline the process for ordering and provisioning the UNE-P when line splitting is involved. The Commission is not persuaded that there is a rational basis for requiring a three-order process for migrating a line sharing to a UNE-P line splitting. In the Commission's view, the service disruption and potential loss of facilities inherent in a three-order process are unnecessary and do not provide the competitor with a reasonable opportunity to compete. Opinion and Order at 10-11, Michigan PSC Case No. U-12320, (December 20, 2001).

838. Staff recommends, here and now, that the Commission require Ameritech Illinois to employ a single-order process for line-splitting applications before rendering a favorable endorsement of its Section 271 application.

d. AT&T Issues/Position

UNE-P With Line Splitting

839. AT&T seeks to offer Illinois customers both voice and data services utilizing UNE-P with xDSL capable loops. This past June, it announced local entry for residential customers in Illinois on a UNE-P basis. Yet, AT&T contends, Ameritech continues to refuse to provide UNE-P with line splitting. (Am. Initial Br. at 118-123).

840. The essence of "line splitting" AT&T informs, is the ability of a "voice" CLEC, by itself or in a partnering arrangement with a "data" CLEC, to offer both voice and data services over one loop. AT&T sees Ameritech to maintain that once the cabling to the CLEC DSLAM is installed for the UNE-P customer, the line splitting arrangement is no longer UNE-P. According to AT&T, Ameritech considers any subsequent changes to this customer a new UNE combination. (See Am. Initial Br. at 118-120). In other words, Ameritech would require the UNE-P carrier to order a *new* loop (even if it turns out to be the existing loop) and a *new* switch port in every case that line splitting is sought. Inherent in this position, AT&T contends, is the certainty that

every time a UNE-P customer seeks line splitting, there will be a service disconnection, the potential for an extended period of loss of dial tone, an increased chance of loss of facilities (such as working telephone number, facilities assignment), increased complexity in the ordering process, and a increased numbers of nonrecurring service order charges. (AT&T Ex. 5.0, at 37-38).

841. AT&T maintains that the Verizon decision renders moot Ameritech's contentions about whether UNE-P remains UNE-P with line splitting, and whether it entails "new" combinations of elements that it (Ameritech) does not have to provide. Whether what is at issue is "new" combinations or not, or whether it entails combinations of ILEC elements with CLEC facilities is irrelevant, AT&T argues, for both are required under the now-governing FCC rules. In the wake of the *Verizon* decision, Ameritech cannot contend in good faith that it is not required to "perform the functions necessary" to combine network elements in conjunction with line splitting, AT&T comments.

842. The *USTA* decision, AT&T asserts, has no impact on a CLEC's right to engage in line splitting. To the contrary, in its *Line Sharing Reconsideration Order*, the FCC made clear that the obligation to allow carriers to engage in line splitting derived from the rules that "require incumbent LECs to provide competing carriers with access to unbundled loops in a manner that allows the competing carriers 'to provide any telecommunications service that can be offered by means of that element.'" *Line Sharing Reconsideration Order* ¶ 31. The FCC specifically stated that the obligation to provide line splitting did not derive from its *Line Sharing Order*: "independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*, incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop." Id. To the extent that loops are available under the *UNE Remand Order*, and they are, AT&T contends, line splitting also is available. The line splitting portion of the *Line Sharing Reconsideration Order,* AT&T contends, was not on appeal before Court and remains unaffected by *USTA*. Ameritech cannot use *USTA* to avoid its obligation to provide line splitting over UNE-P, AT&T argues.

843. According to AT&T, Ameritech must provide assurances that the UNE-P/Line Splitting Arrangement and the UNE-P/post Line Splitting arrangement (i.e., adding data service to a customer served via UNE-P voice service) are treated as UNE-P, i.e., ordered as UNE-P, maintained as UNE-P, tested as UNE-P, repaired as UNE-P, and charged for as UNE-P. While Ameritech witness Ms. Chapman states in her affidavit that Ameritech will provide line-splitting over UNE-P in the third quarter of 2002, AT&T is skeptical that Ameritech can deliver an error-free offering, even if Ameritech were to deliver this offering on time.

Unbundled loops Provisioned using the NGDLC loop network

844. Ameritech is required, AT&T contends, to make its loop facilities using NGDLC technology available as unbundled network elements with rates, terms and conditions governed by Sections 251 and 252 of the Act. According to AT&T, however,

Ameritech has steadfastly refused to provide competitive carriers with unbundled loops provisioned using the Project Pronto technology. AT&T argues that Ameritech cannot be allowed to avoid its obligation to unbundle UNEs, by use of DLC technology that would create one network for Ameritech, and a very limited, less technologically advanced, inherently unequal network for CLECs.

845. AT&T recognizes that, SBC's ILEC operating companies offer Broadband Services on a wholesale basis to affiliated and unaffiliated advanced services providers where Project Pronto DSL equipment is deployed. AT&T asserts, however, that Ameritech cannot avoid offering unbundled loops using this new technology simply by offering a resale alternative. The FCC rules, AT&T argues, designate that unbundled network elements are technology independent. meaning that Ameritech cannot avoid provisioning UNE loops to CLECs over its NGDLC loop network.

846. According to AT&T, CLECs must have access on an unbundled basis to the entire NGDLC loop. The FCC, it observes, defined the unbundled local loop in its UNE Remand Order. Since a loop is defined as a transmission facility between the NID and the MDF or its equivalent, AT&T maintains that the Commission should avoid placing any restrictions on loop unbundling related to 'end-to-end path" requirements and interfaces on either side of the loop. The FCC, it argues, has defined the local loop network element in a forward-looking manner so as to include the deployment of outside plant facilities in the ILEC's network utilizing new technologies. So too, AT&T argues, the FCC defined the local loop as a "transmission facility" and further included various transmission levels, including high capacity loops, in the definition. A transmission facility, AT&T states, can be copper, fiber, or a hybrid between fiber and copper, such as is the case with loops served over fiber-fed Digital Loop Carriers.

847. In Docket 00-0393, AT&T observes, this Commission ordered Ameritech Illinois to unbundle the High Frequency Portion of the Loop (HFPL) over its Project Pronto loop architecture. Its business plans however, AT&T argues, require that AT&T have the ability to order the entire DSL capable loop to offer consumers and businesses a package of both voice and data services. Given its business plans, AT&T contends, its data offering must be provided at the equivalent speeds that Ameritech Illinois is offering for AT&T to compete in the Illinois telecommunications marketplace. In the wake of ICC orders in Docket 00-0393, AT&T notes, Ameritech takes the position that it is *only* required to provide access to the *high frequency* portion of those loops.

848. As a result, AT&T argues, CLECs desiring to offer packages including DSL *and voice services* would be forced to procure a separate loop to provide the voice service even when Ameritech Illinois and its affiliates plan to use the same Pronto (NGDLC) loop facility to offer *DSL and voice* service. A CLEC such as AT&T, needs access to the entire NGDLC loop spectrum so that it can offer voice as well as DSL service to their customers, just as Ameritech Illinois can. Thus, AT&T contends, Ameritech must be held to its obligation to provide the entire Project Pronto loop consistent with the FCC's UNE Remand Order. AT&T further contends that sheer size

and scope of Project Pronto, and Ameritech Illinois' unwillingness to unbundle the architecture, make monopolization of the advanced services market a real possibility.

849. AT&T reasserts that Ameritech's Broadband Service offering is no substitute for the unbundling of Project Pronto. According to AT&T, the Commission must weigh this inferior alternative supply of network elements against the prospect of the Project Pronto elements offered in an unbundled fashion when measuring whether Ameritech Illinois should be required to unbundle the Project Pronto network.

Compliance with the Commission's Order in Docket 00-0393

850. AT&T contends that the Commission's Order on Rehearing, entered September 26, 2001 in Docket 00-0393, requires Ameritech to file a tariff that "mirrors" the tariff language attached as Appendix A, as modified. As Ameritech witness Johnson admitted, AT&T asserts, nothing in that docket or any other proceeding, serves to relieve Ameritech of its obligations (Tr. 825, 849, 851).

851. At the hearing, AT&T recalls, Ms. Johnson admitted that there were significant differences. Actually, AT&T maintains, there are more than 60 discrepancies between the two tariffs. And, it contends, AT&T Johnson Cross Exhibits 9 and 10, number, mark in "orange" stain, and cross-reference the missing provisions.

852. Indeed, AT&T asserts, these exhibits highlight more than 25 instances where Ameritech omitted language that it was required to mirror. (Tr. 836-839; See AT&T Johnson Cross Ex. 9 and Cross Ex. 10). A number of the "missing" provisions, i.e., paragraphs 4.4, 6.4, 6.6.3, 6.6.4, AT&T argues, would allow a CLEC to provide voice service over the SBC Ameritech Project Pronto network using the UNE-Platform. (Tr. 840-855.)

853. As Ms. Johnson candidly conceded, AI maintains, all ten of the references to "UNE-P" or the "UNE-Platform" in the tariff Ameritech was required to mirror never made it into the tariff Ameritech filed, thereby depriving CLECs of their Commission-ordered right to provide voice service over the Project Pronto network using the UNE-Platform. (Tr. 848, 863-864.) Contrary to the tariff language it was required to mirror, AT&T argues, not once does Ameritech's tariff contemplate, much less provide for, a voice and data configuration whereby the CLEC voice provider provides local service via the UNE-Platform. According to AT&T, Ameritech also eliminated all provisions from the model tariff requiring Ameritech's business rules, processes and documentation to comply with the Commission's orders in ICC Docket 00-0393. (Tr. 856-857.)

854. In addition to the missing language, AT&T asserts, there are over 20 places in which Ameritech inserted language that does not exist anywhere in the tariff it was required to mirror. (These new provisions, AT&T explains, are highlighted in "yellow" on AT&T Johnson Cross Ex. 10). As Ms. Johnson testified, many of these provisions contain restrictions on the scope and use of the offerings. For example, the effect of certain of the new provisions is to wholly foreclose CLECs' use of the Project

Pronto architecture to provide line splitting, where a CLEC provides an end user's voice service and another CLEC provides the end user's data service. Tr. 853, 861. The whole point of Ameritech's restriction, AT&T argues, is to deny an end user, receiving both voice and high speed data services via the Project Pronto network, of the choice of another voice provider.

855. Further still, AT&T points out, there are also at least 15 instances in which Ameritech simply changed the language it was ordered to mirror. These language charges, AT&T explains, are marked in "blue" on AT&T Johnson Cross Exs. 9 and 10. Looking to the corresponding place in the Appendix A that Ameritech was required to mirror (AT&T Johnson Cross Ex. 9), AT&T contends, shows the language that Ameritech was actually required to tariff. These exhibits demonstrate, AT&T argues, that Ameritech simply changed the provisioning intervals it was required to tariff and unilaterally gave itself more time in which to provision loop quantities of 20 or more. (Cf. AT&T Johnson Cross Ex. 10, Original sheet 33 with Appendix A to the Commission's Order on Rehearing in ICC Docket 00-0393; AT&T Johnson Cross Ex. 9 at 18).

856. As such, AT&T contends, Ameritech's end-to-end Broadband UNE offering fails to comply in numerous and significant respects with the Commission's Orders in Docket 00-0393 and, accordingly fails compliance with Checklist Item (iv).

e. XO Issues/Position

Coordinated Hot Cut Process

857. The purpose of a "coordinated hot cuts" ("CHC"), XO explains, is to have personnel from both Ameritech and XO available to physically move the loop from Ameritech's switch to XO's equipment in its collocation, so that XO can provide service to the customer. In addition, XO notes, conversion translations need to be removed by Ameritech and subscription versions activated in NPAC. The requisite coordination necessary to minimize customer outages, XO asserts, is disrupted when Ameritech changes a CHC set for a specific day and time to an all day appointment.

858. According to XO, Ameritech's testimony indicates that a CHC is unavailable to a CLEC where the end user's existing facilities reside on Integrated Digital Loop Carrier ("IDLC") service. XO notes Ameritech position that such a conversion requires additional work and an all day appointment, because the existing IDLC facilities cannot be used and the loop must be transferred to a separate copper pair. (AI Ex 2.1 at 23) Ameritech also testified that negotiations are under way to reduce the current 8-hour business day window to a 4-hour window, although to XO's knowledge that change has yet to occur. (Tr. 485.)

859. Its own witness XO notes, testified that an all day appointment increases the likelihood that the XO customer would be out of service for a significant amount of time during the conversion, due to the lack of coordination. Under Ameritech's all day

process, Mr. Barstow explained, its field technician calls the Ameritech LOC to inform it that it is en route to perform the conversion. And, the LOC supposedly calls XO approximately 15 minutes prior to Ameritech's technician performing the work. Ameritech however, XO claims, is not consistently calling to inform XO that its field technician has been dispatched to work the all day conversion. Without such notification, XO contends, it is unable to coordinate the removal of Ameritech switch translations and NPAC subscription activations, and this results in customer downtime.

860. With respect to the all day window, XO notes Ameritech witness Brown's account that: "[I]t doesn't happen at a given time that you chose. It happens sometime throughout the workday. There's really no difference in the process once we make the call." (Tr.490). Due to the uncertainty in the time of the conversion, XO claims, that customer is likely to be without service for a longer period of time than if that same customer received a CHC.

861. Aside from the service disruption that falls to its customers, XO contends that it must be in a position to deploy its resources in an inefficient manner. XO notes that, according to Ameritech witness Brown's testimony, Ameritech only commits to performing the work *at some point* during an 8-hour business day. And, he further stated that XO is only provided about 15 minutes of notice before the actual work will begin. Due to the shortness of notice, XO contends, its employees are often left to postpone or delay assisting other customers in order to respond to Ameritech's call. While XO acts with diligence to respond to Ameritech's call, there are times when it is itself burdened with other commitments. On the whole, XO takes the position that, an all day or eight hour appointment, simply should not be allowed.

862. On the one hand, it sees AI to maintain that a customer conversion from IDLC requires additional work and an all day appointment, because the existing IDLC facilities cannot be used and a loop must be transferred to a separate copper pair. On the other hand, Ameritech asserts that "there's really no difference in the process once we make the call."(Tr. 490) It is unclear to XO, why Ameritech is unable or unwilling to treat the IDLC situation as a CHC, where the parties agree to a specific appointment time (e.g., Wednesday at 2:00 p.m.). Such a procedure, XO contends, would be more productive and efficient for all parties involved.

863. XO requests that, as part of any Commission decision rendered in this proceeding, Ameritech be ordered to end the practice of using all day, eight-hour windows for such conversions, be required to adhere to the time commitment it has agreed to, and further, be subject to penalties for failing that commitment.

5. Reply Positions

a. Ameritech Illinois Reply Position

864. There is no real dispute, AI maintains, as to its offering of traditional, voice-grade loops. There is no basis to AT&T claims that Ameritech Illinois does not

provide loops served via NGDLC the Company asserts, because it does offer such loops. (See Am. Ill. Br. at 115-116; AI Reply Br., Section II.D.1(a).

865. While XO complains about being unable to verify the charges for facilities modification on three loop orders, each one of those orders shows on its face that the charge was zero. (See AI Reply Br. Section II.D.2(b)). Further, Ameritech Illinois already explained why XO's criticisms of the appointment process for certain "hot cuts" of loops are unwarranted. (See Am. Ill. Br. at 106-108). There is also no dispute as to the provision of stand-alone xDSL-capable loops used to provide advanced services. (Id. at 112-113).

866. According to AI, the bulk of the intervenors' arguments under Checklist Item 4 concern "line splitting," where one CLEC provides voice service and the same or another CLEC also provides data service using the same copper loop. There is no dispute that Ameritech Illinois allows CLECs to use one loop to provide both voice and data service. The dispute at hand, AI contends, concerns the various ordering and provisioning issues associated with line splitting.

867. Whereas the FCC has defined line splitting as a voluntary arrangement between CLECs (Line Sharing Reconsideration Order, ¶ 22), the CLECs propose that line splitting be turned into some kind of "line splitting via UNE-P" service offered by Ameritech Illinois. Even as the specifics of the CLECs' proposals are far from clear, AI asserts, it is evident that the CLECs are asking the Commission to impose new requirements (*e.g.*, unbundle the "low frequency portion of the loop") and drastically expand existing requirements (*e.g.*, by eviscerating the FCC's rule that the HFPL UNE need only be provided by a BOC where the BOC is currently providing voice service). (See Am. Ill. Br. at 119-123.)

868. The CLECs even ask the Commission to impose requirements on third parties, by forcing third-party data providers to enter into non-voluntary line splitting arrangements and to allow voice CLECs to use their splitters without permission. (See Id. at 122-124). In a section 271 proceeding AI asserts, a BOC must show compliance with the FCC's "rules and orders in effect at the time the application was filed." (Kansas & Oklahoma 271 Order, ¶ 18.) According to AI, the CLECs have not seriously disputed Ameritech Illinois compliance with the FCC's current line splitting rules.

Nondiscriminatory Access to Stand-Alone Loops

Access to Fiber-Fed Loops

869. In response to AT&T's query "whether Ameritech is required under the Act to provide CLECs access to unbundled loops provisioned using the NGDLC loop network," Ameritech Illinois maintains that it does provide access to loops that are served via the NGDLC architecture. To the extent, however, that AT&T seeks access not just to unbundled loops, but to all the piece parts of the Project Pronto architecture,

AI relies on the Order in Docket 00-0393 where the Commission declined to order such piece part unbundling.

870. In other respects, AI considers AT&T to be vague in articulating its demands. For this reason alone, it argues, the Commission should reject AT&T's claims. Ameritech Illinois has established a *prima facie* showing that it provides nondiscriminatory access to unbundled loops and, it asserts, AT&T's inscrutable contentions should not matter in these premises.

Facilities Modification

871. AI observes XO to have attached three FMOD forms to its testimony in support of its claim that the description of work activity on its FMOD notices is not detailed enough for XO to determine the applicable charges. AI observes that each of these three forms, on their face, show the applicable charges: $0.00 (on each of those forms an "X" appears in the "No Charges" field). It makes no sense, AI contends, to have it provide the detail of a zero price.

Installation of Network Interface Devices-NIDs

872. There is no dispute, Ameritech Illinois contends, but that it permits nondiscriminatory access to its network interface devices ("NIDs"), the demarcation point between the loop and the customer's inside wiring. (Am. Ill. Br. at 106). According to AI, Staff's sole contention, is that it does not comply with a state law that mandates NID deployment. As such, AI proceeds to address this matter under the "public interest" test.

Line Splitting

873. AI contends that there is no dispute regarding standalone xDSL-capable loops, or line sharing, in the situation where it provides voice service to an end user and a data CLEC provides data service to that end user using the same copper loop. The advanced services issues relating to Checklist Item 4, AI notes, concern line "splitting," in the arrangement where a *CLEC* provides voice service and it (or another CLEC) also provides data on the same loop by use of a CLEC-owned splitter. In this situation, Ameritech Illinois points out, it provides no service to the end user.

874. AI observes there to be some line splitting issues arising from what it considers AT&T's and WorldCom's muddled "line splitting via UNE-P" proposals. As such, AT&T asks "whether Ameritech recognizes and provides UNE-P with line splitting as a current combination of network elements." (AT&T Br. at 108.) Similarly noted, WorldCom asks "whether Ameritech is providing access to the loop in a manner that allows line splitting via UNE-P." (WorldCom Br. at 30.)

875. AI answers these queries by asserting that it allows CLECs to engage in line splitting as required by the FCC's rules. See Am. Ill. Br. at 118-119.) Whereas

AT&T and WorldCom appear to be asking for more, AI maintains, they are unclear as to what this "more" entails. To ensure a clarity of record, and to further demonstrate the flaws of AT&T's and WorldCom's "line splitting with UNE-P" positions, AI sets out the various scenarios under which a CLEC may wish to establish a line splitting arrangement.

- The situation in which Ameritech Illinois provides voice service, and there is no data service.

876. In this case, Ameritech Illinois asserts, it has procedures in place to "migrate" to a line splitting arrangement, *i.e.*, to separate the existing network elements and insert the splitter and DSLAM that are required for line splitting. These procedures, it maintains, are the same as those used by Ameritech Illinois' affiliates when they received long-distance approval from the FCC in Texas, Kansas, Oklahoma, Arkansas, and Missouri. (See Am. Ill. Br. at 118).

877. AI perceives AT&T and WorldCom to base their line splitting arguments, in large part, on complaints about potential "service interruption." To this end, AI notes, the Commission has already acknowledged that some service interruption is unavoidable because, in instances where there is no data service, a splitter and "DSLAM must be installed" before the CLEC can engage in line splitting. See Order at 54; Docket 00-0393; March 14, 2001 (recognizing that in this situation "a temporary physical disconnection is an unavoidable fact"). The CLECs' allegations that there would be no service interruption under their proposals, make no sense to Ameritech Illinois.

- The situation in which "Ameritech Illinois is providing voice service" and a data CLEC is providing data service over the same copper loop (a line sharing arrangement), and a CLEC wishes to "migrate" the voice service away from Ameritech Illinois, thus establishing a line splitting arrangement.

878. If the splitter being used in the line sharing arrangement is owned by the data CLEC, Ameritech Illinois explains, it has procedures in place whereby voice service can be "migrated" from Ameritech Illinois to a voice CLEC *without service* interruption. (See Am. Ill. Br. at 122). All that the voice CLEC need do in this situation, AI explains, is obtain the data CLEC's permission to use its splitter and the voice CLEC provides Ameritech Illinois evidence of that permission by providing the data CLEC's Connecting Facility Assignment information. (Am. Ill. Br. at 122).

879. Again, Ameritech Illinois observes, its line splitting procedures are identical to those approved by the FCC in Texas, Kansas, Oklahoma, Arkansas, and Missouri. (See Am. Ill. Br. at 118). AI views WorldCom's complaint about the "rejection" of Line Sharing Reconsideration Orders as nothing more than an attack on the need for gaining the data CLEC's permission. (See WorldCom Br. at 24-25, 30-31). Notably, AI

points out, WorldCom does not even mention (much less dispute) Ameritech Illinois' explanation that WorldCom's orders were rejected because WorldCom did not obtain permission to use the data CLEC's splitter. (Am. Ill. Br. at 124).

- The splitter in the preceding illustration might be owned by Ameritech Illinois.

880. No checklist requirement is implicated in this situation, AI contends, because Ameritech Illinois cannot be required to provide splitters under *federal* law (as the FCC held and this Commission has acknowledged). See Order at 52-59; Docket 00-0393, (March 14, 2001); Texas 271 Order, ¶ 327.

881. Nevertheless, AI observes that the Commission recently held that Ameritech Illinois must provide splitters as part of a "platform" of network elements under state law, i.e., section 13-801 of the PUA). See, Order at 30; Docket 01-0614, (July 11, 2002). Ameritech Illinois maintains that it has filed a tariff that complies with the Commission's Order in Docket 01-0614, such that even the requirements of state law, have been met.

Single Order Process

882. According to AI, the only issue that Staff raises with respect to line splitting is the desire for a single order process (instead of a 3-order process) for converting a CLEC's UNE-P service into the UNEs necessary for line splitting. (See Staff Br. at 157). Although the FCC has never required a single order process for any product, Ameritech Illinois asserts that it has now deployed the single order process described by Staff and suggests that the Commission can confirm that fact in Phase II of this proceeding.

Access to HFPL Subloops

883. AI notes Staff's assertion that Ameritech Illinois is out of compliance with Checklist Item 4 because its tariff requires a CLEC seeking access to an HFPL subloop *i.e.*, access to the HFPL UNE at a location other than the central office, to submit a bona fide request ("BFR"). Staff is wrong, AI argues, to allege that this somehow violates the "rebuttable presumption that unbundling of subloops is technically feasible."

884. Ameritech Illinois explains that its GIA offers to provide access to standard HFPL subloops, for which no BFR is required. (See Am. Ill. Ex. 3.0 at 9.) While a BFR may be required for other forms of HFPL subloops that are not available as a standard offering (and for subloops offered under Ameritech Illinois' tariff), that requirement does not in anyway "shift the burden to a requesting CLEC" to prove technical feasibility. See Staff Br. at 155. The BFR (a process that has been repeatedly approved by the Commission), AI maintains, only requires the CLEC to submit enough information so that Ameritech Illinois can determine whether the request is technically feasible to provision. In the event that it were to deny the CLEC access to the requested subloop on the grounds of technical infeasibility, Ameritech Illinois asserts, it would still bear the burden of proof.

885. AI believes WorldCom to mischaracterize the Order in Docket 01-0614 by stating that the Commission "required line splitting over UNE-P, and the provisioning of the splitter as a UNE." (WorldCom Br. at 25.) To the contrary, AI contends the Commission found that section 13-801 created a brand-new "platform" that includes elements that, like the splitter, are not UNEs at all. The Commission explicitly recognized that the splitter is *not* an *unbundled* network element. It further recognized that a "platform" that includes a splitter is not a *UNE-P*, because (i) the splitter is not an *unbundled* network element, and (ii) the UNE-P consists only of "an unbundled loop, switching functionality and shared transport." Order at 30-31, Docket 01-0614.

886. Thus, AI asserts, this Commission has already recognized that "line splitting via UNE-P" does not exist, for once a splitter is installed the UNE-P ceases to exist and a new and different "platform" of network elements is created. A CLEC will access the subloop HFPL through its DSLAM, and can place its DSLAM in a number of locations, including inside the remote terminal, adjacent to the remote terminal, or at the serving area interface. (Am. Ill. Ex. 3.0 Sch. WCD-1, ¶¶ 99, 106). Further, the configuration selected by the CLEC will impact Ameritech Illinois' voice service, for Ameritech Illinois will continue to provide voice service using the subloop. The BFR provides Ameritech Illinois the necessary information regarding what configuration the CLEC seeks to use.

The "End-to-end Broadband UNE" and The Order In Docket 00-0393

887. AI reemphasizes that the FCC reviewed SBC/Ameritech's planned "Project Pronto" architecture in a nine-month proceeding, and issued its Project Pronto Order in 2000. So too, it repeats, this Commission reviewed, reheard, and reheard again, Project Pronto issues in Docket 00-0393, and its final order is now before the federal courts.

888. AT&T ignores Docket 00-0393 altogether, AI contends, by insisting that "Ameritech Illinois should be required to unbundle the Project Pronto network." (AT&T Br. at 122). As such, AI argues, AT&T is hoping the Commission will disregard Docket 00-0393 and order unbundling of all the various piece parts of the Project Pronto DSL architecture. The FCC and this Commission however, AI notes, have both rejected that request. And, AI argues, AT&T provides no basis for undoing their work. (See Am. Ill. Br. at 125-127).

889. AI observes AT&T and WorldCom to contend that Ameritech Illinois failed to comply with the Commission's Order in Docket 00-0393, because its compliance tariff did not mimic verbatim an appendix to that order. (AT&T Br. at 147-49; WorldCom Br. at 42-43). This issue, AI maintains, is not an appropriate subject for this proceeding. Ameritech Illinois contends that it filed its compliance tariff in good faith after extensive discussions with Staff, that the Company believed had addressed and resolved all interpretative compliance issues. (Tr. 851-52). Staff is currently reviewing this tariff *again*, AI notes. (Tr.1749). Any new compliance issues can and should be resolved

either through this review process or through a separate compliance investigation. The record in this proceeding AI contends, is wholly inadequate to resolve the issues raised by AT&T and they are not appropriate to this proceeding.

890. In a footnote to its arguments, AI suggests that the differences between Ameritech Illinois' tariff and Appendix A to the Order in Docket 00-0393 reflect the fact that Appendix A was based on a Texas interconnection agreement (not a tariff), which, in turn, resulted from a Texas proceeding that addressed a broader range of issues than the parties raised in Docket 00-0393. (Tr. 842, 846, 848-49, 864). As such, of the so-called "discrepancies" cited by AT&T resulted simply from the need to convert contractual provisions to tariff provisions, to further clarify the Texas provisions, or to make them specific to Ameritech Illinois and its Illinois regulatory obligations. (Tr. 839, 848-49, 850, 856-57, 862-63). The removal of the UNE-P provisions – to which AT&T takes particular exception – reflects the fact that the CLECs did not ask for, much less receive, the "right to provide voice service over the Project Pronto network using the UNE-Platform." (AT&T Br. at 148). Given that the tariff gives CLECs the options of using the "end-to-end UNE" to provide data service only, or to provide voice and data services AI is unclear as to the nature of AT&T complaint. Further, AT&T cites to *nothing* in the text of the Commission's Order in Docket 00-0393 to support its claims that the "right" to provide voice service over Project Pronto was "Commission-ordered." It is well-established that the Commission may not place regulatory obligations on a utility unless such obligations are supported by substantial evidence in the record. Illinois Central Railroad Co. v. Ill. Commerce Comm., 395 Ill. 303, 313 (1946). Since there was *no* evidence in Docket 00-0393 on the issue of providing voice service over the Project Pronto architecture using the UNE-P, AT&T is essentially arguing that the Commission can ignore the law as long as it attaches overly broad appendices to its orders. That, AI asserts, is not the case.

Non-recurring Rates for "Line Splitting"

891. AI sees AT&T to assert that Ameritech Illinois has not proposed prices for line splitting. (AT&T Br. at 128-130). On the one hand, AT&T alleges that Ameritech Illinois *should* have separate "line splitting" prices and that the absence of such prices means it does not satisfy the checklist. But on the other hand, AT&T alleges that there should *not* be any separate "line splitting" rates and that Ameritech Illinois does not satisfy the checklist unless line splitting is "charged for [at the same rate] as UNE-P." (AT&T Br. at 112). Neither argument affects checklist compliance in AI's view.

892. According to AI, AT&T's demand for "line splitting" rates is unfounded. Line splitting is not a UNE, AI contends, but an activity that *CLECs* engage in *using* UNEs provided by Ameritech Illinois, along with a splitter and Digital Subscriber Line Access Multiplexer ("DSLAM") to separate voice and data traffic.[15] (Am. Ill. Ex. 3.1 at

[15] In some cases, a CLEC may engage in line splitting using a splitter provided by Ameritech Illinois. To the extent AT&T is contending that the price for splitters does not comply with TELRIC, its argument fails because a splitter is not an unbundled network element, and need not be priced using the TELRIC

34.) As such, AI asserts, there is not an applicable "charge" for line splitting *per se*. The Company applies the Commission-approved, TELRIC-compliant rates applicable to the underlying UNEs, regardless of how the CLEC uses them. Id. For instance, AI explains, a CLEC purchasing a DSL-capable loop will pay the Commission-approved rate for a DSL-capable loop, whether or not the CLEC uses the loop for line splitting. (Am. Ill. Ex. 3.2 at 31.)[16]

b. AT&T Reply Position

Line Splitting Obligations

893. According to AT&T, Ameritech contends that its line splitting obligations are limited to those instances where a CLEC (or two partnering CLECs) approaches Ameritech, purchases an unbundled loop and provides its own splitter. It is only in that situation, AT&T perceives AI to argue, is it required to permit the CLEC(s) to engage in line splitting – and not under any other scenarios.

894. As such, AT&T believes Ameritech to contend that it has no obligation to enable or permit a CLEC to engage in line splitting in the scenario where Ameritech provides the voice service, a data CLEC provides the data service and the end user customer desires to switch its voice service from Ameritech to a UNE-Platform CLEC. Contrary to AI's position, AT&T argues, this is exactly what the Commission ordered Ameritech to do. In Docket 01-0614, AT&T contends, the Commission interpreted Sec. 13-801 of the PUA and concluded that, in those circumstances where Ameritech provides voice service and the end user also subscribes to data service, Ameritech must transfer the voice service, if requested, to a UNE-Platform voice provider with all current features in place and "without any disruption to the end user's services." See Order at 32, Docket 01-0614, (June 11, 2002).

895. In order to prevent any loss of features or any disruption, AT&T notes, the Commission determined that if Ameritech is providing the splitter, it must continue to do so after the voice service has been migrated. This obligation, AT&T contends, arises pursuant to Section 13-801 of the Illinois Act and was enacted to impose additional state requirements as contemplated by Section 261(c) of the federal Telecommunications Act of 1996.

896. As such, AT&T argues, this Commission has already rejected each and every one of the arguments made by Ameritech as to why this very line splitting

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pricing rules. See Section II.D.2(a) infra. Thus, the rates for splitters do not bear on compliance with the federal checklist.

[16] AT&T's reference to pricing discussions that have been held in Michigan (AT&T Br. at 129) is inapposite, as those discussions concern pricing for new product offerings (such as a proposed "low frequency portion of the loop" network element) that are not applicable to Illinois. Am. Ill. Ex. 3.2 at 31; Tr. 397.

arrangement should be rejected. On this basis, Ameritech has failed to demonstrate that it meets its line splitting obligations and, as such, fails to satisfy Checklist Item 4.

Single Order Process

897. Noting the arguments set out in Staff's Initial Brief, AT&T agrees that the *Line Sharing Reconsideration Order* urges the incumbent LEC to develop a single order process for competing carriers to add xDSL service to UNE platform voice customers. According to AT&T, however, Ameritech has not demonstrated that it has implemented a single order process for line splitting. Yet, AT&T observes, the Michigan Commission has alerted Ameritech Michigan that it may determine that Ameritech is not in compliance with the requirements of the Section 271 checklist unless it implements such a single order process.

898. AT&T further observes that the FCC also examined whether the RBOC has implemented a single order process for line splitting in determining whether Section 271 relief is appropriate. In finding Verizon compliant with checklist item (iv) in New Jersey, AT&T asserts, the FCC's conclusion that "Verizon provides nondiscriminatory access to line-splitting in accordance with our rules" relied upon the fact that:

> Verizon began offering new OSS functionality that enables a competitor to submit a single Local Service Request (LSR) to add DSL capability to a loop in an existing UNE-platform arrangement while re-using the same network elements, including the loop, if it is DSL-capable. In addition, Verizon implemented the ability for a competitive LEC to convert from line sharing to line splitting using a single LSR, or drop data from a line-splitting arrangement and revert back to UNE-platform with a single LSR. *New Jersey 271 Order*, fn. 462.

899. According to AT&T, Ameritech has failed to demonstrate that it has implemented a single order process for line splitting and thus fails to comply with Checklist Item 4.

Access To Unbundled Loops Provisioned Using The NGDLC Loop Network

900. Ameritech ignores the majority of AT&T's technical, legal and policy arguments, AT&T contends, and relies solely on the FCC's *Project Pronto Order* as the basis for refusing to unbundle its Pronto architecture. According to AT&T however, Project Pronto loops, just like any other loops in Ameritech's network, must be made available to CLECs. Ameritech cannot be allowed to avoid its obligation to unbundle UNEs by employing a DLC technology that would create one network for Ameritech, and a very limited, less technologically advanced, inherently unequal network for CLECs.

901. According to AI, Ameritech is required to make its loop facilities using NGDLC technology available as unbundled network elements with rates, terms and conditions governed by Sections 251 and 252 of the Act. Moreover, the FCC rules designate that unbundled network elements are technology independent. This means that Ameritech cannot avoid provisioning UNE loops to CLECs over its NGDLC loop network. CLECs must have access on an unbundled basis to the entire NGDLC loop.

902. It is indisputable, AT&T contends, that a Project Pronto "loop" is still a loop. USTA did not vacate the UNE Remand Order, AT&T asserts, so the requirement to provide unbundled access to loops remains in effect, and there is nothing in *USTA* to authorize any retreat from that requirement. To the contrary, *USTA* provides no basis to surmise that the FCC on remand might alter its conclusion that CLECs are impaired without unbundled access to the loop element, and no authority for this Commission to disregard the loop unbundling requirements of the UNE Remand Order in any event.

903. AT&T claims that Ameritech Illinois' Broadband Service offering is not an adequate substitute for unbundling local loops. And, it asserts, Ameritech Illinois' Broadband Service allowing CLECs to use the DSLAM functionality of the remote terminal is not an adequate substitute for unbundled access. According to AT&T, Ameritech claims that competitors can use such "service" to provide advanced services to end users and its "willingness" to offer these services is essentially an admission that CLECs need access to the functionalities of the entire unbundled loop in the NGDLC architecture. But, AT&T contends access via a "broadband service" does not comport with the mandate of section 251(c) (3) to provide unbundled *network elements* on a nondiscriminatory basis. Moreover, while Ameritech asserts that the elements or components used in the Broadband Service are *not* UNEs, AT&T maintains that the NGDLC architecture provides nothing more (and nothing less) than a loop.

904. Ameritech's interpretation of the orders in Docket 00-0393, AT&T argues, is that it is *only* required to provide access to the *high frequency* portion of those loops. As such, CLECs desiring to offer packages including DSL *and voice services* would be forced to procure a separate loop to provide the voice service even when Ameritech Illinois and its affiliates plan to use the same Pronto (NGDLC) loop facility to offer *DSL and voice* service. That is clearly a barrier to competition AT&T argues. CLECs, such as AT&T need access to the entire NGDLC loop spectrum so that they can offer voice as well as DSL service to their customers, just as Ameritech Illinois can. Accordingly, AT&T argues, this Commission must require Ameritech to provide the entire Project Pronto loop consistent with the FCC's UNE Remand Order.

c. Staff Reply Position

HFPL

905. Staff agrees that AI provisions HFPL in compliance with state law. This agreement however, Staff maintains, is contingent upon AI's submission of a tariff with language that complies with the Section 13-801 Order and the Commission's approval of such tariff. See Stipulation at 3.

d. XO Reply Position

Coordinated Hot Cut Process

906. XO continues to request that the Commission order AI to cease its practice of all day appointments when the end user's existing facilities reside on IDLC service and follow, instead, its usual CHC process. Contrary to AI's assertions, XO claims, its current process does not provide XO with a reasonable opportunity to prepare for the activity. There is an increased likelihood of service disruption to XO's end user customers under the current situation, XO asserts, and it is also put to the burden of deploying its resources in an inefficient manner.

907. According to XO, it is only given about 15 minutes of notice prior to the time that AI begins the work, and, in some cases, XO is not notified at all that AI has begun the conversion process. Given the shortness of notice, XO explains, its employees are often required to postpone or delay assisting other customer in order to respond to Ameritech's call. And, as XO witness Barstow testified, the lack of coordination increases the likelihood that the customer will be out of service for a significant time during the conversion.

e. WorldCom Reply Position

Line Splitting

908. This Commission, it notes, has required Ameritech to allow CLECs to provide voice service via the UNE Platform over lines on which another carrier provides data services over the HFPL. Order at 30-33; Docket 01-0614, (June 11, 2002). And, WorldCom points out, this Commission has also ordered line sharing. Order, Docket 00-0393, (September 26, 2001). WorldCom maintains that these state obligations to provide line sharing and line splitting are unaffected by *USTA*.

909. According to WorldCom, the USTA court did not vacate the *Line Sharing Order on Reconsideration*, as Ameritech would claim. (Ameritech Br. at 119). And, WorldCom asserts, the *Line Sharing Reconsideration Order* conclusively resolves any question concerning Ameritech's obligation under federal law to allow line splitting (CLEC voice/DLEC data or CLEC voice/same CLEC data) over UNE-P loops. That Order, WorldCom contends, makes clear that the obligation to allow line splitting is an existing legal obligation borne by ILECs and that ILECs therefore must allow competitors to order line splitting immediately, whether or not a fully electronic OSS interfaces capable of handling orders for line splitting are in place. *Line Sharing Reconsideration Order*, ¶ 18; note 36.

HFPL

910. WorldCom challenges the premise that Ameritech Illinois cannot be required to provide access to the HFPL over the UNE Platform when Ameritech Illinois is not the voice provider as based on the *Line Sharing Order* and *Texas 271* Order. According to WorldCom, the FCC explicitly recognizes the line splitting obligation as such:

> We find that incumbent LECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements. The Commission's existing rules require incumbent LECs to provide competing carriers with access to unbundled loops in a manner that allows the competing carrier 'to provide any telecommunications service that can be offered by means of that network element.' [footnote omitted] Our rules also state that '[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on . . . the use of unbundled network elements that would impair the ability of' a competing carrier 'to offer a telecommunications service in the manner' that the competing carrier 'intends.'[footnote omitted] We further note that the definition of 'network element' in the Act does not restrict the services that may be offered by a competing carrier, and expressly includes 'features, functions, and capabilities that are provided by means of such facility or equipment.'[footnote omitted] As a result, independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*, incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop. This obligation extends to situations where a competing carrier seeks to provide combined voice and data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting. *Line Sharing Reconsideration Order*, ¶ 18.

911. Any argument based on the premise that the line splitter is not a network element is wrong, WorldCom claims, in light of the Illinois Commission's findings in Docket 01-0614. Moreover, where Ameritech has already attached its splitter to an existing loop, it is clear that under federal and state law Ameritech must allow for conversion of line sharing arrangements to line splitting arrangements without disruption to service.

912. For example, WorldCom notes, in the situation where Ameritech is providing voice over a loop and shares that loop with a DLEC via an Ameritech owned splitter, and if that customer wants to obtain voice service from a CLEC that provides voice service via UNE Platform, the customer can be migrated from Ameritech to the

CLEC without any need to separate the loop, port or splitter. This, it argues, is the only way by which to implement the FCC's findings that:

> because no central office wiring changes are necessary in a conversion from line sharing to line splitting, we expect incumbent LECs to work with competing carriers to develop streamlined ordering processes for migrations between line sharing and line splitting that avoid voice and data service disruption and make use of the existing xDSL-capable loop. *Line Sharing Reconsideration Order*, ¶ 22.

913. There is a similar requirement in Illinois law, WorldCom asserts, that prohibits the disruption of an end user's voice or data service when a customer is converted from a line sharing to a line splitting arrangement. Order at 32-33, Docket 01-0614, (June 11, 2002). WorldCom contends that Ameritech's obligation, to convert line sharing to line splitting arrangements without causing disruption to the end user's services, is clear.

914. Despite all of the state and federal law requirements, WorldCom argues, the record demonstrates that Ameritech does not currently allow line splitting and has, in fact, rejected large numbers of WorldCom orders for UNE Platform voice service over lines currently served by line sharing arrangements. According to WorldCom, Ameritech rejects Worldcom's orders for UNE Platform voice service to an end user customer served by a line on which voice and data are provided in a line sharing scenario. Ameritech's attempt to blame such rejections on the involvement of CLEC owned splitters has no foundation in the record, WorldCom argues, in that the hundreds of orders rejected by Ameritech "likely" involved many Ameritech-owned splitters.

915. Further, WorldCom argues, Ameritech does not have in place a process or procedure that allows CLECs to order UNE Platform voice service provided via line splitting arrangements. As a result, it fails its obligations to provide nondiscriminatory access to local loops as required by the federal Act and Illinois law.

6. Staff's Proposed Remedial Actions for Checklist Compliance

916. To obtain and favorable finding on Checklist Item 4 Compliance, Staff proposes that:

1 Ameritech Illinois must file tariff language providing CLECs access to unbundled sub-loops at any technically feasible point. AI must employ a single order process for migration of voice and data to competitive carriers.

Ameritech Illinois is in compliance with state law, but should submit a tariff with language pertaining to the aforementioned issue

revised to comply with the Commission's Order in Docket 01-0614 and Commission's approval of that tariff.

2 AI also must file TELRIC compliant rates or demonstrate that the interim rates for the following are compliant with TELRIC principles: non-recurring charges for UNE combinations; non-recurring charges for UNEs; recurring UNE charges; unbundled switching and interim shared transport rates (ULS-IST); dark fiber; unbundled sub-loop rates; AIN routing of OS/DA charge; CNAM database access charge; NGDLC UNE platform charge; and OSS modification charge for the HFPL UNE.

7. Commission Review – Checklist Item 4

917. We examine a number of different matters, as highlighted below, in order to assess AI's compliance with Checklist Item 4.

918. At the outset, we would note, the Company's provisioning of voice-grade loops is wholly uncontested. It further appears to satisfy its subloop unbundling obligations.

a. Line Splitting

919. Line splitting is complicated by the differences between federal and state law with respect to the obligations that govern in the various types of arrangements. And, it is equally complicated by the less than clear arguments and positions set out by the parties in this proceeding. In order to lend some clarity, we begin our analysis with a summary of the relevant federal and state orders.

Relevant FCC Orders

The Line Sharing Order

920. Pursuant to the FCC's Line Sharing Order, an ILEC must: (1) provide unbundled access to the high frequency portion of the loop (HFPL) so that carriers may use those frequencies to provide xDSL-based services; and (2) provide access to OSS necessary to support non-discriminatory pre-ordering, ordering, provisioning, maintenance and testing, and billing for CLECs. The Line Sharing Order specifically discusses line sharing over the copper portion of the local loop, from the customer premises to the ILEC central office. It does not discuss line sharing over fiber-fed DLC systems. This order, however, does not preclude or restrict deployment of other technologically feasible methods of line sharing.

The UNE Remand Order:

921. The unbundling requirements set forth in the UNE Remand Order, pursuant to § 251 of the Act, are "designed to create incentives for both incumbent and competitive LECs to innovate and invest in technologies and services that will benefit consumers through increased choices of telecommunications services and lower prices." More specifically, the FCC sought to establish unbundling rules "to facilitate the rapid and efficient deployment of all telecommunications services, including advanced services."

922. Under the FCC's UNE Remand Order, the ILECs are obligated to provide non-discriminatory access to UNEs and OSS. Here, the FCC expressly stated that the ILEC obligation to provide access to OSS for xDSL-based services "falls squarely within an incumbent LEC's duty" under the Telecommunications Act of 1996.

Line Sharing Reconsideration Order:

923. On January 19, 2001, the FCC released its Line Sharing Reconsideration Order, which modified the Line Sharing Order. Here, the FCC concluded that incumbent LECs must allow competing carriers to offer both voice and data service on a single unbundled loop and that incumbent LECs had an obligation to permit competing carriers to engage in line splitting using the UNE platform, where the competing carrier purchases the entire loop and provides its own splitter. In addition, LECs were required to make all necessary network modifications to facilitate line splitting, including providing non-discriminatory access to OSS necessary for preordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. The FCC concluded that incumbent LECs must perform central office work necessary to deliver unbundled loops and switching to a competing carrier's physically or virtually collocated splitter that is part of a line splitting arrangement. Line Sharing Reconsideration Order at paras. 19-20. The FCC went on to note that issues closely associated with line splitting arrangements, including splitter ownership, would be addressed in future ratemakings. Line Sharing Reconsideration Order at para. 13.

924. The FCC also encourages ILECs and CLECs to use the state collaborative process to: 1) develop single order process for CLECs to add xDSL service to and existing UNE-P voice customer line; 2) allow CLECs to forego loop qualification if xDSL service already provided on line; 3) allow CLECs to order loops for use in line splitting as a "non-designed" service; 4) use the same number of cross connections and the same length of tie pairs for line splitting and line sharing arrangements. Line Sharing Reconsideration Order at par. 21. The FCC states: "Because line splitting is an existing legal obligation, incumbent LECs must allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place." It further indicates that, "[W]e expect Bell Operating Companies to demonstrate, in the context of 271 applications, that they permit line splitting, by providing access to network elements necessary for competing carriers to provide line splitting services." Line Sharing Reconsideration Order at para. 20; fn 36.

925. Because no central office wiring changes are necessary in a conversion from line sharing to line splitting, the FCC expects ILECs to work with CLECs to develop streamlined ordering processes for migrating from line sharing to line splitting that avoid service disruption and made use of the existing DSL capable loop. Line Sharing Reconsideration Order at para. 22. The ILECs Data Affiliate is not required to provide DSL service on a line where the CLEC provides voice service. Line Sharing Reconsideration Order at para. 26.

Section 271 Orders

926. On June 30, 2000, in the Texas 271 Order, the FCC discussed some policies with regard to line sharing and line splitting. The FCC did not require SWBT to "prove that it has implemented the loop facility and OSS modifications necessary to accommodate requests for access to the line sharing unbundled network element as required by [the FCC's] December 9, 1999 Line Sharing Order. While the Line Sharing Order technically became effective on February 9, 2000, the FCC acknowledged that it could take as long as 180 days from release of its order for incumbent LECs to develop and deploy the modifications necessary to implement the new obligations. The FCC also found that an incumbent LEC has an obligation to permit CLECs to engage in "line splitting" over UNE-P where the CLEC provides its own splitter.

927. The FCC further rejected the argument that an incumbent LEC had an obligation to provide the splitter. The FCCs reiterated this finding in its Line Sharing Reconsideration Order ; the Louisiana & Georgia 271 Order; and in the Missouri and Arkansas 271 Order. The FCC also rejected the augment that the ILEC be required to provide xDSL service to customers who choose a voice service provider other than the ILEC. This decision is repeated in the Louisiana & Georgia 271 Order; and also in the individual Section 271 orders for the states of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.

928. A review of the FCC's 271 orders finds that OSS for line splitting was implemented in Verizon's territory on October 20, 2001 and also in Bell South's territory on January 5, 2002.

Illinois Commerce Commission Decisions

929. On March 14, 2001, this Commission entered the first Order in Docket 00-0393, finding that Ameritech Illinois was not required to provide access to its splitters in order for a CLEC to provide both voice and data service over a loop Id. at 52. In cases where xDSL service is added to a loop some disruption of service will occur in order to insert a splitter (Id. at 53); and the voice CLEC must be responsible for all coordination with the data service provider in a line splitting relationship. (Id at 54). The Commission made findings similar to the FCC in that it did not require Ameritech's data affiliate to continue to provide data service once voice service was switched from Ameritech to a CLEC. Id at 55. The Commission also rejected a proposed requirement to allow line

splitting on resold lines. Id at 55. In this first Order for Docket 00-0393, the Commission voiced an expectation regarding OSS for line splitting by stating, "we fully expect Ameritech to undertake the engineering and office upgrades necessary to comply with the FCC' s requirements for OSS in conjunction with FCC ordered line splitting." (Id. p. 56) Regarding pricing issues the Commission set the monthly rate for HFPL at $0 (Id. at p. 86) and OSS modification charges at $0. (Id at p. 88)

930. On September 26, 2001, the Commission released its first Order on Rehearing in Docket 00-0393. The central issue on rehearing was the feasibility of implementing the unbundling and collocation requirements, regarding the project pronto architecture, of the Commission's March 14th, 2001 Order. In order to address access to the HFPL in the Project Pronto architecture, the Commission ordered Ameritech to file with some modifications, "an interim tariff detailing an end-to-end HFPL UNE based upon the contract terms ordered by the arbitrators in Texas." Order on Rehearing at 36, Docket 00-0393. The implementation of the Texas' Arbitrated terms released Ameritech from its unbundling and collocation requirements, regarding the project pronto architecture, of the Commission's March 14th, 2001 Order.

931. On October 16th, 2001, the Commission released an Amendatory Order in Docket 00-0393, changing the language of the terms ordered in the September 26, 2001 Order. On March 28, 2002, the Commission released its Second Order on Rehearing in Docket 00-0393, that removed references to DS1 ports in the terms ordered in the September 26, 2001 order; set interm prices for the "HFPL UNE Platform;" addressed requests for new xDSL functionalities on the Project Pronto architecture; and removed the words "backend systems" from the OSS terms previously ordered by the Commission.

932. On June 11, 2002, the Commission released its Order in Docket 01-0614, addressing the newly enacted changes to the Public Utilities Act as set out in Section 13-801. The Commission found, "In terms of line-splitting, we agree with Joint CLECs that, when viewed as a whole, the newly enacted legislation contemplates line-splitting with Ameritech owned splitters in at least some contexts." Order at ¶74, Docket 01-0614.

Court Review – the USTA v. FCC Opinion

933. In the Line Sharing Order, the FCC determined that the high frequency portion of the cooper loop ("HFPL") is a network element that ILECs must provide on an unbundled basis to CLECs that wish to provide digital subscriber line ("DSL") service to their end users for high speed internet access. USTA, at 421.

934. The Court found the FCC's analysis deficient because it "completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite)". USTA at 428. The Court inferred from the FCC's brief that the FCC had focused solely on DSL providers because Section 251(d)(2)(B) of the Act defines UNEs in terms of services that a CLEC "seeks to offer" – and CLECs seek to

offer DSL when they request line sharing. The Court rejected this position as "quite unreasonable" because the "unbundling is not an unqualified good." The Court found that the Commission must "apply some limiting standard, rationally related to the goals of the Act" and "cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network". The Court also observed that such "naked disregard of the competitive context" would allow the FCC to inflict costs on the economy under conditions "where it had no reason to think doing so would bring on a significant enhancement of competition". USTA at 429.

935. The Court thus vacated and remanded the Line Sharing Order stating that a future "order unbundling the high frequency portion of the loop should not be tainted by the sort of errors" that had been identified in the UNE Remand Order. USTA at 429. It rejected the ILECs' claim that "a portion of the spectrum of the loop cannot qualify as a 'network element.'" USTA at 429.

936. On September 4, 2002, the Court denied Petitions for Rehearing and rehearing *en banc*, but stated that "[t]he vacatur of the Commission's orders is hereby stayed until January 2, 2003". See USTA v. FCC, Order, Nos. 00-1012 and 00-1015 (D.C. Cir. 2002).

The Record and the Law

937. It is against this legal background that we review, in our own way, the showings and positions with respect to line sharing/line splitting. The Commission finds it useful to examine Ameritech Illinois' obligations and compliance therewith through a series of factual scenarios.

Scenario A

938. AI provides voice service but no data service is provided to the customer; the CLEC wins the customer and then orders the line to be converted to UNE-P and connections to a splitter established in order to provide data service. As the Commission found in Docket 00-0393, the loop will need to be disconnected from the switch in order to insert a splitter. It is assumed that the splitter would be owned by a CLEC, because AI has no obligation to provide splitters to CLECs in this situation.

Discussion

939. The standard of review requires AI to demonstrate that it has a legal obligation to provide line splitting through rates, terms and conditions in interconnection agreements. This issue of rates will be discussed below. In order to show compliance with the terms and conditions portions of its obligation, AI refers to the fact that it provides the same terms and conditions approved by the FCC in SBC's 271 applications in Texas, Kansas, Oklahoma, Arkansas, and Missouri. In our review of the FCC's orders in those dockets, however, it does not appear that any actual line splitting was occurring in those jurisdictions when the 271 applications were made.

940. In Illinois, both AT&T and WorldCom have expressed an interest in providing line-splitting service. WorldCom has even gone so far as to submit orders for such service. In the presence of actual demand for this service, it is the Commission's preference to examine the actual function of provisioning of the service in order to determine if the terms and conditions obligating AI to provide the service are sufficient.

941. AI makes reference to a process being implemented in order to provision the services described in Scenario A. AT&T expresses doubt that such process will work. Rather than speculate on this process the Commission will require Ameritech to submit evidence of how the process works, and evidence that it is being provided in a nondiscriminatory manner, in Phase II of this proceeding.

Migration from Line Sharing to Line Splitting

(i) Agreement of Data CLEC to line split

942. The Commission found in Docket 00-0393 that "[CLECs wanting to line split] must be responsible for all coordination with third party vendors or data services partners." Order Docket 00-0393 at 55. Implicit in this statement is an endorsement of the policy that the data CLEC must be a willing participant in this relationship. WorldCom's apparent desire to line split without the consent of the data CLEC is not the type of situation that would lead to the Commission to find AI deficient on this checklist item.

943. Turning to the matter of the rejected WorldCom orders, it appears that they were rejected because of the missing authorization information. This, however, has not been conclusively established. As such, AI should present a root cause analysis with findings for the rejection of the 778 Worldcom orders in Phase II of this docket.

944. As Ameritech well notes, this same issue has been put before the FCC on several occasions and it has found that the refusal of the incumbent's data affiliate (or any data CLEC for that matter) to participate in a line splitting arrangement to be within the data CLEC's rights.

(ii) Single Order Process

945. Staff initially raised an issue on a single-order process for line-splitting and AT&T joined in on reply argument. While Ameritech would claim that the FCC has never required a single order process, the Commission observes that the FCC has encouraged such a process. Further, the FCC has noted the development of a single order process in many of its 271 decisions where both Verizon and BellSouth developed single order processes in 2001, and early 2002, respectively.

946. AI now claims to be developing a single order process. A simple claim, however, is not sufficient for our purposes. Ameritech has the burden of presenting evidence to show that it offers a workable single order process. We wait such a showing in Phase II of this proceeding in order to verify the reality of the Company claims.

Scenario B

947. AI provides voice service and a Data CLEC provides data services. A CLEC wins the voice service of the customer and makes arrangements with the Data CLEC to continue providing data services. The voice CLEC submits an order for the migration of the voice service to UNE-P while the current splitter arrangement remains intact. In this scenario, the data CLEC provides the splitter.

Discussion

948. AI represents that it will allow this type of migration. According to Ameritech, it meets it obligations in a manner similar to that approved by the FCC in Texas, Oklahoma, Kansas, Arkansas, and Missouri. This Commission, however, prefers and requires a better explanation of how Ameritech migration process actually works.The CLEC appear to suggest that there is separation before items are put back together. This might be problematic if it occurs in the actual provisioning. In a Phase II showing Ameritech must establish that it offers streamlined processes for migrations between line-sharing and line-splitting that avoid voice and data service disruption in satisfication of the FCC's requirements.

Scenario C

949. AI provides voice service and a Data CLEC provides data services. A CLEC wins the voice service of the customer and makes arrangements with the Data CLEC to continue providing data services. The voice CLEC submits an order for the migration of the voice service to UNE-P while the current splitter arrangement remains intact. In this scenario, the Ameritech provides the splitter.

Discussion

950. ILEC provisioning of a splitter is not a federal law requirement. Thus compliance does not need to be shown here. By virtue of our Order in Docket 01-0614, however, and under state law, AI must provide splitters as part of a platform of network elements. At the heart of the CLEC arguments (as made clear in the reply briefs) is their insistence on AI's compliance with our Order in Docket 01-0164. Ameritech indicates that it has filed a tariff to comply with our order for Docket 01-0164. To the extent that the Compliance tariff for Docket 01-0164 meets with our Order, and there is no showing to the contrary, the Company will be found to satisfy this state law requirement, leading in part, to a favorable recommendation on Checklist Item 4. In

other words, we await confirmation of the correctness of the compliance tariff for Docket 01-0614 in Phase II.

Pricing for Line Splitting

951. Apparently AI does not provide a single price for line splitting. According to AI, this is a service, and not a UNE per se, such that a CLEC need only order the network elements at established prices. We see no FCC requirement to be controlling on the matter. AI might do well, however, to collaborate with CLECs and determine what scenarios for line splitting require additional work beyond that encompassed by loop and cross-connection rates.

Project Pronto

952. While setting out a wealth of argument on Project Pronto, AT&T does not, in any way, rely on the FCC's Project Pronto Order.

953. Simply put, the mostly policy-type arguments that AT&T here presents, either were or should have been provided in these earlier proceedings. Such matters are not open to dispute, or action, in this instance. It is only AI's compliance with this settled authority that concerns the Commission in this proceeding.

Compliance Tariff for Docket 00-0393

954. To be sure, we see AT&T to contend that AI is not compliant with an Order of this Commission in Docket 00-0393 because its tariff does not exactly mirror the tariff appended to that order. There are two separate problems, however, that fail AT&T's assertions.

955. (1) AT&T does not offer up or construe any of the narrative text (which discusses and resolves evidentiary matters) in that Order such as would support its contentions. It merely tracks differences between 2 documents, i.e., the Appendix to that Order and the tariff that AI filed in compliance with the Order, outside of any context whatsoever. This type of showing is not probative on the issue.

956.

957. (2) A failure of compliance with a certain order must be raised and decided in the proper forum. It is not viable for consideration in this type of proceeding. We are not acting as an adjudicatory body in this instance, but in an information gathering capacity.

958. That said, AT&T has set out a matter of grave concern to this Commission. For present purposes, Ameritech Illinois needs to show that its tariff is compliant with our Order in Docket 00-0393. Until this showing is made, the Company will not meet the standards for provision of loops.

959. As it stands, the Company and Staff will report to this Commission, in Phase II, on the propriety of Ameritech's compliance tariff for Docket 00-0393 and we urge the parties to resolve their differences in the interim.

Hot Cuts

960. To its credit, XO's arguments, regarding the all day appointment, get right to the heart of the matter in dispute. It basically asks that the general process be utilized in a specific instance, i.e., when IDLC is involved.

961. We are led to understand, however, that there are certain complications with IDLC that prevent AI from adhering to the standard hot cuts process that is generally employed. XO does not dispute this fact. As such, we are unable to accord XO its desired relief. This does not, however, preclude the parties from working out some type of different arrangement if at all possible.

962. In response to our suggestion, AI refers to certain of the testimony indicating the Company's work to develop a 4-hour appointment window to replace the existing 8-hour window for IDLC that XO has put at issue. This work, AI maintains, has been completed, such that SBC-Illinois now offers a 4-hour window for IDLC hot cuts.

963. The Commission is pleased with this effort, but will require the Company to make a showing on the matter in Phase II.

Facilities Modification

964. According to XO, SBC-Illinois distinguishes between complex modification and loop conditioning. While the forms at issue do not contain a charge for complex modification, XO claims that there still are charges for loop conditioning. The XO complaint, as such, is that the forms do not offer enough information for it to determine the amount of these charges insofar as they only refer XO to its interconnection agreement or applicable tariff. A reference of this sort is of little value, XO argues, because it fails to include a specific description of the loop conditioning that is required, i.e., the number of impediments and the length of the loop.

965. As to the two forms XO submitted that relate to loop conditioning, AI maintains that the length of the loop is shown on both. Further, AI asserts, XO overlooks the availability of the loop qualification process that enables CLECs to obtain information regarding the characteristics of a loop before they ever submit an order. To be sure, AI continues, the loop qualification is free, meaning that XO pays nothing.

966. Given that XO takes no account of the loop qualification process, its complaint is incomplete and, in our view, not viable.

Loop Tagging

967. The loop tagging issue has apparently been resolved by the action AI describes in its Initial brief, which is not, in any way, disputed by McLeod USA.

Rates for Subloop and Dark Fiber UNEs.

These matters are dealt with under Checklist Item 2.

Remedial Action

968. Our concerns with respect to the satisfaction of Checklist Item 4 are centered on certain line-splitting matters discussed above and on the compliance tariff for Dockets 00-0393 and 01-0164. We expect the Company to address these concerns to our satisfaction in Phase II together with a showing on resolution of the "hot cuts" issue.

E. CHECKLIST ITEM 5 - Unbundled Local Transport

1. Description of Checklist Item (v)

969. Section 271(c)(2)(B)(v) of the competitive checklist requires a Section 271 applicant to provide:

"[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." 47 U.S.C. Section 271 (c)(2)(B)(v).

2. Standards for Review

970. Transport facilities are the trunks that connect different switches within the BOC's network, or that connect those switches with long distance carrier's facilities. BOCs are required to provided competitors with the transmission links on an unbundled basis that are dedicated to the use of that competitor,- as well as links that are shared with other carriers (including the BOC).

971. The FCC has required BOCs to provide both **dedicated** and **shared** transport to requesting carriers. Second BellSouth Louisiana Order at para. 201. Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.

972. Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.

973. (Adapted from the New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

3. The State Perspective

974. Interoffice transmission or transport facilities include the transmission links between central office switches and tandem switches, central office switches and other central office switches, and tandem switches and other tandem switches. These links make it possible for calls to be completed to customers served by switches other than a customer's local switch or to transport calls to a switch were a customer's inter-exchange carrier is interconnected thus allowing the completion of long distance calls. Transport is required to be provided in two forms, shared and dedicated. "Dedicated transport", as the name implies, is dedicated to a single carrier's use. Dedicated transport is paid for on a circuit capacity basis, for example a monthly fee per voice channel circuit. Dedicated transport is used to interconnect a CLEC's network with the ILEC or for services like enhanced extended loops (EELs) (An EEL consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The EEL allows new entrants to serve customers without having to collocate in every central office in the incumbent's territory). Shared transport is the transmission path between switches shared by CLECs and the ILEC. It is paid for on a per minute of use basis, and is a key element of the UNE-Platform.

975. Incumbent LECs must unbundle dedicated interoffice transmission facilities, or transport, including dark fiber. Rates for dedicated transport were set in Docket 96-0486. Incumbent LECs must also unbundle shared transport (or interoffice transmission facilities that are shared by more than one carrier, including the incumbent) where unbundled local circuit switching is provided. This Commission ordered Ameritech to implement an interim shared transport rate in Docket 96-0486. In Docket 98-0555, Ameritech was ordered to tariff an unbundled local switching and shared transport combination offering similar to what the SBC offered in Texas. Final pricing for shared transport was considered in Docket 00-0700. Order, Docket 00-0700 (July 14, 2002). Ameritech filed tariffs to comply with the Order in that docket on August 21, 2002, and the tariffs took effect on September 21, 2002.

4. The Evidence, Issues/Positions

a. AI Showing of Compliance

976. AI recognizes its Checklist Item 5 obligations to include the provisioning of both dedicated (used only by the CLEC) and shared, interoffice transport. Shared transport, AI notes, consists of "transmission facilities shared by more than one carrier,

including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network." 47 C.F.R. § 51.319(d)(1)(iii).

977. Shared transport, however, cannot be provided separately from unbundled local switching AI explains, because in order for a CLEC to share the same transmission facilities that Ameritech Illinois uses for its own traffic, the CLEC's traffic must be routed by an Ameritech Illinois switch. See UNE Remand Order, ¶ 371. Accordingly, Ameritech Illinois asserts, it provides shared transport through the product known as "unbundled local switching with shared transport," or "ULS-ST" and, it reports, CLECs can obtain ULS-ST via interconnection agreements or tariffs. (Am. Ill. Ex.1.1 at 32).

978. AI witnesses Alexander and Deere presented testimony on the Company's compliance with Checklist Item 5. There is no real dispute with regard to dedicated transport, AI contends. It further notes that only one CLEC, Z-Tel, addressed shared transport and, essentially posited two questions. (Z-Tel Ex. 1.0 at 14; Z-Tel Ex. 3.0 at 9-10).

979. Both of the inquiries, AI notes, are easily answered. First, Z-Tel asks whether shared transport is available to provide intraLATA toll service. AI responds in the affirmative noting that, although federal law does not require incumbents to let CLECs use shared transport for intraLATA toll service, it has filed, pursuant to a recent Commission order in Docket 01-0614, a tariff that allows a CLEC to use ULS-ST to carry intraLATA toll traffic. (Am. Ill. Ex. 1.1 at 32; Tariff Ill. C.C. No. 20, Part 19, § 21; Order, Docket 01-0614, June 11, 2002). For its second inquiry, Z-Tel asks whether Ameritech Illinois provides "terminating switching" as part of shared transport. The answer is yes, AI responds, even though federal law does not require it. Under the 1996 Act, AI explains, shared transport is defined as interoffice facilities only, and the only switching involved is at the originating switch (to obtain routing instructions), and possibly routing through a tandem switch.

980. The FCC, AI contends, has never required a BOC to show that it provides terminating switching as part of shared transport to satisfy section 271, nor has terminating switching ever been defined as a stand-alone UNE. (Am. Ill. Ex. 1.1 at 33). Nevertheless, AI asserts, the Commission's Order in Docket 01-0614 effectively requires it to provide terminating switching as part of a network elements "platform" and, while reserving all of its rights to challenge that decision, Ameritech Illinois has already filed a compliance tariff to implement this requirement.

b. Staff Issues/Position

981. Staff too, recognizes that the FCC has interpreted Checklist Item 5 to require the provision of both dedicated and shared transport to requesting carriers (under appropriate terms, conditions and rates) in order to satisfy Section 271 requirements. Second Louisiana 271 Order, para. 201. According to Staff, the

Commission recently determined that the Ameritech "proposed" tariffs for unbundled local switching and shared transport offering were unsatisfactory. Order, Docket 00-0700 (July 14, 2002)

982. At a minimum, Staff proposes, Ameritech should amend its permanent unbundled local switching-shared transport (ULS-ST) tariff to provide for intraLATA toll capability. (Staff Ex.1.0 at 54). Further, Staff contends, Ameritech must offer ULS-ST with a transiting function. The unbundled local switching-shared transport (ULS-ST) transiting function, Staff claims, enables CLECs (notably purchasers of UNE-P) to economically and efficiently send traffic to and from the customers of switch-based third parties that are interconnected with Ameritech Illinois. (Staff Ex. 1.0 at 54).

983. Staff considers it critical that CLEC customers be able to complete calls to the customers of other CLECs, wireless carriers, small ILECs and other entities. (Id). Since all such carriers operating in Ameritech Illinois' territory are interconnected with or leasing portions of Ameritech Illinois' network, it is efficient for CLECs to send traffic destined for customers of third parties over Ameritech Illinois' network. Id. at 55. If this were otherwise. Staff claims, all CLECs would need to interconnect with all other CLECs and other entities to exchange traffic, which would be extraordinarily costly and inefficient. Id.

984. To satisfy Checklist Item 5, Staff contends, AI must amend its permanent unbundled local switching-shared transport (ULS-ST) tariff to provide for intraLATA toll capability, demonstrate that Commission approved tariffs that provide for AIN-based custom routing capability (for Operator Services/directory assistance (OS/DA)) traffic as a component of Ameritech Illinois' ULS-ST offering are on file, and offer ULS-ST with a transiting function.

c. AT&T Issues/Position

985. On July 10, 2002, AT&T notes, the Commission issued its Order in Docket 00-0700 establishing TELRIC rates for permanent shared transport. Ameritech's compliance tariffs, AT&T observes, are not required to be filed pursuant to that Order until September 21, 2002. If Ameritech fails to comply with the Order, AT&T intends to raise issues regarding Ameritech's non-compliance in the next phase of this proceeding.

d. Z-Tel Issues/Position

986. Z-Tel utilizes shared transport and, it contends, Ameritech does not provide it with nondiscriminatory access to unbundled shared transport. According to Z-Tel, this Commission's recent Order in Docket 01-0614 rejected, Ameritech's efforts to restrict CLECs from using the shared transport UNE for intraLATA toll service. The FCC too, Z-Tel contends, has made clear in past section 271 proceedings that BOCs must allow CLECs to use shared transport to provide intraLATA toll service. SWBT Kansas/Oklahoma Order, ¶ 174. Thus, Z-Tel maintains, a failure to provide adequate shared transport is both a violation of state law and a failure of the competitive checklist.

5. Reply Positions

a. Ameritech Reply Position.

987. AI maintains that the tariff it filed in September of 2001 (to comply with the provisions of section 13-801 of the PUA) allows CLECs to use unbundled local switching with shared transport ("ULS-ST") to carry intraLATA toll. (Am. Ill. Ex. 1.1 at 32; Tariff Ill. C.C. No. 20, Part 19, § 21). AI observes that Z-Tel wholly fails to acknowledge this tariff, much less challenge it. So too, AI contends, Z-Tel's assertions regarding "end-to-end" shared transport, i.e., shared transport with terminating switching, are similarly unwarranted. (Z-Tel Br. at 15). According to AI, Z-Tel provides no authority showing federal law to require Ameritech Illinois to offer "end-to-end" shared transport.

988. The Commission's order in Docket 01-0614, AI notes, while recognizing the absence of a federal requirements, imposes an obligation under state law to provide terminating switching as part of a network elements "platform." Ameritech Illinois maintains that it has filed a tariff in compliance with that order that Z-Tel utterly ignores. Staff, however, has stipulated that the tariff has mooted the intraLATA toll issue. See AI/Staff Joint Stipulation to Eliminate Issues, ¶ 2(d).

989. Further, AI notes, the Staff's issues concerning the use of ULS-ST for transiting and AIN-based custom routing, are likewise mooted by Ameritech Illinois' recent tariff filings. (Staff Br. at 159-160) In compliance with the Commission's Order in Docket 01-0614, Ameritech Illinois filed a tariff that allows ULS-ST to be used for transiting. The AIN-based custom routing issue was litigated in Docket 00-0700, and Ameritech Illinois has filed a tariff that complies with the Commission's Order in that docket.

b. Z-Tel Reply Position

990. Z-Tel supports Staff's recommendation that the Commission should require Ameritech to (1) amend its permanent unbundled local switching-shared transport (ULS-ST) tariff to provide for intraLATA toll capability; (2) demonstrate that Commission approved tariffs are on file that provide for AIN-based customer routing capability; and (3) offer ULS-ST with a transiting function." It further disputes Ameritech's assertion that "federal law does not require incumbent LECs to let CLECs use shared transport for intraLATA toll." (AI Br. at 128). According to Z-Tel, the United States District Court for the Eastern District of Michigan recently held that the UNE Remand Order obligates Ameritech to enable CLECs to provide intraLATA toll over UNE shared transport.

6. Staff's Proposed Remedial Actions for Item 5 Compliance

991. Ameritech Illinois has filed with the Commission a permanent shared transport tariff pursuant to Commission Order in Docket 00-0700. It has not yet been shown to comply with the Commission's Order. Until it is established that Ameritech's permanent shared transport tariff fully complies with federal and state requirements, and such tariff is in effect, the Commission should decline to endorse an Ameritech Illinois Section 271 application.

992. As such, Staff maintains, Ameritech Illinois must demonstrate that it has in effect a permanent ULS-ST tariff with an acceptable transiting functionality. Ameritech Illinois must also demonstrate that its permanent shared transport tariff provides for AIN-based custom routing to alternative OS/DA platforms of a CLEC's choice.

7. Commission Review and Conclusion

993. The record shows Ameritech Illinois to be compliant with the requirements for provisioning Unbundled Local Transport. AI acknowledges its federal obligations to provide both dedicated and shared transport to requesting CLECs. It provides shared transport through ULS-ST, available to CLECs via agreement or tariff. AI informs that it filed a tariff, in September of 2001, that allows CLECs to use unbundled local switching with shared transport. Ameritech tells us that the AIN custom routing issue was litigated in Docket 00-0700 and it has filed a Compliance tariff consistent with our Order for that proceeding. Staff points out, however, that this is an assertion we cannot yet verify. Accordingly, we reserve our final finding on the matter for Phase II of this proceeding.

994. On brief, Staff indicates that Ameritech has filed a permanent ULS-ST shared transport tariff pursuant to this Commission's Order in Docket 00-0700 (July 14, 2002). Staff indicates, however, that this tariff has not yet been reviewed for compliance purposes. To the extent that the Compliance tariff meets with our Order, and there is no showing otherwise in Phase II, AI would be found to satisfy this Checklist Item. As such, we reserve this issue for Phase II of this proceeding, in order to confirm that Ameritech is tariff – compliant.

995. Of record, AI/Staff Joint Stipulation No. 2 indicates that the issue – whether CLECs are entitled to use ULS-ST to provide intraLATA toll services to their end customers – an issue once raised by Staff, was adequately addressed in Docket 01-0614 and need not be addressed in this proceeding. Pursuant to the Joint Stipulation, the compliance tariff for Docket 01-0614 resolves the issue for Staff. In our view, the issues Z-Tel raised mirror those set out by Staff and accordingly, also have been resolved by the filing of the Compliance tariff.

996. Z-Tel complains, in its exceptions brief, of AI's requirement that CLECs negotiate contract amendments in order to obtain shared transport services. In

response, AI would note that Z-Tel does not allege that SBC-Illinois has refused to negotiate a contract amendment, or that securing an amendment is unreasonably burdensome, or that Z-Tel has experienced any difficulty in obtaining a contract amendment to secure the shared transport it requires. On the whole, we find no merit to Z-Tel's assertions.

F. CHECKLIST ITEM 6 – Unbundled Local Switching

1. Description

997. Section 271(c)(2)(B)(vi) of the 1996 Act requires that a 271 Applicant provide:

"[l]ocal switching unbundled from transport, local loop transmission, or other services." 47 U.S.C. Sec. 271(c)(2)(B)(vi).

2. Standards for Review

998. A switch connects end user lines to other end user lines. It also connects end user lines to trunks used for transporting a call to another central office or to a long distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk – such as to a competing carrier's operator services.

999. In the Second BellSouth Louisiana Order, the FCC required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. Id. It described the features, functions, and capabilities of the switch to include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers. Id. Additionally, according to the FCC, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.

1000. Further, in this same Order, the FCC required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic. The FCC also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information. Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching. As such, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.

1001. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality. In addition, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.

1002. (Adapted from the New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

3. The State Perspective

1003. The FCC defined unbundled local switching (ULS) in its Local Competition Order (FCC 96-325). This FCC definition is similar to the definition proposed by Staff and accepted by the Commission in Docket 95-0458. The FCC definition states:

> We define the local switching element to encompass line-side and trunk-side facilities plus the features, functions, and capabilities of the switch. The line-side facilities include the connection between a loop termination at, for example, a main distribution frame (MDF), and a switch line card. Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card. The "features, functions, and capabilities" of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks. It also includes the same basic capabilities that are available to the incumbent LEC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. In addition, the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions. Thus, when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single element on a per-line basis. A requesting carrier will deploy individual vertical features on its customers' lines by designating, via an electronic ordering interface, which

> features the incumbent LEC is to activate for particular customer lines.[17]

1004. The FCC requires the incumbent LECs to offer unbundled access to local circuit switching, except for switching used to serve end users with four or more lines in access density zone 1 (the densest areas) in the top 50 Metropolitan Statistical Areas (MSAs), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link.

1005. This Commission determined in Docket 01-0614, that the Illinois Public Utilities Act does not require the "switch carve out" required by the FCC. The required unbundled switching in Dockets 95-0458, 96-0486, 98-0555, and 98-0396. The initial interim pricing for ULS was set in Docket 96-0486. Permanent pricing for ULS was set in Docket 00-0700. Order, Docket 00-0700 (July 14, 2002). Ameritech filed tariffs to comply with that order on August 21, 2002 and the tariffs took effect on September 21, 2002.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1006. "Local switching", AI maintains, describes the basic function that switches perform in connecting end user lines to each other and to "trunks," which are used to transport a call to another central office or to a long-distance carrier. See New Jersey 271 Order at C-28, n.764. In addition to the basic switching function, unbundled local switching includes both line-side and trunk-side facilities, and all the "features, functions, and capabilities of the switch . . . that are available to the incumbent LEC's customers." Id. at C-28, ¶ 54. These features and functions include "all vertical features that the switch is capable of providing," such as call waiting and call forwarding, "as well as technically feasible customized routing functions," where a switch directs a call to a specific trunk. Id.

1007. Ameritech Illinois asserts that, it satisfies Checklist Item 6 by offering - pursuant to binding interconnection agreements - unbundled local switching that includes all the same features and functions that are available to its own retail operations. (Am. Ill. Ex. 5.0. Sch. WCD-1, ¶ 179; Am. Ill. Ex. 1.0. Sch. SJA-1, ¶ 99). Its witnesses, Deere, Alexander and Muhs, all testified as to AI's compliance.

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[17] First Report and Order, In the Matter of Implementing of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket 95-185, (released August 8, 1996), 11 FCC Rcd. 15499, at ¶ 412.

The Unbundled Local Switching "Carve Out"

1008. According to AI, both AT&T and Staff assert in testimony that, Ameritech Illinois should not be permitted to invoke its well-established rights under FCC rules to stop offering unbundled local switching in certain areas where it provides EELs. (AT&T Ex. 5.0 at 41-42; AT&T Ex. 5.1 at 3-4 ; Staff Ex. 3.0 at 139-140). There are however, AI maintains, at least three reasons why these assertion fail to raise a legitimate Sec.271 issue.

1009. First, AI contends, the FCC rules clearly and unambiguously permit Ameritech Illinois to take advantage of this "switch carve out." The UNE Remand Order (¶¶ 277-99) and the pertinent FCC rule i.e., 47 C.F.R. §51.319(c)(2), the Company maintains, make crystal clear that Ameritech Illinois need not offer unbundled local switching in certain areas where it also provides nondiscriminatory access to EELs.[18] There is no question, Ameritech Illinois contends, but that it provides such access to EELs. Indeed, AI observes that its EELs offering is tariffed in Illinois (Ill.C.C. No. 20, Part 19, Section 20) and the EELs rates were approved in Docket 98-0396 on October 16, 2001. Neither Staff nor AT&T presented any evidence of a problem with Ameritech Illinois' EELs offering, it argues, and there is none.

1010. Second, AI notes, the Commission's Order in Docket 01-0614 prevents it from invoking the "switch carve out," at least with respect to the intrastate services subject to Section 13-801 of the Illinois Public Utilities Act. Finally, Ameritech Illinois has not invoked this right, it explains, such that Staff and AT&T attempt to raise an issue that has no basis in fact.

The Secure Switch Features

1011. A "secure" switch feature, AI explains, is an unsold capability that the manufacturer places in the switch, behind a password-protected security device that prevents purchasers (namely, LECs) from accessing or using that feature unless they agree to pay for the feature software license. In the event that the purchasing LEC agrees to pay the "right to use" fees, AI informs, the manufacturer will activate (or enable the LEC to activate) that feature. According to AI, a LEC does not have access to the secure switch features (or any legal right to use them) until it pays for that right.

1012. The issue at hand, AI contends, is whether Ameritech Illinois provides reasonable access to secure switch features. (Staff Ex. 3.0 at 141-48). Ameritech Illinois does so through the Bona Fide Request "BFR" process, it explains, which is a

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[18] The FCC's rule, 47 C.F.R. § 51.319(c)(2), provides that an ILEC does *not* have to provide unbundled local switching to any requesting carrier who services end users with four or more voice grade lines, as long as the ILEC provides EELs throughout "Density Zone 1" (which is defined elsewhere in the FCC's rules), and the ILEC's local switches are located in Density Zone 1 and in the top 50 Metropolitan Statistical Areas.

time-tested, Commission-approved way for Ameritech Illinois to respond to specialized requests from CLECs.

1013. In the Second Louisiana 271 Order (¶ 220), AI notes, the FCC addressed the situation where a BOC is asked to provide a new vertical feature for the first time. The FCC held that a BOC can require CLECs to request such a vertical feature through a "predetermined process that gives the BOC an opportunity to ensure that it is technically feasible and can otherwise develop the necessary procedures" for ordering those features. Further, AI notes, the FCC found that the process "cannot be open ended" and "should not be used to delay the availability of the vertical feature"; rather, a BOC must "provide the requesting carrier with a response within a reasonable and definite amount of time."

1014. Ameritech Illinois' BFR process, it contends, meets with the FCC's criteria. It is a "predetermined process" that gives Ameritech Illinois a chance to perform the technical and process work needed to provide and support the new switch feature. It is not an open-ended process, AI observes, because it requires Ameritech Illinois to provide a response to a request within a definite (and reasonable) time. In particular, it requires Ameritech Illinois to provide a preliminary analysis of a request within 30 days and, if the CLEC authorizes further work, to provide a complete price quotation and delivery date within an additional 90 days. (Am. Il. Ex. 5.0, Sch. WCD-1, ¶ 83-87). These are the maximum, and not the minimum intervals, AI notes. In other words, it observes, the tasks can sometimes be completed in less time. According to AI, on at least three occasions, this Commission has approved of the very same BFR process and timelines that are put at issue here.

1015. While Staff offers two reasons why the BFR process should not apply to secure switch features, AI contends that neither of them has any merit. First, AI notes, Staff believes that there is no need for Ameritech Illinois to conduct compatibility testing because manufacturers would not design switch features that could not work with each other. (Staff Ex. 3.0 at 146). Mr. Deere however, AI asserts, explained that manufacturers *do* place incompatible features in a switch so that carriers can select from a wide range of potential services; it is up to the telephone company to select a mix of features that can operate with one another. (Am. Il. Ex. 3.1 at 28-29).

1016. AI further notes that Staff second suggestion, i.e., that Ameritech Illinois may be double-recovering costs if it charges CLECs for secure switch features, was also answered on record. In this regard, AI points to Mr. Deere explanation that. there is no danger of double-recovery, because the cost models used in developing Ameritech Illinois' approved rates excluded inactive switch features. (Am. Il. Ex. 5.2 at 21-22).

Access to RCF/RACF Features

1017. Under the FCC's rules, AI recognizes, ILECs are required to provide CLECs with access to all the features, functions and capabilities of the local switch,

including vertical features resident in the switch. It notes AT&T's contentions that Ameritech Illinois is improperly denying it access to a switch feature known as Remote Access to Call Forwarding ("RACF"). (AT&T Ex. 4.0 at 8-13). RACF, AI explains, is a feature that allows customers to dial into a special telephone number to activate, deactivate or change the call-forwarding functionality offered as a vertical feature. (Am. Ill. Ex. 1.2 at 38). According to Ameritech Illinois, it offered RACF to end users prior to December 18, 2000, at which time it was grandfathered because of concerns resulting from fraudulent use of the service. (Am. Ill. Ex. 1.1 at 38-39).

1018. Ameritech Illinois indicates that its commitment to provide RACF to requesting CLECs, now obviates this issue. Where the feature is still active in a switch and/or where an end user has RACF on a grandfathered basis, Ameritech Illinois observes, it will be made available under appropriate ordering procedures. In other instances, AI explains, the submission of a BFR by the CLEC will be required so that the Company can determine what, if any, additional engineering work or costs (*e.g.*, switch vendor licensing fees) may be involved. (Am. Ill. Ex. 1.1 at 39). Ameritech Illinois already has stated that it will send an accessible letter to the CLECs providing additional information. (Tr. 1614-15).

1019. AI observes that Z-Tel raised a separate issue with respect to remote call forwarding ("RCF"). (Z-Tel Ex. 3.0 at 11). Unlike RACF, AI notes, RCF is not a feature of the switch port providing dial tone to the end user. AI explains RCF to be a permanent call forwarding functionality that is provisioned by placing a translation against a telephone number in another central office switch, which then forwards all calls made to that number to the end user's local telephone number. (Am. Ill. Ex. 1.2 at 38). To the extent that Z-Tel actually meant to address RACF, AI notes, this issue is now resolved. If Z-Tel truly meant to address RCF, AI explains that CLECs may provide RCF functionality by purchasing an unbundled local switching port in the remote central office. According to AI, however, RCF cannot and will not automatically "migrate" when a CLEC assumes a customer using the UNE-P, because it is not associated with the end user's switch port. (Am. Ill. Ex. 1.2 at 38-39). All total, Ameritech Illinois maintains, it is, or will be, providing CLECs the functionalities required by section 271.

Billing

1020. Ameritech Illinois asserts that it provides any CLEC using Unbundled Local Switching, a Daily Usage File showing per-call billing information for each line-side ULS port. (Am. Ill. Ex. 1.0,Sch. SJA-1, ¶ 104).

Customized Routing

1021. "Customized routing," AI explains, permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching, provided by the incumbent, which will carry certain classes of traffic originating from requesting carrier's customers. Second Louisiana 271 Order, ¶ 221. When a CLEC is using Ameritech Illinois' unbundled local switching or unbundled local switching with shared transport,

and its end user makes an operator service ("OS") or directory assistance ("DA") call, Ameritech Illinois' end office switch must recognize and route the call based on the CLEC's routing instructions. According to AI, the CLEC may choose one of two routes for these OS/DA calls. It may choose to have the end office route the OS or DA call to Ameritech Illinois' OS/DA platform or to the platform of a third-party OS/DA provider. Alternatively, AI notes, the CLEC may use custom routing to route the call to a dedicated trunk group that will transport the call to the CLEC's own OS or DA platform. (Am. Ill. Ex. 5.0, Sch. WCD-1, ¶ 194).

1022. Ameritech Illinois contends that it provides two methods by which CLECs using unbundled local switching may have OS/DA calls custom routed according to their own specifications: through the Advanced Intelligent Network ("AIN") and through Line Class Codes. (Am. Ill. Ex. 5.0, Sch. WCD-1, ¶¶ 184-186). AIN is the standard method, AI explains, that has been used in SWBT states for some time, and was introduced into the Ameritech region in the fall of 2000. In a few low-volume applications where AIN is not technically feasible (such as certain coin services), Ameritech Illinois indicates that it uses line class codes to custom route CLEC calls. (Id. ¶ 185). It further notes that CLECs may also request non-AIN custom routing for OS/DA through the BFR process. (Id. ¶ 187).

1023. According to AI, no party to this proceeding disputes that Ameritech Illinois offers custom routing through AIN and through Line Class Codes. The only issue is whether Ameritech Illinois provides a special form of custom routing, described by WorldCom as custom routing on Feature Group D ("FGD"). (WorldCom Ex. 5.0 at 6-7). This very same issue, AI contends, was addressed by the FCC in the Second Louisiana 271 Order (¶ 226). There, the FCC made clear that an ILEC must provide custom routing on Feature Group D signaling only where: (1) a competing carrier requests Feature Group D signaling; and (2) it is technically feasible for the incumbent LEC to offer it. (Id). Further, AI notes, the FCC directs that the incumbent LEC "may recover [the associated costs] from requesting carriers." Id. n.727. In other words, AI contends, the CLEC must follow the BFR process.

1024. None of these directives, AI maintains, have been satisfied in the WorldCom situation. According to AI, WorldCom has steadfastly refused to issue a bona fide request for the development of customized routing on Feature Group D apparently because it has no intention of paying for the development of the specialized capability it seeks. This is expressly contrary to the FCC's requirement, AI asserts, that incumbent LECs "recover such costs from requesting carriers". Second Louisiana 271 Order, ¶ 226 n.727. WorldCom also fails on technical feasibility, AI continues, because, by its own admission, custom routing over Feature Group D is not technically feasible in almost half of the switches used by Ameritech Illinois. Approximately forty-five percent (45%) of the switches used by Ameritech Illinois are Nortel switches, AI explains, and WorldCom witness Caputo acknowledges that Nortel switches are not technically able to support custom routing over Feature Group D. (WorldCom Ex. 5.1 at 16). Staff too, AI notes, agrees that custom routing over the Feature Group D is not technically feasible in Ameritech Illinois' network. (Staff Ex. 17.0 at 5-6).

b. WorldCom Issues/Position

1025. WorldCom raises an issue with respect to customized routing, asserting that it has instructed Ameritech on how it wants its OS/DA calls routed to its own platform or to third party OS/DA platforms. It contends that Ameritech has refused to implement WorldCom's preferred OS/DA customized routing method.

1026. According to the FCC, WorldCom maintains, a BOC must provide CLECs with technically feasible customized routing functions, so that the CLEC can designate the particular outgoing trunks that will carry certain classes of its customers' originating traffic. Texas 271 Order at para. 346, note 1021; Louisiana II Order at para. 221. Further, WorldCom asserts, the CLEC must tell the BOC how to route its customers' calls. Louisiana II Order, para. 224).

1027. Its witness Caputo, WorldCom contends, discussed Ameritech's failure to provide customized routing of OS/DA (Operator Services/Directory Assistance) calls placed by WorldCom's customers. As he explained, WorldCom can provide OS/DA to its customers in one of two ways: (1) by purchasing it from Ameritech, or (2) by providing it itself. Even if it were to choose the latter option, WorldCom asserts, it is still dependent upon Ameritech to route WorldCom's UNE-P customers' OS/DA calls to WorldCom's OS/DA facilities. According to WorldCom, while it prefers this option (for the control it allows over WorldCom's OS/DA service offerings), Ameritech fails to provide the customized routing that is necessary to meet both WorldCom's business needs and FCC rules, even though it is technically feasible. Mr. Caputo, WorldCom claims, provided extensive evidence to show that Worldcom's preferred customized routing method is technically feasible. (WorldCom Ex. 5.0, 5.1). He further testified, WorldCom notes, that Ameritech has been on notice for years as to how WorldCom prefers to have its OS/DA traffic routed.

1028. Due to Ameritech's failure to provide compliant customized routing, WorldCom argues, it must provide OS/DA as UNEs – at TELRIC-based prices – until it complies with its customized routing obligations. WorldCom prays that the Commission ensure that Ameritech satisfies this legal obligation until such time as it successfully implements WorldCom's requested mode of customized OS/DA routing.

c. Z-Tel Issues/Position

1029. Z-Tel indicates that it purchases Unbundled Local Switching ("ULS") from Ameritech, as part of the UNE-P, in order to provide telecommunications services, including local exchange, exchange access, and long distance services to its end users. According to Z-Tel, Ameritech places restrictions on ULS that prevent Z-Tel from using ULS to terminate certain kinds of telecommunications traffic, such as intraLATA toll calls. This use restriction on ULS, Z-Tel contends, is an unlawful checklist violation, and it notes that the Commission has found the restrictions to also violate state law.

1030. In the recent Docket 01-0164 Order, Z-Tel contends, the Commission noted that:

> network elements are defined to include equipment used in the provision of a telecommunications service. The terminating switching function of ULS-ST fits this description and requesting carriers must be given access to it as a network element, to complete intraLATA toll calls. Order at 139, Docket 01-0614.

1031. In this same Order, Z-Tel observes, the Commission further stated that :

> Ameritech should not be allowed to charge terminating access to a CLEC that utilizes the ULS-ST portion of the network platform to provide intraLATA toll calling. Ameritech's argument that it has always done so, overlooks the fact that the legislature has now changed Ameritech's way of doing business in numerous ways. Order at 139, Docket 01-0614.

1032. According to Z-Tel, Ameritech Illinois also fails to provide a certain switching functionality to CLECs, known as Remote Call Forwarding ("RCF"). RCF, it explains, is a service often subscribed to by small business customers, which allows the customer to keep its phone number when changing physical locations. Z-Tel contends that when it places a UNE-P order to migrate a customer's service, Ameritech refuses to migrate the remote call forwarding function with the order. As a result, Z-Tel contends, the end user customer is required to change phone numbers in order to have Z-Tel as the local service provider. Naturally, Z-Tel observes, this imposes a significant burden and cost on the customer, *e.g.*, new business cards, yellow page listings, etc., and is a major impediment to competing in this market segment. Although Ameritech has committed to providing this functionality at some point, Z-Tel notes, it has not yet done so

d. Staff Issues and Position

1033. Staff raises two issues with respect to Ameritech's provisioning of unbundled local switching:

(1) whether AI offers an unbundled local switching offering, that is reasonably available, according to cost criteria for availability; and

(2) whether AI provides secure features to CLECs in a non-discriminatory manner?

1034. To comply with the requirements of unbundled local switching, Staff maintains, a BOC must make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality. *Second BellSouth Louisiana Order*, 13 FCC Rcd. at 20723.

1035. According to Staff, the FCC further states that a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch. Id. at 20723

Availability of Unbundled Local Switching Based on Cost Criteria

1036. Staff observes that the Commission rejected Ameritech's proposed ULS rate un Docket 01-0614, and ordered Ameritech to adopt the flat-rated ULS charge proposed by AT&T/WorldCom. See Order at 6, Docket 00-0700. (July 14, 2002).

Secure Features

1037. The bona fide request ("BFR") process that Ameritech uses to provision secure features, Staff observes, may not result in the nondiscriminatory provision of secure features to CLECs "Secure features," it explains, are vendor-developed software packages which provide additional capabilities or services in AI switches.

1038. Staff expresses concern that the BFR process Ameritech uses to provision secure features does not result in nondiscriminatory provision of secure features to CLECs -- provisioning intervals at parity with those Ameritech would experience when provisioning such features for itself. (Staff Ex. 3.0 at 99). Staff also indicates its concern that the BFR process might lead to double recovery by Ameritech of the costs involved in provisioning secure features active on some switches but not on others. (Staff Ex. 3.0 at 147).

5. Reply Positions

a. Ameritech Illinois Reply Position

Unbundled Local Switching and IntraLATA Toll

1039. AI observes Z-Tel to continue with the allegation that Ameritech Illinois does not allow Z-Tel to use unbundled local switching with shared transport (ULS-ST) to provide intraLATA toll. In connection with checklist item 5 (unbundled local transport) AI notes, Z-Tel had argued that the shared transport half of this product was deficient. At this juncture, AI points out, Z-Tel challenges the "unbundled local switching" half of the offering. As demonstrated under checklist item 5, AI contends, Z-Tel's allegation is both wrong (because Ameritech Illinois' tariff expressly allows Z-Tel to use ULS-ST for intraLATA toll) and irrelevant to checklist compliance (because Z-Tel's position is based

solely on the Commission's Order in Docket 01-0614, which explicitly addressed state law rather than federal law).

Secure Switch Features

1040. As already demonstrated, Ameritech Illinois contends, it provides CLECs nondiscriminatory access to secure switch features through the BFR process. According to AI/Staff Joint Stipulation No. 2, Staff agrees that the BFR process is appropriate. (Staff Br. at 164; Aug. 23, 2002 Stipulation to Eliminate Issues, ¶ 4).

Rates for Unbundled Local Switching

1041. AI informs that the Commission issued an order (which Staff calls the "TELRIC 2000 Order") in Docket 00-0700 on July 14, 2002. That order, it maintains, determined that Ameritech Illinois' current cost studies do not support a usage-sensitive component to the ULS rate, and that the rate should be "flat." Order at 4-6, Docket 00-0700 (July 14, 2002). Ameritech Illinois duly filed its compliance tariff in a timely manner on August 23, 2002. According to AI, Staff is wrong to contend that Ameritech Illinois' unbundled local switching rates do not comply with that order. (Staff Br. at 160-162)

1042. Critical to the Commission's decision, AI contends, is its understanding as to just what Staff means when it asserts "non-compliance." Staff does not allege that there was or is any "non-compliance" now, i.e., *after* the date of the Order in Docket 00-0700. It does not contend that there were any substantive deficiencies in the compliance tariff, and it does not contend that the tariff was untimely. The Order specifically gave Ameritech Illinois 45 days to file a compliance tariff, and that tariff was indisputably filed on time. Thus, Ameritech Illinois has been – and remains in – full compliance with Commission orders concerning TELRIC pricing of ULS.

1043. Nor is Staff complaining about the rates Ameritech Illinois charged *before* the Order in Docket 00-0700. The Commission's previous order in the TELRIC proceeding (Docket 96-0486/96-0569) directed Ameritech Illinois to charge a flat rate ($5.01) for ULS, and Ameritech Illinois did so. Staff's only complaint is that Ameritech Illinois *proposed* a new ULS rate that included a usage-sensitive component in Docket 00-0700. See Staff Br. at 161 (quoting Commission's Order: "The Commission rejects Ameritech's *proposed* ULS rate structure."). Thus, Ameritech Illinois did not charge usage-based rates for ULS either before or after the Order in Docket 00-0700. In Ameritech's view, exercising the right to be heard, and putting forth a proposal at the litigation stage, does not in any way constitute non-compliance.

Customized Routing

1044. It is uncontested, the Company asserts, that Ameritech Illinois offers two versions of custom routing that CLECs like WorldCom can use to route UNE-P calls to their own operator services and directory assistance platform. (Am. Ill. Br. at 135-136).

Ameritech Illinois further demonstrated (and WorldCom has not contested) that WorldCom has yet to make a Bona Fide Request for its desired *new* version of custom routing for Feature Group D, or to compensate Ameritech Illinois for the cost of development as required by the FCC. (Id. at 136). AI sees WorldCom to argue that it has "instructed" Ameritech Illinois to develop that version of custom routing. (WorldCom Br. at 32). It is insufficient, the Company asserts, to merely "instruct" Ameritech Illinois to develop a specialized service that – by all indications – will be used only by WorldCom. The development of such a specialized routing capability would be an expensive undertaking and the FCC has ruled that incumbents need not follow a CLEC's "instructions" without compensation. Second Louisiana 271 Order, ¶ 221. In AI's view, WorldCom simply wants something for nothing. It wants Ameritech Illinois to develop and test an application without any advance payment and without any promise on WorldCom's part that it will purchase the capability so that Ameritech Illinois can recover these costs. Not only is this position contrary to the Second Louisiana 271 Order, AI asserts,it is commercially unreasonable on its face.

1045. WorldCom's other argument is equally deficient, AI maintains. WorldCom contends that its proposal for custom routing over Feature Group D is technically feasible. (WorldCom Br. at 33). By WorldCom's own admission, however, custom routing over Feature Group D is not technically feasible in the Nortel switch (WorldCom Ex. 5.1 at 16), which accounts for 45% of all Ameritech Illinois switches. (See Am. Ill. Br. at 136). That leaves WorldCom to claim that Nortel *could* develop this capability in the future. (See WorldCom Ex. 5.1 at 8). Unless and until Nortel does so, AI asserts, custom routing over Feature Group D remains technically infeasible in almost half of Ameritech Illinois' switches. If a proposal where deemed technically feasible today, based on the mere possibility that it might be feasible tomorrow, the concept of technical feasibility is rendered meaningless.

1046. WorldCom's witness claimed that it has conducted successful laboratory tests of custom routing over Feature Group D (WorldCom Ex. 5.0 at 8) but then contradicted that assertion when he admitted that there are technical problems in the Nortel switch (WorldCom Ex. 5.1 at 16). In any event, AI maintains, technical feasibility cannot be determined by WorldCom just saying so. SBC offered to put those assertions to the test under live, real-world conditions in California, but WorldCom refused to pay the costs of the developing and deploying that capability. (Am. Ill. Ex. 5.2 at 16-20). The Company observes Staff to agree with Ameritech Illinois on this issue. (Staff Ex. 17.0 at 5-6).

b. AT&T Reply Position

Limited Switching Feature Availability

1047. On July 11, 2002, AT&T notes, Ameritech filed its unbundled local switching tariff in alleged compliance with the Commission's Order in Docket 01-0614. (June 11, 2002). In the unbundled local switching section of that tariff – ILL. C.C. NO.

20, Part 19, Section 21, 1st Revised Sheet No. 4, Ameritech describes the ULS-ST Features, Functions and Capabilities as follows:

> The features, functions, and capabilities of the end office switch include access to all available basic local switching functions and basic capabilities the switch is capable of providing and which the Company currently makes available to its end-user customers for the port type selected. Access to other basic capabilities that the switch is capable of providing, but are not currently resident in the switch may be requested through a Bona Fide Request. Access to other features, functions and capabilities currently resident in the switch but not offered by the Company can be requested through a Bona Fide Request. Id.

1048. On its face, AT&T contends, this tariff violates the FCC rules implementing the federal Act because it limits the features, functions and capabilities currently resident in the switch that are available to CLECs as only those features, functions and capabilities that the Company offers to its end user customers. The FCC's rules, however, require that *all* features the switch *is capable of providing* be provided as part of the unbundled local switching element, *regardless of whether the Company offers these features to its retail customers.* In its First Report and Order, AT&T informs, the FCC defined the local switching element as follows:

> We define the local switching element to encompass line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The line-side facilities include the connection between a loop termination at, for example, a main distribution frame (MDF), and a switch line card. Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card. The "features, functions, and capabilities" of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. It also includes the same basic capabilities that are available to the incumbent LEC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. In addition, the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions. Thus, when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single element on a per-line basis. A requesting carrier will deploy individual vertical

> features on its customers' lines by designating, via an electronic ordering interface, which features the incumbent LEC is to activate for particular customer lines. First Report and Order, Para 412.

1049. Further, AT&T contends, the Bell South Louisiana II Order confirms that Ameritech Illinois is legally obligated to provide CLECs with all vertical features the switch is capable of providing, regardless of whether these features are available to Ameritech's retail customers:

> Bell South fails to acknowledge that, consistent with our rules, it is legally obligated to provide all vertical features "that the switch is capable of providing." Vertical features provide end-users with various services such as custom routing, call waiting, three-way calling, caller ID, and Centrex. According to BellSouth's interpretation of the rule, it is only legally obligated to make available vertical features that it currently offers to its retail customers. We disagree. Bell South Louisiana II Order, Para. 216.
>
> Our rules require BellSouth to provide all vertical features loaded in the software of the switch, ***whether or not BellSouth offers it on a retail basis.*** As the Commission has previously explained, requiring BOCs to provide all vertical features that the switch is capable of providing permits competing carriers using unbundled local switching to compete more effectively by designing new packages and pricing plans. BellSouth's interpretation would limit the end user's choice of vertical features to those that BellSouth has made a business decision to offer, and therefore, would stifle the ability of competing carriers to offer innovative packages of vertical services. Bell South Louisiana II Order, ¶ 217 (emphasis supplied).

1050. AT&T takes issue with Ameritech's tariff for limiting the features a CLEC can obtain to those offered to Ameritech's end user customers. On this basis it claims that Ameritech's ULS offering fails to satisfy the requirements of checklist item (vi).

Restrictions On CLECs' Use Of Unbundled Local Switching

1051. In response to the claim that Ameritech has improperly prevented AT&T from using the Remote Access to Call Forwarding ("RACF") of the local switch, AT&T observes Ameritech to state that it "has committed to provide RACF to requesting CLECs, *thus obviating the issue.*" (Ameritech Initial Br. at 133) (emphasis added). According to AT&T, there is no evidence in the record establishing Ameritech has complied with its commitment. At the hearing, AT&T observes, Ameritech's witness

only indicated that he had requested that the RACF restriction be removed and that, as far as he was concerned, it was "in progress." (Tr. 1318). Until such time as Ameritech has eliminated all limits on a CLEC's access to "all vertical features that the switch *is capable of providing*," AT&T argues, it fails to satisfy checklist item (vi).

c. WorldCom Reply Position

1052. Given that Ameritech is required to provide customized routing as a part of its obligation to provide local switching as an unbundled network element, WorldCom contends, no CLEC is required to utilize a BFR process to obtain an unbundled network element.

1053. Ameritech also is seen to claim that 45 percent of the switches that it owns in Illinois are Nortel switches. According to Ameritech, too, WorldCom witness Edward Caputo acknowledged that Nortel switches are not able to technically support customer routing over FGD trunks. For this reason, Ameritech asserts that custom routing over FGD trunks in Ameritech's network is not technically feasible. (Ameritech Brief, at 137). This argument is misleading, contrary to the record and should be rejected, WorldCom argues.

1054. According to WorldCom, the record contains substantial evidence that the custom routing it proposes, does work. As WorldCom witness Caputo testified, WorldCom's proposal for customized routing uses line class codes and standard switch table routing features and functions. This will facilitate routing of OS/DA calls to WorldCom's Feature Group D trunks and to WorldCom's OS/DA platforms. A Proprietary Schedule (EJC-1-P) attached to Mr. Caputo's direct testimony, WorldCom notes, provides a complete package of switch vendor documentation on how to accomplish such routing as well as the results of its lab tests of this exact custom routing capability. WorldCom contends that its own lab testing included successful tests of customized routing of OS/DA traffic on switches from the three main switch vendors, including Siemens, Nortel and Lucent. (WorldCom Ex. 5.1 at 5-6). Documentation of the results from the testing of the Nortel DMS 500 switch, WorldCom maintains, were included in Proprietary Schedule EJC-1.

1055. Due to Ameritech's failure to provide compliant customized routing, WorldCom contends, it must provide OS/DA as UNEs – at TELRIC-based prices – until it complies with its customized routing obligations. This Commission should ensure that Ameritech satisfies this legal obligation until it successfully implements WorldCom's requested mode of customized OS/DA routing. For these reasons, the Commission should decline to recommend to the FCC that Ameritech Illinois be granted approval to provide in-state, interLATA services in Illinois under Section 271 of the Telecommunications Act of 1996 until Ameritech meets the customized routing obligations of Checklist Items 6 and 7.

d. Staff Reply Position

Availability of Unbundled Local Switching On Cost Criteria

1056. Staff notes Ameritech's assertion, on brief, that its UNE switching rates are no longer an issue because the Commission set permanent rates in its Order for Docket 00-0700. (Ameritech IB at 42). Staff agrees that the Commission ordered Ameritech to implement UNE switching rates that were intended and designed to be TELRIC-compliant based on the best evidence available. It recommends, however, that Ameritech be required to demonstrate in Phase II of this proceeding that it has fully implemented and complied with the Order for Docket 00-0700 before the Commission would give a positive recommendation to the FCC with respect to Ameritech's obligation to provision unbundled local switching at TELRIC compliant rates.

Secure Features - Stipulation

1057. Staff observes Ameritech's assertion that it provides reasonable access to secure switch features through the BFR process, "a time tested, Commission approved way for Ameritech Illinois to respond to specialized requests from CLECs." (Ameritech IB at 131-132). Staff, however, has some concerns. All in all, however, Staff believes that these issues can be addressed through increased monitoring of Ameritech's BFR process. As with provision of UNEs, Staff believes that via increased monitoring of the type ordered in Docket 01-0614, the Commission will not only be able to determine whether Ameritech's is provisioning secure features in accordance with Section 271 of the Act, but will also be able to determine whether the BFR process itself is an appropriate mechanism for such provisioning. In the event that the BFR proves inadequate, Staff maintains that the Commission can always pursue remedial action.

1058. Staff refers to the Stipulation filed with the Commission on August 23, 2002 and entered with the record as AI/Staff Joint Stipulation No. 2. Pursuant to the Stipulation, Staff notes, Ameritech agreed to amend, as expeditiously as possible but in no event later than September 6, 2002, its Bona Fide Request (BFR) tariff in accordance with and in the form of an attached schedule. These amendments, Staff points out, will require Ameritech to notify the Commission: (1) when requests for secure features are referred to the BFR process; (2) of the completion of each step of the process including notification of rates, terms, and conditions being offered to the carrier through the BFR process; and (3) when a request is rejected including notification of the grounds for rejection.

1059. Staff and Ameritech agree that such changes will enable the Commission to adequately monitor Ameritech's UNE provisioning process, and that based upon such amendments to Ameritech Illinois' tariff the "BFR issues" raised by Staff in this docket have been resolved. The BFR issues, as defined and identified in the Stipulation, Staff observes, include its concerns with the BFR process Ameritech uses to provision secure features (the "Secure Feature Issue").

6. Staff Proposed Remedial Actions For Item 6 Compliance

1060. Staff recommends that the Commission have Ameritech demonstrate in Phase II of this proceeding that it has fully implemented and complied with the Order in 00-0700, i.e., the "TELRIC 2000" Order, before giving a positive recommendation to the FCC with respect to Ameritech's obligation to provision unbundled local switching at TELRIC compliant rates and prove that its unbundled local switching offering is reasonably available.

1061. In accordance with, and subject to, the terms and conditions of the Stipulation, the issues Staff raised pertaining to the "Secure Feature" Issue have been addressed adequately pursuant Ameritech's agreement to amend its BFR tariff, and need not be addressed again in this docket subject to confirmation of compliance in Phase II (as provided in the Stipulation). Staff takes no position on ULS issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

7. Commission Review and Conclusion

Secure Features

1062. Staff maintains that the amendments to the BFR tariff as agreed to by Ameritech Illinois now satisfy all of Staff's concerns with respect to the "Secure Features" issue it initially raised in this proceeding. We accept Staff's representation noting that AI provides access to secure switch features through the BFR process and increased monitoring of the BFR process is now provided for in the Joint Stipulation. AI/Staff Stipulation No. 2

1063. Insofar as AT&T would challenge Ameritech's compliance tariff for Docket 01-0614, it had and has the opportunity to do so in that docket. In any event, AT&T's assertions take no account of the BFR process (as modified by the Joint Stipulation) or the entirety of the Second Louisiana 271 Order and thus fail for present purposes.

Access to RCF/RACF

1064. AI sets out its commitment to provide RACF – a feature that allows customers to dial into a special telephone number to activate, de-activate or change the call-forwarding functionality offered as a vertical feature. AT&T contends that the Company's commitment with respect to RACF is not enough. AT&T suggests that, unless a commitment appears on record at the evidentiary stage of a proceeding, it is not viable. While we do not fully accept AT&T's argument, the Commission will require AI to make a showing of the steps and timeframes by which it is implementing its RACF commitment in Phase II.

1065. AI informs that Z-Tel's particular concerns about access to RCF became clear on the basis of subsequent discussions between the companies and through Z-Tel's exception arguments. As such, AI maintains, it is also now clear that the existing record is inadequate to address the matter in a meaningful way. Thus, AI suggests that the RCF issue be re-visited in Phase II.

1066. The Commission accepts this proposal and will consider the issue on the record to be developed for the Phase II proceeding.

Customized Routing

1067. There comes before us WorldCom's custom routing complaint. We, however, do not see WorldCom to have followed through with a responsible request, on its desired and specialized custom routing. WorldCom appears to suggest that AI fails for not generally acceding to its wishes and shows nothing of its willingness to compensate AI for the task.

1068. WorldCom's other customized routing arguments are not substantiated. With little analysis of the exhibits it puts in front of this Commission, WorldCom would have us find that the customized routing it seeks, is technically feasible. We are not persuaded and the Commission requires nothing further of the Company.

Rates

1069. Finally, Staff further points out that this Commission directed AI to implement UNE switching rates, intended and designed to be TELRIC-compliant on the best evidence available in Docket 00-0700 (July 14, 2002). To the extent that the Compliance tariff meets our Order in Docket 00-0700, and there is no showing to the contrary, AI will be found to satisfy the requirements of Checklist Item 6. As such, we reserve this issue for Phase II of this proceeding, in order to confirm that Ameritech has filed a tariff that meets our Order in Docket 00-0700.

G. CHECKLIST ITEM 7 – 911/E911 Access and Directory Assistance – Operator Services

1. Description of Checklist Item

1070. Section 271(c)(2)(B)(vii) of the Act, requires that a 271 Applicant provide nondiscriminatory access to:

(I) 911 and E911 services;

(II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

(III) operator call completion services. 47 U.S.C. Section 271 (c)(2)(B)(vii).

2. Standards for Review

1071. The 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

1072. The FCC found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity." Ameritech Michigan Order, para. 256.

1073. Specifically, a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers." Id. For facilities-based carriers, the BOC must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself." Id.

1074. The provisions of Section 271(c)(2)(B)(vii)(II) and (III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively. Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays." 47 U.S.C. Sec. 251 (b)(3). In the Second BellSouth Louisiana Order, the FCC concluded that a BOC must be in compliance with the regulations implementing section 251(b)(3) in order to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and (III).

1075. In the Local Competition Second Report and Order, the FCC interpreted the phrase "nondiscriminatory access to directory assistance and directory listings" to mean that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."

1076. The FCC concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.

1077. The FCC specifically held that the phrase "nondiscriminatory access to operator services" means that "a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."

1078. Competing carriers may provide operator services and directory assistance by:

1. reselling the BOC's services,
2. outsourcing service provision to a third-party provider, or
3. using their own personnel and facilities.

1079. The FCC rules require BOCs to permit competitive LECs wishing to resell the BOC's operator services and directory assistance to request the BOC to brand their calls. Competing carriers wishing to provide operator services or directory assistance using their own or a third party provider's facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC's database.

1080. Although the FCC originally concluded that BOCs must provide directory assistance and operator services on an unbundled basis pursuant to sections 251 and 252, the FCC removed directory assistance and operator services from the list of required UNEs in the UNE Remand Order.

1081. Checklist item obligations that do not fall within a BOC's obligations under section 251(c)(3) are not subject to the requirements of sections 251 and 252 that rates be based on forward-looking economic costs. Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.

1082. (Adapted from the New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

3. The State Perspective

Operator Services and Directory Assistance (OS/DA)

1083. The UNE Remand Order found that Incumbent LECs are not required to unbundle their OS/DA services pursuant to section 251(c)(3), except in the limited circumstance where an incumbent LEC does not provide customized routing to a

requesting carrier to allow it to route traffic to alternative OS/DA providers. (Third Report and Order and Forth Further Notice of Proposed Rulemaking, In the Matter of Implementing of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, (Released November 24, 1999), 15 F.C.C. Rcd. 3696 at para. 441-442). Operator services are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers. Incumbent LECs, however, remain obligated under the non-discrimination requirements of section 251(b)(3) to comply with the reasonable request of a carrier that purchases the incumbents' OS/DA services to rebrand or unbrand those services, and to provide directory assistance listings and updates in daily electronic batch files. In its Order for Docket 98-0396 (October 16, 2001) the Commission required Ameritech to provide OS/DA at TELRIC prices until Ameritech demonstrated that it could route OS/DA calls to CLEC networks.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1084. The testimonies of AI witnesses Valentine, Deere, and Nations address the Company's compliance with the various components of Checklist Item 7.

911 and E911 Services

1085. In its Michigan 271 Order, Ameritech observes, the FCC elaborated that a BOC must ensure that resellers can provide 911 Service to their end users in the same manner as Ameritech Illinois. Id. (para.256). Meanwhile, for facilities-based carriers, Ameritech Illinois must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what Ameritech provides to itself." Id. Moreover, Ameritech Illinois "must maintain the 9-1-1 database entries for competing LECs with the same accuracy and reliability that it maintains the database for its own customers." Id. Ameritech Illinois disclaims being "responsible for errors made by its competitors" (Id. para. 260 n.672); rather, its responsibility is to process CLEC updates to the E911 database and perform error correction for competitors on a nondiscriminatory basis. (Id. para. 256). The testimony of AI witnesses Valentine, Deere and Nations addresses compliance with Checklist Item 7.

1086. According to Ameritech, 911 Service is provided to private and Public Safety Agencies by tariff. It enables a caller to reach a Public Safety Answering Point ("PSAP") by dialing the familiar digits 9-1-1. (AI Ex. 21.0 at para. 7).

1087. Enhanced 911 Service, Ameritech explains, uses a switch to route 911 calls to a particular PSAP designated by the Public Safety Agency based on the end user's telephone number. (Id). The E911 system, as described by AI, includes the Automatic Number Identification ("ANI") Control Equipment, the Automatic Location

Identification ("ALI") multiplexer, and other station equipment, which are located at the PSAP premises. (Id. para. 8). (Attachment A to AI Ex. 21.0 shows a diagram of the E911 system). The Public Safety Agencies determine whether the PSAPs will receive the ANI (telephone number) and ALI (name and address) with the 911 call. (Id. para. 7).

1088. Ameritech maintains that when an end user dials 9-1-1, the end-user's serving central office sends the call to the 911 Control Office, which then uses the end-user's telephone number (identified by the ANI) to query a routing database known as the Selective Routing/Automatic Location Identification database or "SR/ALI" to determine which PSAP should receive the call. (Id. para. 9). The SR/ALI it explains database stores end-user data such as name, address, telephone number, and class of service, which are provided and updated by each carrier, including Ameritech Illinois, CLECs and other ILECs. (Id. para. 9-10). In addition, Ameritech Illinois has a Master Street Address Guide ("MSAG"), which contains street information with address ranges and routing information for the responding Public Safety Agencies. This information is provided to Ameritech Illinois by the county 911 coordinator(s). (Id. para. 23).

1089. No party to this proceeding, AI asserts, challenges the evidence showing that Ameritech Illinois complies with its obligations to provide CLECs with nondiscriminatory access to 911 and E911 Services. Therefore, and on the basis of the following showing, it contends the Commission should find that Ameritech Illinois has satisfied Checklist item 7(1).

1090. First, according to Ameritech, resale CLECs can provide 911 and E911 Service to their customers in the same manner as Ameritech Illinois provides such services to its own customers. (Id. para. 34). End user records for resale customers are included in the same files that Ameritech Illinois uploads for its own customers. (Id). If Ameritech Illinois' error file identifies an error for a resale customer record, Ameritech Illinois employees (or employees of Ameritech Illinois' 911 Database Services Provider, Intrado) will correct the errors that can be resolved by issuing a service order. (Id. para. 35).

1091. Second, Ameritech Illinois asserts that it provides facilities-based CLECs nondiscriminatory access to 911 and E911 service through dedicated trunks from their facilities to the 911 Control Office. (Id. para. 17). Dedicated 911 implementation managers facilitate CLEC interconnection and the testing and turn-up of a CLEC's 911 trunk(s) at the 911 Control Office. (Id. para. 18). Upon installation, Ameritech Illinois and the CLEC jointly conduct continuity testing to ensure that the trunks are functioning properly, using the same tests that Ameritech Illinois performs when it installs new 911 trunks from its own end offices to its 911 Control Offices. (Id).

1092. Third, Ameritech Illinois notes that it provides CLECs with access to the MSAG database containing the necessary street address information for the exchanges or communities in which the CLECs operate, so CLECs can create the necessary end user files for the ALI. (Id. para. 21). There is a single mechanized MSAG that is under the control of the 911 customer (the municipality) and used by all service providers

interconnecting with the 911 systems provided by Ameritech Illinois. (Id. para. 22). CLECs may view a copy of the MSAG electronically via a product called TCView, and can periodically obtain their own mechanized copy of the MSAG. (Id).

1093. Ameritech Illinois opines that it handles 911 updates in the same manner for CLECs as for itself. (Id. para. 26). Each switch-based service provider is responsible for electronically uploading and maintaining the 911 database information for its own customers. (Id. para. 27). When files containing a CLEC's customer records are received, Ameritech Illinois' Transactions Service System ("TSS") validates the information against the MSAG. If the record matches a valid address in the MSAG, then the record will be input into the SR/ALI database, and routing information will be added. (Id. para. 12). If the record does not match a valid address in the MSAG, an error file is created, which may be sent to the PSAP or municipality for resolution. Id. In addition to the MSAG validation, the TSS performs a number of other edit checks on record updates to ensure database accuracy and completeness. (Id. para. 13).

1094. According to Ameritech, the CLEC receives a statistical report confirming the number of records processed and an error file with any records that failed the system edits. The error file provides codes explaining the reason each record failed to process, and the CLEC is then responsible for correcting the record and resubmitting it. Similarly, Ameritech Illinois provides CLECs with an electronic comparison file containing the 911 database information for the CLECs' customers served through the UNE switch ports. (Id. para. 29). The CLEC uses this file to check accuracy and submit any necessary corrections to Ameritech Illinois. Id. Ameritech Illinois has taken numerous steps to maintain the accuracy of the 911 database, and provides CLECs with a variety of methods to ensure the accuracy of the end-user information they submit for 9-1-1 purposes, including electronic tools for inputting, reviewing, and correcting end-user data. Id. para. 6. Further, CLEC errors are detected by Ameritech Illinois and its 911 Database Services Provider, Intrado (formerly SCC Communications Corporation), just as they are for Ameritech Illinois. (Id).

Directory Assistance/Operator Services (DA/OS)

1095. Under Checklist Item 7, Ameritech Illinois recognizes that it is also required to provide or offer to provide CLECs with "nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services." The FCC has held that the phrase "nondiscriminatory access to . . . directory assistance services" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested." Meanwhile, the FCC has held that "nondiscriminatory access to operator services" means that " a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number." Second Report and Order, para. 112.

1096. Ameritech Illinois maintains that it provides CLECs with nondiscriminatory access to Operator Services ("OS") and Directory Assistance ("DA") pursuant to legally binding agreements. (AI Ex. 9.0 Sch. 1, para. 6). More specifically, it provides OS, including Automated Call Completion (which allows an end user to complete a call without the assistance of an operator); Manual Call Assistance (in which an end user dials "0" or "0" plus an area code and telephone number in order to place a collect, third number, calling card or "sent paid" call using an operator's assistance); Busy Line Verification ("BLV") (a service whereby a caller may request that an operator check an access line to determine if the line is busy or is "off the hook"), Busy Line Verification Interrupt ("BLVI") (which allows the end user to request that the operator interrupt a conversation in progress to ask whether one of the parties is willing to speak to the caller requesting the interrupt), and Operator Transfer Service (which allows a subscriber to request that an operator transfer a call to an interexchange carrier). (Id. para. 24).

1097. Ameritech Illinois further asserts that it provides CLEC subscribers with the same DA services as provided to Ameritech Illinois subscribers. According to AI, DA services include local and national Directory Assistance, which provides a subscriber with listing information such as name, address and published telephone number – or an indication of "non-published" status – when a CLEC subscriber dials 411 or 555-1212 for the applicable area code. (Id. para. 23). Directory Assistance Call Completion, AI explains, is a service that completes a local or intraLATA call to the requested number utilizing Ameritech Illinois' automated voice system or operator assistance. Ameritech Illinois maintains that it provides CLECs with nondiscriminatory access to these and other wholesale DA services via interconnection agreement provisions, and also under ICC Tariff 20. (Id. para. 28).

1098. In addition to the OS and DA services already described, Ameritech Illinois also asserts that it provides certain wholesale services for both resale and facilities-based CLECs. It describes these services to include: Call Branding, which enables the CLEC to identify itself to its subscribers at the beginning of each OS/DA call handled on the CLEC's behalf; Rate/Reference, which enables Ameritech Illinois' operators to quote a CLEC's retail OS rates to the CLEC's subscribers upon request; and Inward Operator Service, which allows to telephone operators of CLECs that provide their own operator services (via their own switches or custom routing) to ask Ameritech Illinois' Inward Operator personnel to check a line on Ameritech Illinois' network. (Id. para. 25-26).

Pricing for OS/DA

1099. Ameritech Illinois claims that its provision of nondiscriminatory access to OS and DA is not disputed by the parties. The WorldCom complaint, it notes, deals with pricing. According to AI, the FCC has held that an incumbent LEC need not provide wholesale OS and DA as unbundled network elements at TELRIC-based prices, but instead may charge market rates unless it does not provide custom routing. 47 C.F.R. 51.319(f). While asserting that it provides custom routing for its OS/DA services in Illinois, and is thus entitled to use market-based rates, Ameritech Illinois further contends that it complies with the Commission's TELRIC Compliance Order, which

requires it to use TELRIC-based rates until it demonstrates that CLECs have the ability to route their OS/DA traffic to their own OS/DA platforms or to those of a third party provider. (Id. para. 4, 18; AI Ex. 9.1 at 10).

1100. According to AI, WorldCom's assertion that Ameritech Illinois does not provide OS/DA at TELRC prices is simply incorrect. Ameritech Illinois does provide OS/DA services at TELRC rages via Ill. C.C. Tariff No. 20, Part 19, Section 7 and 8, filed pursuant to the TELRC Compliance Order. (AI Ex. 9.2 at 9; AI Ex. 9.1 at 10). To be sure, AI notes that WorldCom itself purchased OS/DA services from Ameritech Illinois' tariff at TELRIC rates. (Id).

Directory Assistance Listings and Direct Access to DA Database

1101. Ameritech Illinois asserts that it provides directory assistance listing information in bulk format with daily updates so that CLECs can provide their own DA services. (AI Ex. 9.0 Sch. 1, para. 29). Appendix DAL of Ameritech Illinois' interconnection agreements provides CLECs and their agents with access to all of the DA listings in Ameritech Illinois' database. (Id). According to Ameritech, a CLEC can request DA listings on a statewide, geographic area, or class of service basis (business or residence or both) and receive the same listing information that Ameritech Illinois' operators access to provide DA service. (Id). Ameritech Illinois further offers CLECs direct access to "query" the DA database. (Id. para. 30).

Pricing for DA Listings

1102. AI observes WorldCom to contend that Ameritech Illinois is required to provide DAL in bulk with daily updates at TELRIC rates. (WorldCom Ex. 5.1 at 8). It notes, however, that the FCC has expressly excluded DA listing updates from its unbundling requirements. (AI Ex. 9.2 at 4-5). In the UNE Remand Order AI contends, the FCC stated:

> We decline to expand the definition of OS/DA, as proposed by some commenters, to include an affirmative obligation to rebrand OS/DA and to provide directory assistance listings updates in daily electronic batch files. We find such modifications unnecessary because, as mentioned above, these obligations already exist under section 251(b)(3), and the relevant rules promulgated thereunder. (UNE Remand Order at para 444).

1103. Moreover, Ameritech notes that the FCC has approved 271 applications for Arkansas, Kansas, Missouri, Oklahoma and Texas, even though SWBT offers DAL at market-based rates in those states through 271 – compliant interconnection agreements. (AI Ex. 9.2 at 6). While Ameritech Illinois has a duty to provide nondiscriminatory access to DAL under section 251(b)(3) (and it complies with this duty) Ameritech contends that the FCC does not require it to provide DA listings as a UNE at TELRIC-based rates. Indeed, AI would note, WorldCom conceded in its comments to

the FCC(in the Triennial Review) that the UNE Remand Order does not designate DA listing as a UNE. (See AI Ex. 9.2 at 5 (citing WorldCom comments).

1104. AI observes WorldCom's contradictory argument to be founded on the FCC's 1996 First Report and Order. (WorldCom Ex. 4.1 at 8). According to AI, however, the FCC's UNE Remand Order, which was issued in November 1999, expressly excludes DA listings from the unbundling requirement and thus supersedes the analysis in the First Report and Order. (AI Ex. 9.2 at 4-5). While WorldCom also asserts that certain state commissions have endorsed its position (WorldCom Ex. 4.1 at 1-2), AI observes that the FCC is the authoritative voice on the scope of its unbundling requirements and on checklist compliance. Further, AI observes that the Ohio decision cited by WorldCom (WorldCom Ex. 4.1 at 2) was also based on the FCC's First Report and Order, that was later superseded, on this issue, by the UNE Remand Order.[19]

Quality of DA Listings

1105. AI views WorldCom to raises two "quality" issues regarding DA listings. First, AI observes, WorldCom asserts that it continually experiences "unmatched deletes," a phenomenon that occurs when the Ameritech Illinois daily update file shows that a listing was deleted, but WorldCom cannot find the listing in its database. (WorldCom Ex. 4.0 at 12). The evidence shows, AI argues, that WorldCom itself was the source of the unmatched delete problem. Ameritech Illinois contends that it investigated each of the instances provided by WorldCom, and found that each deleted listing did match a listing that WorldCom had previously received, such that there were no unmatched deletes at all. (AI Ex. 9.1 at 7). Further, Ameritech Illinois' personnel helped WorldCom uncover the root of the problem, which AI contends, was the result of WorldCom's attempts to match the wrong field on update files to listings that had previously been incorporated into WorldCom's database. (Id). The number of "reloads" WorldCom received during that period did not reflect any problem in quality either, AI maintains, but stemmed from Ameritech Illinois' efforts to assist WorldCom in resolving the unmatched delete issue. (Id. at 8).

1106. Second, while WorldCom would assert that it has experienced "fluctuations" in the number of new listings in each update file, its own witness concedes that the fluctuation issue has been resolved. (WorldCom Ex. 4.0 at 13; (WorldCom Ex. 4.1 at 10). WorldCom witness Mr. Caputo also admits that WorldCom is not aware of the alleged fluctuations even occurring in Illinois. (WorldCom Ex. 4.0 at 12). Investigations in other states, AI contends, suggest that changes in the number of DA listings provided to DAL customers have occurred due to the influx of other ILEC listings that were added to the DAL downloads in early 2001. (AI Ex. 9.2 at 12). Prior to that

[19] WorldCom also attempts to compare access to the DAL database with access to the CNAM database. That analogy, however, is misplaced. Unlike DAL, which is simply an aggregation of names, addresses, and telephone numbers, the CNAM database is used to complete a call, bill, collect, or route a telecommunications service. UNE Remand Order, para. 403. Ameritech Illinois provides DAL in bulk through electronic downloads via the Network Data Mover or via magnetic tape; WorldCom does not access Ameritech Illinois' DAL database itself. (AI Ex. 9.2 at 8-9).

time, Ameritech Illinois did not have authorization from other ILECs to include their listings in DA listing downloads and updates. (Id). In addition, Ameritech Illinois typically experiences increases in the numbers of listing updates immediately prior to White Pages directory "close dates," as end users request listing changes for the upcoming directory. (Id. at 12-13).

1107. In short, Ameritech Illinois asserts that it strives for accuracy in its DA database, but perfection is not always possible or required. Parity is required, however, and Ameritech Illinois contends that it provides updates, upgrades, and any changes to the DA database to WorldCom on the same basis as Ameritech Illinois provides to itself in accordance with the Act. (Id. at 13).

b. Staff Issues/Position

1108. Staff witness Gasparin addressed Ameritech's compliance with Checklist Item 7 (being careful to note that he was not addressing either the rate or OS/OA aspects there of). Mr. Gasparin ultimately concluded that:

> Ameritech has provided competitive carriers, both resale and facilities-based, with non-discriminatory access to 9-1-1 services for its customers. I am not aware of any customers in the Ameritech Illinois service area who have subscribed to a competitive carrier and do not have access to 9-1-1 services. This conclusion is supported by the knowledge the Commission's 9-1-1 Staff, who work with and communicate with the various carriers and 9-1-1 systems throughout the State in the regular performance of its duties, have provided to me. (Staff Exhibit 8.0 at 4).

1109. Also, in reviewing AI witness Valentine's testimony, Mr. Gasparin found it to be "an accurate portrayal of the Ameritech Illinois policies and procedures as it relates to competitive local exchange carriers regarding the provisioning of 9-1-1 services." (Id).

1110. Staff believes that no other party to this proceeding addressed 9-1-1 and E9-1-1 issues. Therefore, Staff's overall conclusion is that:

> Based on the information provided by Ameritech in its Affidavits in this docket, and information otherwise available to Staff, Ameritech appears to be in compliance with the 9-1-1 related requirements for this competitive checklist item. (Staff Ex. 8.0 at 4–5).

1111. While having has analyzed 9-1-1 and E-9-1-1 issues in this phase of the proceeding, Staff will present an analysis of the independent third party review of AI's OSS and business processes, and other OSS related issues that arise subsequent in Phase II. That analysis, it contends, is still ongoing and the Phase II investigation may

reveal that AI provides 9-1-1 and E-9-1-1 services in a non-discriminatory manner. If any new information comes to light and reveals actions in violation of federal or state law or rules, Staff cautions that it will introduce such evidence and make a recommendation in Phase II that is contrary to the recommendation it makes at this juncture.

c. WorldCom Issues/Position

Customize Routing

1112. WorldCom contends that, consistent with FCC and Commission requirements, Ameritech must provide OS/DA as a UNE at TELRIC rates, unless and until it successfully implements WorldCom's preferred customized routing solution (that would allow WorldCom's UNE-P OS/DA calls to be routed to WorldCom's OS/DA platforms or the OS/DA platforms of a third party provider).

1113. Despite Ameritech witness Deere's testimonial claim in his rebuttal testimony that, "…the FCC has approved the same type of customized routing arrangements for Arkansas and Missouri," WorldCom asserts that this Commission has already set the conditions for Ameritech Illinois with respect to customized routing and OS/DA services. In its Order in Docket 98-0396, dated October 16, 2001, WorldCom observes, the Commission states that:

> we also require Ameritech, consistent with the record evidence presented by AT&T and MCI WorldCom and the FCC's UNE Remand Order, to provide operator services and directory assistance as UNEs at TELRIC rates until such time as Ameritech successfully demonstrates, after testing and our approval of terms, that CLECs have the ability to route their OS and DA traffic to their own OS and DA platforms or to those of a third party provider.

1114. According to WorldCom, SBC and Ameritech Illinois have been aware of WorldCom's requirements since 1997, and have been provided with documentation on exactly how to perform the customized routing that WorldCom requires since before February, 2001 (as part of the Pacific Bell proceeding). Nevertheless, WorldCom argues, SBC and Ameritech Illinois failed to provide WorldCom with its required customized routing in a swift, efficient and businesslike manner. So too, WorldCom contends Ameritech Illinois fails to acknowledge in this proceeding that it must comply with the Commission Order in 98-0396, and provide OS/DA as UNEs at TELRIC rates until such time as it provides customized routing. For these reasons, it asserts Ameritech Illinois does not meet its obligations under Checklist Item 7.

5. The Reply Positions

a. Ameritech Reply Position

1115. With the exception of a single pricing issue, Ameritech sees Staff to agree that Ameritech Illinois has met its burden to demonstrate compliance with checklist item 7. (Staff's single pricing issue, related to pricing for AIN-based custom routing, AI contends was resolved by the Commission's July 10, 2002 Order in Docket 00-0700. (See AI Reply Br., Section II.E; Staff Br. at 166-167; Staff Ex. 17.0 Light Rebuttal at 5-6). The only CLEC to contest compliance with this item is WorldCom (addressing only OS and DA). Ameritech contends that the issues raised by WorldCom lack merit.

911 and E911 Services

1116. There is no dispute that Ameritech Illinois satisfies Checklist Item 7(I) by providing nondiscriminatory access to 911 and Enhanced 911 ("E911") Services. See 47 U.S.C. 271(c)(2)(B)(vii)(I).

Directory Assistance/Operator Services

1117. Ameritech Illinois has demonstrated that it provides CLECs with "nondiscriminatory access to . . . (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and (III) operator call completion services." See 47 U.S.C. 271(c)(2)(B)(vii). The only issue raised on brief, AI observes, is WorldCom's contention that Ameritech Illinois must offer OS and DA at TELRIC-based rates because it has not provided WorldCom with its preferred form of customized routing. (WorldCom Br. at 34-35). This contention concerning customized routing is, in AI's view, without merit. And in any event, Ameritech Illinois asserts, it does offer OS and DA at TELRIC-based rates, in accordance with the Commission's TELRIC Compliance Order. (AI Ex. 9.0 Sch. 1, para. 4, 18; AI Ex. 9.1 at 10).

Directory Assistance Listings and Direct Access to DA Database

Pricing for DA Listings

1118. Ameritech Illinois asserts that it is not obligated to provide "bulk" DA listings at TELRIC-based rates. According to Ameritech, WorldCom has provided no legal authority for its assertion that DA listings updates are a UNE. Indeed AI asserts, WorldCom ignores the FCC's UNE Remand Order (para. 444), which expressly excludes DA listing from the unbundling requirements, and thus from the TELRIC regime. (See AI Br. at 144-145). WorldCom it notes, resorts to claiming that the unbundling rules are irrelevant because "federal law requires 'just' 'reasonable' and 'non-discriminatory' pricing for DA and DAL regardless of whether or not directory assistance is required to be unbundled pursuant to Sections 251(c) and (d)."

(WorldCom Br. at 37, emphasis added). If, however only TELRIC-based rates were "just," "reasonable," and "non-discriminatory," AI contends there would be little need for the 1996 Act to differentiate between those network elements that must be "unbundled" (and thus offered at TELRIC-based rates) and those that do not fall under the unbundling requirements.

1119. Further, AI asserts, the FCC would not have held, as it did in the UNE Remand Order (para. 473), that market-based rates apply to those elements that are not required to be unbundled:

> "In circumstances where a checklist network element is no longer unbundled, we have determined that a competitor is not impaired in its ability to offer services without access to that element. . . . Under these circumstances, it would be counterproductive to mandate that the incumbent offers the element at forward-looking prices. Rather, the market price should prevail, as opposed to a regulated rate which, at best, is designed to reflect the pricing of a competitive market."

1120. Ameritech contends that the TELRIC methodology was not developed to implement the requirements of "nondiscrimination" or "just and reasonable" rates, terms and conditions for all the wholesale products and services that appear throughout the 1996 Act. Rather, it asserts, TELRIC was developed solely to implement the specific language of section 252(d)(1) of the 1996 Act, which requires that rates for interconnection and certain network elements be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element." 47 U.S.C. 252(d)(1) (emphasis added); See First Report and Order, para. 618-620.

1121. Under Section 252(d)(1), AI contends, cost-based rates apply only to the rates for interconnection under section 251(c)(2) and for unbundled network elements under section 251(c)(3). Sections 251(c)(2) and 251(c)(3) mirror that language, as they are the only provisions that require rates to be set in accordance with the requirements of section 252. By its plain terms, section 252(d)(1) does not apply to the requirements established in section 251(b), such as the requirement to provide DA listings downloads. Likewise, section 251(b) does not refer to the pricing requirements of section 252, AI argues.

1122. Finally, and contrary to WorldCom's claims, AI asserts that the DA listings rate is on its face "just and reasonable." According to AI, WorldCom buys DAL from Ameritech Illinois at about 3.3 cents per listing, but then sell its DA Service in some instances as high as $2.49. (See Tr. 960 961; AI Ex. 9.2 at 8).

b. Staff Reply Position

OS/DA Branding

1123. Staff notes that, Ameritech's initial brief refers to branding. "Branding" calls, Staff explains means that a CLEC customer that is accessing OS/DA services will hear an automated voice response that identifies the service as the CLEC's, and Ameritech's operators answering CLEC customers' calls identify themselves as if they were employees of the CLEC.

1124. Staff observes Ameritech witness Rogers' direct testimony to state that, as of the fourth quarter of 2001, Ameritech had refined its branding capability by utilizing information from its Line Information Database "("LIDB") which triggers the branding change much more quickly than previously employed methods. (AI Ex. 9.0 at 6). She further asserts, according to Staff, that the issue raised by a CLEC in discussions was irrelevant, since "branding changes triggered by a subscriber's migration from one local exchange carrier to another are the same for Ameritech Illinois subscribers and CLEC subscribers." (AI Ex. 9.0 at 36).

AIN Routing of OS/DA Services

1125. Staff observes that CLECs serving customers by use of Ameritech facilities must also be able to route OS/DA traffic to a third party platform, using customized routing. See New York 271 Order, n.186. (relying on the Local Competition First Report and Order for the proposition that BOCs are "to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services"). According to Staff, Ameritech complies since the AIN method of customized routing it provides has been tested and is a proven method. Additionally, it appears to Staff, that the custom routing requested by WorldCom may not operate in the current Ameritech network.

1126. Staff observes WorldCom to state that it would prefer "OS/DA calls to be routed to WorldCom's OS/DA platforms or the OS/DA platforms of third party provider." (WorldCom Br. at 34). Furthermore, WorldCom's testimony suggests that AI fails to meet the Checklist item requirements because it does not allow WorldCom to route its OS/DA traffic through the use of Feature Group-D trunks. (WorldCom Ex. 5.0 at 7-9). WorldCom, however, cites no instance where it has requested this service from Ameritech, Staff contends.

1127. Staff notes the testimony indicating that AI meets this requirement by offering such capability in two different forms. Customized routing may be done via Ameritech's AIN or through the use of Line Class Codes ("LCC"). (AI Ex. 5.1 at 23). The AIN method of customized routing used by Ameritech is the same method used to

route local calls over shared transport in Illinois, therefore, has been tested and is a proven method. (See AI Ex. 5.1 at 25) (where Ameritech states that the AIN method of customized routing "…is the same programming that is used in Illinois to route local calls over shared transport. Therefore, this program was tested in the lab and in field before being deployed for actual use.").

1128. Additionally, Staff notes, there is a significant question regarding the feasibility of implementing OS/DA access via the use of Feature Group-D trunks. According to Staff, the testimony that Mr. Caputo put before the California Public Utilities Commission ("CPUC") in March 2001, suggest that not all switching equipment types can successfully manage this traffic. (California Public Utilities Commission, Application 01-01-010 "Application for Pacific Bell for arbitration of an interconnection agreement with MCI Metro" at 861-866, March 26, 2001). In that testimony, it observes Caputo to state that there were problems routing OS traffic through Nortel switches. This problem is significant, in Staff's view, since approximately 45% of AI's switches are manufactured by Nortel and therefore a substantial portion of the network could not be used for the customized routing requested by WorldCom.

1129. All of the foregoing, Staff contends, shows AI to provide branding and routing of OS/DA services in a nondiscriminatory manner. While there is some disagreement between AI and CLECs over the timeliness of OS/DA branding when a customer migrates its service from one provider to another, as well as which is the preferred method for customized routing to third party OS/DA providers, Staff believes that Ameritech fulfills its obligations under Checklist Item 7, as they pertain to non-rate OS/DA access.

6. Staff's Proposed Remedial Actions for Checklist Compliance

1130. AI must file TELRIC compliant rates or demonstrate that the interim rates for the following are compliant with TELRIC principles: non-recurring charges for UNE combinations; non-recurring charges for UNEs; recurring UNE charges; unbundled switching and interim shared transport rates (ULS-IST); dark fiber; unbundled sub-loop rates; AIN routing of OS/DA charge; CNAM database access charge; NGDLC UNE platform charge; and OSS modification charge for the HFPL UNE.

7. Commission Review and Conclusion

1131. Checklist Item 7, in part, requires AI to provide nondiscriminatory access to 911 and E-911 services. Staff reviewed the Company's showing and was led to the conclusion that AI is in compliance with this requirement. There is no contrary view or evidence on record. Thus, it would be reasonable for the Commission to find that AI satisfies this portion of Item 7.

1132. Another element of Checklist Item 7 is the obligatory provisioning of non-discriminatory directory assistance services. WorldCom contends that AI does not "acknowledge" its need to comply with this Commission's Order in 98-0396. That order,

it argues, requires AI to provide OS/DA as UNEs and TELRIC until such time as it provides customized routing. We see AI to assert that it does offer OS and DA at TELRIC-based rates via the tariff it filed in compliance with our Order, and WorldCom has not shown otherwise. So too, WorldCom's bulk DA listing at TELRIC pricing issue is not supported by any authority and, indeed, is contrary to the "standards for review" we set out for this section.

1133. According to Staff, AI meets the customized routing requirement by offering this capability in two forms. Based on its review, Staff indicates that Ameritech Illinois provides branding and routing of OS/DA in a non-discriminatory manner, thus fulfilling its Checklist Item 7 obligations.

1134. Finally, Checklist Item 7 requires non-discriminatory access to operator services. AI maintains that it satisfies this obligation pursuant to legally binding agreements and specifically details the components provided. See AI Ex. 9.0. We are shown nothing to preclude a finding that the Company satisfies this element of Checklist Item 7.

1135. We take note of Staff's recommendation that before a definitive finding of compliance is made, the Company will need to provide evidence in Phase II to show that the rates it charges for AIN-routing of OS/DA are TELRIC compliant. This recommendation is reasonable. Relevant to this matter, we note that this Commission's Order for Docket 00-0700 may have resolved Staff's pricing concerns.

H. CHECKLIST ITEM 8 – White Pages Directory Listings

1. Description of Checklist Item

1136. Section 271(c)(2)(B)(viii) of the 1996 Act requires a 271 applicant to provide:

"[w]hite pages directory listings for customers of the other carrier's telephone exchange service." 47 U.S.C. Section 271 (c)(2)(B)(viii).

2. Standards for Review

1137. Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing. The FCC has determined that, "consistent with the Commission's interpretation of 'directory listing' as used in this statute the term 'white pages' in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider." Second BellSouth Louisiana Order, 13 FCC Rcd at 20748, para. 255. The

FCC further concluded that the term "directory listing," as used in this section, includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof.

1138. According to the Second BellSouth Louisiana Order, a BOC satisfies the requirements of Checklist Item 8 by demonstrating that it:

> (1) provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and
>
> (2) provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers. Id.

1139. (Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

3. The State Perspective

1140. The goal of the white pages requirement is to maintain a central repository of names, addresses, and telephone numbers. This requirement works in much the same way as the interconnection requirement in that it allows customers to move to another telecommunications carrier without fear that it will become more difficult to phone them or find their number. The Commission addressed the issue of white pages listing in Docket 95-0458 stating, "[t]he Commission believes that a standard directory listing is an essential and integral component of local service." Order at 70, Dockets 95-0458 and 95-0531 (consol). (June 26, 1996).

4. The Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1141. Ameritech Illinois recognizes that it is required to put listings for CLEC end users in its own white pages directories just as if they were Ameritech Illinois customers, such that end users of all carriers can locate each other without having to obtain or consult several separate directories.

1142. The FCC defines a "directory listing" to include, "at a minimum, the subscriber's name, address, telephone number, or any combination thereof." Georgia & Louisiana 271 Order at D-31. To satisfy Checklist Item 8, a BOC must show that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for competitor's customers with the same accuracy and reliability that it provides its own customers. Id. at D-32. The FCC explained that in order to comply with the "nondiscriminatory appearance and integration" requirement, a BOC must offer a CLEC customer a listing that is "identical" (that is, in the same size, typeface, and font) to a BOC retail

customer's listing, and that is not separately classified (or otherwise identified) from the BOC's own customers. Second Louisiana 271 Order, para. 256. To meet the "same accuracy and reliability" test, a BOC must have procedures in place "that are intended to minimize the potential for errors in the listings provisioned for the customers of competing LECs." Pennsylvania 271 Order, para. 115.

1143. Ameritech Illinois asserts that it has demonstrated compliance with all of the above requirements. The "white pages", it explains, are published by an affiliate of Ameritech Illinois known as Ameritech Advertising Services or "AAS." AAS integrates and publishes the primary listings of CLEC end users in the same directory (covering the relevant geographic area) as the listings of Ameritech Illinois' customers. (AI Ex. 8.0 Sch. RKR-1, para. 3). Listings for all subscribers, whether served by a CLEC, Ameritech Illinois or independent telephone company, include the subscriber's name, address and telephone number. (Id).. CLEC end users may obtain a primary white pages listing in the same manner as Ameritech Illinois provides for its own retail customers. (Id. para. 4). As of November 1, 2001, directories serving Ameritech Illinois customers contained over 487,000 listings of CLEC end users. (Id)..

1144. Ameritech Illinois maintains that it provides for the "nondiscriminatory appearance and integration" of CLEC customer listings. See Georgia & Louisiana 271 Order at D-32. The size, font, and typeface of CLEC customer listings are identical to those of Ameritech Illinois customer listings. (AI Ex. 8.1 Sch. RKR-1, para. 3-5). CLEC customer listings are integrated alphabetically into all the other listings, and are not separately identified in any way. Id. Thus, Ameritech asserts, a reader cannot discern which listings belong to CLEC customers and which belong to Ameritech Illinois' customers. A CLEC may also include its own customer-contact information (for example, the CLEC's business office, residence office, and repair bureau telephone numbers) in Ameritech Illinois white pages on the same index-type informational page that lists Ameritech Illinois' contact information. Id. para. 8.

1145. Ameritech Illinois further contends that it provides white pages listings to CLEC customers "with the same accuracy and reliability that it provides its own customers." Georgia & Louisiana 271 Order at D-32. CLECs can submit their listing orders to AAS itself (which offers an Electronic Data Interchange or "EDI" interface for that purpose) or via one of the two electronic OSS interfaces that Ameritech Illinois provides i.e., Enhanced LEX or EDI. (Id. para. 9-10). CLECs can also submit their directory listing orders through ACES, a transitional software package offered by AAS. (AI Ex. 8.0 at 3). In any case, all white pages listing orders are ultimately sent to AAS for processing and inclusion in the white pages directories and the associated database. (AI Ex. 4.1 at 31).

1146. Ameritech Illinois explains that it provides CLECs with detailed instructions for the proper submission of white pages listings in its CLEC Handbook (https://clec.sbc.com) and by offering a variety of training workshops. AI Ex. 8.0 (Kniffen-Rusu Direct) Sch. RKR-1, para. 9. Other information regarding Ameritech Illinois' white pages listings and directories, including deadlines or "close dates" for submitting listings to be included in the published directory, is available in the CLEC

Handbook. Id. Furthermore, AAS offers an enhanced Directory Listing CLEC Hotline that CLECs can call to request on-the-spot assistance or additional training from AAS. (AI Ex. 8.1 at 9-10).

1147. According to Ameritech Illinois, it allows CLECs the opportunity to review their customers' listings for any errors before the white pages directory is published. CLECs have the option of receiving two verification review reports. The first is free, and is provided 45 calendar days before the "close date" for the directory. (AI Ex. 8.0 Sch. RKR-1, para. 16). Ameritech also notes that AAS offers a website called TCListLink, where CLECs can review and verify their customers' white pages listing information. (AI Ex. 8.0 at 4). It is the same verification tool that AAS provides to Ameritech Illinois' retail operations. AI Ex. 8.0 at 4; AI Ex. 8.1 at 7.

1148. After submission and processing, Ameritech explains, the names, addresses, telephone numbers, directory listing format, and directory delivery information for both Ameritech Illinois and CLEC customers are contained in the same white pages database. (AI Ex. 8.0, Sch. RKR-1, para. 14). This database updates the directory assistance ("DA") and TCListLink databases each night and treats all updates in the same manner, regardless of the underlying carrier. (AI Ex. 8.0 at 3, 5). White pages directory listings for CLEC customers reach Ameritech Illinois' database in the same manner and within the same timeframe as do listings for Ameritech Illinois' own retail customers. (AI Ex. 8.0 Sch. RKR-1, para. 15).

1149. During the annual delivery of directories, the Ameritech Illinois white pages directory is delivered to each subscriber of CLEC resale and UNE-P services in the same manner and at the same time as Ameritech Illinois' retail subscribers. (Id. para. 7). Further, Ameritech Illinois has agreed to provide secondary delivery (between annual delivery dates) to subscribers of CLEC resale and UNE-P services on the same basis as Ameritech Illinois' own retail customers. (Id).. Finally, AI contends, CLECs may request and negotiate arrangements with AAS for the delivery of white pages directories to their switched-based customers in the same manner and at the same time that the directories are delivered to Ameritech Illinois' retail customers. Id.

Single Interface for Directory Listings Orders

1150. Ameritech explains that CLECs, who use an Ameritech Illinois switch to provide service have always been able to order a directory listing order at the same time they request local service (e.g., an order for resale, UNE-P, or unbundled local switching). That is the case because a service that uses an Ameritech Illinois switch automatically includes a directory listing. Before June 2001, AI notes, CLECs who used their own switches to provide service (e.g., a CLEC purchasing only an unbundled local loop from Ameritech Illinois) submitted their white pages listing orders directly to AAS, because these CLECs did not purchase anything from Ameritech Illinois that included a directory listing. In June 2001, however, Ameritech Illinois implemented a single interface, that allows a CLEC, that use its own switch, to submit a directory listing order to Ameritech Illinois at the same time that the CLEC submits its unbundled loop order.

(AI Ex. 4.0 Sch. MJC-1, para. 128). Ameritech Illinois then passes the directory listing order to AAS.

1151. According to Ameritech, AT&T claims that Ameritech Illinois failed its commitment to provide a single interface for directory listing and local service orders. (AT&T Ex. 8.0 at 50). While Ameritech Illinois has implemented a single interface for ordering, AT&T alleges that it must still maintain a separate interface with AAS. (Id. at 50-51). As an initial matter, AI would note that the FCC has never held that BOCs must provide a single interface for directory listing and service orders to satisfy Checklist Item 8 or any other item. In any event, Ameritech Illinois asserts that it has met its commitments. The AAS-provided EDI interface has been integrated into the Ameritech OSS EDI ordering interface, and switch-based CLECs can perform the same directory listings ordering functions using the Ameritech Illinois interfaces as they could through the AAS EDI interface. (AI Ex. 4.1 at 30).

1152. Ameritech views AT&T's objection to actually center on one part of the directory listing request process. As such, AI explains, when AT&T submits a directory listing request, there is no dispute but that the request is submitted through the Ameritech Illinois EDI interface as part of the related local service request, just as is done for resale and UNE-P CLECs and just as AT&T wants; it is not submitted to AAS. (Tr. 1679-1680; AT&T Ex. 8.0 at 50; AI Ex. 4.1 at 30-31). So too, AI continues, the initial edit on directory listing requests is also done by Ameritech Illinois' OSS EDI ordering interface, just as is done for resale and UNE-P CLECs and just as AT&T wants; it is not performed by AAS. (Tr. 1681-1685 AT&T Ex. 8.1 at 22; AI Ex. 4.1 at 31).

1153. The only dispute, Ameritech contends, relates to the possibility of AT&T receiving an error notice after the initial confirmation, if AAS were to detect an error during its processing of the order. (Tr. 1682-1683; AI Ex. 4.1 at 32). In that case, AAS may directly contact the CLEC by telephone, fax, or e-mail (rather than through the Ameritech Illinois interface) to resolve the matter. According to AI, AT&T does not object to receiving this information (which gives AT&T additional assurance that its order is processed accurately and an additional opportunity to resolve issues). AT&T's sole objection is to receiving the notice via fax. (Tr. 1685). But AI asserts the faxed error notices about which AT&T complains only occur on a trivial percentage of facilities-based orders. (AI Ex. 4.1 at 33). At the hearing, AI points out, AT&T witness Willard admitted that he did not dispute AI's percentages, and did not provide an estimate of his own. (Tr. 1687-1688). Thus, Ameritech argues, AT&T's complaint can hardly be considered significant enough to affect checklist compliance.

Single Interface for Directory Listing Inquiries

1154. Ameritech notes AT&T to claim that the process for directory listings inquiries is discriminatory, because switch-based CLECs must use an EDI interface with AAS to send their inquiries, while resale/UNE-P CLECs are able to use Ameritech Illinois' pre-ordering EDI functionality to access Ameritech Illinois' customer service record database. (AT&T Ex. 8.0 at 52-53). Ameritech maintains that the differences AT&T describes do not reflect any discrimination, but are simply a natural consequence

of the fact that resale and UNE-P CLECs have ordered a different product. (See AI Ex. 4.1 at 33).

1155. According to Ameritech, its customer service records only contain the directory listings information that is retained from orders for directory listings made to Ameritech Illinois. (Id). CLECs who order a service like resale or UNE-P that includes a telephone number from Ameritech Illinois also receive a directory listing, so the customer service record will include directory listing information. (Id). A resale/UNE-P CLEC, AI explains, can thus obtain that customer service record, which includes listing information, through Ameritech Illinois' pre-ordering interface.

1156. A switch-based CLEC, on the other hand, does not order any product that includes a directory listing. (Id). Rather, Ameritech explains, the directory listing is a separate service that the CLEC receives from AAS. (Id). While the single interface allows switch-based CLECs to submit a directory listing order over the Ameritech Illinois interface, Ameritech Illinois merely hands the listing order to AAS. Because the listing comes from AAS, it does not reside in Ameritech Illinois' customer service records. (Id. at 33-34). Switch-based CLECs are not prejudiced, however, AI maintains. They can still access listing information in AAS's database via an inquiry interface offered by AAS. Further, Ameritech Illinois and AAS have agreed to integrate some of the inquiry functionality currently provided by AAS's interface into the Ameritech Illinois' pre-ordering interface and the release is scheduled for November 2002. (Id). At that time, AI asserts, switch-based CLECs will be able to use Ameritech Illinois' pre-ordering interface to access their facilities-based listings. (Id).

ACES Interface

1157. The Ameritech Customer Entry System ("ACES"), AI explains, is a PC-based software package offered by AAS that some CLECs use in lieu of the AAS interface or the two interfaces offered by Ameritech Illinois. (AI Ex. 8.0 at 3). ACES is intended as a transitional alternative to be used while a CLEC implements one of the available electronic interfaces. (Id). Within 24 hours of submitting a listing order through ACES, according to Ameritech, the CLEC receives confirmation that the listing order passed the electronic edit checks and was transmitted properly, or a rejection notice that explains the CLEC's error so that the CLEC can resubmit the listing order correctly. (XO Ex. 1.2 at 3).

1158. AI sees XO to complain that it has experienced trouble with listings transmitted through ACES. (Id. at 2-3). According to AI, AAS' determined that XO had mistakenly submitted nearly 100 duplicate listings. (AI Ex. 8.1 at 2-3). Thus, it asserts the problem did not originate with ACES, but was the result of XO's own error.

1159. Nevertheless, Ameritech admits that AAS should have spotted these duplicate listings and should have issued a rejection notice to XO, but failed to do so. (AI Ex. 8.1 at 4). According to AI, AAS has retrained the personnel responsible for Illinois listings on the rejection notice process, and it has implemented an audit process

to avoid a recurrence. (Id). Contrary to XO's claim, Ameritech asserts that the rejection process has worked properly since then. (See AI Ex. 8.2 at 3-4).

1160. Finally, Ameritech sees XO to complain that only 90% of the listing orders it submitted via ACES were electronically updated into the white pages database within 24 hours. Ameritech notes, however, that this rate has improved significantly. (See AI Ex. 8.2 at 4). Ameritech also contends that the electronic update rate has been adversely affected by XO's own actions. According to AI, XO submitted, and continues to submit, duplicate listings that must be manually rejected and handled, thus reducing the update rate. (Id. at 4-5).

TCListLink Website

1161. Ameritech explains that TCListLink is an AAS website that allows CLECs and Ameritech Illinois alike to review and verify their end user's white pages listing data. The information in TCListLink, it contends, is generally updated within 24 hours of the submission of a listing order (whether submitted through ACES or one of the available electronic interfaces), such that in most cases CLECs are able to verify their listing the next business day after it is submitted. (AI Ex. 8.1 at 8). And, if the CLEC finds a problem with a directory listing, it can submit a Listing Trouble Report ("LTR") to AAS. (Id. at 7-8).

1162. According to Ameritech, XO complains that the order confirmation process is too slow, alleging that it takes three days to get an order confirmation using ACES and TCListLink (one day to receive a confirmation from ACES and two more days for TCListLink to be updated). (XO Ex. 1.2 at 3-4). Ameritech Illinois does not agree with XO's three-day figure. It maintains that CLECs can usually verify their listing via TCListLink the next business day after an order is submitted. (AI Ex. 8.1 at 8). And, in any event, Ameritech Illinois already offers a faster confirmation process. CLECs that submit listing orders via Ameritech Illinois' Enhanced LEX or EDI interfaces, AI asserts, will receive a Firm Order Confirmation (or a rejection notice if the submission is incomplete or improper) within the range of a few minutes to a maximum of 5 hours. (AI Ex. 8.2 at 1). All CLECs, including XO, can use these interfaces. According to AI, however, XO has chosen to use ACES, which is not intended to be a full or long-term interface, but is simply a transitional tool to be used while a CLEC implements LEX or EDI. Id. If XO desires a faster, better confirmation process, AI contends, it need only implement one (or both) of the two interfaces offered by Ameritech Illinois.

1163. AI also observes XO to claim that there are some discrepancies between the information in TCListLink and the white pages database. (XO Ex. 1.2 at 6). The extent of XO's showing indicates that these discrepancies occur infrequently. From September 2001 through March 2002, AI notes, AAS received but a handful of Listing Trouble Reports (the established procedure for CLECs to report discrepancies) from XO. (AI Ex. 8.1 at 8-9). And, AI asserts, the FCC has repeatedly rejected CLEC claims based on such isolated occurrences. In the Texas 271 Order (para. 358), for instance, the FCC rejected allegations that SWBT did not satisfy Checklist Item 8 because there was no evidence that the problems some carriers encountered "were a systemic

problem involving a significant number of listings." Given the number of CLEC listings (487,000), AI contends, the number of LTRs from XO is clearly a de minimis amount that does not indicate any significant or systemic problem. Moreover, there is no evidence that these occasional discrepancies are discriminatory, as TCListLink is the same listing verification tool that AAS provides to Ameritech Illinois' retail operations. (AI Ex. 8.1 at 7).

1164. Finally, XO's concern that an end-user's listing will not appear in the directory if it does not immediately appear in the white pages database ignores the fact that Ameritech Illinois offers CLECs the option of receiving two pre-publication verification reports, so that they can verify which listings will appear in the directory. (AI Ex. 8.1 at 11). Thus there is ample opportunity for CLECs to verify the accuracy of the database before the white pages directory is published. (Id). Verification reports are produced separately for each carrier for each directory, by section (i.e., residence listings are separate from business listings).

Training

1165. AI disputes the XO complaint that Ameritech Illinois has not provided live training sessions to XO since 1997 or 1998. (XO Ex. 1.2 at 6-7). According to AI, AAS has provided training to XO at XO's offices on seven occasions, and has provided copies of its 30-minute refresher training video to two different XO offices in December 2001 and January 2002. (AI Ex. 8.1 at 9). Further, AI asserts, XO has made ample use of AAS's CLEC Hotline, with over 40 calls since January 2001 alone. (Id). To the extent XO wanted additional training, AI asserts, all it had to do was ask for it via AAS' CLEC Hotline. (Id. at 10). Indeed, in year 2002, AAS has on four occasions proactively suggested to XO that it schedule a directory listing training session, yet XO has not accepted this offer. (AI Ex. 8.2 at 16).

1166. In addition, AI notes, if XO is interested in using the EDI interface instead of the transitional tool ACES, it can attend a two-day workshop on how to complete the forms and properly format directory listings. (Id). Ameritech Illinois has offered this directory listing workshop every month in 2002. (Id). And the CLEC Education schedules, information and registration opportunities are posted on the CLEC Online website at least two months in advance. (Id).

b. Staff Issues/Position

1167. In reviewing the testimony of both Ameritech and XO, Staff notes that there have been ongoing problems with XO's interface with AI as regards the submission and correction of white pages and directory assistance listings. According to Staff, Ameritech addresses each example provided by XO, and recites the steps and actions taken by AI to remedy the problems. Further, Staff notes, Ameritech states that XO's chosen access method to submit customer directory listings i.e., ACES, is intended only to be a transitional tool until such time as a CLEC can implement one of the electronic interfaces. Unlike ACES, the benefit of electronic interfaces is that they provide real time acknowledgement and feedback. (AI Ex. 8.1 at 5). From the record

accounts, it appears to Staff that XO has chosen to maintain ACES as a permanent method of listing submission.

1168. Staff observes AI to point out that a significant portion of the problems experienced by XO were caused by XO's internal processes. Further, it notes that the root cause of the duplicate listing problems outlined by XO were caused by internal XO error, and that AI and XO were working together to prevent future occurrence of the problem. (Id. at 3).

1169. According to Staff and based on the evidence presented, AI appears to be in compliance with the white pages directory listing requirements of Checklist Item 8.

1170. Based on its ongoing investigation, Staff maintains that any new information that comes to light about actions taken in violation of federal or state law or rules will be introduced into evidence together with appropriate recommendations, even if contrary to the recommendations set out in this Phase of the proceeding.

c. XO Illinois Issues/Position

1171. Pursuant to Checklist Item 8, XO maintains, Ameritech must provide white pages directory listings for XO's customers. In this proceeding, XO presents testimony regarding directory listing and white pages problems that it has experienced.

1172. Many of the directory listing problems that XO experiences, it claims, stem from the fact that there is no notification from Ameritech Advertising Services ("AAS") when an XO order does not process correctly within AAS' internal systems. XO asserts that it should be notified when the ACES (electronic ordering) system rejects a directory listing order. The evidence shows, XO claims, that it was not receiving CLEC Reject Notification Forms when a problem, such as a duplicate listing occurred. (XO Ex. 2.2 at 2).

1173. XO sees Ameritech to state that the CLEC reject notification form is used to notify CLECs when a CLEC order of any other activity in the system creates a database level error. Examples of such problems that were discussed in XO and Ameritech's testimonies were duplicate listings and the absence of listings. Significantly, as AI indicated, a service order may impact numerous listings even though a database level error may occur on only one of those listings. (Tr. 632).

1174. Prior to filing testimony in this docket, XO maintains that it had not received any CLEC reject notification forms from Ameritech, contrary to the policy Ameritech states in its testimony. XO asserts that, if it is not aware that there is an error because Ameritech has not sent the error notification to XO, it is unable to resolve a duplicate listing or missing data in the directory database.

1175. XO asserts that its filing of initial testimony in this proceeding caused Ameritech to respond. As such, Ameritech sent a bulk notification indicating that approximately seventy directory listings had some form of problem, i.e. either it was a duplicate or it could not be related to an associated listing. XO claims that Ameritech's

bulk notification would indicate that there is a problem, with the mechanism by which Ameritech is supposed to inform CLECs of errors. XO complains that, after its commitment of significant resources to find the root cause of the problem in Ameritech's handling of directory listings, Ameritech asserted it had addressed the issue and remedied the problem by retraining personnel.

1176. Successfully transmitting an order via ACES, XO maintains, does not guarantee that the order will successfully update either the white pages database or that the white pages database will successfully update the Directory Assistance database. The lack of notification problem is compounded where an error in one listing, e.g., an abbreviation in a street address, cascades when a database query relies on the previous incorrect listing. Further, XO witness Ms. McCabe testified to discrepancies with Ameritech's databases, including TCListLink, Directory Assistance, and white pages. (See XO Ex. 2.2 at pages 4-7).

1177. The information contained in Ameritech's databases XO asserts, is extremely important to all customers. For example, if the customer's listing is not in Ameritech's Directory Assistance database, the customer listing will not be published in the white pages Directory. Further, the white pages Directory feeds into the yellow pages Book. Therefore, if a customer listing is not in the white pages database, the customer will not be listed in either the white or yellow pages books. Given the importance of these functions, XO concludes that prior to receiving 271 authority Ameritech should be required to ensure and demonstrate that its processes can accurately maintain and update its Directory Assistance and white pages databases.

d. AT&T Issues/Position

Nondiscriminatory access to directory listing functionality

1178. AT&T maintains, that in the settlement of Docket 00-0592, Ameritech committed to "incorporate the functionalities of its OSS interface and Ameritech Advertising Services' Electronic Data Interchange (EDI) interface so that CLECs can use a single Ameritech interface for service orders for directory listing on or before June 2001." See Order at 98-99, Docket 00-0592, (January 24, 2001).

1179. According to AT&T, Ameritech has failed to live up to this commitment. AT&T maintains that it first became aware of Ameritech's construction of its directory ordering commitment from a March 5, 2001 accessible letter. (See AT&T Ex. 8.0, at 50, indicating that CLECs would still need to maintain a separate interface with AAS). While Ameritech will accept integrated LSR-DSRs over the EDI interface, AAS will send edits, rejection notices, and completion notices concerning the CLEC directory orders over separate manual interfaces: via fax, phone call, or email. (Id). Thus, CLECs would still be required to maintain a separate interface for directory listing orders if they are to process the directory order; i.e. one electronic interface for sending the order across to Ameritech, and several manual interfaces for receiving ordering responses from AAS. Of course, AT&T notes, when using Ameritech's LSOG EDI interface, CLECs receive all responses from Ameritech electronically. Despite its commitment to the contrary, AT&T

maintains that AI has not "incorporated the functionalities of its OSS interface" (e.g. LSOG 4) into the directory listing ordering interface now available to CLECs. (Id., at 51).

1180. In AT&T's view, Ameritech's directory listing ordering process discriminates against facilities based CLECs. If a CLEC directory order involves resale service or UNE-P services, AT&T contends, the CLEC integrates its directory listing order with the LSR and Ameritech processes that order via one interface – i.e., all completion notice, rejects, etc. are sent by Ameritech to the CLEC electronically over the same EDI interface by which the CLEC sends it directory order. The same holds true for Ameritech's retail directory listing orders, which are processed the same as the CLEC UNE-P and resale orders. (AT&T Ex. 8.0, at 51). But, AT&T asserts, when a facilities-based CLEC places a directory order with Ameritech, all responses (e.g., completion notices, rejects, and edits) are provided from AAS via fax, phone, or email. By providing two separate and wholly unequal means by which CLECs place directory orders, AT&T argues, Ameritech is discriminating between CLECs based solely on the market-entry mechanism (UNE-P/resale versus UNE-loop) they choose to use to enter the local market.

1181. Ameritech's process for allowing CLEC's "access" to directory listings is similarly discriminatory, AT&T contends. Once the order process is final and the CLEC has retained a new customer with a directory listing, the CLEC still needs access to Ameritech's listing database to assist customers with questions about the listings that were placed and to facilitate changes and updates to those listings. (AT&T Ex. 8.0, at 52). The listing itself is retained in Ameritech's databases and access to that listing is commonly referred to as "directory listing inquiries," (a generally accepted pre-ordering inquiry). For its own retail customers, AT&T asserts, Ameritech accesses directory listings from its own databases as part of its customer service records. CLECs using UNE-P or resale similarly access their customers' directory listings directly from Ameritech's databases via a pre-ordering EDI functionality. According to AT&T, however, Ameritech does not provide directory-listing inquiries for facilities-based CLECs (e.g., CLECs entering the market via the UNE-loop strategy). Instead, such CLECs are required to process their inquiries through a separate EDI interface with AAS. AT&T argues that this is discriminatory.

1182. Ameritech has provided no valid reason why directory-listing inquiries could not be provided over one interface for all CLEC and Ameritech requests. Indeed, it plans to provide just that in September, 2002, at least according to its Illinois POR. Ameritech has informed the CLEC community that, as a result of the POR delay, this implementation date will slip to November, 2002. Unless and until Ameritech moves up this date, AT&T asserts that AI cannot be deemed to be providing nondiscriminatory access to directory listings.

5. Reply Positions

a. Ameritech Reply Positions

1183. There is no dispute, AI maintains, but that CLEC subscribers' listings are integrated into the white pages just like Ameritech Illinois' end user listings, and that CLEC subscribers receive the same white pages in the same way that Ameritech Illinois' end users do. (AI Br. at 148-151). AI notes Staff to agree that Ameritech Illinois "appears to be in compliance with the white pages directory listing requirements of Checklist Item 8." (Staff Br. at 170). The few disputes related to this Checklist Item, it observes, relate solely to procedures for submitting or obtaining listings, and do not affect checklist compliance.

Single Interface for Directory Listing Orders and Pre-Ordering Inquiries

1184. As previously explained, Ameritech Illinois notes, CLECs can submit a directory listing order at the same time and through the same interface that they request local service. AT&T's charge that a "second interface" is required, AI maintains, concerns only the indisputably small percentage of orders for which AT&T receives a faxed error notice from AAS after the initial submission and edit of a request. As for AT&T's claim regarding pre-order inquiries, AI asserts that AT&T has not shown the use of an AAS interface (as opposed to the Ameritech Illinois interface used by resale and UNE-P CLECs) for pre-ordering to have any competitive significance. Nor does AT&T dispute that this difference stems solely from the fact that switch-based CLECs do not order any product from Ameritech Illinois that includes a directory listing, such that CLECs' listing information does not reside in Ameritech Illinois' customer service records. (See AI Br. at 155).

ACES Interface and TCListLink

1185. AI reasserts that XO's complaints concerning white pages listings have either been addressed or are groundless. As noted by Staff, Ameritech Illinois' testimony "addresses each example [of problems] provided by XO, and cites the steps and actions taken by [Ameritech Illinois] to remedy the problem." (Staff Br. at 169). Further, "a significant portion of the problems experienced by XO were caused by XO's internal processes." (Id).

1186. In light of this showing, AI points out that XO's arguments on brief only discuss two minor points. First is XO's claim of a "major problem" with the rejection notification process. Ameritech Illinois has acknowledged that it did not provide rejection notices after XO submitted duplicate listings. (AI Ex. 8.0 at 4). This problem was fixed months ago. AAS has retrained the personnel responsible for the rejection notice process and has implemented a periodic audit process to avoid any repeat of the problem. (Id). Rejection notices are and have been flowing to XO on a regular basis. (AI Ex. 8.2 at 3-4).

1187. Second, XO's attempt to discredit the accuracy of the TCListLink database is based on its complaint of a single incident in which some of its customer information "fell-out" of the TCListLink database. (XO Br. at 12). The record shows that XO itself caused those names to be removed from the database. (AI Ex. 8.2 at 12-13). One XO employee issued manual orders to supplement the listings in the database, while at the same time, a second XO employee instructed AAS to delete the entire listing for that end user so that XO could resubmit the order on a clean slate. (Id). AAS ultimately identified the conflicting information from XO and assisted XO in coordinating its orders so that XO was able to establish the directory listings to its satisfaction. (Id.); See also New York 271 Order, para. 176 n.558 (rejecting CLEC claims where there was "no evidence in the record that shows, or even indicates, that Bell Atlantic's systems and interfaces, and not the competing carriers', are responsible for the failure of competing carriers to receive order confirmations").

1188. In connection with this issue, AI notes XO's attempts to supplement the record by alleging new facts on brief that are not found in testimony. (See XO Br. at 12). AI disputes the extra-record allegation, i.e. that Ameritech Illinois instructed XO to issue at least one of the conflicting orders. In any event, it asserts that this is not "evidence" of record, not tested under cross-examination, and therefore, should be disregarded.

6. Staff's Proposed Remedial Actions for Checklist Compliance

None.

7. Commission Review and Conclusion

1189. Staff tells us that Ameritech Illinois is in compliance with the requirements of Checklist Item 8. Ameritech has adequately addressed, corrected or responded to the few issues raised on the matter at hand. Before setting out its opinion, Staff took specific and careful note of both the testimony presented by the Company and the testimony provided by XO. Staff sets out no remedial actions as would warrant our restraint in finding AI compliant. Having reviewed the entirety of the accounts before us, the Commission finds it reasonable to conclude that Ameritech Illinois satisfies the requirements of Checklist Item 8.

I. CHECKLIST ITEM 9 – Numbering Administration

1. Description of Checklist Item

1190. Section 271(c)(2)(B)(ix) of the 1996 Act requires a 271 applicant to provide:

"nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers," until "the date by which

telecommunications numbering administration, guidelines, plan, or rules are established." 47 U.S.C. 271(c)(2)(B)(ix).

1191. This checklist Item mandates compliance with "such guidelines, plan, or rules" after they have been established.

2. Standards for Review

1192. A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules. See Second Bell South Louisiana Order, 13 FCC Rcd at 20752; See also Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, CC Dockets 96-98; 99-200 (rel. Dec. 29, 2000); Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200 (rel. Dec. 28, 2001).

1193. (Adapted from the New Jersey 271 Order with cites and footnotes omitted.)

3. The State Perspective

1194. Follows Federal Law No Commission Orders are referred to for this Section.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1195. Number administration, AI explains, refers to the assignment and administration of central office or "NXX" codes, which are depicted by the first three digits of a seven-digit telephone number (e.g., NXX-XXXX). Facilities-based carriers have NXX codes assigned to their switches in order to provide the associated telephone numbers to the end users served by those switches. (See AI Ex. 18.0 para. 9). A regional Central Office Code Administrator assigns AI informs, these codes to carriers in accordance with FCC rules (such as, 47 C.F.R. 52.15) and industry numbering administration guidelines, i.e., the Central Office Code Assignment Guidelines and the NPA Code Relief Planning Guidelines. (Id). Each NXX code contains 10,000 telephone numbers (NXX-0000 to NXX-9999), and telephone numbers are thus assigned to carriers in blocks of 10,000 numbers at a time. (Id. para. 8-11). AI witness Smith provided testimony of its compliance with Checklist Item 9.

1196. Ameritech Illinois asserts that there is no dispute as to whether it has satisfied Checklist Item 9. Before March 29, 1999, AI recalls, it served as the Code Administrator for the State of Illinois. (AI Ex. 18.0, para. 10). In that capacity, it satisfied

the requirements of Checklist Item 9 by providing nondiscriminatory access to telephone numbers to all requesting carriers. (Id). Ameritech Illinois followed the applicable industry standards, the Central Office Code Assignment Guidelines and the NPA Code Relief Planning Guidelines, in providing access to telephone numbers. (Id). Pursuant to those guidelines, Ameritech Illinois assigned 934 NXX codes (representing 9.34 million telephone numbers) to 23 different CLECs in Illinois. (Id. para. 12).

1197. On March 29, 1999, AI informs, NeuStar (formerly Lockheed Martin) assumed central office code administration responsibilities in Illinois (and since that time Ameritech Illinois has had no responsibility for number administration). As such, Ameritech contends, March 29, 1999 is the "date [on] which telecommunications numbering administration guidelines, plan, or rules are established" under Section 271(c)(2)(B)(ix) of the 1996 Act. Rather than show that it provides nondiscriminatory access (because it is no longer responsible for providing access), Ameritech Illinois contends that it must show that it "adheres to the industry's CO administration guidelines and Commission rules, including those sections requiring the accurate reporting of data to the CO code administration [NeuStar]." Second Louisiana 271 Order, para. 265.

1198. Ameritech Illinois asserts that there is no dispute but that it adheres to all number administration industry guidelines and applicable rules. (AI Ex. 18.0 para. 16). Also, while Ameritech Illinois no longer acts as Code Administrator, it still translates competing providers' NXX codes into its network to facilitate call completion (so its switches will know how to route calls to those NXX codes). (See Staff Ex. 9.0 at 9). In translating new NXX codes, Ameritech Illinois treats all new codes identically, and uses the same process and timeline, regardless of whether the code is assigned to Ameritech Illinois or a CLEC. (AI Ex. 5.0 at 15). And, Ameritech Illinois adheres to the Central Office Code Assignment Guidelines to manage the translation process. (Id).

b. Staff Position

1199. The Telecommunications Act of 1996, Staff notes, predated the guidelines for, and selection of, an independent numbering administrator. According to Staff, telephone numbering responsibilities were transitioned from incumbent LECs to the new North American Numbering Plan Administrator ("NANPA") during 1998 and 1999. And, it observes, as of March 1999, all numbering responsibilities for Ameritech were assumed by Lockheed-Martin (now NeuStar). (Staff Ex. 9.0 at 9).

1200. Since number assignment responsibilities to other carriers are no longer managed by Ameritech, Staff asserts that the only potential issue would be the method employed by Ameritech to activate a competitor's NXX code ("prefix") in its network. Staff, however, observes Ameritech witness Deere's testimonial account, that the "same timeline and process applies to new NXX codes, regardless of whether the NXX codes are assigned to CLECs or Ameritech Illinois". (AI Ex. 5.0 at 15). Staff further notes that no other parties submitted any testimony with regard to this Checklist Item 9.

1201. Based on the whole of the evidence presented, it appears to Staff that Ameritech complies with the numbering administration requirements of Checklist Item 9. Its testimony with regard to this Checklist Item affirms that AI activates all new NXX codes in the same manner, regardless of the assigned code holder.

1202. Although Staff has analyzed numbering administration issue in this phase of the proceeding, is contends that certain aspects of its inquiry are ongoing. In Phase II of this proceeding Staff will present its analysis of the independent third party review of Ameritech's OSS and business processes, and other OSS related issues that arise subsequent to this phase. Staff cautions that its ongoing investigation may reveal that AI provides numbering administration in a non-discriminatory manner. In the event that any new information comes to light about actions in violation of federal or state law or rules, it is Staff's position that it would introduce evidence and make a recommendation in Phase II that is contrary to the recommendation it makes here and now.

5. Reply Positions

a. Ameritech Reply Position

1203. Ameritech Illinois asserts that its satisfaction of the Checklist Item 9 requirements is unchallenged. See Staff Br. at 171-172 (stating that "it appears that Ameritech complies with the numbering administration requirements of Checklist Item 9").

6. Staff's Proposed Remedial Actions for Checklist Compliance

None.

7. Commissioner Review and Conclusion

1204. Ameritech has demonstrated that it adheres to all pertinent rule and requirements. There being no dispute or showing to the contrary, it is reasonable for this Commission to find that AI is in compliance with Checklist Item 9.

J. CHECKLIST ITEM 10 - Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion

1. Description of Checklist Item

1205. Section 271(c)(2)(B)(x) of the 1996 Act requires a 271 applicant to provide **"nondiscriminatory access to databases and associated signaling necessary for call routing and completion."** 47 U.S.C. Section 271 (c)(2)(B)(x).

2. Standards for Review

1206. In the Second BellSouth Louisiana Order, the FCC required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to:

(1) signaling networks, including signaling links and signaling transfer points;

(2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and

(3) Service Management Systems (SMS).

1207. The FCC also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).

1208. In the Local Competition First Report and Order, the FCC defined "call-related databases" as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service. At that time, the FCC required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases. (Id. at 15741-42, para. 484).

1209. In the UNE Remand Order the Commission clarified that the definition of call-related databases "includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases." Id. at para. 403.

1210. (Adapted from the New Jersey 271 Order, Appendix C, with most cites, footnotes omitted)

3. The State Perspective

1211. Incumbent LECs must unbundle signaling links and signaling transfer points (STPs) in conjunction with unbundled switching, and on a stand-alone basis. Incumbent LECs must also offer unbundled access to call-related databases, including, but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, Advanced Intelligent Network (AIN) databases, and the AIN platform and architecture. The FCC found that incumbent LECs need not unbundle certain AIN software. (Third Report and Order and Forth Further Notice of Proposed Rulemaking, In the Matter of Implementing of the Local

Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, (Released November 24, 1999), 15 F.C.C. Rcd. 3696 at para. 419).

1212. Signaling networks work together with databases to exchange call information between switches. The information exchanged is used to set up transmission paths across the network, receive special instructions on how to route or handled a call, provide information such as the caller's name and telephone number, and provide other services. Access to the signaling network and call-related databases allows competitive carriers the opportunity to provide services comparable to the incumbent and perhaps innovate and provide new services.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1213. According to Ameritech Illinois, it maintains customer information and instructions for routing calls in several databases. It uses a Service Management System to administer the data: the SMS is where carriers may "create, modify, or update information in call-related databases." First Report and Order, para. 493. And it uses a signaling network (which is physically separate from the voice network) to transmit such information to its switches. Ameritech Illinois' signaling system, like that of most LECs, the Company contends, adheres to the Bellcore standard Signaling System 7 (SS7) protocol. "A typical SS7 network includes a signaling link that transmits signaling information in packets, from a local switch to a signaling transfer point (STP), which is a high-capacity packet switch." UNE Remand Order, para. 380 n.746. "The STP switches packets onto other links" that "extend to other switches, databases, and STPs in the incumbent LEC's network." Id. "A switch routing a call to another switch will initiate a series of signaling messages via signaling links through a STP to establish a call path on the voice network between the switches." Id.

1214. Ameritech recognizes that the FCC has held that, under Checklist Item 10, a BOC must demonstrate that it provides requesting carriers with nondiscriminatory access to:

(1) signaling networks, including signaling links and signaling transfer points;

(2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and

(3) Service Management Systems (SMS). Georgia & Louisiana 271 Order at D-32.

1215. Ameritech Illinois contends that it provides for nondiscriminatory access to all three functions and, therefore, is in full compliance with this checklist item. Testimony in support of this assertion was provided by AI witness Deere.

Nondiscriminatory Access to the Signaling Network

1216. Ameritech Illinois maintains that no party disputes that it provides unbundled, nondiscriminatory access to its signaling networks, including signaling links and Signal Transfer Points. (AI Ex. 5.0 Sch. WCD-1, para. 231). Ameritech Illinois provides a SS7 Interconnection Service, which allows CLECs to use its SS7 network for signaling between CLEC switches, between CLEC and Ameritech Illinois switches, and between CLEC switches and those of other parties connected to the SS7 network. (Id). This arrangement is identical to what Ameritech Illinois uses itself. (Id).

1217. Where a CLEC obtains unbundled local switching, Ameritech Illinois provides "access [to signaling] from that switch in the same manner in which [Ameritech] obtains such access itself." 47 C.F.R. 51.319(e)(1)(i). Unbundled switching is provided on the same switches that Ameritech Illinois uses to provide service to its own end users, the Company contends, so all signaling functions are identical. (AI Ex. 5.0 Sch. WCD-1, para. 232).

1218. Finally, Ameritech Illinois asserts that, in accordance with 47 C.F.R. 51.319(e)(1)(ii), it provides to a CLEC with its own switches "access to [Ameritech's] signaling network for each of the requesting telecommunications carrier's switches," and this connection is "made in the same manner as an incumbent LEC connects one of its own switches to a signaling transfer point." Ameritech Illinois provides access to its SS7 network through the Signaling Access Service. (AI Ex. 5.0 Sch. WCD-1, para. 233). Access to the network, Ameritech explains, is provided by subscribing to a Dedicated Network Access Link, as described in Ameritech Operating Companies Tariff F.C.C. No. 2, Section No. 8, and to a dedicated STP port for carriers with their own Signal Transfer Points. (Id).

Nondiscriminatory Access to the Call-Related Databases

1219. Under Checklist Item 10, Ameritech Illinois recognizes that it must also demonstrate that it provides requesting carriers with nondiscriminatory access to its "call-related databases necessary for call routing and completion," (Georgia & Louisiana 271 Order at D-32), which are databases "used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service." (UNE Remand Order, para. 403). The FCC, Ameritech notes, has specifically identified six such databases: the Calling Name Database ("CNAM"), the Line Information Database ("LIDB"), the Toll Free Calling Database ("800 Database"), the Advanced Intelligent Network Database ("AIN"), the 911 Database, and the E911 Database. (47 C.F.R. 51.319(e)(2)(i)). (The latter two databases relate to Checklist Item 7, AI notes, and are discussed in connection with that checklist item).

1220. 800 Database: Ameritech Illinois allows CLECs to access its 800 Database to support the processing of toll-free calls. The database is used to identify the appropriate 800 service provider to transport a toll-free call, and the appropriate routing for the call, based on the toll-free number (e.g., 1+800+NXX+XXXX). (AI Ex. 5.0

Sch. WCD-1, para. 242-243). According to Ameritech, noparty disputes that it provides nondiscriminatory access to the 800 Database.

1221. AIN: Ameritech notes that the "Advanced Intelligent Network" is a network architecture that uses centralized databases that control call processing and manage network information so that those functions need not be performed at every switch. (Id. at para. 250). Thus, Ameritech explains, AIN allows some call processing functions to be performed outside the switch. While requiring ILECs to provide access to AIN databases, however, the FCC concluded that ILECs are not required to provide access to the proprietary service software that resides in those databases. (UNE Remand Order, para. 402). Instead, according to Ameritech, CLECs are entitled to use an ILEC's Service Creation Environment (SCE: a computer used to design, create, test, and deploy new AIN-based services) to develop their own AIN-based services. Ameritech Illinois provides nondiscriminatory access to its AIN databases and access to its SCE, provided that appropriate security arrangements are made.

1222. Ameritech understands Z-Tel to claim that Ameritech Illinois should be required to offer Z-Tel "access" to its Privacy Manager service (Z-Tel Ex. 1.0 at 16), as opposed to the AIN database that the service uses. In the UNE Remand Order (para. 409), however, the FCC specifically deemed Privacy Manager a proprietary AIN service provided by Ameritech Illinois' AIN platform. On that basis, the FCC found that Ameritech Illinois has no obligation to unbundle its Privacy Manager software, because "unbundling AIN service software such as 'Privacy Manager' is not 'necessary' within the meaning of the standard in section 251(d)(2)(A)." (Id. at para. 419). Instead, as required, Ameritech Illinois makes available to all CLECs unbundled access to its AIN databases and to its Service Creation Environment (SCE), which is used to develop new services. (AI Ex. 1.2 at 40-41; AI Ex. 5.0 Sch. WCD-1, para. 251-256). A CLEC, such as Z-Tel, can request access to Ameritech Illinois' SCE to develop and deploy its own AIN-based services.

1223. LIDB: The "Line Information Database" is where local exchange carriers store information about their end users' accounts. (AI Ex. 5.0 Sch. WCD-1, para. 259). The LIDB database contains information such as "whether a subscriber number is a valid working line, telephone line type, call screening information and validation information for calling cards." First Report and Order, para. 467 n.1050. Ameritech Illinois no longer maintains its own LIDB. (AI Ex. 5.0 Sch. WCD-1, para. 258). Rather, it contracts with Southern New England Telephone Diversified Group ("SNET DG"), which maintains a LIDB that Ameritech Illinois switches "query" in routing calls. (Id). Almost by definition, Ameritech explains, a CLEC that uses Ameritech Illinois' switching (by resale or by unbundled access to switching) accesses the LIDB in the same way that Ameritech Illinois does, by using the same switch. (Id. at para. 261). According to Ameritech, CLECs using their own switches can access the LIDB by interconnecting with SNET DG's network, with Ameritech Illinois' SS7 network (which gives them access through the same facilities and functions that Ameritech Illinois uses), or with a third party's SS7 network that interconnects with Ameritech Illinois' network. (Id).

1224. Ameritech notes WorldCom to assert that the Company fails to provide nondiscriminatory access to the LIDB database because "Ameritech Illinois limits WorldCom's use of its LIDB database as a UNE only in those cases where WorldCom would use it for the provision of local service." (WorldCom Ex. 4.0 at 33). That assertion is wholly justified, Ameritech argues. Local exchange carriers use unbundled access to provide local service. When WorldCom is providing long-distance service, it may still access Ameritech Illinois' LIDB, but in that situation WorldCom is acting as an inter-exchange carrier and purchases an access service from Ameritech Illinois' access tariff, rather than a UNE. (AI Ex. 5.1 at 49). Ameritech contends that CLECs cannot use unbundled access – which was meant as a tool for them to compete in the local market – as a means to circumvent the charges they must pay to access Ameritech Illinois' network to provide long-distance service. In the First Report and Order (at para. 30), AI observes the FCC to have stated that:

> Nothing in this Report and Order alters the collection of access charges paid by an interexchange carrier under Part 69 of the Commission's rules, when the incumbent LEC provides exchange access service to an interexchange carrier, either directly or through service resale.

1225. The FCC's Rule 51.309, Ameritech contends, does not change this result. (See WorldCom Ex. 4.1 at 20-22). That rule states that a CLEC may use a UNE to "provide exchange access services to itself in order to provide interexchange services to subscribers." 47 C.F.R. 51.309. It does not allow an IXC (or a CLEC acting on behalf of an IXC) to purchase a UNE in order to provide interexchange services. Ameritech Illinois explains that it allows WorldCom, as a CLEC, to use the LIDB to provide exchange access services to all IXC customers (including WorldCom as an IXC) by allowing WorldCom to store its customer information in the LIDB database. IXCs can then query that database in order to complete calls that require alternate billing arrangements. (See AI Ex. 5.2 at 44-46).

1226. CNAM: The "Calling Name Database," Ameritech contends, "contains the name of the customer associated with a particular telephone number and is used to provide Caller ID and related services." (UNE Remand Order, para. 406). Ameritech explains that the Caller ID software retrieves the calling party's name from a CNAM database and delivers it to the called party on their Caller ID equipment at home or work. (AI Ex. 5.0 Sch. WCD-1, para. 262). Ameritech Illinois provides all CLECs nondiscriminatory access to its CNAM database. A CLEC that uses Ameritech Illinois' switching gains access to the CNAM database through that switch, the same way Ameritech Illinois would; a CLEC that uses its own switching may interconnect with Ameritech Illinois' SS7 network and access the CNAM database the same way that Ameritech Illinois' switches do. (Id. at para. 266).

Per-Query Access vs. Bulk Downloads of CNAM

1227. Ameritech notes the CLECs to raise three issues with respect to CNAM. First, WorldCom contends that it should receive "bulk downloads" of the CNAM

database. Like Ameritech Illinois, CLECs access the CNAM database on a "query" basis. As an incoming telephone call is routed, the terminating switch asks the CNAM database to retrieve information concerning the calling party. (WorldCom Ex. 4.0 at 15). This information is then routed over the network so the called party can view the information on their Caller ID equipment. (Id). This is exactly how Ameritech Illinois accesses the CNAM database when an Ameritech Illinois end user uses Caller ID. (AI Ex. 5.1 at 43).

1228. According to Ameritech, WorldCom wants to download the entire contents of Ameritech Illinois' CNAM database en masse as a "batch" file, rather than access that database using its switch on a per-call "query" basis. (WorldCom Ex. 4.0 at 17). But the FCC has never required incumbents to hand over, in bulk, all the data contained in CNAM. Its rules require incumbents to allow CLEC switches (and CLECs using Ameritech Illinois' switches) to query that database for information through the signaling network. E.g., First Report and Order, para. 484. Ameritech relies on 47 C.F.R. 51.319(e)(2)(i) as the pertinent rule, arguing that it expressly states that the incumbent is to provide access to CNAM and similar databases "[f]or purposes of switch query and database response through a signaling network" (not for purposes of mass downloads). Furthermore, Ameritech contends, such access is to be provided "by means of physical access at the signaling transfer point linked to the unbundled databases" (not by means of downloading an entire file, which cannot even be done through interconnection at the signaling transfer point). (See AI Ex. 5.2 at 40-41). Ameritech Illinois thus asserts that it complies with the FCC rule.

1229. WorldCom seems to suggest that the pertinent FCC rule, "while requiring . . . access at the Signaling Transfer Point, does not preclude" the kind of bulk download that WorldCom seeks. (WorldCom Ex. 4.1 at 12). Although the FCC did not explicitly say that "a download of the CNAM database is not required," Ameritech counters, the FCC did explicitly say precisely how CLECs are entitled to access the CNAM database – per query switch access. This limitation, Ameritech argues, necessarily excludes the possibility that CLECs are also entitled to access the CNAM database in any other method they may desire, such as a full download.

1230. Ameritech disputes WorldCom's claim as to "nondiscrimination." Ameritech Illinois accesses CNAM in exactly the same manner as CLECs – on a per query basis. (AI Ex. 5.1 at 42). Ameritech explains that per query access does not result in call processing delays, as WorldCom suggests. (See WorldCom Ex. 4.1 at 22). It takes only a few milliseconds for a switch to submit a query and receive a response, and the query takes the same amount of time for every carrier, including Ameritech Illinois. (AI Ex. 5.1 at 43).

CNAM Database Updates

1231. Ameritech asserts that WorldCom's claim that Ameritech Illinois fails to "update its CNAM information for customers who obtain local service from a CLEC" is based on a single incident.[20] Ameritech Illinois investigated WorldCom's claim and found WorldCom to have been at fault.[21] In any event, Ameritech considerts WorldCom's accusation to be irrelevant. First, Ameritech argues, it does not concern the information provided to WorldCom, but rather the quality of Caller ID information Ameritech Illinois provides to its own retail customers. Second, the FCC has repeatedly ruled that isolated, non-systemic incidents do not affect checklist compliance. See Maine 271 Order at D-16; Georgia & Louisiana 271 Order at para. 164, 178, 219, 232, 260; Vermont 271 Order at para. 49.

1232. As for WorldCom's more general assertion that Ameritech Illinois fails to update its CNAM database when a number is ported to a CLEC, again WorldCom is wrong. WorldCom alleges that after a customer is ported to WorldCom, Ameritech Illinois continues to query its own databases rather than the one WorldCom uses (which is called Illuminet), and thus returns outdated information to end users. (WorldCom Ex. 4.0 at 30). But as of August 2001, Ameritech maintains, it did begin to query the Illuminet database. (AI Ex. 5.1 at 48).

Access to Other Carriers' CNAM Databases

1233. Ameritech sees RCN to assert that Ameritech Illinois' provision of CNAM access is discriminatory, but its complaints have nothing to do with access to Ameritech Illinois' CNAM database. Rather, RCN asserts that where caller information is not in Ameritech Illinois' CNAM database (for example, the caller is from out of state), RCN customers with Caller ID sometimes receive an "out of area" message, while Ameritech Illinois retail customers would receive the caller's number and state name. (RCN Ex. 2.0 at 2-3). This difference, the Company asserts, has nothing to do with nondiscriminatory access to Ameritech Illinois' CNAM database or signaling network. The difference is caused either by RCN's failure to make arrangements to access third party's CNAM databases, or by the operation of Ameritech Illinois proprietary AIN-based Caller ID with Name service. (AI Ex. 5.1 at 30; AI Ex. 5.2 at 24-26).

1234. Checklist Item 10 requires, and Ameritech Illinois maintains that it provides to RCN, nondiscriminatory access to its CNAM database. When RCN accesses the

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[20] WorldCom alleges, an end user (a travel agency) switched from Ameritech Illinois to WorldCom, the line number was ported to WorldCom, and the Caller ID data Ameritech Illinois thereafter showed to retail customers was wrong. In its rebuttal testimony, WorldCom provided a second example, but WorldCom's own testimony shows that problem has already been fixed. See WorldCom Ex. 4.1 Conf. Sch. ML-1. See WorldCom Ex. 4.0 at 29.

[21] The root cause of WorldCom's problem, Ameritech maintains, was within WorldCom itself. Contrary to WorldCom's assertion, the travel agency's number was not even a ported number, but had belonged to WorldCom. AI Ex. 5.1 at 45. Thus, WorldCom had responsibility for administering the number in the local number portability database. WorldCom failed to do so. Id.

CNAM database, Ameritech Illinois explains, it routes that query to the appropriate database, and then returns the response. (Id. at 31). When the caller information is not in Ameritech Illinois' CNAM database, Ameritech Illinois routes the database query to the appropriate third-party CNAM database, and then returns the response, just as it does for its own retail operations. (Id). If RCN has not made a business arrangement with the third-party to access that party's database, however, that third party may not allow RCN to access the database and RCN will not be able to receive a response. (AI Ex. 5.2 at 22, 35). Alternatively, the distant CNAM database might not respond, either because no data is found, or because of network delay or a failed signal path. (Id). Ameritech Illinois receives the same non-response in such cases, but its proprietary Caller ID with Name Service (which uses proprietary AIN software) will provide the calling number and a state name. (Id). Ameritech Illinois is not required to provide this service to RCN. The FCC's rule, Ameritech asserts, provides that:

> Notwithstanding the incumbent LEC's general duty to unbundle call-related databases, an incumbent LEC shall not be required to unbundle the services created in the AIN platform and architecture that qualify for proprietary treatment. 47 C.F.R. 51.319(e)(2)(ii).

Nondiscriminatory Access to Service Management Systems (SMS)

1235. To satisfy Checklist Item 10, Ameritech Illinois recognizes that it must also demonstrate that it provides requesting carriers with nondiscriminatory access to its "Service Management Systems (SMS)." Georgia & Louisiana 271 Order at D-32. The SMS that Ameritech Illinois uses to administer data in the LIDB and CNAM databases it informs is called Operator Services Marketing Order Processor (OSMOP). (AI Ex. 5.0 Sch. WCD-1, para. 258). Ameritech Illinois provides CLECs access to OSMOP to input, change, and maintain their data in Ameritech Illinois' CNAM database and in SNET DG's LIDB database. (Id). According to the Company, CLECs can use the same two electronic interfaces that Ameritech Illinois uses, i.e., the Service Order Entry interface (which allows CLECs to send data directly to OSMOP) or the Interactive Interface (which is equivalent to the interface used by Ameritech Illinois' Database Administration Control personnel). (Id. at para. 270). In addition, carriers may submit a Local Service Request through the ordering interface, and OSMOP processes such requests in exactly the same manner as its does for Ameritech Illinois' retail and resale accounts. (Id. at para. 269).

b. Staff Issues/Position

Calling Name Database – Parity of Service

1236. Under federal law, Staff notes, Ameritech is required to provide CLECs with nondiscriminatory access to databases and associated signaling necessary for call routing and completion in accordance with the requirements of 47 U.S.C. 271(c)(2)(B)(x). Pursuant to state law, Staff observes, AI is required to "provide to any

requesting telecommunications carrier . . . nondiscriminatory access to network elements on any unbundled or bundled basis . . . on just, reasonable and nondiscriminatory rates, terms, and conditions. (220 ILCS 5/13-801(d)).

1237. The evidence presented in this proceeding, Staff contends, suggensts that there is a problem with CNAM. According to Staff, however, RCN's Exhibits 2.3 through 2.7 do not clearly identify whether it is a problem within AI's or RCN's control. In Staff's view, this problem may be caused by a number of factors. See Staff Ex. 16.0 at 10 (listing four potential causes of RCN's problems). The resolution can only be made on a case-by-case basis, Staff contends, through coordinated efforts of the CLEC, AI and any third party CNAM database provider.

1238. Even as the cause of RCN's problem that is unclear Staff maintains that, AI has met its burden by identifying a number of non-AI related causes. (AI Ex. 5.1 at 32). As such, Staff, believes that the likelihood of the error was caused by AI is insignificant. Thus, Staff asserts that AI should be found to be in compliance with Checklist Item 10. (Staff Ex. 7.0 at 8).

1239. This issue involves both parties as well as third party database providers, and, for it to continue, harms RCN. (See AI Ex. 5.1 at 34 (stating that there have been discussions between the parties on this issue); Staff Ex. 16.0 at 12 (stating that RCN could experience an anti-competitive effect if the problem is not resolved). Therefore, Staff believes that the Commission should direct AI to work with RCN in a coordinated effort to resolve the problem in as expeditious manner as possible, and report the results to the Commission.

1240. Based on the evidence presented in this proceeding, AI has met its burden of proof in demonstrating that CLECs can access CNAM databases in a manner that is at parity with the way in which AI accesses the databases. Since the debate looms as to who is at fault, or why some Calling Names do not appear, and that the CNAM problems may have an anticompetitive effect, Staff's position is that these problems can and should be resolved on a case-by-case basis.

1241. Although Staff has analyzed CNAM in this phase of the proceeding, it will present an analysis of the independent third party review of AI's OSS and business processes, and other OSS related issues that arise subsequent, in Phase II. Any new information coming to light about actions in violation of federal or state law or rules will be introduced and may lead to a recommendation in Phase II that is contrary to the recommendation being made at this point in the proceeding.

Privacy Manager

1242. In its UNE Remand Order, Staff observes the FCC to state:

> Ameritech adds that Privacy Manager is currently a trade secret because it has independent economic value, is not generally known by or readily discernable to Ameritech's competitors, and has been the subject of reasonable security

> measures. We agree with Ameritech that services such as Privacy Manager qualify as 'proprietary' treatment. We also agree that software services such as Privacy Manager are new and innovative products used to differentiate the incumbent LECs' service offering. As such, they should be evaluated under the "necessary" standard of section 251(d)(2)(A). (UNE Remand Order, para. 409).

1243. Further, in its UNE Remand Order, the FCC stated that:

> we find that AIN service software qualifies as a proprietary network element, and therefore, should be analyzed under the 'necessary' standard. Our interpretation of the 'necessary' standard requires the Commission to determine whether, after taking into consideration alternatives outside the incumbent's network, lack of access to that element would, as a practical, economic, and operational matter, preclude the requesting carrier from providing the services it seeks to offer. (Id., para. 409).

1244. Further along, the FCC continues:

> We agree with Ameritech that unbundling AIN service software such as "Privacy Manager" is not "necessary" within the meaning of the standard in section 251(d)(2)(A). In particular, a requesting carrier does not need to use an incumbent LEC's AIN service software to design, test, and implement a similar service of its own. Because we are unbundling the incumbent LECs' AIN databases, SCE, SMS, and STPs, requesting carriers that provision their own switches or purchase unbundled switching from the incumbent will be able to use these databases to create their own AIN software solutions to provide services similar to Ameritech's "Privacy Manager." They therefore would not be precluded from providing service without access to it. Thus, we agree with Ameritech and BellSouth that AIN service software should not be unbundled. [Footnotes have been omitted.] (Id., para. 419).

1245. Based on the FCC's UNE Remand Order, Staff asserts, there appears to be no basis for requiring AI to provision Privacy Manager to requesting carriers. (Staff Exhibit 16.0 at 12). As the FCC has stated in paragraph 402 of its UNE Remand Order:

> LECs, upon request, must provide nondiscriminatory access to their AIN platform and architecture. We also conclude, however, that service software created in the AIN platform and architecture is proprietary and thus analyzed under the

"necessary" standard of section 251 (d)(2)(A). (UNE Remand Order, para. 402).

1246. Staff disagrees with Z-Tel's position to the contrary. An ILEC is not required to unbundle Privacy Manager by either the FCC or the State of Illinois Staff asserts. It appears that AI provides nondiscriminatory access to Privacy Manager in compliance with Section 271(c)(2)(B)(x).

Calling Name Database – Batch access v. Per Query access

1247. Staff asserts that the FCC has only placed requirements upon the ILEC in the manner in which it provides access to call-related databases, but it has not expressly limited the CLEC's access to a "per query" basis. Staff observes the First Report and Order to state that nondiscriminatory treatment is defined by the standards set by the FCC, and those standards set by the states. First Report and Order, para. 310. The General Assembly has not addressed this issue, nor has the Commission ruled upon the issue. Therefore, Staff asserts, the standards set by the FCC are the standards to be applied in this case.

1248. With respect to call-related databases, Staff notes that the FCC's non discriminatory standards are set out in paragraph 410 of the UNE Remand Order, i.e., that the ILEC must provide non discriminatory access to the call-related database. According to Staff, the FCC defines "non discriminatory access" as the ILEC providing access equal between all carriers requesting access to that element," or "where technically feasible, the access . . . must be at least equal in quality to that which the incumbent LEC provides to itself." First Report and Order para. 312. Staff sees Ameritech to contend that it provides WorldCom access to the CNAM in a manner similar to the way it provides access to itself. (See AI Ex. 5.1 at 42) (stating that the routing scheme for querying call related databases is controlled by an industry standard, and that AI, "just like WorldCom, must connect to the CNAM database using the SS7 through the STP").

1249. Staff views WorldCom to fail with its allegations that Ameritech has greater access than what it provides WorldCom. WorldCom states that Ameritech owns the physical database and thus has the ability to access, manipulate, or use the database any way it likes. According to Staff, there is a distinction between access for updating or maintaining data, and access for inquiry purposes. Although Ameritech has to have access to the database to maintain the data, the nondiscriminatory access that the ILEC has to provide relates to the manner in which Ameritech and CLECs make inquiries of the call-related database. Ameritech suggests that its access is in a manner similar to the way in which WorldCom accesses the database and, according to Staff, this assertion was unrebutted by WorldCom. (AI Ex. 5.1 at 42).

1250. Staff's analysis, it contends, demonstrates that AI does not need to provide "batch" downloads to CLECs for it to provide nondiscriminatory access to CNAM. Although Staff has analyzed the provisioning of batch access or per query access of CNAM data in this phase of the proceeding, Staff will present its analysis of

the independent third party review of AI's OSS and business processes, and other OSS related issues that arise subsequent in Phase II. If new information indicates actions in violation of federal or state law or rules, Staff will introduce evidence and make a recommendation in Phase II that is contrary to the recommendation it makes here.

c. AT&T Issues/Position

1251. According to AT&T, Ameritech is required to provide CLECs with the CNAM database as a UNE pursuant to the UNE Remand Order and to provide the CNAM database at TELRIC-based rates in accordance with the Section 252(d)(1) of the Act and the FCC's TELRIC methodology. AT&T notes that Ameritech's tariffed offering for the Calling Name (CNAM) database UNE was included in the same tariff investigated in Docket 00-0538. This tariff was withdrawn and refiled, and an investigation has not been initiated. As such, AT&T maintains, Ameritech's CNAM database rates have neither been investigated nor approved by the Commission.

1252. AT&T notes Staff witness Koch's testimony indicates that the Ameritech Illinois rates for subloops, dark fiber and the CNAM database are higher than the rates for the same rate elements in Ameritech Michigan territory (which has a comparable rate structure) in 73% of the instances. That is, rates for 73% of dark fiber, subloop and CNAM UNEs are higher in Illinois than in Michigan, where subloop and CNAM rates have been investigated by the Michigan Commission and where all subloop rates in Michigan are lower than the rate for the entire loop of which they are a part. (See Staff Ex. 23.0, at 15-17 and Schedule 23.01).

1253. Moreover, AT&T contends, CNAM rates are significantly higher in Illinois than they are in other states. As both RCN and Staff witnesses pointed out, the CNAM rate in New York is 1/100th of Ameritech Illinois' rate, the CNAM rate in Maryland is 1/15th of the Illinois rate and the Massachusetts CNAM rate is 1/7th of the Illinois CNAM rate. (ICC Staff Ex. 23.0, p. 19). All total, AT&T argues, Ameritech's CNAM rates have not been investigated, are highly inflated, and are not TELRIC-based or TELRIC-compliant. Therefore, Ameritech Illinois has therefore failed to satisfy Checklist Item 10.

d. WorldCom Issues/Position

Directory Assistance Listings Download

1254. WorldCom contends that, while the FCC has determined that the Directory Assistance Listing ("DAL") database is a UNE, Ameritech today does not offer DAL at TELRIC rates. To be sure, it claims, there is disagreement as to whether DAL should be provided at TELRIC rates, with WorldCom asserting that TELRIC based rates are appropriate, and Ameritech contending that market-based rates are appropriate. According to WorldCom, the ability to receive the DAL database in a readily accessible format and at reasonable and nondiscriminatory prices is essential to its ability to compete in the directory assistance marketplace. The FCC, WorldCom contends, has fully addressed the appropriateness and the need for DAL. See In the Matter of

Provision of Directory Listing Information, First Report & Order, FCC 0127, January 2001, para. 1, 3, and 6 ("DAL Provisioning Order").

1255. It is perfectly clear, WorldCom argues, that Ameritech must provide this DAL information to WorldCom and that it be priced at TELRIC, which is the only nondiscriminatory and reasonable pricing for this type of information. Indeed, it contends, federal law requires "just" "reasonable" and "non-discriminatory" pricing for DA and DAL regardless of whether or not directory assistance is required to be unbundled pursuant to Sections 251(c) and (d). Until Ameritech first provides DAL to WorldCom (and other qualifying providers) at TELRIC rates, and in an acceptable manner, it will not satisfy Checklist Item 10.

CNAM Batch Downloads

1256. Obtaining Customer Name database ("CNAM") in a batch download form, as opposed to per-query access, is important to WorldCom. Access to CNAM downloads, as opposed to the more expensive "per-query" form of CNAM access, is crucial to WorldCom's ability to offer such products economically and to compete in the current market. Because the CNAM database, as a call-related database, has been deemed a UNE, WorldCom contends, Ameritech Illinois is required to provide access thereto on just, reasonable and nondiscriminatory terms. Forcing CLECs to purchase per query access, which requires even those CLECs with their own Signaling System 7 ("SS7") networks to pay for using Ameritech's SS7 network, does not meet this standard. The whole notion of unbundling network elements, WorldCom asserts, was to allow CLECs to purchase only those UNEs they need to obtain from the incumbent. WorldCom urges the Commission to join with Georgia, Tennessee, Michigan and Minnesota and require the provision of CNAM information in batch download form, as well as on a per-query basis.

Ameritech CNAM Update Problems

1257. WorldCom suggests that there is a flaw in the way that Ameritech provisions CNAM for WorldCom customers who are calling Ameritech customers, resulting in the display of incorrect information on caller ID with name units. It cites one example of this problem and concludes that it has a detrimental effect on WorldCom customers.

1258. While Ameritech will correct the wrong information as each wrong piece of data is noticed, WorldCom notes, there is no timetable for implementing a permanent solution to prevent incorrect information from being displayed. While Ameritech is taking steps to correct this problem, the only way that the problem can be identified (without preemptive action on Ameritech's part) is for a WorldCom customer to notify WorldCom if a third party, i.e., an Ameritech or another CLEC's customer notifies the WorldCom customer that the caller ID with name is displaying the wrong name. Obviously, WorldCom contends, there can be long delays in any third party notifying the WorldCom customer about the problem.

Non-Discriminatory Access to LIDB

1259. According to WorldCom, Ameritech is currently limiting WorldCom's use of the LIDB to the provision of local service. Because LIDB is generally used to validate calling cards, collect calls and third party call information, however, this restriction is improper, given that it excludes these very uses of the LIDB. These LIDB restrictions are improper and anticompetitive, WorldCom contends.

e. RCN Telecom Issues/Position

1260. RCN contends that Ameritech's Calling Name ("CNAM") database query rates are not TELRIC-based, and the Company fails to provide nondiscriminatory routing of third-party CNAM database queries. Ameritech's CNAM query rates, it claims, are significantly higher than the CNAM query rate in other jurisdictions. In addition, Ameritech does not route RCN's third-party CNAM queries in the same manner in which Ameritech routes such queries for its own retail customers. As a result, RCN's customers either do not receive any information from a third-party CNAM query or receive information that is inferior to that Ameritech provides its own retail customers.

1261. By law, Ameritech must provide RCN and its customers with the same level of access to Ameritech's CNAM database that Ameritech provides its own retail customers, at rates that are just and reasonable. In its UNE Remand Order, the FCC determined that databases, including specifically the CNAM database, are UNEs that must be provided to CLECs in a nondiscriminatory manner at rates, terms and conditions that are just and reasonable. In addition, because the CNAM database is a UNE, it must be provided at TELRIC-based rates.

1262. RCN provided evidence showing that Ameritech's CNAM query rates are significantly higher than the query rates in other states. In addition, RCN submitted evidence to demonstrate that Ameritech routes RCN's third-party CNAM queries in a manner that produces results substantially inferior to those provided to Ameritech's retail customers.

1263. The CNAM database, RCN explains, is a database that provides caller ID information with a caller's name. When a subscriber to caller ID service receives a call, the switch queries the CNAM database to obtain the name associated with the calling telephone number, which is then displayed for the subscriber. (Tr. 199). Where a CLEC is purchasing signaling from Ameritech, Ameritech's SS7 platform launches CNAM queries through Ameritech's Signal Transfer Points to Ameritech's CNAM database, (see RCN Ex. 2.4) or in the case of a call from a third-party carrier, the third-party database is queried in order to obtain the calling party information (see RCN Ex. 2.5).

1264. According to RCN, Ameritech is its SS7 network provider. This means that Ameritech provides the SS7 platform that allows RCN to launch various types of call-related database queries, including CNAM queries. (RCN Ex. 2.2 at 1-2; RCN Ex.

2.4; RCN Ex. 2.5). For CNAM queries, Ameritech also routes RCN's queries to CNAM databases owned by entities other than Ameritech. (RCN Ex. 2.2 at 1-2; RCN Ex. 2.7). RCN submitted several figures depicting Ameritech's CNAM configuration and the manner in which Ameritech is supposed to route CNAM queries to Ameritech's database and to third-party databases. (See RCN Exhibits 2.3 through 2.7. RCN prepared these diagrams based upon information provided by Ameritech and RCN's understanding of the manner in which Ameritech routes CNAM queries). As these figures show, because Ameritech is providing RCN's SS7 service to access third-party CNAM databases (and thus, in theory, is providing CNAM query routing in the same manner it routes such queries for its own customers) the information RCN's customers receive from a CNAM query should be the same as the information an Ameritech customer receives for the same query.

CNAM Query Rate

1265. RCN contends that Ameritech's CNAM rates are excessively high. Ameritech's CNAM query rate is almost a XX per query. In comparison, the New York Public Service Commission recently approved a new Line Information Database ("LIDB")/CNAM rate of XX per query or less than 1/100 of Ameritech's rate. (See Verizon New York Inc. Tariff PSC NY No. 10, Section 5, First Revised Page 136; RCN Exhibit 2.0B (Proprietary Version) at 3). The CNAM query rates of other ILECs are substantially less RCN contends. For example, RCN notes, in a pending UNE rate proceeding in Maryland, Verizon filed a proposed CNAM query rate nearly 1/15th that of Ameritech's rate. (RCN Exhibit 2.0B (Proprietary Version) at 3). Verizon's current rate in Massachusetts, which is a melded rate for CNAM and Billed Number Screening queries, is XX per query, significantly lower than Ameritech's Illinois query rate. (See Verizon New England Inc. Tariff DTE MA No. 17, Part M, Section 3 Page 3; (RCN Exhibit 2.0B; Proprietary Version at 3). And, as RCN sees Staff to state, Ameritech has not demonstrated that its CNAM query rates are TELRIC-compliant.

1266. RCN points out that Ameritech did not respond to RCN's or Staff's testimony in this regard or otherwise attempt to demonstrate that its CNAM query rate is TELRIC-compliant. Therefore, the evidence submitted by RCN shows that Ameritech's CNAM query rates should be reduced before Ameritech can demonstrate compliance with Checklist Item 10.

Access to Third-Party CNAM Databases

1267. The evidence provided by RCN, it contends, demonstrates that Ameritech is not providing nondiscriminatory access to third-party CNAM databases. According to RCN, its customers receive different treatment and a different response with respect to information from third-party CNAM databases than if Ameritech were to launch a query from its own network for its own retail customers. In addition, RCN customers receive CNAM query responses that are inferior to the response that Ameritech's customers receive.

1268. For example, RCN's witness described a hypothetical situation involving a Verizon Maryland subscriber calling an Ameritech customer and an RCN customer, to explain the difference in treatment of the two customers by Ameritech. When the Verizon Maryland subscriber calls an Ameritech customer in Chicago, Ameritech's customer receives the Maryland party's name. When the same Maryland subscriber calls RCN's Chicago customer, however, Ameritech sends only an "out of area" response to a CNAM query. (RCN Ex. 2.0B (Proprietary Version), at 2-3). This example, RCN contends, highlights the inferior, discriminatory manner in which Ameritech handles CNAM queries for RCN's customers vis-à-vis the manner in which Ameritech handles such queries for its own customers. In other words, Ameritech fails to deliver customer names for other callers (who are not stored in the Ameritech CNAM database) in a significant number of cases for RCN's customers. (Id. at 3).

1269. In response to this testimony, RCN notes, Ameritech offers several excuses for the different CNAM query results received by RCN and Ameritech customers. Included is the claim that Ameritech and RCN offer different Caller ID services and utilize different Caller ID with name service platforms. Such claims, RCN contends, do not adequately rebut the evidence or describe a reasonable basis for the difference between the CNAM information Ameritech provides is own customers and the CNAM information Ameritech provides RCN's customers.

1270. RCN notes Ameritech to suggest that any differences between the caller ID information that RCN customers and Ameritech customers receive "are solely attributable to RCN's network and to the third party database vendors that RCN uses." (AI Ex. 5.1 at 30). As such, Ameritech asserts that it provides the same routing of CNAM queries to RCN that it provides to its own customers and that any difference in the information received by the customer is the result of a difference between the services offered by RCN and Ameritech and the technology each company deploys. (AI Ex. 6.1 at 31; AI Ex. 5.2 at 33). So too, Ameritech claims that if RCN deployed the same Advanced Intelligent Network ("AIN") platform that Ameritech deploys, it would be able to build the platform such that it would provide comparable results to Ameritech's Caller ID with Name service. (AI Ex. 5.1 at 35). In RCN's view, Ameritech is pointing to irrelevant differences in the services provided and technologies deployed by Ameritech and RCN, rather than addressing how it actually routes RCN's CNAM queries.

1271. According to RCN, the difference between the Caller ID with name service that RCN offers or Ameritech's AIN/Intelligent Network platform differences is not relevant to whether or not Ameritech properly routes RCN third-party CNAM queries. Rather, the differences in query responses (or lack of a response) are totally dependent on how Ameritech "routes" those queries for its own customers versus the manner in which it routes the queries for RCN's customers, and not on RCN's network or the third-party database vendor, as Ameritech claims. RCN maintains that a CNAM query is just that, and should produce the same information regardless of the type of platform a carrier utilizes.

1272. According to RCN, if Ameritech were properly routing RCN's queries to third-party CNAM databases in the same manner Ameritech routes its own queries to

those databases, both RCN and Ameritech would receive the same information. At that point, RCN and Ameritech could take the information and provide it to their customers in whatever form they choose. Simply because Ameritech elects to manipulate the CNAM query information through its AIN platform to provide it in a different form to its customers than RCN does not give Ameritech the right not to provide the same generic database information to RCN, or to assert that RCN must purchase and install a platform identical to Ameritech's in order to receive the information. Neither the Act nor the FCC, RCN argues, requires CLECs to mirror ILEC networks or services in order to obtain access to UNEs, including the CNAM database.

1273. According to RCN, Ameritech is as technically capable of routing RCN's CNAM queries as are other ILECs who work with RCN (including Pacific Bell, an Ameritech affiliate company). In at least six instances, RCN contends, Ameritech has corrected routing problems on a case-by-case basis for an RCN customer (in response to RCN customer complaints). This fact alone demonstrates that neither RCN's network nor a third-party database vendor has anything to do with the responses (or lack of response) received by RCN's customers.

1274. RCN notes Ameritech to also claim that the differences between CNAM query information provided to its retail customers and that provided to RCN's customers is due to the proprietary AIN platform Ameritech has deployed. (AI Ex. 5.1 at 33; AI Ex. 5.2 at 31). Ameritech is confusing the basic issue of simple CNAM query responses from the third- party CNAM database providers with that of Ameritech's own proprietary version of Ameritech architecture for CNAM and caller ID services.

1275. While RCN does not have enough information concerning Ameritech's AIN platform to comment on the proprietary technology for CNAM and Caller ID or to opine about whether it is superior to the standard TR-1188 implementation used by RCN and the rest of the telecommunication industry, that fact is that whether or not Ameritech's version is superior to that used by RCN is not relevant to the issue raised by RCN – that Ameritech is required to provide nondiscriminatory access to CNAM database information. Regardless of the differences between Ameritech's and RCN's versions of Caller ID with Name, (which RCN does not concede exist), Ameritech is required to provide RCN and its customers with the same level of access and the same information that Ameritech provides its own retail customers. How RCN chooses to provide the information to its customers is up to RCN, not Ameritech. If Ameritech were to properly set up the routing of RCN's CNAM queries to the third-party CNAM database providers (which, as noted, it does only on an individual customer complaint basis) such that RCN had access to the same information to which Ameritech has access, RCN's concerns would be minimized. Ameritech is not currently doing so. Last December, RCN notes, Ameritech promised just that, when migrating its LIDB/CNAM database platform from a dual AIN/IN platform to only AIN platform. Despite its commitment, Ameritech has not corrected the routing of RCN's CNAM queries destined for the third party CNAM database providers.

1276. RCN sees Ameritech to also claim that some of RCN's CNAM query problems may be related to the fact that RCN does not have arrangements with third-

party CNAM database providers that would enable it to obtain information from those entities. Staff witness Murray offers the same scenario as a possible reason for the CNAM query problems identified by RCN; however, these claims are not consistent with the CNAM query failures RCN experiences, which typically indicate that the query failed at Ameritech's STP and did not even reach the third-party provider's database. Ameritech can route queries correctly because it does so when RCN specifically requests it for a particular customer. RCN does not believe that any business arrangement with third-party CNAM database owners would be a reason for the query failures, as Ameritech and Staff suggest may be the case. If that were the reason for the query failure, then Ameritech's correction of individual NPA NXX routings would not have resolved the problem, as it has in several instances.

1277. Even if the problem were the result of the lack of appropriate arrangements with third-party database providers, RCN has made the right attempts. Specifically, RCN has requested information as to Ameritech's access arrangements with the third-party CNAM providers and whether those providers need RCN's point codes in order to receive and respond to CNAM queries from RCN customers. Ameritech, it contends, has failed to provide RCN any response to these requests, leading RCN to believe that the problem lies with Ameritech's routing of RCN's third-party CNAM queries.

1278. Staff recognizes that RCN is experiencing problems with Ameritech's routing of RCN's CNAM queries, but remains unclear as to whether the problem actually resides with Ameritech. As a result, Staff suggests that RCN's concerns can be resolved by the parties working together "to locate and trouble shoot the source of this problem." RCN welcomes the suggestion, and is willing to cooperate with Ameritech to solve the problems. To date, however, Ameritech has not responded to RCN's requests to resolve these concerns.

1279. To begin the process of resolving the issue, RCN would need a minimal amount of additional information from Ameritech concerning Ameritech's routing to and arrangements with third-party CNAM database providers. Upon receipt of that information, RCN will be able to propose a process to begin resolving the routing problems. Should the Commission otherwise determine that Ameritech has satisfied the Checklist Item 10 requirements and that RCN's concerns can be resolved by the parties, RCN requests that the Commission include as a condition of any such favorable recommendation a requirement that Ameritech work with RCN to resolve its CNAM issues.

5. Reply Positions

a. Ameritech Reply Position

1280. According to Ameritech, the Checklist Item 10 requirement of nondiscriminatory access to databases and associated signaling necessary for call routing and completion refers specifically to the signaling network that transmits data

within the network, certain call-related databases necessary for call routing and completion, and the Service Management Systems (SMS) used to maintain the data.

1281. No party, it asserts, disputes that Ameritech Illinois provides nondiscriminatory access to its signaling networks and to its Service Management Systems. So too, AI contends, there is no dispute as to four of the six call-related databases identified by the FCC, i.e., 47 C.F.R. 51.319(e)(2)(i): the Toll Free Calling Database ("800 Database"), the Advanced Intelligent Network Database ("AIN"), the 911 Database, and the E911 Database. (See AI Br. at 138, 163-164). The only disputes under this Checklist Item, AI notes, relate to the Calling Name Database ("CNAM") and the Line Information Database ("LIDB").

LIDB

1282. Ameritech Illinois is not, as WorldCom claims, "limiting WorldCom's use of the LIDB to those cases where WorldCom would use it for the provision of local service." (WorldCom Br. at 39). Where WorldCom is providing long distance service, it may still access the LIDB; all it has to do is pay the applicable access charge. (AI Br. at 164-166). WorldCom may not access the LIDB as a UNE when it provides long distance service, AI contends, because the FCC has held that long-distance providers cannot use unbundling to evade long-distance access charges. (Id. at 165, citing First Report and Order, para. 30). In any event, AI perceives this to be a theoretical controversy with no real-world implications, given that the rate for LIDB access in Ameritech Illinois' access tariff is actually lower than its tariffed TELRIC-based rate. (See Tr. 979-980).

Per-Query Access vs. Bulk Downloads of CNAM

1283. WorldCom's contention that Ameritech Illinois must provide bulk downloads of all the information in its CNAM database (as opposed to allowing CLECs to submit "queries" for individual calls the way Ameritech Illinois does) has been demonstrated to be wrong the Company claims. (AI Br. at 166-168). Staff likewise rejects WorldCom's argument. (Staff Br. at 182-183). In the Verizon Virginia arbitration, AI notes, WorldCom made the same arguments concerning bulk access that it makes here. The FCC expressly held that "the Act and the Commission's rules do not entitle WorldCom to download a copy of Verizon's CNAM database or otherwise obtain a copy of that database from Verizon." Verizon Virginia Arbitration, para. 524. The FCC noted that an ILEC need only allow access to call-related databases "[f]or purposes of switch query and database response through a signaling network" and "by means of physical access at the signaling transfer point," the way Ameritech Illinois does. Id. The FCC also expressly rejected WorldCom's arguments that bulk downloads are required for "nondiscriminatory access." (Id. at para. 525-527). Further, AI contends, WorldCom's citations to decisions by a few other state commissions (which predate the Verizon Virginia Arbitration and are outnumbered by the weight of state commission decisions going the other way) are obsolete.

Access to Other Carriers' CNAM Databases

1284. While RCN makes much of the fact that Ameritech Illinois has in six instances corrected individual routing errors that affected CNAM queries these are, as Staff notes, the kind of problems that are appropriately resolved on a case-by-case basis. (See Staff Br. at 174-175). Further, RCN presented no testimony to dispute Ameritech Illinois' explanation of the causes for the differences in CNAM information that RCN and Ameritech Illinois customers sometimes receive. (See AI Br. at 169-170).

1285. In any event, AI considers RCN's complaints to be based on a misunderstanding of the relevant legal requirement. RCN asserts that Ameritech Illinois must provide access to its CNAM database "so that the information CLEC customers receive is the same as the information that Ameritech's customers receive." (RCN Br. at 37). But it does not and can not provide any legal authority for this claim. The relevant standard, as Staff notes, is whether Ameritech Illinois provides RCN with "nondiscriminatory access." Parity in access does not mean parity in the end result, because, AI asserts, different carriers may use different technologies to read the data and provide their Caller ID services. (AI Br. at 169-170). As Staff notes, Ameritech Illinois "has met its burden of proof in demonstrating that CLECs can access CNAM databases in a manner that is at parity with the way in which [Ameritech Illinois] accesses the databases." (Staff Br. at 175-176).

1286. While Staff believes that "it is unclear at this time what is causing the problem RCN is experiencing," it further notes that Ameritech Illinois "has met its burden by identifying a number of non-[AI] related causes." (Staff Br. at 175). As Staff has requested, Ameritech Illinois continues "to work with RCN in a coordinated effort to resolve the problem raised by Mr. Dedhiya, in an expeditious manner as possible" (Id. at 176). AI intends to make clear, however, that it is not to be held responsible for problems it did not cause, or to fix the software that RCN purchased from an outside vendor or any source other than Ameritech Illinois.

b. Staff Reply Position

Calling Name Databases – Parity of Service

1287. Staff notes RCN to claim that Ameritech has not responded to its repeated attempts to resolve its problems, and to complain that RCN cannot start to resolve the problems with third-party database providers without some additional information from Ameritech. (RCN Br. at 29-30). Based on Staff's review, it is unclear that the problem is completely within Ameritech's control. Yet at the same time, it is obvious that the problem has an anti-competitive effect on Ameritech's competitors. (Id). As such, and in light of RCN's recommendation to the Commission, Staff is slightly modifying its own recommendation.

1288. While Staff continues to believe that Ameritech has met its burden of proof in demonstrating that CLECs can access CNAM databases at parity with the way in

which Ameritech accesses these databases, it is important to ensure that the CNAM database problem noted by RCN is resolved. Thus, Staff recommends that the Commission condition its favorable recommendation to the FCC on Ameritech making a commitment to resolve this issue. Therefore, Staff contends this issue should be continued to Phase II. This will allow Ameritech to either provide evidence that it has resolved this problem, or to allow the CLECs and AI to propose to the Commission a timeline and plan, by which this problem can be resolved.

c. AT&T Reply Position

1289. AT&T again maintains that Ameritech's rates for the CNAM database were filed at the same time its subloop and dark fiber rates were filed; in fact, they were a part of the same tariff filings. Consequently, the Commission has not investigated Ameritech's CNAM rates and AT&T believes it is virtually certain that they are not TELRIC-compliant given the fact that they are many orders of magnitude higher than the TELRIC-based CNAM rates adopted by other state commissions. (AT&T Br. at 139-140).

1290. With respect to the issue of access to Privacy Manager, AT&T agrees with Staff that neither the FCC nor the state has required up to this point that this AIN service software to be unbundled. (Staff Br. at 179-80). Believing that the Commission has the authority to require the unbundling of additional elements beyond the FCC's requirements, AT&T nevertheless contends that the issue concerning Privacy Manager should be taken up in further or future proceedings, rather than in this phase of the investigation.

d. WorldCom Reply Position

Directory Listing Order

1291. Contrary to Ameritech's arguments, WorldCom maintains that it never said that the 1999 Directory Listing Order requires ILECs to provide bulk download access to the CNAM database. Rather, WorldCom noted that the CNAM database is "analogous" to that of the Directory Assistance Listings ("DAL") database, since both databases contain nearly identical information and the rationale behind 1999 Directory Listing Order's reliance on FCC rule 51.311 in requiring ILECs to provide bulk downloads of the DAL database is equally persuasive in the CNAM context. Specifically, the 1999 Directory Listing Order held that "[a]lthough some competing providers may only want per-query access to the providing LEC's directory assistance database, per-query access does not constitute equal access for a competing provider that wants to provide directory assistance from its own platform." (1999 Directory Listing Order at para. 152). The same is true in the CNAM context, WorldCom argues.

1292. Similarly, the 1999 Directory Listing Order noted that "if the requesting LEC cannot enter the data into its own database, but is limited to supplying directory

assistance to its customers by dipping into the providing LEC's database on a query-by-query basis, the requesting LEC would not have control over service quality and could be subject to degraded service and dialing delays with no control over the management of the database." Once again, WorldCom contends, the same concerns are applicable to a requesting LEC's use of the CNAM database.

1293. It is clear, WorldCom contends, that Ameritech itself has bulk access to the CNAM database, and that CLECs who are relegated to merely the per-query form of access cannot use the database nearly as economically, efficiently or effectively as Ameritech. Although Ameritech claims that it allows CLECs to access its CNAM database via the very same query method that it uses to access that database itself, this is not the case. According to WorldCom, Ameritech incurs neither a charge, nor a time delay, every time it dips into its own database using its SS7 network, whereas the CLECs do (although they would not if they received bulk download access to the CNAM database, thereby allowing them to use their own SS7 networks to "dip" the database). Ameritech can also use the database to provide other innovative offerings that the CLECs cannot develop if relegated to merely per-query access. Similarly, WorldCom notes Ameritech's claim that "it is not a monopoly provider of the CNAM database" is misleading, because although there are other CNAM providers, for example ILECs in other regions of the country, the only CNAM provider that can provide CNAM information for Ameritech Illinois customers is Ameritech Illinois.

1294. Although Ameritech may claim otherwise, WorldCom contends that the FCC's recent order in the Virginia Arbitration between various CLECs (including WorldCom) and Verizon does not preclude the outcome a requirement that CNAM be provided in batch download format. That proceeding, WorldCom observes, was an arbitration relating to WorldCom's interconnection agreement with Verizon, and not a 271 proceeding. According to WorldCom, the record in the Virginia matter did not highlight, as does the record here, the technical feasibility of bulk download via the FTP. Further, the Virginia Order makes clear that that the arguments in favor of batch download access were "not fully articulate[d]" in that proceeding, and that the FCC did not feel that there had been a sufficient discussion of the issue (including citations to specific statutory authority) to warrant finding that providing bulk download CNAM access was required under the FCC's rules and orders. Such is not the case here, WorldCom argues.

1295. Additionally, WorldCom notes, the fact that the FCC found that Verizon's per-query CNAM access offering met the requirements of FCC Rule 51.319(e)(2)(i), and that the rule did not require Verizon to provide batch download access in the arbitration context does not preclude this Commission from requiring bulk download CNAM access after considering the record in this proceeding. Not only did the FCC fail to address the implications of its own rule on nondiscriminatory access to UNEs in the Virginia Order, WorldCom asserts, there is a fundamental distinction between the FCC requiring one form of CNAM access, and precluding any alternate form of CNAM access.

1296. The Virginia Order WorldCom claims also failed to address the issue of independent state authority to require bulk download CNAM access. WorldCom

contends it is clear that states can – and have – required Ameritech and other ILECs to provide bulk downloads of the CNAM database. Section 251(d)(3) of the Act provides that the FCC shall not preclude the enforcement of any state commission regulation, order or policy that (A) establishes access and interconnection obligations of ILECs; (B) is consistent with the requirements of section 251; and (C) does not substantially prevent implementation of this section and the purposes of sections 251-261.

1297. Similarly, section 261(b) of the Act provides that nothing therein is intended to "prohibit any State commission from … prescribing regulation … in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part." In addition, the FCC's implementing orders and rules provide this Commission with the explicit authority to unbundle the ILEC's network beyond the FCC's minimum requirements. See 47 C.F.R. 317 (b). Indeed, this Commission recently reiterated the scope of its independent state authority in its order in Docket 01-0614.

1298. WorldCom invites the Commission to take a progressive stance, and find on the basis of federal and state authority, as well as upon the record here developed, that it is appropriate to have Ameritech provide CLECs with batch download access to the CNAM database, in addition to its per-query CNAM access offering.

6. Staff's Proposed Remedial Actions for Checklist Compliance

1299. Staff recommends that the Commission condition its favorable recommendation to the FCC on AI making a commitment to resolve the issue raised by RCN pertaining to transmission of a calling party's CNAM information. Consequently, the Commission should order this issue continued to in Phase II. According to Staff, this will allow AI to either provide evidence that it has resolved this problem, or to allow the CLECs and AI to propose to the Commission a timeline and plan, by which this problem can be resolved.

1300. Staff repeats that AI must also file TELRIC compliant rates or demonstrate that the interim rates for the following are compliant with TELRIC principles: non-recurring charges for UNE combinations; non-recurring charges for UNEs; recurring UNE charges; unbundled switching and interim shared transport rates (ULS-IST); dark fiber; unbundled sub-loop rates; AIN routing of OS/DA charge; CNAM database access charge; NGDLC UNE platform charge; and OSS modification charge for the HFPL UNE.

7. Commission Review and Conclusion

1301. On record, WorldCom has raised a dispute concerning its desire for batch or bulk CNAM v. per query access. We are told, however, that the FCC has rejected arguments asserting that bulk downloads are required for non-discriminatory access. The handful of state commissions that found otherwise, AI informs, rendered their decisions prior to the FCC's pronouncement in the Verizon-Virginia Arbitration matter.

1302. Here and now, WorldCom asks this Commission to take a progressive stance and order Ameritech Illinois to provide batch download access to the CNAM database. As such, it makes clear that this is not a compliance issue and outside the scope of this investigation. In other words, WorldCom's request lies outside the scope of this compliance investigation.

1303. Another issue came forward in the testimony of RCN and concerns the routing of RCN's CNAM queries.

1304. While Staff believes Ameritech Illinois to have met its burden of proof with respect to the issue raised by RCN, it favors further action by the Company. To be specific, Staff recommends that AI commit to working along with RCN to resolve the problems. The Commission agrees and accepts Staff's recommendation on the matter.

1305. In other words, Ameritech will be found compliant with Checklist Item 10 on the condition that it reports, in Phase II, and in writing, the details of measures taken to assist in the identification and resolution of RCN's difficulties.

K. CHECKLIST ITEM 11 – Number Portability

1. Description of Checklist Item

1306. Section 271(c)(2)(B) (xii) of the 1996 Act requires a 271 applicant to comply with: **the number portability regulations adopted by the Commission ["FCC"] pursuant to section 251**. 47 U.S.C. Section 271(c)(2)(B)(xii).

2. Standards for Review

1307. Section 251(b)(2) requires all LECs to provide, "to the extent technically feasible, number portability in accordance with requirements prescribed" by the FCC." 47 U.S.C. Section 251(b)(2). The Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." Id. at 153(30).

1308. In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [FCC]." Id. at 251(e)(2).

1309. Pursuant to these statutory provisions, the FCC requires LECs to offer interim number portability "to the extent technically feasible." The FCC also requires LECs to gradually replace interim number portability with permanent number portability. The FCC has established guidelines for states to follow in mandating a competitively

neutral cost-recovery mechanism for interim number portability, and created a competitively neural cost-recovery mechanism for long-term number portability.

1310. (Adapted from New Jersey 271 Order with cites and footnotes omitted)

3. The State Perspective

1311. The FCC has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability, (See 47 C.F.R. 52.29; Second BellSouth Louisiana Order, 13 FCC Rcd at 20758, para. 275; First Number Portability Order, 11 FCC Rcd at 8417-24, para. 127-40). and created a competitively neural cost-recovery mechanism for long-term number portability. (See 47 C.F.R. §§ 52.32, 52.33; Second BellSouth Louisiana Order, 13 FCC Rcd at 20758, para. 275; Third Number Portability Order, 13 FCC Rcd at 11706-07, para. 8; Fourth Number Portability Order at 16464-65, para. 9).

1312. Number portability allows a customer to switch local exchange carriers without having to change telephone numbers. Illinois drove much of the initial development and implementation of local number portability. As directed by this Commission, an Industry Working Group on number portability held a number of workshops during year 1995. On September 8, 1995, the Working Group reached consensus regarding the basic type of number portability to recommend to the Commission for implementation in Illinois.

1313. On February 20, 1996, Ameritech, GTE, Sprint, MCI, MFS, AT&T and TCG filed a Stipulation and Agreement seeking the Commission's adoption of the Location Routing Number (LRN) method for permanent number portability. This method, originally proposed by AT&T, was refined within the Illinois Number Portability Task Force meetings by the above seven companies as well as other industry participants. By Order, on March 13 1996, the Commission found that, "the Location Routing Number call model is reasonable and supported by the record for use as the long-term call processing model for implementation of local number portability" Order at 4 Docket 96-0089, (March 13, 1996). Illinois Bell Telephone Company; GTE North Incorporated; GTE South Incorporated; Central Telephone Company of Illinois, Inc.; AT&T Communications of Illinois; MCI Telecommunications Corporation; MCIMetro Transmission Service, Inc.; Sprint Communications Company L. P.; MFS Intelenet of Illinois, Inc.; Teleport Communications Group, Inc. Joint Petition For Approval of Stipulation and Agreement Relating to the Implementation of Local Number Portability).

1314. On March 13, 1996, this Commission initiated Docket 96-0128 to discuss statewide implementation of local number portability. (Illinois Commerce Commission On Its Own Motion, Implementation of Local Number Portability, Docket 96-0128, (Dismissed November 7, 1996)). On July 2, 1996, the FCC released its First Report and Order in CC Docket 95-116 addressing number portability. This order adopted the same call model selection criteria used in Illinois to select LRN. The FCC also mandated that a Field Test be carried out in the Chicago MSA prior to implementation of

number portability. The FCC's schedule for implementation set Chicago as one of the first areas to implement number portability (10/1/97).

1315. Following the conclusion of the FCC mandated Field Test on September 26, 1997, the Task Force filed with the FCC and ICC a report detailing the results of the Field Test on October 17, 1997. The report indicated that no technical issues were identified that would prevent the deployment of number portability.

1316. On March 31, 1998 the end date mandated by the FCC for number portability implementation in the Chicago MSA, Ameritech implemented number portability. On April 8, 1998, this Commission approved Ameritech Illinois' number portability tariff and it was allowed to go into effect.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1317. "Number portability", AI explains, refers to the ability of end users to keep their existing telephone numbers when they switch from one telecommunications carrier to another, while remaining at the same location. This process, AI notes, is sometimes described as "porting" the number from one carrier to the other. (AI Ex. 19.0 para. 4). Checklist Item 11 requires that, after the FCC issues regulations to require permanent number portability, a BOC must show "full compliance with such regulations." 47 U.S.C. 271(c)(2)(B)(xi). These FCC regulations, referred to in Checklist Item 11, require the deployment of "long term number portability," or LNP (as opposed to "interim number portability" the system that was in place while the regulations were developed and implemented). AI compliance with Checklist Item 11, is set out in the testimonies of witnesses Deere and Smith.

1318. Ameritech Illinois asserts that there is no dispute as to it "full compliance" with the relevant FCC orders and Checklist Item 11. According to AI, the FCC's First Report and Order required incumbent carriers to deploy LNP in the country's top 100 Metropolitan Statistical Areas ("MSAs") by December 31, 1998. Ameritech Illinois contends that it has deployed LNP in all of the required MSAs within its service area; in fact, by August 1999, Ameritech Illinois had deployed LNP in every switch in its operating territory, representing 100% of its access lines. (AI Ex. 19.0 para. 5). There is also no dispute, Ameritech Illinois observes, but that its deployment of LNP fully satisfies the myriad performance criteria and technical requirements established by the FCC. For instance, in providing number portability, Ameritech Illinois assures the support of existing network services, features and capabilities, and assures that no unreasonable degradation in service quality results from porting. (Id. para. 10-11).

1319. Ameritech notes that telephone numbers for all carriers, including Ameritech Illinois, are maintained by a regional third-party Number Portability

Administration Center ("NPAC"), i.e., Neustar. If a CLEC wants to "port" a number assigned to Ameritech Illinois, it initiates a number portability request by issuing a Local Service Request ("LSR") to Ameritech Illinois. (Id. para. 24). As with other LSRs, Ameritech explains, it processes the request and returns a firm order confirmation ("FOC") to the requesting carrier. (Id). The requesting carrier must then input a "create message" to the regional administrator, indicating its intent to port a telephone number. (Id). Ameritech Illinois sends a matching message. (Id). The requesting carrier may then activate the ported number on the due date, and the LNP administrator broadcasts the number, along with the associated LNP routing information, to all LNP-capable service providers so they can properly route calls. (Id).

1320. Ameritech Illinois maintains that it has binding interconnection agreements with CLECs that require parties to provide LNP in conformance with the Act and the FCC's rules. Competing carriers, it notes, have ported over 864,000 numbers through September 2001. (Id). AI observes that, in the Third Report and Order, the FCC established "an exclusively federal recovery mechanism for long-term number portability." Id. para. 29. According to AI, it has effective tariffs for a monthly number-portability charge and a query-service charge. (AI Ex. 19.0 para. 27). The Company asserts that these tariffs comply with the relevant FCC orders. (Id. para. 28-30).

b. Staff Position

1321. According to Staff, the specific issues related to number portability are: (1) whether AI has implemented line number portability ("LNP") for all of its switches in Illinois; and (2) whether AI has identified locations (i.e., rate centers) of switches where LNP is not available.

1322. Staff accepts the testimonial assertions of Ameritech witness Eric Smith, and maintains that this evidence demonstrates that AI complies with number portability requirements of Checklist Item 11. According to Staff, Ameritech witness Smith affirms that AI has equipped all 395 of its switches in Illinois with LNP capability. (AI Ex. 19.0 para. 5). Staff notes no party to have challenged Mr. Smith's assertions. Based on all of the relevant evidence by Ameritech, it appears to Staff that Ameritech complies with the number portability requirements of Checklist Item 11.

1323. While it has analyzed number portability issues in this part of the proceeding, Staff will present its analysis of the independent third party review of Ameritech's OSS and business processes, and other OSS related issues that arise subsequent in Phase II. Since the analysis is ongoing, the Phase II investigation may reveal that Ameritech provides number portability in a non-discriminatory manner. In the event that any new information that comes to light about actions in violation of federal or state law or rules, it is Staff's position that it may introduce such evidence and make a new recommendation in Phase II that is contrary to the recommendation it makes at this juncture.

5. Reply Positions

a. Ameritech Reply

1324. Ameritech Illinois maintains that there is no dispute that it satisfies Checklist Item 11 and that it provides long-term number portability in accordance with FCC rules. (AI Br. at 172-173). Ameritech further notes the concurrence of Staff with its assertion of compliance. (Staff Br. at 184).

6. Staff Final Recommendation for Checklist Compliance

None

7. Commission Review and Conclusions.

1325. On the whole of the record before the Commission, it is reasonable to conclude that AI satisfies the requirements of Checklist Item 11. The Commission does so find.

L. CHECKLIST ITEM 12 – Local Dialing Parity

1. Description of Checklist Item

1326. Section 271(c)(2)(B)(xii) requires a 271 applicant to provide: **"[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."** 47 U.S.C. 271 (C)(2)(B)(xii).

2. Standards for Review

1327. Section 251(b)(3) imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays." 47 U.S.C. 251(b)(3). The Act defines "dialing parity" as follows:

> [A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation. 47 U.S.C. 153(15).

1328. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call. 47 C.F.R. 51.205, 51.207. Moreover, customers

of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers. See 47 C.F.R. 51.207 (requiring same number of digits to be dialed); Local Competition Second Report and Order, 11 FCC Rcd at 19400, 19403.

1329. (Adapted from New Jersey 271 Order, Appendix C, with cites and footnotes omitted).

3. The State Perspective

1330. Dialing parity is the ability of all customers within a local calling area to dial the same number of digits to make a local telephone call, without regard to the identity of the customer's or the called party's carrier.

1331. The Commission has addressed this issue within the context of toll services. On April 7, 1995, the Commission proposed a statewide rule that required all incumbent and new local exchange companies to allow customers to "presubscribe" to the long distance carrier of the customer's choice for local toll calls. Order, at Docket 94-0048, Illinois Commerce Commission, On Its Own Motion Adoption of Rules Relating to Intra-Market Service Area Presubscription and Changes in Dialing Arrangements Related to Implementation of Such Presubscription). (October 3, 1995). Local toll presubscription is the means by which telephone customers are able to designate which company will carry their local toll telephone traffic and thus do not need to dial any extra numbers in order to access their preferred carrier. The rule, which became effective on November 1, 1995, requires that local exchange carriers offer presubscription by November 1, 1996, using the "2-PIC" method. (83 Ill. Adm. Code Part 773). The 2-PIC method allows end users to choose one carrier for local toll traffic and a different carrier for long distance traffic.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1332. Local dialing parity, AI explains, means that all customers within a local calling area can dial the same number of digits to make a local telephone call, regardless of the identity of the customer's or the called party's carrier. See 47 U.S.C. 153(15); 47 C.F.R. 51.207. Checklist item 12 requires Ameritech Illinois to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." 47 U.S.C. 271(c)(2)(B)(xii). In turn, section 251(b)(3) of the Act provides:

> Dialing Parity – The duty to provide dialing parity to competing providers of telephone exchange service and

> telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

1333. The Company asserts that the evidence provided by AI witness Deere establishes that it is in full compliance with the Checklist Item 12. (See AI Ex. 5.0 Sch. WCD-1, para. 282-284). According to Ameritech Illinois, its binding interconnection arrangements do not require any CLEC customer to use access codes or additional digits to complete local calls to Ameritech Illinois customers. (Id. para. 284). Nor are Ameritech Illinois' customers required to dial any access codes or additional digits to complete local calls to a CLEC customer. (Id). Ameritech further explains that CLEC central office switches are connected to the trunk side of Ameritech Illinois' switches in the same manner as Ameritech Illinois or other LEC switches. Thus, there are no different or additional dialing requirements for CLEC customers or any built-in delays. (Id). From the end user's perspective, AI points out, the interconnection of Ameritech Illinois networks and CLEC networks is seamless. (Id).

b. Staff Position

1334. Staff relies on the statutory provisions that constitute Checklist Item 12 and the FCC's implementing rules thereunder. In the end, Staff finds that the testimonial account provided by Ameritech witness Deere demonstrates the Company's compliance with the local dialing parity requirements of Checklist Item 12. Staff accepts that Ameritech provides local dialing parity to CLECs in a manner that is nondiscriminatory since it does "not require any CLEC to use access codes or additional digits to complete local calls to Ameritech customers", nor has it "built in any delays for CLEC customers." (AI Ex. 5.0, Attach. 5.01, para. 284). It would further note that no other party has challenged Mr. Deere's assertion.

1335. Based on all of the evidence presented, it appears to Staff that Ameritech's operations satisfy the requirements under Checklist Item 12.

5. Reply Positions

a. Ameritech Reply

1336. Ameritech Illinois maintains that there is no dispute but that it satisfies Checklist Item 12 by providing "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." 47 U.S.C. 271(c)(2)(B)(xii). Ameritech notes the concurrence by Staff "that Ameritech's operations satisfy the requirements for Checklist Item 12." (Staff Br. at 186).

6. Staff's Proposed Remedial Actions for Checklist Compliance:

None.

7. Commission Review, and Conclusion

1337. The record shows that AI is in full compliance with Checklist Item 12. The Commission is compelled to enter such a finding.

M. CHECKLIST ITEM 13 - Reciprocal Compensation

1. Description

1338. Section 271(c)(2)(B)(xiii) of the Act requires that a 271 applicant:

enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." 47 U.S.C. Section 271 (c)(2)(B)(xiii).

2. Standards for Review

1339. At the outset, Section 251 (b) (5) establishes the LEC duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. For purposes of compliance with section 251(b)(5) above, Section 252 (d)(2)(A) provides that "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless:

> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 USC See 252 (d)(2)(A)

1340. Section 252 (d)(2) (B), sets out "rules of construction for paragraph (2) directing that this paragraph shall not be construed:

> (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive recovery (such as biel-area-keep arrangements); or
>
> (ii) to authorize the [FCC] or any State Commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or

terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

Other Authority

1341. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Dockets 96-98 and 99-68, released April 27, 2001) ("ISP Compensation Order").

3. The State Perspective

1342. Under Checklist Item 1, local exchange carriers like Ameritech Illinois are required to interconnect their networks with those of competing LECs so that customers of each carrier can call customers of the others.

1343. Checklist Item 13 requires a BOC to provide reciprocal compensation arrangements in accordance with section 252(d)(2) of the 1996 Act, which governs charges for traffic subject to the reciprocal compensation requirements of section 251(b)(5). Section 251(b)(5) of the Act requires LECs to establish arrangements for "reciprocal compensation" for certain traffic.

1344. The compensation for traffic subject to section 251(b)(5) works as follows: when a customer of Ameritech Illinois calls a customer of a CLEC, Ameritech Illinois pays that CLEC for "terminating," or completing, that call. Likewise, when the CLEC's customer calls a customer served by Ameritech Illinois, the CLEC pays Ameritech Illinois for completing the call. Hence, the compensation is "reciprocal."

1345. This Commission first examined reciprocal compensation rates in October 1994, when MFS filed a complaint against Ameritech Illinois for refusing to provide certain intercarrier arrangements that, it alleged, Ameritech Illinois had made available to other previously authorized independent local exchange carriers, i.e., adjacent incumbent LECs. This action was followed with similar complaints filed by TC Systems and MCI Communications. On February 8, 1995, the Commission ordered Ameritech Illinois to provide interconnection arrangements and reciprocal compensation to MFS until issues in the "Customers First" dockets were decided. Interim Order, MFS Intelenet of Illinois, Inc. vs. Illinois Bell Telephone Company, Complaint and Petition as to Alleged Refusal to Provide Certain Inter-Carrier Arrangements, Docket 94-0422, (February 8, 1995).

1346. In the Commission's investigation of Ameritech's Customers First Proposal, reciprocal compensations rates were addressed on a permanent basis. Order at 96-101, Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois, Docket 94-0096, Illinois Bell Telephone Company Addendum to Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois, Docket 94-0117, AT&T Communications of Illinois, Inc. Petition for an

Investigation and Order Establishing Conditions Necessary to Permit Effective Exchange Competition to the Extent Feasible in Areas Served by Illinois Bell Telephone Company, Docket 94-0146, Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois (refiled), Docket 94-0301 Consolidated, (April 7, 1995), at 96-101.

1347. In Docket 96-0486/96-0596 (consolidated), the Commission determined forward looking assumptions for Ameritech's cost models, these assumptions affected the rates for reciprocal compensation[22]. Order, Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois, Docket 94-0096, Illinois Bell Telephone Company Addendum to Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois, Docket 94-0117, AT&T Communications of Illinois, Inc. Petition for an Investigation and Order Establishing Conditions Necessary to Permit Effective Exchange Competition to the Extent Feasible in Areas Served by Illinois Bell Telephone Company, Docket 94-0146, Illinois Bell Telephone Company Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois (refiled), Docket 94-0301 Consolidated, (April 7, 1995), at pp. 96-101.

1348. The Commission also addressed reciprocal compensation in the context of ISP bound traffic. On March 11, 1998, the Commission entered an Order requiring Ameritech Illinois to pay petitioning CLECs reciprocal compensation for calls that are within 15 miles and for traffic that is billable as local from its customers to ISPs that are customers of petitioning CLECs[23]. Order, Teleport Communications Group, Inc et al. v. Illinois Bell Telephone Company, Complaint as to Ameritech Illinois' Refusal to Pay Reciprocal Compensation for Local Traffic Terminated by Complaintant to Its Internet Service Provider Customers, Dockets 97-0404/97-0519/97-0525 (cons). (Mar. 11, 1998).

1349. The Commission reexamined the reciprocal compensation issue in an Arbitration case, i.e., Docket 00-0027. The Commission reaffirmed its past decision on this issue but noted the need for a generic case to reexamine the impact of internet traffic on the reciprocal compensation payment structures. In August of 2000, the Commission initiated Docket 00-0555[24] to investigate the pricing of reciprocal compensation. Illinois Commerce Commission on Its Own Motion, [Establishing Rules for Reciprocal Compensation For Internet Service Provider-bound Traffic], Initiating Order, Docket 00-0555. (August 17, 2000).

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[22] Second Interim Order, Illinois Commerce Commission On Its Own Motion Investigation Into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic, Docket 96-0486, Illinois Bell Telephone Company Proposed Rates, Terms and Conditions for Unbundled Network Elements, Docket 96-0569, Consolidated, (February 17, 1998).

[23] Teleport Communications Group, Inc et al. v. Illinois Bell Telephone Company, Complaint as to Ameritech Illinois' Refusal to Pay Reciprocal Compensation for Local Traffic Terminated by Complaintant to Its Internet Service Provider Customers, Docket Nos. 97-0404/97-0519/97-0525 (cons). (Mar. 11, 1998).

[24] Illinois Commerce Commission on Its Own Motion, [Establishing Rules for Reciprocal Compensation For Internet Service Provider-bound Traffic], Initiating Order, Docket No. 00-0555, (August 17, 2000).

1350. On April 27, 2001, the Federal Communications Commission ("FCC") released an order addressing intercarrier compensation. (In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Dockets 96-98 and 99-68, released April 27, 2001) ("ISP Compensation Order"). After this Order was released, Staff filed a motion to dismiss Docket 00-0555 because the FCC's Order pre-empted the States authority over the pricing of ISP bound traffic. The Commission dismissed Docket 00-0555 on July 25, 2001.

4. Evidence, Issues/Positions.

a. Ameritech Illinois Showing of Compliance.

1351. Ameritech Illinois witness Scott Alexander provided testimony with respect to this checklist item. There is no dispute, AI claims, as to the facts that demonstrate its Checklist Item 13 compliance, to wit:

- Ameritech Illinois has entered into reciprocal compensation arrangements as part of legally binding interconnection agreements and an effective tariff, and it is paying reciprocal compensation under those arrangements (Am. Ill. Ex. 1.0 , Alexander Direct, Sch. SJA-1, ¶¶ 115-116);

- Ameritech Illinois' agreements provide for reciprocal compensation at least to the extent required by the Act (Id. ¶ 115);

- The Commission has approved rates for reciprocal compensation, and has found them consistent with TELRIC cost principles and with section 252(d)(2) (Id. ¶ 116);

1352. The issues raised relative to this checklist item, AI notes, all revolve around the FCC's ISP Compensation Order, which considered inter-carrier compensation for traffic delivered to Internet Service Providers ("ISP-bound traffic").

1353. This Commission, Ameritech Illinois observes, has ordered it to pay reciprocal compensation on ISP-bound traffic under certain interconnection agreements. (Am. Ill. Ex. 1.0, Sch. SJA-1, ¶ 117). Recently however, AI notes, the FCC has determined that "ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5)." ISP Compensation Order, ¶ 3 Nevertheless, AI maintains, it complies with the ICC's orders, pending judicial review (Am. Ill. Ex. 1.0, Sch. SJA-1, ¶ 117).

1354. More important, AI contends, is that the FCC has steadfastly held that a BOC's payment (or non-payment) of inter-carrier compensation on ISP-bound traffic is "irrelevant to checklist item 13." See Kansas & Oklahoma 271 Order, ¶ 251; Pennsylvania 271 Order, ¶ 119.

The FCC's "Rate Cap" Election

1355. The ISP Compensation Order, AI explains, allows incumbent LECs to elect *out* of reciprocal compensation rates applied by state commissions to ISP-bound traffic, and into a series of rate "caps" designed as a transitional measure during the time that the FCC considers permanent rules for compensation on such traffic. Id. ¶¶ 7-8. The rate caps decrease over time, AI notes, consistent with the FCC's tentative conclusion that it would replace the reciprocal compensation regime with a "bill and keep" system where LECs carry each others' traffic without payment. Id. ¶ 7.

1356. Ameritech notes that the FCC set two conditions for this election: (1) an incumbent LEC making the election must also offer to exchange traffic that is subject to section 251(b)(5) at the same rates (id. ¶ 8); (2) the election "does not alter existing interconnection agreements, except to the extent that parties are entitled to invoke contractual change-of-law provisions (id. ¶ 82). According to Ameritech Illinois, it has not yet elected the caps, such that its effective tariff reflects the Commission-approved rates for now.

1357. While Staff contends that Ameritech Illinois should be forced to make or forego its election immediately, the FCC does not agree. (Staff Ex. 3.0 at 46-47). Nothing in the ISP Compensation Order, AI maintains, even remotely suggests that incumbent LECs must declare at any particular time whether they wish to avail themselves of the rate cap plan. To the contrary, AI asserts, the FCC left the decision as to when (or whether) to declare its intention to implement the rate caps up to each incumbent on a state-by-state basis. The FCC plainly contemplated, AI argues, that incumbents *would* elect into the caps at different times: first, the starting point depends in part on the remaining life of any pre-existing agreements and the existence or terms of any "change of law" provisions; and second, the rate caps decline over time, so carriers would find them desirable (and choose to adopt them) at different times.

1358. Staff's position, AI contends, overlooks the fact that this election was created by the FCC, and provided to the incumbents (including Ameritech Illinois) for their election on its terms. Moreover, AI maintains, the Commission is not acting as a decision-maker in this instance, but as an advisor to the FCC – the very authority whose order Staff puts into issue. Further, AI notes, this proceeding concerns compliance with the checklist of section 271, and this particular provision concerns compliance with the reciprocal compensation obligation established by section 251(b)(5). The ISP Compensation Order, AI maintains, strictly governs compensation for ISP-bound traffic, which the FCC has held is "irrelevant" to Checklist Item 13; and its rate caps were not created under the provisions of section 251(b)(5) (because the FCC has held that ISP-

bound traffic is not subject to reciprocal compensation under section 251(b)(5)) but under the FCC's section 201 interstate authority).

1359. AI notes Staff's position that allowing incumbents like Ameritech Illinois to retain the flexibility given them by the FCC – namely, to choose whether and when to invoke the rate caps for ISP-bound traffic – creates some uncertainty as to future rates for reciprocal compensation. The uncertainty is not significant, according to Ameritech. It asserts that the rate caps are published in the FCC's order, and Ameritech Illinois offers CLECs a contractual provision that provides 20 days advance notice of any election. (Am. Ill. Ex. 1.1 at 4).

1360. In any event, AI maintains, complete certainty cannot be achieved even under Staff's proposal. To be sure, AI observes, the elective "caps" are merely a transitional mechanism, and the FCC is still considering final rules whose content is uncertain for incumbents and CLECs alike. Further, CLECs sought to have the ISP Compensation Order overturned in the courts, making it apparent that the CLECs can live with some uncertainty.

1361. In WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. May 3, 2002), AI notes, the D.C. Circuit remanded the FCC's ISP Compensation Order for further proceedings based on the finding that the FCC's reasoning (namely, that Internet traffic was excepted from the scope of section 251(b)(5)'s reciprocal compensation obligation by section 251(g) of the 1996 Act) was erroneous. It did not however, AI observes, vacate the order or the rules issued pursuant to that order. Accordingly, the FCC continues to apply the ISP Compensation Order in section 271 proceedings, even after the D.C. Circuit's ruling. See Georgia & Louisiana 271 Order, in which the FCC held:

> "Under a prior Commission order, ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2). This decision was reaffirmed by the Commission [in the ISP Compensation Order]. Although the D.C. Court has remanded this latest Commission decision, the court did not vacate it and our rules remain in effect." Id. at para 272.

The Opt-in Exemption – (Implicating Checklist Item 1)

1362. AI disagrees with Staff's position that Ameritech Illinois must permit CLECs to "opt in" to terms and provisions for reciprocal compensation in existing interconnection agreements. (Staff Ex. 3.0 at 169). It asserts that the FCC has expressly held that the Act's "opt in" provisions do not apply to terms and conditions related to compensation for ISP-bound traffic, (so as to prevent new carriers from receiving such compensation and to serve as a prelude to phasing it out entirely). ISP Compensation Order, ¶¶ 2, 82.

1363. Given that the Commission has ordered Ameritech Illinois to pay "reciprocal compensation on ISP-bound traffic" under the reciprocal compensation provisions of several existing interconnection agreements (a conclusion with which Ameritech Illinois disagrees, but with which it is in compliance pending judicial review), it is hard to see, AI maintains, just how Staff could contend that those provisions are not related to ISP-bound traffic. At any rate, AI asserts, the FCC's opt-in exemption does not delay interconnection: Ameritech Illinois has a standard offer for reciprocal compensation that several CLECs have adopted, and to the extent a CLEC wishes to negotiate the matter it can enter into an interim compensation arrangement while negotiations proceed forward. (Am. Ill. Ex. 1.1 at 43, 47-48).

The Bifurcated Rate Offer

1364. According to AI, the current tariffed rate structure for reciprocal compensation consists of a single "unitary" rate assessed on each minute of a call. For example, if Ameritech Illinois owed a CLEC reciprocal compensation for a five-minute phone call, the amount owed would be five times the applicable unitary rate; for a 30-minute call, the amount would be 30 times the unitary rate.

1365. Reciprocal compensation rates, AI contends, are intended to cover two different types of costs: (1) the costs to a carrier of setting up a call, which are not incurred on a per-minute basis but incurred only once (at the start of the call), and (2) the costs of keeping open an existing connection, which are time-sensitive and incurred throughout the call. Because set-up costs are incurred one time per call, they were melded into the per-minute rate by being spread over the length of the call, which was assumed to be approximately four minutes. For example, if the fixed set-up costs were 4 cents per call (an amount chosen solely for ease of illustration), the unitary rate would include one cent per minute for this cost component (along with the per-minute cost of maintaining the call).

1366. Dial-up Internet calls, AI observes, last much longer on average, as an Internet subscriber may spend a long time "surfing the Web" in a single Internet session. If a carrier were to receive "reciprocal compensation" on a 30-minute call at the unitary per-minute rate, the carrier would receive 30 cents for call set-up (30 minutes times one cent per minute) even though the actual cost incurred was only four cents (one set-up per call, at four cents). Thus, the application of the unitary rates to Internet traffic would result in a windfall, i.e., "compensation" that was several times greater than costs incurred to the receiving carrier. For the same reason, the FCC has found that "[i]t is unlikely that any minute-of-use rate that is based on average costs and depends upon demand projections will reflect the costs of any given carrier to serve any particular customer." ISP Compensation Order, ¶ 76. As the FCC reasoned, AI notes, per-minute averaged rates "do not . . . reflect the costs incurred by any particular carrier for providing service to a particular customer" but instead "encourage[] carriers to target customers that are, on average, less costly to serve, and reap a reciprocal compensation windfall." Id.

1367. Ameritech Illinois asserts that it offers CLECs an "alternative" rate structure through its GIA. The alternative structure is "bifurcated," AI explains, as it consists of a one-time charge at the start of each call to compensate for the cost of call set-up, and a separate charge assessed for each minute of the call's duration. While Staff suggests that this "offer" violates Checklist Item 13, AI instructs that the GIA structure uses exactly the same set-up and duration costs that this Commission approved; Ameritech Illinois simply reversed the averaging step that had been used to meld the two elements into a single rate. (Am. Ill. Ex. 10.1 at 10).

1368. According to AI, the FCC has never held that a bifurcated rate structure warrants a finding of non-compliance. To the contrary, AI asserts, its ISP Compensation Order endorses the concept as a potential solution to the windfalls some CLECs obtained under the unitary system. Id. Para 92

1369. As or more importantly, AI contends, Staff's position overlooks one of the fundamental tenets of the 1996 Act: the primacy of contract. AI points out that the GIA and the bifurcated structure contained therein are merely offers that do not bind CLECs, and parties are free to negotiate without regard to the requirements of the Act. 47 U.S.C. § 252(a)(1). The Commission is well aware of this principle, AI maintains, by its having approved agreements in which CLECs voluntarily accepted the bifurcated rate offer. (Am. Ill. Ex. 4.1 at 43).

b. The Attorney General's Issues/Position

1370. The AG notes that Checklist Item 13 specifically requires that BOCs seeking to enter the long distance marke, have reciprocal compensation arrangements in place. According to the AG, the position that AI puts forward, i.e., that this Commission need not review its reciprocal compensation arrangements and that they are not subject to state law, presents a question of law for the Commission to resolve.

1371. Clearly, the AG argues, Congress intended that reciprocal compensation arrangements be subject to oversight. It further notes that the FCC's ISP Compensation Order offered BOCs an alternative reciprocal compensation arrangement, i.e. rate caps, if they choose to treat all traffic, ISP-bound and local, the same. (Staff Ex. 3.0 at 35). The AG understands AI to argue that even in the absence of choosing rate caps, all traffic should be treated as ISP-bound and not local. In the AG's view, this would effectively remove the Checklist Item 13 requirement from Section 271 contrary to the plain language of this provision and Congressional intent. Where AI has not opted for the rate caps, the AG maintains, the default assumption should be that state rules apply -- not that no rules apply.

c. AT&T's Issues/Position

1372. AT&T contends that Ameritech Illinois does not allow CLECs to opt in to other carriers' interconnection agreements regardless of whether those agreements were executed before, or after, the entry of the ISP Compensation Order. Further, it

argues, Ameritech Illinois has refused to offer CLECs the rate caps the FCC imposed on reciprocal compensation traffic in its ISP Compensation Order.

1373. Instead, AT&T notes, Ameritech Illinois offers to CLECs a reciprocal compensation mechanism called the "bifurcated rate" that contains a high first minute rate and a minuscule per minute rate for additional minutes. (Ameritech Illinois Ex. 1.1, at. 43-44). On this point, AT&T observes that calls to CLEC customers - such as Internet Service Providers or ISPs - tend be calls of longer duration than calls terminating to customers of ILECs like Ameritech. Applying Ameritech Illinois' bifurcated rate structure to such calls, AT&T argues, results in a smaller payment from Ameritech Illinois than using an average charge per minute. (AT&T Ex. 3.1, at 14).

1374. AT&T claims that a similar situation arises with calls involving wireless providers. According to AT&T, wireless calls are generally recognized to be of shorter duration than landline calls. Additionally, AT&T asserts, customers of wireless providers tend to disproportionately call ILEC customers over CLEC customers, because almost everyone still is a customer of the incumbent. Thus, AT&T contends, by proposing a high rate for the first minute of a call with minuscule rates for additional minutes, Ameritech collects proportionately more than do CLECs in direct violation of the reciprocal and mutual cost recovery necessary to constitute "just and reasonable" rates pursuant to section 252(d)(2). (AT&T Ex. 3.1 at 15).

1375. Rather than use the FCC's rates, AT&T argues, Ameritech Illinois returns to its bifurcated rate proposal that competitively advantages the company vis-à-vis the CLECs and refuses to allow CLECs to opt in to the reciprocal compensation provisions of any other interconnection agreements. (AT&T Ex. 3.1, at 13-15). In AT&T's view, this conduct violates Section 251(i) of the federal Act and the reciprocal compensation pricing mandates contained in section 252(d)(2) of the federal Act and, thus, is outside compliance with Checklist Item 13.

d. Staff's Issues/Position

1376. The evidence here, Staff maintains, demonstrates that Ameritech does not provide: (i) cost based reciprocal compensation rates as required by Section 252(d)(2); (ii) reciprocal compensation rates, terms, and conditions in accordance with the ISP Compensation Order; and (iii) nondiscriminatory access to reciprocal compensation rates per Section 251(c)(2) and the ISP Compensation Order. Each of these points serve to frame the issues that Staff raises relative to Checklist Item 13 compliance.

Reciprocal Compensation Rates

1377. As evidence of compliance with Section 271(c)(2)(B)(xiii), Staff observes Ameritech witness Mr. Alexander to have relied on: (1) numerous interconnection agreements" included in Attachment A to his affidavit; and (2) C.C. No. 20, Part 23, Section 2;the Ameritech End Office Integration Tariff, ILL. (Ameritech Ex. 1.0, Schedule SJA-1 at ¶116).

1378. Further, Staff notes AI witness Alexander to have testified that Ameritech's effective tariff and the cited agreements "contain reciprocal compensation rates based on costs developed pursuant to the requirements mandated by the ICC in its February 17, 1998 Order in consolidated Dockets 96-0486/96-0569." Id. According to Staff, however, Mr. Alexander only provided a general citation to a group of 13 agreements included in Attachment A to his testimony. Nowhere, Staff claims, does he identify a single agreement that contains reciprocal compensation rates based on costs developed pursuant to the requirements mandated by the Commission in its *TELRIC Order*.

1379. Staff indicates that it reviewed the "Level 3 Agreement" referred to by Mr. Alexander in order to assess whether the reciprocal compensation rates contained therein are, as asserted, based on costs developed pursuant to the requirements mandated by the Commission in its *TELRIC Order*. On this point, it notes Staff witness Zolnierek's testimony to state that the rates contained in that agreement are "not fully consistent with the cost assumptions, rate structure and rates" that Ameritech has adopted as a result of the TELRIC Order]: (Staff Ex. 3.0 at 161). According to Staff, AI witness Alexander confirmed Dr. Zolnierek's assessment, but further indicated that "this is evidence that the negotiation/arbitration process is working as intended under the regime established by the federal Act and as required by the FCC's ISP Compensation Order." (Ameritech Ex. 1.1 at 46).

1380. Staff further notes that Mr. Alexander provided citations in his surrebuttal testimony to numerous provisions in Ameritech's agreement with "Onepoint Communciations" that it is now relying on to demonstrate compliance with specific checklist items including reciprocal compensation provisions. According to Staff, however, Mr. Alexander did not reference that portion of the agreement containing reciprocal compensation rates, Appendix Pricing, at 12 and 13, and presumably, has not submitted these rates as evidence of compliance. Ameritech Ex. 1.2, Attachment SJA-3). All of this means, according to Staff, that the only evidence (Ameritech presented to support its position of compliance, is its End Office Integration Tariff, ILL.C.C. No. 20, Part 23, Section 2. Further, Staff points to AI witness Smith's account, that:

> Section 51.709 of the FCC's rules provides that rates for the transport and termination of local traffic (i.e. reciprocal compensation) are to be "structured consistently with the manner that carriers incur those costs". The two-part rate structure is consistent with the way in which Ameritech Illinois incurs its costs.
> (Ameritech Ex. 10.1 at 11).

1381. According to Staff, this would indicate that Ameritech's tariff, which does not contain a two-part rate structure, is inconsistent with the way in which Ameritech Illinois incurs its costs and thus does not comply with the FCC's rules.

Terms and Conditions

1382. Staff notes that the FCC adopted a transitional reciprocal compensation mechanism that conditions reductions in reciprocal Compensation for ISP-bound traffic upon similar reductions in reciprocal compensation for local traffic. ISP-Bound Traffic Order, ¶¶ 77, 89-90, 95. This scheme, Staff maintains, is designed to move intercarrier compensation for local and ISP-bound traffic toward the conditional "bill and keep" system. Additionally, Staff notes, the FCC system provides for an immediate transition to bill and keep solely for new ISP-bound traffic. Id., ¶¶ 78, 81-82.

1383. Staff further observes that while the FCC provided ILECs with an option, it did not mandate use of its revised intercarrier compensation scheme. ISP Compensation Order, ¶89. In the event an ILEC chooses not to elect the new intercarrier compensation scheme, Staff notes it would be required to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in its contracts. Id.

1384. To date, Staff notes, AI has rejected the FCC's reciprocal compensation mechanism and chosen to implement its own local and ISP-bound intercarrier compensation scheme in Illinois. AI's offering, according to Staff, does not comply with either the ISP Compensation Order or Section 271 of the 1996 Act, nor has it been submitted to the Commission for its review.

1385. Staff clarifies that it is not raising the issue of whether Ameritech pays carriers reciprocal compensation for ISP-bound traffic. Its concerns, Staff says, is with regard to Ameritech's "implementation" of the ISP Compensation Order and go directly to the carriers' ability to obtain reciprocal compensation rates, terms, and conditions for local traffic that comply with section 271, and to requesting carriers' ability to readily obtain from Ameritech access to rates, terms, and conditions that the FCC and this Commission (in implementing federal guidelines), have ordered Ameritech to provide.

1386. Staff suggests that the Commission should consider these issues from the perspective of a new entrant who has no desire to provide service to ISPs and has no customer that subscribe to ISP service. This kind of exercise, Staff maintains, will illustrate that Ameritech has used the ISP Compensation Order to escape its Section 271 "local" reciprocal compensation and "local" interconnection obligations.

Uncertainty and Time for Election

1387. Staff fully recognizes that Ameritech's failure to make an immediate election is neither a violation of the FCC's order, nor does it raise Section 271 compliance issues. The actual concern that Staff has, arises from Ameritech taking the position that, it "might" adopt the FCC solution at some undisclosed time.

1388. There is no question, Staff contends, but that CLEC business plans depend critically on the rates the carriers pay and receive for traffic exchanged with Ameritech. (Staff Ex. 3.0 at 43-45). In summarizing its ISP Compensation Order, Staff notes, the FCC highlighted that its interim regime "provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the NPRM proceeding." ISP Compensation Order, ¶95.

1389. Staff observes that reciprocal compensation received from Ameritech constitutes a major portion of CLEC revenues in Illinois, and conversely, reciprocal compensation paid to Ameritech constitutes a major portion of CLEC expenses in Illinois. Yet, Staff argues, Ameritech has needlessly increased the amount of uncertainty for competitive carriers providing local service in Illinois. According to Staff, carriers may know what the rates are before an election, and may know the rates after an election, but they do not know when or if an election actually will be made.

1390. While Ameritech will give carriers 20 days notice, it is not at all clear to Staff, how much time Ameritech and the other carriers will require to implement the election. Nor is it at all certain, Staff argues, how Ameritech plans to implement the FCC's rate caps. The details are not included in any interconnection agreements that Staff is aware of in Illinois, and are certainly not to be found in any agreement upon which Ameritech relies to support its alleged compliance. With this additional level of uncertainty, Staff believes there to be a nontrivial probability that carriers will be unable to reach agreement on implementation and might seek dispute resolution.

1391. While Ameritech believes that it has no legal obligation to make an election because the FCC set no explicit timetable for such an election, Staff considers Ameritech to be wrong. It cites to a number of legal opinions and treatises which hold to the proposition that where an order, statute or contract imposes "a duty" or requires the performance of some action, but is silent as to when it is to be performed, a reasonable time is implied. (Citations in Staff's Initial Brief at).

1392. On this basis, Staff argues that the FCC's imposition of a "duty on ILECs to choose" whether to elect the price caps at issue here, combined with the FCC's silence on when that action should be taken, must be interpreted to require the taking of that action within a reasonable period of time. Noting that it is now been well over a year since the FCC released the ISP Compensation Order, Staff asserts that this is more than reasonable time for Ameritech to make its election.

Opt-In to Reciprocal Compensation Rates – Implicating Item 1

1393. Under Section 252(i) of the federal Act, Staff maintains, a carrier may obtain the terms and conditions of a currently approved and effective Illinois interconnection agreement between Ameritech and any other CLEC. In reviewing the ISP Compensation Order, however, Staff notes the FCC's pronouncement that "…carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic." ISP

Compensation Order, ¶ 82. As such, Staff contends, the FCC explicitly restricted the limitation of opt-in rights to the rates paid for the exchange of ISP-bound traffic.

1394. According to Staff, the FCC set out the intent behind this restriction in its Order by stating, "[t]o permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here … would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery." ISP Compensation Order, ¶8. Noting that Ameritech has neither elected the reciprocal compensation rate caps nor chosen not to start this transition, there is no current need in Staff's view, for this restriction in Illinois. Ameritech imposes it anyway, Staff argues, and more importantly, the FCC's restriction does not apply to local traffic, only ISP-bound traffic.

1395. In arbitrating the Ameritech/Focal Interconnection Agreement, Staff observes, this Commission required Ameritech to treat ISP-bound traffic as local traffic. (Arbitration Decision at 12, Docket 00-0027, May 8, 2000). Staff maintains that the structure that Ameritech must follow under the FCC's ISP Compensation Order mirrors the structure that this Commission ordered in the Ameritech/Focal Interconnection agreement. In other words, Staff argues, a requesting carrier should be able to obtain the Ameritech/Focal Agreement rates not only because Focal obtained those rates, but because the rates in that agreement are those required under the FCC's ISP-Bound Traffic Order.

1396. Staff claims, however, that Ameritech denies carriers both the ISP-bound traffic reciprocal compensation rates and the local reciprocal compensation rates contained in the Ameritech-Focal Agreement. It does so, Staff claims, on the premise that rates, terms, and conditions for local reciprocal compensation are "interrelated" to rates, terms, and conditions for ISP-bound reciprocal compensation such that requesting carriers may not opt-in to rates, terms, and conditions for local reciprocal compensation.

1397. Staff again emphasizes that compensation for ISP-bound traffic is not the issue in this proceeding. The issue, Staff attempts to make clear, is that Ameritech has used the ISP Compensation Order as an excuse to relieve itself from providing to requesting carriers the local reciprocal compensation rates, terms, and conditions that both this Commission and the FCC require it to provide.

1398. Staff observes that, relative to its tariffed rates, Ameritech's GIA reciprocal compensation rates increase the amount of reciprocal compensation paid for short duration calls (compensation of which Ameritech is predominately the net recipient), and reduce the amount of reciprocal compensation paid for long duration calls (compensation of which Ameritech is predominately the net payer). By moving from its tariffed rates to its GIA rates, Staff claims, Ameritech likely will reduce its net payout of reciprocal compensation to its CLEC competitors and increase the net payments it receives from wireless carriers. It appears, in Staff's view, that Ameritech Illinois has decided to adopt its own remedy to address its own concerns. And, according to Staff,

it has not submitted its new reciprocal compensation rate scheme for Commission approval.

1399. Again, Staff contends, Ameritech has used the ISP Compensation Order to introduce uncertainty into CLEC business plans. And, in denying carriers existing reciprocal compensation rates, terms, and conditions, AI also denies carriers the ability to obtain entire interconnection agreements that Ameritech currently offers to other CLECs in Illinois. Such practices, Staff maintains, have impaired carriers' ability to obtain interconnection agreements with Ameritech and represent non-compliance with Checklist Item 1 of the federal Act.

1400. Checklist Item 1, Staff maintains, requires a Section 271 applicant to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i). In turn Section 251(c)(2) imposes a duty on ILECs to provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section [251] and section 252". 47 U.S.C. § 251(c)(2)(D). Further, Section 252(i) provides that an ILEC "shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i).

1401. According to Staff, Ameritech does not permit carriers to opt-in to reciprocal compensation provisions of existing interconnection agreements. (Staff Ex. 3.0 at 33). As a result, every new interconnection agreement between Ameritech and a LEC must be negotiated and/or arbitrated. That is, carriers may not simply adopt "off the shelf" interconnection agreements.

1402. Staff sees Ameritech to contend that CLECs may not opt into those provisions as a result of the FCC's ISP Compensation Order. (Staff Ex. 3.0 at 33). Contrary to Ameritech's contention, Staff asserts, the FCC only and explicitly restricted the limitation of opt-in rights to the rates paid for the exchange of ISP-bound traffic. ISP Traffic Order at 82. According to Staff, Ameritech improperly expands the FCC's limitation of opt-in rights on reciprocal compensation rates for ISP-bound traffic to all reciprocal compensation rates, terms, and conditions for non-ISP-bound traffic governed by Section 251(b)(5).

1403. The relationship (created by the FCC's *ISP Traffic Order)* between the rates, terms, and conditions for traffic subject to Section 251(b)(5), and those for ISP-bound traffic does not preclude carriers from opting into rates, terms, and conditions for traffic subject to Section 251(b)(5 Staff contends. In the event that Ameritech does not elect the FCC's reciprocal compensation rate caps, both traffic subject to the reciprocal compensation provisions of section 251(b)(5) and ISP-bound traffic are to be exchanged at "the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts." Id., ¶ 89. In its *Ameritech-Focal Arbitration Decision*, Staff

reminds the Commission held "that ISP bound calls are local and should be due reciprocal compensation" and it set reciprocal compensation rates for ISP-bound traffic at the rates established for local traffic. *Arbitration Decision at* 12, Docket 00-0027 (May 8, 2000).

1404. Until and unless Ameritech elects the FCC rate caps, Staff contends, it is required to maintain the same pricing regime for reciprocal compensation that this Commission has consistently maintained in Illinois. According to Staff, the rates contained in existing interconnection agreements in Illinois are consistent with the FCC's reciprocal compensation guidelines. Thus, there is no reason for Ameritech to deny carriers access to the reciprocal compensation rates, terms, and conditions found in its existing interconnection agreements.

1405. According to Staff Ameritech is currently obligated by both federal and state regulations to provide carriers access to reciprocal compensation terms and conditions consistent with those in its existing interconnection agreements. Ameritech, however, does not permit carriers to "opt-in" to terms and conditions of interconnection agreements related to reciprocal compensation as required by Section 251(i), and does not offer nondiscriminatory access to reciprocal compensation rates as required by Section 251(c)(2).

1406. The *ISP-Bound Traffic Order* itself Staff observes, does not mention a specific date or time period within which an ILEC must decide whether to elect the FCC's reciprocal compensation rate caps. Nevertheless Staff contends it clearly expected ILECs to make a choice within a reasonable time. Where an order, statute or contract imposes a duty or requires the performance of some action, but is silent as to when it is to be performed, a reasonable time is implied under general rules of construction. *See* White v. Roughton, 689 F.2d 118, 120 (7th Cir. 1982), *citing* United States v. ITT Continental Baking Co., 420 U.S. 223, 238, 43 L. Ed. 2d 148, 95 S. Ct. 926 (1975).

1407. According to Staff, the FCC's imposition of a duty on ILECs to choose whether to elect the price caps at issue in the *ISP-Bound Traffic Order*, combined with the FCC's silence on when that action should be taken, must be interpreted under applicable rules of construction to require the taking of that action within a reasonable period of time. It has been more than a year since the April 27, 2001 release of the *ISP-Bound Traffic Order*, Staff observes, and that is certainly more than reasonable time for Ameritech to make its election. It contends that Ameritech has not elected to offer to exchange all traffic subject to Section 251(b)(5) pursuant to the ISP-bound traffic rates set by the FCC, and therefore has not elected to be subject to the FCC's ISP-bound traffic rate caps.

1408. As such, Staff argues, Ameritech is required by the *ISP Compensation Order* and Commission Merger Condition 27 to offer carriers reciprocal compensation rates, terms, and conditions that match those ordered by the Commission in Ameritech's existing interconnection agreements, such as the one between Ameritech

and Focal. If Ameritech were to elect the FCC rate caps, however, Ameritech would no longer be required under the *ISP Compensation Order* to offer carriers reciprocal compensation rates, terms, and conditions that match those in existing contracts. Instead, it would then be required to offer to exchange all traffic subject to Section 251(b)(5) of the Act at the rates established for ISP-bound traffic under the FCC's rate caps.

1409. Although it has been nearly a year since the *ISP-Bound Traffic Order* was released, Ameritech (1) has not elected the FCC's reciprocal compensation rate caps contained therein and (2) still maintains the position that it may at any moment make such an election. Ameritech's actions and policies are anticompetitive and constitute violations of its duty under Section 251(c)(2) to provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory" and its duty under Section 251(c)(1) "to negotiate in good faith".

5. Reply Positions

a. Ameritech Reply Position

Abstract Issues

1410. According to AI, no one discusses, much less disputes, the only issue that matters namely that, Ameritech Illinois has entered into numerous legally binding reciprocal compensation arrangements, and those arrangements satisfy "the requirements of section 252(d)(2)." The only dispute at hand, AI asserts, concerns a subject that does not matter for purposes of the checklist, and is not even ripe for adjudication, i.e., the terms that Ameritech Illinois "offers" for *future* reciprocal compensation arrangements to implement the FCC's ISP Compensation Order.

1411. Specifically, AI notes, Staff and AT&T oppose:

(i) Ameritech Illinois' offer of bifurcated rates – a straightforward proposition in which the up-front costs of setting up a call are charged up front, while costs incurred throughout the duration of the call are charged throughout the duration of the call;

(ii) that Ameritech Illinois does not affirmatively offer to let CLECs "opt in" to other CLECs' reciprocal compensation arrangements (based on the ISP Compensation Order's express termination of such "opt ins"); and

(iii) that Ameritech Illinois has not yet affirmatively elected the optional "caps" on reciprocal compensation rates that appear in the ISP

> Compensation Order, but instead offers to give 20 days' notice if it makes that election in the future. Staff Br. at 41-49, 193-212; AT&T Br. at 48-50, 141-143.

1412. While the arguments would effectively suggest that the Company's offer constitutes a barrier to entry, AI observes that no such claims comes from a CLEC seeking to enter. To be sure, AI points out, the challenge is raised by Staff and by AT&T (which itself has reciprocal compensation arrangements in place that it appears perfectly happy to keep). Not only are the arguments unavailing, AI argues, but there are strong reasons why the Commission need not address them at all.

1413. First, AI notes, this Commission has held that disputes related to compensation for ISP-bound traffic fall outside its jurisdiction and within the exclusive purview of the FCC. (Order at 8, Docket 01-0427 July 24, 2002). Second, AI asserts, the FCC has held that compensation for ISP-bound traffic is irrelevant to Checklist Item 13, because the 1996 Act's provision on reciprocal compensation, i.e., section 251(b)(5), does not apply to such traffic in the first place. Georgia & Louisiana 271 Order, ¶ 272. And, taking a more general view, AI contends that the FCC has also declined to use section 271 proceedings to resolve interpretive disputes, particularly with respect to matters that are the subject of a pending rulemaking devoted to the issue. Arkansas & Missouri 271 Order, ¶ 82.

1414. According to AI, Staff suggests that the disputed provisions of the ISP Compensation Order might also affect compensation for traffic other than ISP-bound traffic. To date, AI maintains, this is not the case. Although the ISP Compensation Order (¶ 8) allows incumbents to elect "caps" on reciprocal compensation rates, Ameritech Illinois maintains that it has not yet made the election, such that it remains subject to the "state-approved or state-negotiated rates reflected in [its] contracts" and that is where the Commission must assess compliance.

1415. Likewise, AI notes, although there seems to be no dispute that the FCC's order prevents entering carriers from opting into other carriers' existing arrangements in at least some cases (the only dispute is whether there are any existing arrangements that can be opted into), that does not affect existing arrangements, nor does it affect the substantive compliance of any arrangement. It only addresses the procedure by which future arrangements are to be made.

1416. Most importantly, AI observes, although the FCC initiated a rulemaking that could extend to reciprocal compensation for *non*-ISP traffic, the pendency of that rulemaking mitigates against, not for, the consideration of new compensation rules here and now. It is on that basis, AI maintains, that Staff sought, and the Commission ordered, the dismissal of a generic proceeding on reciprocal compensation (which covered all traffic, and not just ISP-bound traffic) shortly after release of the ISP Compensation Order. See, Order at 2-3, Docket No. 00-0555; July 25, 2001.

1417. In any event, AI contends, to the extent that any CLEC wants to enter a reciprocal compensation arrangement and disagrees with Ameritech Illinois' offer, it has full opportunity to do what parties do in any other such disagreement – negotiate or seek arbitration – and the Commission can resolve any disagreement at such time. Pending negotiation or arbitration, AI notes, the CLEC can enter into an interim arrangement to receive compensation immediately. The amount of compensation would be trued up to reflect the final agreement. (Am. Ill. Ex. 1.1 at 43, 47-48).

1418. AI asserts that the Commission has not had to decide a single such dispute as of yet, even though the ISP Compensation Order has been in effect for over a year. To the contrary, it notes, several carriers have *accepted* Ameritech Illinois' offer and the Commission has approved the resulting agreements. (Am. Ill. Ex. 1.1 at 43). As such, AI contends, there simply is no basis for the contention that the Company's offer represents a barrier to entry, and no need for the Commission to address these issues in the abstract.

The Bifurcated Rate Offer

1419. AI sees AT&T to assert that Ameritech Illinois' mere *offer* of a bifurcated rate structure constitutes discrimination against CLECs that serve ISPs. (AT&T Br. at 142-143) And, in the same vein, it observes Staff to contend that "Ameritech has imposed its own self-serving reciprocal compensation rate structure on CLECs" (Staff Br. at 211).

1420. The first and dispositive rebuttal to these claims, AI asserts, is that the bifurcated rate offer is just that, an offer, being extended to carriers that seek to negotiate new or amended agreements. Thus, it asserts, Ameritech Illinois does not impose anything on anyone. Exploring the various types of scenarios, AI explains that (1) carriers that already have agreements with unitary rates can continue under their existing arrangements; (2) carriers that order from tariffs will continue to receive the tariffed unitary rates; (3) carriers agreeing to the bifurcated structure can accept Ameritech Illinois' offer and enter into a binding agreement; and (4) carriers that want new agreements but disagree with the bifurcated structure can seek negotiations or arbitration.

1421. While the ISP Compensation Order has been in effect for over a year, AI observes, the Commission has not had to decide a single challenge to its bifurcated rate offer. To the contrary, AI contends, carriers such as One Point, have accepted the offer and the Commission itself has approved the resulting agreements. (Am. Ill. Ex. 1.1 at 43).

1422. According to AI, AT&T and Staff omit much of the history behind the "ISP" reciprocal compensation issue, and distort the rest. First, neither party points out that the FCC has found that CLECs who target ISPs are not the victims of discrimination, as AT&T would suggests, but rather the beneficiaries of a regulatory arbitrage that does not warrant the protection AT&T seeks. Second, neither party points out that the Commission has approved agreements containing the "self-serving scheme" that Staff

contends has never been "submitted . . . for Commission approval." (Staff Br. at 210). AI intends to set the record straight.

1423. Consumers contract with ISPs, AI explains, to obtain access to the Internet. "Typically, when the customer wishes to interact with a person, content, or computer, the customer's computer calls a number provided by the ISP that is assigned to an ISP modem bank. The ISP modem answers the call (the familiar squelch of computers handshaking)." ISP Compensation Order, ¶ 58. The user then initiates a communication over the Internet by transmitting a command, for example, by requesting a webpage. Id. The request is forwarded to the distant computer that "hosts" that page (for example, the CNN.com website).

1424. This Commission, AI contends, ordered it to pay reciprocal compensation to AT&T (among other CLECs) for traffic initiated by Ameritech Illinois customers and forwarded to Internet destinations by ISPs that are served by the CLECs. (Am. Ill. Ex. 1.0, Sch. SJA-1, ¶117). While Ameritech Illinois has sought judicial review of that decision, there is no dispute that it complies with the Commission's order.

1425. On April 27, 2001, AI notes, the FCC issued its ISP Compensation Order, wherein it determined "that the [reciprocal compensation] provisions of section 251(b)(5) do not extend to ISP-bound traffic." ISP Compensation Order, ¶ 1. Indeed, the FCC found that the assessment of reciprocal compensation on such traffic was contrary not only to the text of the 1996 Act but also to its competitive purposes. In the FCC's words, AI contends, such compensation represents a "classic regulatory arbitrage" that created a "windfall" for carriers receiving such payments (Id. ¶ 21, 70).

1426. There are two reasons for this arbitrage, AI contends. First, while reciprocal compensation was founded on the assumption "that traffic back and forth on these interconnected networks would be relatively balanced," in reality "ISP modems do not generally call anyone in the exchange." Id. ¶ 21. Thus, "traffic to ISPs flows one way" and "so does money in a reciprocal compensation regime." Id. The FCC found that such "large one-way flows of cash" have "distort[ed] the development of competitive markets" and encouraged carriers to compete by shifting their costs to incumbent carriers rather than on the basis of quality and efficiency. (Id). Further, the regulatory arbitrage encouraged carriers to "target ISP customers" at the expense of other customers (such as homeowners) and this "created incentives for inefficient entry of LECs intent on serving ISPs exclusively [rather than] offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act" Id. ¶ 70, 21.

1427. One solution to the problem of imbalanced traffic, AI contends, is to establish a contingent, lower rate that applies when traffic is out of balance. Ameritech Illinois and Level 3 agreed to such an arrangement and amended their interconnection agreement to reflect it. (Am. Ill. Ex. 1.1 at 46). While Staff suggests that the amended agreement no longer matches the Commission-approved rates, there is no shortage of interconnection agreements that reflect the approved rates (as does the tariff), such that Ameritech Illinois still meets its burden of proof. The Level 3 amendment also comports with the 1996 Act. AI contends noting that Section 251(a) upholds voluntary

agreements even if their terms differ from the Act's requirements, and the FCC specifically cited the Level 3 amendment to support the elective "caps" established by the ISP Compensation Order. See Id. ¶ 85 & n.158.

1428. Another part of the arbitrage, AI asserts, was facilitated by the rate structure for reciprocal compensation. As already explained, AI notes, reciprocal compensation rates are intended to cover two different types of costs: (1) the costs of setting up a call, which are not incurred on a per-minute basis but incurred only once (at the start of the call), and (2) the costs of keeping open an existing connection, which are incurred throughout the duration of the call. But most states, including Illinois, "have adopted per minute reciprocal compensation rate structures." ISP Compensation Order ¶ 76.

1429. Because set-up costs are incurred one time per call, these were divided by the estimated average length of a call (about four minutes) to derive a flat per-minute rate. For calls of roughly that length, compensation reflects cost incurred. The per-minute rate is multiplied by four (minutes), and the result is the same as the set-up cost with which we started. But for longer calls, like those made to "surf the Web," compensation exceeds the cost incurred, because the per-minute rate is multiplied by a duration much longer than the four minutes that were divided into cost. Thus, the FCC found that "[i]t is unlikely that any minute-of-use rate that is based on average costs and depends upon demand projections will reflect the costs of any given carrier to serve any particular customer"; instead, such a structure "encourage[s] carriers to target customers that are, on average, less costly to serve, and reap a reciprocal compensation windfall." Id.

1430. The FCC, AI observes, has undertaken a comprehensive review of reciprocal compensation. Id. ¶ 6. It is actively considering a phase-out or elimination of some or all such compensation; it has also sought comment on a bifurcated rate structure (which separates the charges for call set-up and duration) as one solution to the arbitrage issues noted above. Id. ¶ 75 n.142.

1431. But, in recognizing "a need for immediate action with respect to ISP-bound traffic" AI notes that the FCC took, in part, the following actions: (i) to prevent reciprocal compensation arrangements from spreading beyond existing agreements, the FCC held that "carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic," Id. ¶ 82; and (ii) the FCC established a declining schedule of "caps" on reciprocal compensation rates, which an incumbent could elect so long as it offered to exchange non-ISP traffic at the same rate Id. ¶ 8.

1432. The caps however, AI contends, do not apply to agreements that "pre-date" the ISP Compensation Order unless an agreement, by its terms, says so (for example, by means of a change-in-law provision). Id. ¶ 82. Thus far, Ameritech Illinois maintains, it has neither made nor refused the election. It does, however, "offer" CLECs a bifurcated rate structure in its GIA.

1433. AT&T itself admits that CLECs have rushed to sign up ISPs, and Staff similarly observes that "reciprocal compensation received from Ameritech constitutes a major portion of CLEC revenues in Illinois" but, AI notes, neither party identifies why this is so. For its part, AI contends that CLECs are obtaining a steady diet of "reciprocal compensation" that is neither reciprocal (*i.e.*, most of the money goes one way, to the CLEC) nor compensatory (*i.e.*, the CLEC receives payments that greatly exceed any actual costs). In AI's view, the history and outcome of the ISP Compensation Order devastate the Staff and AT&T arguments regarding reciprocal compensation.

1434. Contrary to AT&T's view, AI explains, the bifurcated rate "offer" does not discriminate against carriers that target ISPs or other subscribers that receive a large volume of long-duration incoming calls. (AT&T Br. at 141-143). The reality is that the unitary structure in current tariffs discriminates *in favor of* carriers that target ISPs, by giving them a windfall. While a bifurcated structure might mean less money for such carriers, AI contends, that is only true because it provides for more accurate compensation.

1435. Contrary to Staff's view, AI emphasizes, the bifurcated rate offer does not represent a substantive departure from cost or from the rates approved by this Commission. The costs used for each rate component, AI contends, are the same as those approved by the Commission. The only change is that Ameritech Illinois unraveled the artificial "averaging" step used to collect one-time call set-up costs through per-minute rates. (Am. Ill. Ex. 10.1 at 10). Nor is the bifurcated rate offer inconsistent with the ISP Compensation Order, AI maintains. The FCC did not reject bifurcated rates, AI contends, much less preclude parties from agreeing to them. Indeed, AI asserts, it has sought comment on the merits of such a structure in its pending rulemaking. ISP Compensation Order, ¶ 92.

1436. The FCC, AI observes, also did not order parties to implement unitary rates. To be sure, AI contends, the FCC found the unitary system to be at the heart of the arbitrage problem it sought to address. According to AI, the FCC merely offered a system of unitary "caps" that incumbents *could* elect if they so chose; if not, the incumbent "must exchange ISP-bound traffic at the state-approved *or state-negotiated* reciprocal compensation rates reflected in their contracts." Id. ¶ 8. Ameritech Illinois does just that, and Staff's contention that the FCC ordered Ameritech Illinois to use *only* state-*approved* rates, AI asserts, ignores the FCC's endorsement of state-*negotiated* rates (Id. ¶ 8).

1437. AI notes Staff to mention, but not discuss, the Ameritech Illinois/Focal arbitration. In that cause, AI observes, the Commission ordered Ameritech Illinois to pay reciprocal compensation on ISP-bound traffic, but also recognized the evidence showing that "dramatic shifts in the utilization of the local exchange network, associated with the explosion in Internet traffic," were affecting the issue of reciprocal compensation. Arbitration Decision at 12, Docket 00-0027, (May 8, 2000). As such, AI contends, the Commission directed Staff to initiate a generic proceeding "to further address the issue of reciprocal compensation." (Id). This proceeding i.e., Docket 00-0555, was to consider " alternatives to the current reciprocal compensation rate

structure" on the grounds that "current reciprocal compensation rates are based on traditional voice call holding times," which may be shorter, on average, than for "dial-up Internet traffic routed to an ISP." Initiating Order at 1, Docket 00-0555, Aug. 7, 2000. And at that time, AI contends, Staff acknowledged that a " bifurcated rate structure is one solution the Commission may wish to explore." (See Staff Resp. to Hearing Examiner's Directive at 6, Docket 00-0555, March 19, 2001).

1438. While Docket 00-0555 was in progress, AI notes, the FCC issued its ISP Compensation Order and announced its own comprehensive rulemaking on reciprocal compensation. Shortly thereafter, AI asserts, Staff moved to dismiss Docket 00-0555 on the grounds that the FCC had pre-empted the Commission's initiative. See Staff Motion to Dismiss at 5, Docket 00-0555, (June 25, 2001). The Commission agreed, AI observes, and it recently reaffirmed that principle in declining to resolve a dispute between Essex Telecom and Gallatin River Communications regarding compensation for ISP-bound traffic. See Order at 8, Docket 01-0427, July 24, 2002 (where the Commission concludes that it is without authority to determine disputes over compensation for ISP bound calls).

1439. All in all, AI views Staff to take inconsistent positions. On the one hand, Staff seems to oppose the bifurcated rate proposal (Id. at 210); on the other hand, Staff suggests that the Commission might do away with the current unitary structure (Id. at 192). Either way, AI contends, Staff's call for a new generic ratemaking flies in the face of Staff's earlier position – and the Commission order adopting that position – that such issues belong to the FCC.

1440. Moreover, AI asserts, Staff's position on the merits (that a bifurcated rate structure is a "self-serving scheme") is contrary to the Commission's order approving such an agreement between Ameritech Illinois and One Point. It is also incorrect, AI argues, for Staff to suggest, that "Ameritech has not submitted its new reciprocal compensation scheme for Commission approval [because] it simply cannot stand up to scrutiny." Clearly, Ameritech Illinois contends, there is no secret to its offer.

The Opt-in Exemption

1441. Ameritech Illinois believes it has demonstrated that it need not permit CLECs to "opt in" to terms and provisions for reciprocal compensation in existing interconnection agreements, because the FCC has held that the Act's "opt in" provisions do not apply to terms and conditions related to compensation for ISP-bound traffic. ISP Compensation Order, ¶¶ 2, 82.

1442. To be sure, AI asserts, there is *some* limit on opt-in rights; the only question is its scope. AI notes AT&T to posits a hypothetical situation, in which Ameritech Illinois would oppose a carrier's attempt to opt into an agreement even if it was negotiated after the ISP Compensation Order. But, according to AI, this just shows that the issue is not ripe. If and when a CLEC really wants to opt into the reciprocal compensation provision of a specific agreement, AI notes, it is free to negotiate that request with Ameritech Illinois; and, if the parties do not reach agreement the CLEC can

raise the matter before the Commission. In this situation, AI contends, the Commission can resolve the matter based on facts, and not in the abstract.

The Rate Cap Election

1443. AI urges the Commission to reject out of hand AT&T's insinuation that the rate caps are "the FCC's rates" and that Ameritech Illinois has disobeyed the FCC's order by not adopting them. Staff itself acknowledge, AI asserts, that the rate caps are elective, not mandatory. See Staff Br. at 197 (stating that the FCC did not mandate the use of its revised intercarrier compensation scheme. Rather, it provided ILECs a choice of whether to elect the plan or not.")

1444. AI maintains that Staff's error lies in its view that the election period has expired and that Ameritech Illinois violates the "intent and letter" of the ISP Compensation Order simply by *offering* language that would allow Ameritech Illinois to elect the caps in the future on 20 days' notice. (Staff Br. at 175). By Staff's own admission, AI contends, its position has no support in the FCC's Order. As such, AI continues, Staff simply appliquéd a "reasonable time" limitation onto the FCC's order and then decided for itself what that time limit should be.

1445. Ameritech Illinois does not agree that it is proper for this Commission to blue-pencil time limits into the FCC's Order, or that the one year limit is viable. The FCC's Order, AI notes, sets out a three-year schedule for the caps. Further, it observes, the election generally does not begin until interconnection agreements expire. In many instances, AI contends, Staff's proposal would work out in such a way as to have the election expire before it could even be exercised. ISP Compensation Order, ¶¶ 7-8, 82.

1446. The Staff argument that the election creates "uncertainty" fares no better, AI claims. To the extent any CLEC could claim a vested right to the certainty of a regime that supports arbitrage (and that the FCC is in the process of dismantling), the FCC has already decided how that interest is to be addressed. According to the FCC, AI notes, the transitional rate caps, like the permanent rules now under development in the FCC, do not apply to existing agreements unless those agreements themselves so provide (*e.g.*, by a change-of-law provision). ISP Compensation Order, ¶ 82.

b. Staff Reply Position

1447. Staff does not dispute that Ameritech has entered into reciprocal compensation arrangements and that it is paying reciprocal compensation under those arrangements. But, Staff suggests that the information being offered by the Company does not demonstrate that the arrangements Ameritech enters into contain Section 271 compliant rates, terms, and conditions.

1448. Since the time that the FCC's ISP-Compensation Order became effective, Staff contends, Ameritech has not agreed to include the reciprocal compensation rates contained in its tariff in its interconnection agreements with CLECs and, it notes, Ameritech does not dispute this fact. It cannot be disputed, Staff asserts, because Dr. Zolnierek testified that "when XO requested these tariffed rates, Ameritech refused to

provide them, forcing XO to submit an arbitration petition to the Commission." (Staff Ex. 20.0 at 95; *see also* Staff Ex. 3.0 at 161-162).

1449. Staff challenges Ameritech's statement that it "offers CLECs an alternative rate structure through its GIA." (Ameritech IB at 180). To the extent that Ameritech does not permit carriers to adopt its current tariffed reciprocal compensation rates in their interconnection agreements, Staff maintains that it is not offering its bifurcated rate structure as an actual alternative.

1450. Ameritech has not submitted a tariff containing its bifurcated rates at the Commission, Staff contends, such that the Commission has not found its revised rates to be TELRIC compliant. Whereas Ameritech has argued that its current tariffed local reciprocal compensation rates are not TELRIC compliant, Staff notes that the Company has not sought Commission approval for rates that it considers TELRIC compliant.

Opt-In to Reciprocal Compensation Provisions

1451. Staff contends that requesting carriers cannot opt-into or obtain, without arbitration, any current interconnection agreement that includes the Company's existing tariffed local reciprocal compensation rates. (Staff Ex. 3.0 at 161-162). Staff views Ameritech to defend its actions on the basis of the FCC's determination that the Act's 'opt-in' provisions do not apply to the terms and conditions related to compensation for ISP-bound traffic." (Ameritech IB at 179, citing to ISP Compensation Order).

1452. Staff notes that the FCC limited its opt-in restriction for reciprocal compensation "**to the rates paid for the exchange of ISP-bound traffic**." ISP CompensationOrder, ¶ 82 (emphasis added). The clear implication of this language, it argues, is that the FCC was not restricting the ability of carriers to opt into reciprocal compensation rates, terms and conditions for non-ISP-bound traffic.

1453. Further, Staff observes the ISP Compensation Order to state:

> For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This mirroring rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic. (ISP CompensationOrder, ¶ 89 (emphasis added)).

1454. The FCC's language, Staff contends, is clear on its face. In the event that Ameritech does not elect to use the FCC's reciprocal compensation rate caps, it "must exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation rates" (i.e., the rate currently contained in Ameritech's reciprocal compensation tariff). Id.,¶ 8 (emphasis added).

1455. Yet, Staff contends, these are precisely the terms XO Illinois, Inc. ("XO") requested of Ameritech and which Ameritech denied XO. According to Staff, XO attempted to opt into the Ameritech/Focal agreement, which contains reciprocal compensation rates for local traffic that match those found in Ameritech's reciprocal compensation tariff. (Staff Ex. 3.0 at 162). These were the very rates, Staff contends, that the ISP Compensation Order requires Ameritech to provide requesting carriers, i.e., rates that mirror what Ameritech has defined as its current Commission approved rates for Section 251(b)(5) traffic.

1456. Even if the opt-in restriction would apply in this situation, Staff maintains that Ameritech's attempt to negotiate terms different from those mandated by the ISP Compensation Order constitutes a clear breach of its duty to negotiate in good faith under Section 251(c)(1). See XO Arbitration Proposed Order at 4. (Staff indicates, in a footnote, that on Oct 2, 2001, the Commission granted XO's Petition to Withdraw and Terminate Docket).

1457. If Ameritech chooses not to operate under the FCC's transition plan (i.e., declines to operate under the rate caps), Staff contends, there is no support for an opt-in restriction that denies carriers the very rates the ISP Compensation Order requires Ameritech to provide. According to Staff, Ameritech has declined to invoke the rate caps, but it still invokes the opt-in restriction.

1458. In order to comply with Checklist Item 1, Staff asserts, Ameritech must offer interconnection in compliance with the requirements of Section 251(c)(2) of the 1996 Act. (47 U.S.C. § 271(c)(2)(B)(i)). Considered apart, Section 251(c)(2) requires Ameritech to provide interconnection in accordance with the provisions of Section 251 and Section 252 of the Act. (47 U.S.C. § 251(c)(2)). Still further, under the provisions of Section 251 (c)(1) Ameritech is required to negotiate agreements in good faith and, under the directives of Section 252 Ameritech is required to allow requesting carries to opt into the rates, terms and conditions of approved interconnection agreements to which it is a party. *See* 47 U.S.C. § 251(c)(1);and § 252(i).

1459. In Staff's view, Ameritech's policy of refusing to allow carriers to opt into approved interconnection agreements containing reciprocal compensation rates, terms and conditions that this Commission and the FCC require it to provide clearly constitutes non-compliance with its obligations to allow carriers to opt-in to existing agreements and negotiate in good faith pursuant to Section 251(c)(2). And, Staff continues, its policy and actions are a direct violation of the ISP Compensation Order.

Timing of Election

1460. Staff sees Ameritech to argue that the FCC left the decision as to when (or whether) to declare its intention to implement the FCC's rate caps up to each incumbent on a state-by-state basis. Ameritech further contends that the absence of any reference to a specific date or time period in the ISP Compensation Order means that it is free at any time to change the pricing regime applicable to ISP-bound and Section 251(b)(5) traffic. This contention, Staff counters, is contrary to the law that holds: "Where an

order, statute or contract imposes a duty or requires the performance of some action, but is silent as to when it is to be performed, a reasonable time is implied under general rules of construction." (Staff Br. at 51) (citations therein).

1461. Staff observes Ameritech to contend that the FCC contemplated that, incumbent LECs "would elect into the caps at different times". (Ameritech IB at 177). To support its contention, Staff notes, Ameritech relies on the fact that the "starting point" of the FCC's transitional compensation plan depends in part on the remaining life of any existing agreements and the existence of any "change of law" provisions. (Id). According to Staff, however, the FCC decision, not to have its new rate caps supercede the terms and conditions of "existing" agreements does not support Ameritech's position. In Staff's view, the FCC's deference to "existing" agreements does not address "when" an ILEC would elect the caps but rather, "how" the rate caps will be applied after an ILEC has elected the rate caps.

1462. To the extent that the FCC's deference to "existing" agreements implies anything about when an election is to be made, Staff contends, it supports the position that an election must be made within a "reasonable time" from the date of the ISP Compensation Order. According to Staff, the FCC's decision to treat agreements "existing" at the time of the ISP Compensation Order differently from agreements negotiated "after" that date suggests that the FCC considered the date of its order to be the critical for purposes of an ILECs election.

1463. Ameritech's assertion that the FCC's rate caps change over time making them more desirable for future election is, in Staff's view, a matter ill-ascribed to the FCC's intention. If anything, Staff claims, Ameritech's view is contrary to the FCC's stated objective of providing certainty pending its final resolution of this issue:

> [T]he interim regime we adopt here "provides relative certainty in the marketplace" pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments. ISP Compensation Order, ¶ 94.

1464. To be sure, Staff maintains, the Commission is conducting an investigation into Ameritech's compliance with the requirements of Section 271 for purposes of its consultation with the FCC, rather than serving as the ultimate decision maker on Ameritech's anticipated request for Section 271 relief. Contrary to AI's position, however, Staff contends that it is entirely proper and permissible for this Commission to advise the FCC, that :

> (i) it interprets the FCC's ISP Compensation Order to require ILECs to decide whether to elect the rate caps set forth therein within a reasonable amount of time from the date of the FCC's order; and,

> (ii) that Ameritech is not in compliance with Checklist Item 1 because its policy (asserting that it is free to elect the FCC's reciprocal compensation rate caps at any point in the future) is contrary to the ISP Compensation Order, impedes competition, and creates uncertainty in violation of Ameritech's duties ,i.e., to provide interconnection on rates, terms and conditions that are just, reasonable and non-discriminatory and to negotiate in good faith. In the end, Staff acknowledges the FCC will be the ultimate decision-maker.

1465. Staff counters Ameritech's argument that "the uncertainty is not significant" because the "rate caps are published in the FCC's order" and because Ameritech offers CLECs "a contractual provision that provides 20 days advance notice of any election." (Ameritech IB at 178). Although the rate caps are published, Staff maintains that they are merely "rate caps" such that it is not known what the actual rates will be if Ameritech makes an election. Indeed, Staff points out that Ameritech's own witness could not shed light on the actual rates that would apply if the rate caps were elected. (Tr. at 1531). Yet, the FCC has indicated that certainty is needed to allow "carriers to develop business plans, attract capital, and make intelligent investments." ISP Compensation Order, ¶ 94. In Staff's view, a notice time of 20 days is neither sufficient or reasonable for developing business plans, attracting capital, or making investment decisions.

1466. Staff notes AI to argue that uncertainty is both inherent and unavoidable under the FCC's interim regime given that it is still considering final rules whose content is uncertain for incumbents and CLECs alike. (Ameritech IB at 178). Such an argument, Staff contends, is contrary to, the FCC's pronouncement that its interim regime "provides relative certainty in the marketplace pending further Commission action" and "provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the NPRM proceeding." ISP Compensation Order, ¶¶ 94, 95.

c. AT&T Reply Position

1467. AT&T summarily agrees with Staff assertion that Ameritech's refusal to permit a CLEC to opt in to the reciprocal compensation provisions applicable to local, non-ISP bound traffic included in the Focal/Ameritech interconnection agreement, as approved by the Commission, constitutes a violation of Section 252(i) of the federal Act, the FCC's ISP Compensation Order and Ameritech's obligation to provide non-discriminatory reciprocal compensation rates, terms and conditions pursuant to Section 252(d)(2).

1468. Moreover, AT&T contends, Ameritech refusal to allow a CLEC to incorporate its tariffed reciprocal compensation rates into an interconnection agreement

violates the federal Act, the ISP Compensation Order and this Commission's orders regarding reciprocal compensation for local non-ISP bound traffic. Consequently, Ameritech fails to comply with Checklist Item 13.

1469. AT&T agrees with Staff that Ameritech violates Checklist Item 1 as well as Checklist Item 13 by failing to allow CLECs to opt into the provisions of existing agreements relating to reciprocal compensation for non-ISP bound local traffic. Because of this action, AT&T contends, an Illinois CLEC cannot opt into an entire interconnection agreement in Illinois, but must negotiate and/or arbitrate a new agreement each time. Ameritech's policy in this regard, AT&T asserts, not only violates this Commission's Merger Order and Section 252(i) of the federal Act, but its reciprocal compensation rates, terms and conditions are also not nondiscriminatory as required by Section 251(b)(2) of the Act.

1470. AT&T again points out that the FCC's ISP Compensation Order did not address a CLEC's right to "opt" into reciprocal compensation provisions for local traffic. As such, it contends, that right continues to exist for agreements that preceded, as well as those that followed, the entry of the ISP Compensation Order.

1471. According to AT&T, the ISP Compensation Order simply concluded that carriers could no longer invoke section 252(i) of the federal Act to opt in to an existing interconnection agreement, i.e., one that predated its Order, "with regard to the rates paid for the exchange of ISP-bound traffic." Id. ¶82). It did nothing, AT&T claims, to limit a carrier's right to exercise Section 252(i) of the federal Act to opt in to the reciprocal compensation provisions for non-ISP bound local traffic. Given that Ameritech has not elected to opt in to the rate caps the FCC established in the *ISP Compensation Order*, AT&T considers Staff to be correct in noting that Ameritech is bound to the reciprocal compensation terms, conditions and rates established by this Commission.

1472. AT&T observes Ameritech to contend that because the same reciprocal compensation provisions in its interconnection agreements apply to both ISP-bound and non-ISP bound traffic, the FCC's conclusion that carriers cannot opt in to the existing rates for the exchange of ISP-bound traffic, insulates it from allowing CLECs to opt in to the reciprocal compensation provisions of existing interconnection agreements applicable to non-ISP bound local traffic. This is wrong, AT&T contends, because the FCC's "opt in" exemption only applies to *ISP-bound* traffic. In AT&T's view, Ameritech continues to be required to allow CLECs to opt in to the existing rates for the exchange of *non-ISP bound local traffic*.

1473. Ameritech refuses to allow CLECs to opt in to the rates for both ISP-bound and non-ISP bound traffic, AT&T contends, for the reason that the rates happen to be the same. Ameritech cannot and should not be permitted to use the fact that the rates are identical, AT&T maintains, to shield itself from its Section 252(j) obligations to allow CLECs to opt in to interconnection agreements with regard to the rates paid for the exchange of non-ISP bound local traffic. Its refusal to allow CLECs to opt in to reciprocal compensation provisions with regard to the rates paid for the exchange of non-ISP bound local traffic, AT&T asserts, is in violation of Checklist Items 1 and 13.

1474. Because Ameritech does not allow a CLEC to opt in to reciprocal compensation provisions of existing interconnection agreements (either agreements that pre-date or post-date the ISP Compensation Order and for neither ISP-bound traffic or non-ISP bound traffic), AT&T notes that a CLEC is forced to negotiate and/or arbitrate *all* reciprocal compensation provisions. And because Ameritech has not opted in to the FCC's rate caps, it is required to comply with this Commission's orders in those negotiations and arbitrations. It does not, AT&T complains.

1475. The problem, as explained by AT&T witness Henson, is that Ameritech refuses to make the reciprocal compensation provisions adopted in the Ameritech/Focal arbitration agreement available to other carriers. Instead, AT&T asserts, Ameritech offers up a bifurcated reciprocal compensation rate structure (a charge for call set up and a charge for call duration) as set out in the GIA. (AT&T Ex. 3.1, pp. 14-15). As Mr. Henson testified, however, the Commission has not adopted this bifurcated rate structure, which AT&T asserts, is designed to disadvantage CLECs and unfairly advantage Ameritech. (Id).

1476. Ameritech does not, AT&T contends, offer the Commission-ordered single reciprocal compensation rate to any CLEC seeking to establish or re-negotiate an interconnection agreement in direct violation of the FCC's ISP Compensation Order.

d. AG Reply Position

1477. In its ISP Compensation Order, the AG notes, the FCC concluded that ISP-bound traffic, only, is not subject to section 251(b)(5) reciprocal compensation requirements. The AG considers AI to be in violation of checklist item (xiii), because of its position that all CLEC traffic, local and ISP-bound is affected, and because it does not allow carrier to use the "opt-in" provisions of section 252(i) to obtain reciprocal compensation rates for **local** traffic.

1478. According to the AG, Ameritech makes no attempt to distinguish ISP-bound from non-ISP traffic, despite that, in order to "limit disputes and avoid costly efforts to identify this traffic," the FCC adopted "a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of termination to original traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in this Order." (Id. at ¶ 79). In the AG's view, AI is using the ISP-bound exemption to nullify all carriers' reciprocal compensation opt-in rights – even those carriers that are not carrying the threshold amount of ISP-bound traffic. While the ISP Compensation Order served to exempt ISP-bound traffic from section 251(b)(5), the AG believes that the FCC was also "concerned about the superior bargaining power of incumbent LECs" when it concluded that:

> we will not allow them [ILECs] to 'pick and choose' intercarrier compensation regimes, depending in the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic

> subject to 251(b)(5) at the same rate." ISP Compensation Order ¶ 89.

1479. Further, the AG notes, the FCC determined that:

> For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic **at the state-approved or state-arbitrated rates, terms, and conditions for local voice and ISP-bound traffic**." Id. (emphasis added).

1480. In other words, the AG contends, if the rate caps do not apply, existing state rates do apply. According to the AG, AI has not chosen the rate caps that would apply to all traffic and, thus, it must continue to provide reciprocal compensation at the state approved rates found in tariffs and in interconnection agreements for **all** traffic. In the AG's view, AI's policy ignores all the work that done on tariffing reciprocal compensation and in the arbitration of interconnection agreements, on the assumption that, even in the absence of a rate cap election, AI can renegotiate reciprocal compensation from scratch for all carriers

1481. The AG notes that AI has "a standard offer for reciprocal compensation that several CLECs have adopted." (AI Initial Brief at 179). This does not, the AG claims, address the issue of AI's superior bargaining power, and whether the rates it offers are TELRIC based, or are the same for voice and for data, as the FCC requires. Further, the AG notes Staff's contentions that, the rates AI has offered change AI's "net payout" and therefore constitute a significant change in reciprocal compensation. (Staff In. Brief at 211). By insisting on new, "bifurcated" rates, the AG contends, AI is preventing carriers from adopting existing state-approved rates, in violation of the ISP Compensation Order.

1482. According to the AG, this Commission should, find that AI's policies - which do not adopt the ISP Compensation Order's rate caps, but still deny carriers the right to opt-in to state approved rates for local and for ISP-bound traffic - do not comply with Checklist Item 13.

6. Staff's Proposed Remedial Actions for Compliance

1483. Prior to giving Ameritech a positive Section 271 recommendation to the FCC, Staff urges that the Commission require Ameritech to take the following steps:

For Checklist Item 1 Compliance:

(1) permit carriers to opt-into, without the need for negotiation or arbitration, reciprocal compensation rates, terms, and conditions, and, therefore, into entire interconnection agreements, particularly

when such agreements contain rates, terms, and conditions that this Commission and the FCC require Ameritech to provide.

(2) make it known that Ameritech Illinois does not plan to elect the FCC's reciprocal compensation rate caps or make an immediate election of the FCC's rate caps. Alternatively, the Commission should rule that Ameritech's decision to not offer to exchange all traffic subject to Section 251(b)(5) at the same ISP-bound traffic rates set by the FCC for more than a year following the FCC's ISP-Bound Compensation Order amounts to an election and precludes Ameritech from picking and choosing a different pricing scheme at this time.

or

alternatively, the Commission should rule that Ameritech's decision to not offer to exchange all traffic subject to Section 251(b)(5) at the same ISP-bound traffic rates set by the FCC for almost 11 months following the FCC's *ISP-Bound Traffic Order* amounts to an election and precludes Ameritech from picking and choosing a different pricing scheme at this time.

For Checklist Item 13 Compliance:

(3) to update its tariffed reciprocal compensation rates and obtain Commission approval of the updated reciprocal compensation cost studies that support these rates;

or,

alternatively, to submit state-to-state reciprocal compensation rate comparisons and any other evidence to demonstrate that its reciprocal compensation rates are in the range that can be considered by any reasonable standard within the range of TELRIC compliance.

(4) permit carriers to opt-into, without the need for negotiation or arbitration, reciprocal compensation rates, terms, and conditions for reciprocal compensation of traffic subject to Section 251(b)(5) of the federal Act in existing interconnection agreements between Ameritech and CLECs.

7. Commission Review and Discussion

1484. We note, at the outset, that no party or Staff disputes AI's entry into agreements containing reciprocal compensation provisions. No CLEC has come forward charging AI to be in breach of its contractual obligation under an agreement. No party or Staff alleges nonpayment by Ameritech of its reciprocal compensations obligations arising out of interconnection agreements.

1485. There are, however, a number of claims suggesting that AI's non-compliance with the FCC's ISP Compensation Order precludes a satisfaction of its Checklist Item 13 obligations as well as its Checklist Item 1 obligations. In order to gain a clear perspective on the issues, we are compelled to carefully examine and construe the FCC Order that drives the instant disputes.

The ISP Compensation Order

1486. As a threshold issue, the FCC explored the question whether intercarrier compensation for ISP-bound traffic is governed by section 251 or section 201 of the federal Act. It concluded that ISP-bound traffic is not subject to reciprocal compensation obligations of section 251 (b)(5). Rather, the FCC held, intercarrier compensation for ISP-bound traffic is within the jurisdiction of the Commission [the FCC] under section 201 of the Act. On the basis of this finding, the FCC took the responsibility of establishing an appropriate, albeit interim, cost recovery mechanism for the delivery of this type of traffic.

1487. In tandem with the instant Order, the FCC noted that it was initiating a rulemaking (Unified Intercarrier Compensation NPRM) that would consider:

> whether the [FCC] should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep." The *NPRM* also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion.

1488. The FCC does not fully adopt a "bill and keep" regime in this Order because further inquiry is necessary (Para. 6). ("In the companion *NPRM*, we consider the desirability of adopting a uniform intercarrier compensation mechanism, applicable to all traffic exchanged among telecommunications carriers, and, in that context, we intend to examine the merits of a bill and keep regime for all types of traffic, including ISP-bound traffic." (Para. 66).. Evidence on record, however, showed the need for certain "immediate" action such that the FCC implemented an "interim recovery scheme."

1489. The FCC established an "interim" regime to govern intercarrier compensation for ISP-bound traffic until such time as it resolves the issue raised in the

intercarrier compensation NPRM. (Para. 77). According to the FCC, the interim compensation scheme applies as carriers "renegotiate" expired or expiring interconnection agreements. It does not alter existing contractual obligations except to the extent that parties are entitled to invoke contractual change-of-law provisions. (Para.82)

1490. The FCC, however, established a different rule to govern cases where carriers are not exchanging traffic pursuant to an interconnection agreement prior to adoption of this Order (where, for example, a new carrier enters the market, or where an existing carrier expands into a market it previously had not served. (Para. 81) In such instances, as of the effective date of its Order, the FCC directs that carriers shall exchange ISP-bound traffic on a bill-and-keep basis during the interim period. (Id).

1491. The FCC also made clear that its Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime it adopted. Given that the FCC is exercising its authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions would no longer have the authority to address this issue. (Para. 82).

1492. In the same vein, carriers may no longer invoke section 252 (i) to "opt" into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. (para 82) Section 252(i), the FCC explains, applies only to agreements arbitrated or approved by state commissions pursuant to section 252 – it has no application to the intercarrier compensation regime established by the FCC pursuant to sec. 202. (Para. 82).

1493. The FCC further addressed the relationship of its interim recovery scheme to Section 251 (b)(5).

1494. It would be unfair, the FCC wrote, to allow incumbent LECs to benefit from reduced rates for ISP-bound traffic (where they are the net payors) while also permitting them to exchange other traffic at state reciprocal compensation rates that are much higher than the instant caps (and where the traffic imbalance is reversed such that LECs are the payees). As such, the FCC determined that it would not allow LECs to "pick and choose" among the intercarrier compensation regimes (depending on the nature of the traffic exchanged with another carrier),

1495. In accord therewith, the FCC's Order imposes certain restrictions, as follows:

> The rate caps for ISP-bound traffic apply only if an incumbent LEC offers to exchange all traffic subject to Section 251(b)(5) at the same rate (Para. 89). (Emphasis added)

> If an ILEC wishes to continue to exchange ISP-bound traffic on a "bill and keep" basis in a state that has ordered "bill and keep", it must offer to exchange all section 251 (b)(5) traffic at that same rate (Id).
>
> For LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate cap we adopt for ISP-bound traffic, the FCC orders them to exchange ISP-bound traffic at - the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. Para 89. (Further, the FCC indicates that LECs may make this election on a state-by-state basis. Id. fn.179)

1496. This "mirroring" rule that the FCC thus imposes, is meant to ensure that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic. Para. 89. Indeed, the FCC saw no reason to impose different rates for ISP-bound and voice traffic.

1497. Having thus reviewed the critical aspects of the FCC's Order, we turn to the arguments set out by Staff, AT&T and Ameritech Illinois. Granted that the FCC's Order is far more lengthy and involved, we need go no further in addressing what we perceive to be the major contentions.

Election

1498. At the outset, we consider Staff's assertions of non-compliance based on AI's failure to make an election of the FCC rate caps within a "reasonable" time. We note, however, and Staff acknowledges too, that the FCC does not establish a date certain by which an ILEC need make an election. Indeed, it would not be availing to do so. Pursuant to the ISP Compensation Order, the interim compensation scheme applies as carriers "renegotiate" expired or expiring interconnection agreements. (Para.82). This pronouncement answers Staff's time frame concerns.

1499. The FCC was certainly aware of timing issues when fashioning its Order. To be sure, in setting out the directive that carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP traffic, the FCC further noted:

> In any event, our rule implementing section 252(i) requires incumbent LECs to make available [I]ndividual interconnection, service, or network element arrangements" to requesting telecommunications carriers only "for a reasonable period of time." 47 C.F.R 51.809 (c). We conclude that any "reasonable period of time" for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order

> of an intercarrier compensation mechanism for ISP-bound traffic. (fn. 155)

1500. In the end, this Commission has no authority to graft a "election" deadline onto an order it itself has not authored, and which is unsupported by a reading of the ISP order as a whole. Moreover, given that there is no formal mechanism by which an ILEC makes an election, it is difficult to understand Staff's claim that, AI has neither accepted, nor rejected, the rate caps. Further, Staff's legal proposition fails in this instance in that there is no "duty" put on AI to perform; it is merely provided with the right to exercise an option.

Certainty

1501. Whereas we see Staff to speak of the need for "certainty" the FCC fashioned its ISP Compensation Order around the concept of "expectancy." As such, the FCC believed it prudent to avoid a "flash cut" to a new compensation regime that would upset the legitimate business expectations of carriers and their customers. According to the FCC, however, the CLECs have been put on notice since the 1999 Declaratory Ruling that it might be unwise to rely on the continued receipt of reciprocal compensation for ISP-bound traffic. Thus, it notes, many have begun the process of weaning themselves from these revenues. (Para. 84).

1502. The three-year transition, the FCC announced, ensures that carriers have sufficient time to re-order their business plans and customer relationships, should they so choose, in light of its tentative conclusion that "bill and keep" is the appropriate long-term compensation regime. (Para. 83)

1503. Staff imagines that CLECs are put into the position of uncertainty by AI's failure to make an election of the FCC's interim rates. If this be the case, it is a fault of the FCC's order that we are loathe to disturb or remedy.

1504. All in all the ISP Compensation Order is what it is. We are in no position to interpret its provisions in the way Staff would propose. Nor have we been shown a single factual instance where the plain directives of the Order have been violated. The remedial actions that Staff would have us direct, are simply not supported by law.

Opt-In Requirements

1505. Staff would have us require Ameritech, apparently without regard to circumstance or the FCC's pronouncements, to permit carriers to opt-into reciprocal compensation rates, terms, and conditions in "existing" interconnection agreements. The pertinent question, which the parties do not pursue, might be whether there are any existing agreements that can be "opted into" by carriers who do not, and have no intention to, serve ISP traffic. Staff has provided no factual situation or agreement that matches this scenario. This Commission, however, is not wont to prejudge such matters in the abstract as we are invited to do.

1506. Staff arguments wholly fail a factual context. To be sure, not one CLEC with an interest has come forward to complain of a real-life dispute related to an opt-in situation. While AT&T makes a number of contentions, it does not allege that it was improperly denied such rights in the formulation of its agreement. The XO matter to which Staff only generally refers, did not invoke Commission action and is not probative on any issue. To the extent that the Commission has approved an actual real life agreement – and AI asserts that we have – we need not and will not take a position based on an abstract proposition.

Positions in the Abstract

1507. Ameritech Illinois points out that there is no ripe issue for us to review. The Company is correct on this count. A claim is not ripe for adjudication if it rests upon contingent future events that may not occur (1) has anticipated, or (2) at all. Texas v. United States, 523 U.S. 726 (1998). So too, it is inappropriate and contrary to the promotion of judicial and administrative economy to maintain a position based only on a theoretical issue than may never affect the appellant. A. Finkl & Sons v. ICC, 620 N.E. 2d 1141 (1st Dist. 1993); appeal denied, 624 N.E. 2d 804.

1508. The ripeness doctrine requires a court to evaluate both the fitness of the issues for decision and the hardship to the parties of withholding court consideration. As to the fitness of the issue at hand, Staff would have us find that under no circumstances whatsoever should AI be allowed to deny opt-in to any agreement under any situation. Like the Court in Texas, we do not have sufficient confidence in our powers of imagination to affirm such a negative. There is no hardship to consider, because the right to seek arbitration will put the matter squarely before this Commission. To be sure, factual development in such instance is the only way to advance our ability to deal concretely and decidedly with the issues.

1509. The FCC will have the record of this proceeding at its disposal when making an assessment of Ameritech's compliance with Section 271. With respect to the instant issues, we urge the FCC to consider whether the lack of a specific deadline by which the ILEC needs to make an "election" is a serious concern.

1510. There is no question that, as a general matter, Ameritech must permit carriers to incorporate the reciprocal compensation rates included in its Illinois tariffs into its interconnection agreements even as the parties are free to negotiate otherwise. Should the Company believe it is entitled under FCC rules to revise the reciprocal compensation rates included in its Illinois tariffs then it must follow Commission rules and regulations to enact such a change.

1511. Any disputes regarding the Company intentionally impairing or delaying a requesting carrier's ability to obtain access to rates, terms, and conditions that this Commission and/or the FCC require will be closely examined by the Commission and dealt with in due course.

1512. On the whole, and on the basis of the relevant evidence, and there being no "factual" dispute to resolve, we find Ameritech Illinois to be compliant with the requirements of Checklist Item 13.

N. CHECKLIST ITEM 14 – Resale

1. Description of Checklist Item

1513. Section 271(c)(2)(B)(xiv) of the Act requires a 271 applicant to make telecommunications services … available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." 47 U.S.C. 271 (c)(2)(B)(xiv).

2. Standards for Review

1514. At the outset, section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. 251 (c)(4)(A). Further, section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on service resold under section 251(c)(4)(A). 47 U.S.C. 251(c)(4)(B). Finally, section 252(d)(3) requires state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. 252(d)(3)

1515. In the Local Competition First Report and Order, the FCC concluded that resale restrictions generally are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and nondiscriminatory. If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers. Where a state creates such a limitation, it must do so consistent with requirements established by the FCC.

1516. In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to OSS for the resale of its retail telecommunications services. The obligations of section 251(c)(4), apply to the "retail" telecommunications services offered by a BOC's advanced services affiliate. See Verizon Connecticut Order, 16 FCC Rcd 14147, 14160-63, paras. 27-33 (2001); Association of Communications Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001).

3. The State Perspective

1517. "Resale" is a requirement of the incumbent local exchange carrier to discount its to retail telecommunications services and sell them to competitive telecommunications carrier. The wholesale price is arrived at by determining the amount of money spent by the ILEC to provide the service at retail to customers and deducting that amount from the retail price. These retailing costs are things such as marketing, billing, and collection that would be reduced or eliminated in a purely wholesale operation.

1518. The purpose of the resale requirements is to allow competitors, who are able to provide retailing services more efficiently than the incumbent, to compete with the incumbent for the provision of those services.

1519. In September of 1995 AT&T petitioned the Commission for the creation of a wholesale service tariff. The Telecommunications Act of 1996 also required resale of the incumbent's retail telecommunications services. The Commission considered AT&T's petition and the 1996 Act in Docket 95-0458, releasing its Order in June of 1996. The Commission summarized the benefits of retail requirement as follows:

> The Commission is of the opinion that a properly established wholesale/resale market would place competitive pressure on both the incumbent LECs, as well as new entrants into the local exchange market. This pressure would be exerted in terms of price, cost, and service quality. In addition, a properly established wholesale/resale market would preserve any possible efficiencies to be gained from situations where there may be natural monopoly conditions in the underlying network of local exchange service. However, the Commission also is cognizant that new technology and innovation in the actual service provisioning will take place only as facilities based competition evolves – although pure resale competition should not be written off just because it may not be as beneficial as facilities-based competition. Wholesale/resale competition will put competitive pressure on both retail rates and quality of service. Wholesale/resale competition is also a first step in an evolving marketplace that will eventually involve more facilitates-based competition. Order at 5-6, Dockets 95-0458 and 95-0531 (consol.). (June 26, 1996)

1520. The Commission's Order includes a formula to calculate wholesale/resale rates. Ameritech set out its wholesale rates in a wholesale compliance tariff in 1996. The Commission investigated those tariffs in Docket 97-0553. (Illinois Commerce

Commission On Its Own Motion v. Illinois Bell Telephone Company Investigation of certain Illinois Bell Telephone Company wholesale non- competitive tariffs, pursuant to Section 9-250 of the Public Utilities Act, Docket No. 97-0553. (Docket initiated October 10, 1997).) While testimony was taken and hearings conducted in the case, no order was ever issued in that case. The issues of 97-0553 where addressed in Docket 98-0555.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

1521. Testimony to support AI's position on compliance with Checklist Item 14, was provided by its witness, Scott Alexander. Ameritech Illinois maintains that it provides telecommunications services to CLECs, for resale, that are identical to the services being furnished to its own retail customers. (AI Ex. 1.0, Sch. SJA-1, para. 126). It asserts that CLECs are able to resell these services to the same customer groups and in the same manner as Ameritech Illinois. (Id). Ameritech Illinois offers wholesale discounts on promotional offerings lasting more than 90 days. (Id. para. 130). For retail services that Ameritech Illinois offers to a limited group of customers (such as grandfathered services), Ameritech Illinois explains that it allows resale to the same group of customers to which it sells the services, in accordance with 47 C.F.R. § 51.615. (AI Ex. 1.0, Sch. SJA-1, para. 131).

1522. Further, Ameritech Illinois maintains that its customer-specific contracts are available for resale to similarly situated customers without triggering termination charges or transfer fees to the end user. (Id. para. 133). According to Ameritech Illinois, it has approved wholesale rates for resold services that reflect a discount based on avoided cost. Those wholesale rates are reflected in tariffs and have been incorporated into interconnection agreements, AI contends, making them available to all CLECs. (Id. para. 128).

DSL Transport Service

1523. Ameritech Illinois explains that it does not provide xDSL service to end users. Instead, an affiliate, Ameritech Advanced Data Services, Inc. ("AADS") provides certain advanced services. According to AI, the Commission need not decide whether the Act's resale obligations apply to affiliates like AADS, because even if they do, AADS is in compliance.

1524. AI observes that the "category of services subject to the provisions of section 251(c)(4) is determined by whether those services are: (1) telecommunications services that an incumbent LEC provides (2) at retail, and (3) to subscribers who are not telecommunications carriers." Arkansas & Missouri 271 Order, para. 80. AADS provides data transmission services like Frame Relay and ATM Cell Relay at retail, AI notes, and it makes those services available for resale at a wholesale discount. (AI Ex. 13.0 Sch. JSH-1, para. 23, 30-32).

1525. Ameritech Illinois' testimony indicates that ADS provides a wholesale service called "DSL Transport" to unaffiliated Internet Service Providers ("ISPs"), who add familiar Internet services (such as e-mail, Internet access, and personal web pages) to create a high-speed Internet access service. (AI Ex. 13.0 at 12). The FCC has held, AI points out, that wholesale DSL transport service "is a wholesale service offering…. Because that offering is not a telecommunications service sold at retail, [the BOC] is not required to offer it at a resale discount pursuant to section 251(c)(4)." Arkansas & Missouri 271 Order, para. 80. [25]

1526. Further, AI asserts, AADS provides DSL transport to an affiliated ISP known as Ameritech Interactive Media Services ("AIMS"), which offers a high-speed Internet access service to end users. Here too, AI observes, the FCC has held that section 271 does not require that the bundled Internet access service (which is an information service, not a telecommunications service) or the underlying wholesale DSL transport be made available for resale. Arkansas & Missouri 271 Order, para. 81 ("With respect to SWBT's third category of service -- its high-speed Internet access service -- we find that there is no violation of Checklist Item 14.").

1527. According to AI, the FCC found that the "regulatory treatment of the underlying transmission facilities provided by incumbent LECs to their affiliate information service providers could have far-reaching implications for a wide range of issues that would be more appropriately handled" in a separate rulemaking on broadband service, which is now ongoing. Thus, AI observes, even Staff witness Liu concedes that AADS has no obligation to resell its DSL Transport service at wholesale discount. Staff Ex. 10.0 (Liu Direct) at 36.

1528. Staff apparently seeks to circumvent this outcome by contending that AADS should be forced to sell DSL transport at retail. Those arguments AI argues, do not belong here.

Resale of Business Services to Residential Customers

1529. AI notes McLeodUSA's contention that Ameritech Illinois improperly restricts the resale of business services to residential customers. MTSI Ex. 2.0 (Heitland Direct) at 7-8. Although the FCC's rules do not prohibit business-to-residence cross-class resale (as they do in the case of residence-to-business resale), AI observes that they are not as open-ended as McLeodUSA suggests. The FCC, AI observes, has recognized that some restrictions may be appropriate where there are "volume discount and flat-rated" offerings. AI Ex. 1.1 (Alexander Rebuttal) at 48-49; First Report and Order, para. 964.

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[25] There is one exception. AADS does offer DSL Transport "RLAN" Service to business customers for a limited remote local area network ("RLAN") application (for example, universities use RLANs so that students can log in from remote locations). AADS, accordingly, offers this DSL Transport RLAN Service for resale. (AI Ex. 13.0 at 17).

1530. No further analysis of this issue is required, AI argues, given that McLeodUSA's recently arbitrated interconnection agreement allows it to continue to resell those services which Ameritech Illinois currently provides to McLeodUSA for resale (e.g., Centrex service, which McLeodUSA has used as a cross-class resale vehicle). Arbitration Decision, Docket No. 01-0623 at 48-49. (Jan. 16, 2002). Accordingly, AI asserts, this issue is moot.

b. The Attorney Generral's Issues/Position

DSL Resale Policies

1531. The AG notes AI's witness Habeeb to assert that AI need not offer DSL for resale because it does not offer DSL to retail subscribers. Its subsidiary AADS, AI reports, offers DSL to the public. (AI Ex. 13.1 at 3; Staff Ex. 10.0 at 26) (public and proprietary).

1532. The availability and penetration of broadband Internet access, the AG contends, has been a subject of extensive public interest in Illinois. In adopting House Bill 2900, the AG observes, the Illinois General Assembly included provisions that require the dissemination of broadband technology, including DSL. As such, the AG notes, there was established the Digital Divide Elimination Infrastructure Fund (30 ILCS 105/5.545), and the Digital Divide Elimination Fund (30 ILCS 780/5-20) along with the expansion of the Community Technology Grant Program (30 ILCS 780/5-30). A payment of $30 million into each of the first two funds above was required (220 ILCS 5/13-502.5(e)) and the Public Utilities Act was further amended to provide that "every incumbent local exchange carrier ... shall offer or provide advanced telecommunications services to not less than 80% of its customers by January 1, 2005." (220 ILCS 5/13-517). The AG notes that an ILEC can seek a waiver from this latter requirement only upon a specified showing. (Id. at 13-517(b)). Clear from these statutory mandates, the AG argues, the General Assembly considers the provision of advanced telecommunications services, such as DSL, to be a retail service that should be generally available from the incumbent telephone company.

1533. In Association of Communications Enterprises v. FCC, 235 F.3d 662 (D.C.Cir. 2001) ("ASCENT v. FCC"), the AG notes, the Court squarely held that SBC/Ameritech could not escape the resale obligations in section 251(c)(4) by offering advanced services through an affiliate. The court said: "Since Congress prescribed no such affiliate structure for advanced services, we must assume that Congress did not intend for section 251(c)'s obligations to be avoided by the use of such an affiliate." 235 F.3d at 668.

1534. The ASCENT court, the AG observes, rejected the arguments in support of relieving SBC/Ameritech of its resale obligations, as follows:

> In short, the Act's structure renders implausible the notion that a wholly owned affiliate providing telecommunications

> services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent. Id. at 668.

1535. The Court's decision leaves no doubt, the AG contends, but that the existence of a separate affiliate is irrelevant to SBC/Ameritech's resale obligations. The AG takes the position that AI's failure to provide DSL for resale on the same terms as other retail services is a violation of the Commission's Order setting the retail/wholesale price formula, and is an attempt to circumvent sections 251(c)(4) and 252(d)(3) in a way that the Court has already rejected as unlawful and contrary to Congressional intent.

1536. The fact that broadband deployment is a matter of state public concern, the AG argues, makes AI's efforts to avoid its DSL resale obligations an issue that the People will further pursue under the public interest requirement of section 271. Regardless of whether the public interest is implicated, the AG contends, AI's failure to offer DSL for resale in accordance with the Commission's resale Order and formula shows that is has not satisfied Checklist Item 14.

c. Staff Issue/Position

Resale of DSL Services

1537. According to Staff, Ameritech Illinois has shown, in testimony, that it satisfies the requirements of Checklist Item 14 with respect to its DSL services. (AI Ex.13.1, Sched. A; Staff Ex. 10.0 at 2, 24.) Staff contends that Ameritech Illinois currently has no federal obligation to provide DSL transport to retail end users on a stand-alone basis.

Pricing

1538. Ameritech appears to meet part of its obligations under competitive Checklist Item 14, Staff contends, insofar as it applies resale discounts consistent with the Commission's Order on this issue, and provides such services subject to nonrecurring charges that are just and reasonable. (Staff Ex. 5.0 at 3.)

1539. The first question, Staff posits, is whether Ameritech properly applies resale discounts in the manner ordered by the Commission in Dockets 95-0458/95-0531. (Staff Ex. 5.0 at 14.) Next, the Commission must determine whether Ameritech offers these services subject to nonrecurring charges that are just and reasonable. (Id. at 14-15.)

1540. With respect to the first issue, when Ameritech offers a new service or changes the rate of an existing service, Staff determines whether the resale discount is appropriately applied. (Staff Ex. 5.0 at 16.) The discount is determined based upon retail rates charged to subscribers for the telecommunications service requested, excluding the portion of those rates attributable to marketing, billing, collection, and

other costs that will be avoided by selling the service at wholesale. (Staff Ex. 5.0 at 15.) In Staff's opinion, and based upon its ongoing review, Ameritech has indeed properly reflected resale discount rates in its tariffs. (Id.) Therefore, Staff suggests, Ameritech has properly determined the level of wholesale discounts. (Id.)

1541. With respect to the second issue, Staff points out that wholesale non-recurring rates were established as part of the proceeding in Docket No. 95-0458/0531. (Staff Ex. 5.0 at 16.) Since the entry of that Order, Staff observes, some of the rates have been reduced as a part of Ameritech's annual alternative regulation compliance filings. (Id.) Accordingly, Staff is of the opinion that these rates are just and reasonable. (Id.) On the whole, Staff maintains that Ameritech has properly applied discounts to its wholesale rates, and they are just and reasonable.

d. AT&T Issue/Position

1542. AT&T has not raised any issues in connection with resale but reserves its right to do so should issues arise.

5. The Reply Positions

a. Ameritech Reply Position

1543. With one minor exception, AI notes, there is no dispute as to whether it satisfies the requirements of Checklist Item 14. Neither Staff nor any CLEC raise any issue on brief with respect to this Checklist Item and, AI observes, Staff affirmatively states that "Ameritech Illinois has shown that it satisfies the requirements of Checklist Item 14 with respect to its DSL services" and with respect to its resale rates. (Staff Br. at 213-214.)

1544. AI observes, however, the AG to claim that Ameritech Illinois' affiliate AADS must provide DSL transport at a wholesale discount. (AG Br. at 21-24). According to AI, however, such claim arises from a fundamental misapprehension of the matter at hand. AI explains that DSL transport is sold to Internet Service Providers ("ISPs") and, as a matter of law, these are not "retail" sales that trigger the duty to resell the service at a wholesale discount. Arkansas & Missouri 271 Order, para. 80; (See Staff Br. at 235 (noting that "AADS does not offer DSL services to end-users directly"; AI Br. at 183-184). Accordingly, AI contends, there is no obligation under section 251(c)(4) of the Act for AADS to offer DSL transport service for resale at a wholesale discount.

1545. Further, AI observes that the ASCENT decision on which the Attorney General relies, does not factor into this analysis. AI notes that the question before the ASCENT court was whether advanced services affiliates are exempt from certain obligations that apply to incumbent LECs. By contrast, it argues, the point here is not who provides DSL transport (Ameritech Illinois or AADS) but who obtains it (ISPs, rather than the public). Assuming arguendo, the Attorney General's premise to be that AADS

does have the same resale obligations as Ameritech Illinois under Section 251(c)(4), AI maintains that AADS is in full compliance. But, AI points out, its DSL transport service is a wholesale offering, not a retail offering, and as such, it is not required to be offered at a wholesale discount. Arkansas & Missouri 271 Order, para. 80. (AI Br. at 183).

6. Staff's Proposed Remedial Actions for Checklist Compliance

None.

7. Commission Review, and Conclusion

1546. On the basis of Ameritech Illinois' showing, and there being no legitimate disputes raised in respect thereto, we are compelled to find Ameritech Illinois to be in compliance with the requirements and obligations of Checklist Item 14.

1547. Certain matters raised by the AG are outside the obligations and showings under this Checklist item and thus, will be addressed in Part IV of this Order.

IV. PUBLIC INTEREST - Under Section 271(d)(3)(C)

A. Description of the Statute

1548. With respect to a Section 271 application under its review, the FCC is directed to make a finding on the concern, that:

"the requested authorization is consistent with the public interest, convenience and necessity. 47 U.S.C. Section 271 (d)

B. The Federal Standards

1549. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the FCC to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity. According to the FCC, compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the FCC's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

1550. The FCC recognizes, however, that the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination. Thus, the FCC views the public interest requirement as an opportunity to review the circumstances presented by the

application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.

1551. (Adapted from the New Jersey 271 Order, with most cites and footnotes omitted).

C. The State Perspective

1552. The Commission's Initiating Order for this investigation sets out the Public Interest concern in two places.

1553. At page 2, the Initiating Order recites that:

> The FCC has considered the following issues within the context of the Public Interest requirement: (1) competition in local exchange and long distance markets, (2) assurance of future compliance, and (3) CLEC claims of anticompetitive behavior, in order to determine whether the BOC has engaged in patterns of systemic discriminatory conduct that would contradict a finding that the local market will remain open after Section 271 approval. (See Section 271 orders for the following states: New York, Kansa/Oklahoma, Pennsylvania, Connecticut, and Texas). The FCC has found that satisfying the competitive checklist is a "strong indicator" that approving the requested 271 relief is consistent with the public interest. Additionally, the FCC has reviewed the sufficiency of the BOCs' performance remedy plans to provide "additional assurance that the local market will remain open after [the BOC] receives 271 authorization. The FCC has also given substantial consideration to the performance measurement results within its competitive checklist review in each proceeding to determine whether nondiscriminatory access is being provided to the competitors by the BOCs. Id. at 2

1554. Further, at page 3 of the Initiating Order, the Commission wrote:

> The Commission notes that in prior 271 Orders, the FCC has consistently made its public interest determination based on evidence provided in the competitive checklist review. The FCC has also placed special emphasis on the BOCs' performance remedy plan. This Commission will fully investigate the performance remedy plan to ensure that the local market remains open to competition and to guard against backsliding following 271 approval. The Commission

> will also review and consider Ameritech-Illinois compliance with the competitive checklist and related public interest issues. To the extent that a particular public interest issue is unrelated to the competitive checklist, but a party believes that it is important to the development of competition in Illinois, the party is free to comment on such issue. Should the ICC find such argument important to the development of local competition, it may, at its discretion, provide consultation on this issue to the FCC. Id. at 3.

D. The Parties' General Views and Positions

1555. An investigation and review of the Section 271 performance remedy plan has not yet occurred in this docket. Likewise, OSS is not up for review and discussion. The Commission and the parties have only addressed Track A eligibility and the competitive checklist items. Nevertheless, most if not all of the parties express their views on the public interest concern and this Commission's role in that analysis which the FCC itself must perform. In this preliminary section too, the Company's compliance with Commission orders is put into issue as a factor that might be considered

1. The Attorney General's Position

1556. In general, the AG comments, use of the term "public interest" in a statute takes its meaning from the purposes of the Act of which it is a part. NAACP v. FPC, 425 U.S. 662, 669-670 (1976) (Power and Gas Acts' purpose to encourage orderly development of plentiful supplies of electricity and natural gas at just and reasonable rates. Employment practices outside scope of public interest.). The purpose of Section 271 and the Federal Act, the AG maintains, is to stimulate competition in the local telecommunications market. Sprint v. FCC, 274 F.3d 549, 555-556 (D.C. Cir. 2001)(allegations of price squeeze in local market implicated public interest and required remand).

1557. State commissions, the AG contends, have advised the FCC on matters generally related to the public interest. One of the major public interest issues that state commissions have addressed is whether a BOC will continue to provide adequate wholesale performance, once the incentive of in-region long distance is gone. But, the AG observes, state commissions have addressed more than performance assurance plans in the context of the public interest. Many have also included analyses and recommendations about whether Section 271 approval would generally serve the public interest and those states include Texas, New Jersey, Rhode Island and Massachusetts.

1558. The state commission's role under Section 271, the AG maintains, is to inform the FCC about the status of the local market and of the BOC's compliance with federal, and any consistent, state market opening efforts, required by the 14 item checklist. 47 U.S.C. § 261(c). It is for the FCC, the AG contends, to take that

information and decide if it demonstrates compliance with federal law and Section 271 requirements. Despite its insistence that state law should be ignored, the AG notes Ameritech Illinois to admit that it is complying with some state law obligations, subject to its right to challenge those same state obligations.

2. Ameritech Illinois Position

1559. The public interest analysis does not appear under Section 271 (c), AI observes, but resides in subsection (d), which expressly assigns the public interact inquiry to the FCC. As such, the "public interest" test does not authorize a state Commission to create new regulations or conduct new inquiries not related to the checklist compliance provisions of the federal statute. To be sure, AI comments, the comprehensive "appendix of statutory requirements" that the FCC attaches to each of its most recent orders (summarizing its "road map" for Section 271), does not include state law compliance issues under the public interest umbrella or embrace the dictum in the Michigan 271 Order. See, for example New Jersey 271 Order at App. C, 70-71.

1560. AI sets out certain basic "public interest" principles that it believes the Commission should consider. At the outset,, AI contends, Section 271 expressly directs the FCC to consult with state commissions regarding compliance with Tracks A and B, and with the 14 checklist items. 47 U.S.C. § 271(d)(2)(B).

1561. So too, AI asserts, the public interest test is not a second chance for arguments that fail under Track A or the competitive checklist. According to AI, It would make no sense for the FCC to say that some proposal (e.g., a market share test for Section 271 approval) is a bad idea under Track A or the checklist, then turn around and deem that same proposal to be compelled by the "public interest and necessity." Compare Michigan 271 Order, 77 ("We also do not read [Track A] to require that a new entrant serve a specific market share") with New York 271 Order, 427 ("Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance, and we have no intention of establishing one here [under the public interest test].")

1562. Further, AI contends, the public interest test is not a suggestion box for CLECs to submit any and all ideas they have for imposing new obligations on the incumbent LEC. Indeed, AI points out that Section 271(d)(4) – which immediately follows the statutory "public interest" test – commands that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)." 47 U.S.C. § 271(d)(4).

1563. The FCC, AI asserts, has recognized that Section 271 proceedings are not the place to resolve "new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act." Texas 271 Order, 23. As the FCC reasoned, such an approach would be "irreconcilable with th[e] statutory scheme" because "the Section

271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a Section 271 application." Id. 24. One reason that such inquiries are improper is the FCC's tight time limit for reviewing applications (Id. 25), but that is not the only one. AI observes the FCC to explain that:

> Congress designed Section 271 to give the BOCs an important incentive to open their local markets to competition, and that incentive presupposes a realistic hope of attaining Section 271 authorization. That hope would largely vanish if a BOC's opponents could effectively doom any Section 271 application by freighting their comments with novel interpretive disputes and demand that authorization be denied unless each one of those disputes is resolved in the BOC's favor. Indeed, if that were the required approach, the BOCs would face enormous uncertainty about the steps they need to take to win Section 271 authorization, and they would therefore lose much of their incentive to cooperate in opening their local markets to competition in the first place. That result would disserve the public interest in greater competition in both local and long-distance markets, and it would defeat the congressional intent underlying this statutory scheme. Texas 271 Order at para 26.

1564. Finally, AI argues, it is not enough for a party to suggest certain action and claim that such action is in the public interest, simply because it is in that party's interest or otherwise warranted on the conclusory assertion that the market is not irreversibly open. The issue, AI maintains, is whether granting the BOC's application would be in the public interest, not whether adopting a particular CLEC proposal might also serve the public interest. 47 U.S.C. § 271(d)(3)(C). On that issue, AI observes, the FCC considers whether "relevant factors exist that would frustrate the congressional intent that markets be open," and whether that approval would not serve the public interest Congress expected it to serve. (New Jersey 271 Order, App. C, 71).

1565. AI sees Staff and certain CLECs to contend that Ameritech Illinois has demonstrated a pattern of regulatory non-compliance. See, e.g., Staff Br. at 217; AT&T Br. at 147. Ameritech Illinois disagrees with these parties' views, both with respect to the Company's overall compliance with Commission orders and their characterization of individual proceedings. (Am. Ill. Ex. 15.0 at 15). Ameritech Illinois takes seriously its obligations to comply with applicable state and federal requirements. Id. Moreover, AI points out, most of the "noncompliance" examples that were presented in testimony reflect disputes over legal, factual and policy issues – not actual non-compliance. Id. The arguments on brief, the Company notes, similarly serve to distort Ameritech Illinois' compliance record.

1566. Point by point, AI addresses Staff's version of the history of shared transport pointing out differences in view and overlooked fact. Ameritech Illinois does not deny that the history of shared transport has been confusing and contentious, but the facts themselves, the Company contends, do not support Staff's blanket and simplistic indictment of Ameritech Illinois' conduct over the last six years.

1567. Staff's remaining allegations of non-compliance, the Company notes, consist of CLEC complaint matters, that the Commission ultimately resolved against Ameritech Illinois. The transition to competition, it maintains, has not been and will not be without disputes. Ameritech Illinois contends that it is obligated to provide a myriad of products and services under a complex, overlapping (and occasionally conflicting) set of legal requirements. In many instances, Ameritech Illinois' observes, obligations are undefined beyond generic prohibitions against discriminatory conduct.

1568. According to AI, the U.S. Supreme Court itself has said: "It would be gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction." AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 397 (1999). It is a fact of regulatory life AI comments, that CLECs take an aggressive view of what they are (or should be) entitled to. It is equally a fact of regulatory life that the incumbent carrier will see these issues from a more conservative perspective. The mere fact that the Commission ultimately sides with the CLECs (or Staff) on any given issue does not mean that Ameritech Illinois acted in bad faith, the Company argues, or that its actions indicate a pattern of "non-compliance." These orders are simply part of a complex patchwork of federal and state decisions that, over time, more precisely define Ameritech Illinois' obligations to its competitors.

1569. AI sees Staff to refer to the Z-Tel complaint, in which Z-Tel contended that it was not receiving line loss notifications on a timely basis. (Staff Br. at 228). Put in perspective, AI maintains that this was a systems problem that affected one OSS functionality out of hundreds. No one has ever contended that Ameritech Illinois was acting in bad faith or deliberately allowed its performance to deteriorate. Ameritech Illinois stated from the outset of the Z-Tel litigation, (and again in this proceeding) that it understood its obligation to provide these notifications on a timely basis and that it was working diligently to resolve the problem. (May 8, 2002 Order, Docket 01-0160 at 10-14; Am. Ill. Ex. 15.0 at 13; Am. Ill. Ex. 4.1 at 2-12). This is not contested in the record, nor is there any real dispute but that Ameritech Illinois has made great strides on the issue, and has kept CLECs and Staff informed of its progress.

1570. According to AI, the Commission's decision in the MCI PIC change verification complaint has no bearing on Section 271 compliance. Order, Docket 97-0540 Dec. 17, 1997. This complaint case, AI explains, is almost five years old and involved PIC changes for local toll service provided by IXCs – not local service provided by CLECs subject to the Act. In the QST docket, too, Ameritech Illinois argued that section 252(i) should not apply to interconnection agreement terms governing reciprocal compensation, in part because it would constitute bad policy to allow CLECs to opt into

agreements made with other carriers that allowed those carriers to receive a windfall for ISP-related traffic. Order, Docket 98-0603, (Nov. 5, 1998) (Ill. PUC Lexis 986 at *18-*19. While the Commission disagreed with Ameritech Illinois, Ameritech Illinois' position in that docket can hardly constitute regulatory malfeasance, given that the FCC later adopted Ameritech Illinois' position in the ISP Compensation Order at 2, 82). Further, AI observes, the special construction charge docket established new policies (such as CLEC notification processes and pricing) for the situation where Ameritech Illinois does not have facilities available. See Order, Docket 99-0593 (Aug. 15, 2000). Following all of these decisions, Ameritech Illinois duly amended its practices and Staff does not contend otherwise.

1571. Ameritech sees AT&T and Z-Tel to refer to Docket 01-0614 where the Commission ultimately resolved certain issues against the Company. (AT&T Br. at 151; Z-Tel Br. at 19-20). These issues constituted good faith disputes over the proper interpretation of a new statutory provision, i.e., Section 13-801, AI explains. The mere fact that Ameritech Illinois did not prevail in the end does not mean that the Company was guilty of "non-compliance" before the Commission even ruled. (Am. Ill. Ex. 15.0 at 16-17).

1572. Ameritech Illinois points out that it is not the only company which has been on the receiving end of negative Commission decisions. For example, the Commission recently entered an emergency order against WorldCom under Section 13-514, ordering that carrier to cease and desist slamming and misleading marketing practices. Order Granting Emergency Relief, Docket 02-0443 (July 8, 2002). Similarly, the Commission entered an order finding that AT&T violated Section 13-514 by denying both Ameritech Illinois and other carriers access to certain AT&T facilities. Order, Docket 97-0624 (Feb. 27, 1998).

1573. Given the large number of CLECs of varying capabilities and sophistication to whom Ameritech Illinois provides products and services, the extensive array of products and services which it provides, and the complex interfaces between Ameritech Illinois and the CLECs, the potential for misunderstanding and disputes is enormous. In this environment AI asserts, Staff should acknowledge the fact that there have been relatively few complaints.

1574. Ameritech Illinois' admits that its processes are not perfect and its judgments are not infallible, but contends that no telephone company in the country would meet such standards. Ameritech Illinois readily concedes that it has disagreed (sometimes strongly) with Commission decisions on specific issues and that it has used its best efforts (sometimes successfully, sometimes not) to convince the Commission to take a different approach in that or subsequent proceedings. But, these positions. AI maintains, have always been taken in good faith and in accordance with the rule of law.

1575. This Commission, AI contends, has numerous mechanisms at hand to assess and enforce compliance with state law, and no one contends that it has not made sufficient use of those means. Indeed, AI notes, the very issues raised by Staff or

the intervenors are being or have been addressed by separate dockets, and any public interest at stake in those matters, is accordingly being served.

3. WorldCom's Position

1576. WorldCom agrees with Staff's position that this Commission's responsibility to consult with the FCC on 271 compliance requires that it do more than just determine whether Ameritech is in minimal, technical compliance with the fourteen checklist items. (Staff Br. at 23-24). Staff's analysis and conclusions regarding state law matters, WorldCom contends, demonstrates that the state of competition in Illinois in general, and Ameritech's compliance with Commission orders and state law in particular, cannot be ignored if the Commission is to fulfill its role consistent with federal Act the intent of the Congress and the Illinois General Assembly. WorldCom believes that the Commission must look beyond the extremely narrow and limited role that Ameritech would have the Commission play in consulting the FCC on whether the local market in Illinois is irreversibly open to competition.

1577. Its witness Campion, WorldCom claims, detailed SBC- Illinois's disregard for Commission orders with respect to establishing TELRIC pricing for UNEs and for implementing the shared transport UNE in particular. (WorldCom Ex. 6.0 at 8-13). Ms. Campion also observed that Ameritech had also failed to comply with the Commission's Order in Docket 00-0393 which had required Ameritech to file specific tariff language identified by the Commission. (WorldCom Ex. 6.1 at 8-9). Such non-compliance, WorldCom contends, was demonstrated during the cross examination of Ameritech witness Rhonda Johnson where she admitted that Ameritech removed all references to the UNE Platform or UNE-P even though those terms appeared at ten different places in the tariff language that the Commission ordered Ameritech to mirror. (Tr.863-864).

1578. WorldCom believes that Staff witness Feipel's direct testimony clearly laid out examples of Ameritech's non-compliance with competitive requirements contained in federal law, state law, FCC orders and Commission orders and showed how that non-compliance impacted on competition in the Illinois local market. WorldCom observes Mr. Feipel to have stated that, "Ameritech's continued non-compliance represents a prolonged and systemic problem that has hindered the development of a competitive telecommunications marketplace in Illinois." (Staff Ex. 2.0, p. 11).

1579. According to WorldCom, the record is replete with instances in which Ameritech has actively resisted and outright disobeyed several state law requirements. (WorldCom Ex. 6.0, pp. 9-13,15-18). WorldCom witness Campion observed, for example, that Ameritech recently was found to have engaged in activities that are per se impediments to competition in the Z-Tel complaint proceeding in Docket 02-0160, and has been found in violation of various state laws based on its anticompetitive ValueLink contracts in the ACENT complaint case in Docket 00-0024. (Worldcom Ex. 6.1 at 9-10). It is this pattern of conduct, WorldCom argues, that compels an evaluation not only of Ameritech's non-compliance with state laws and regulations, but also an

evaluation of the extent to which Ameritech is complying with state laws and regulations, including Commission orders.

1580. WorldCom contends that while Ameritech was invited to demonstrate how it is complying with the Commission's special construction order in Docket 99-0539, and to demonstrate that it is not discriminating against CLECs and in favor of itself , its customers and its authorized agents in terms of the intervals in which it provisions high speed data lines, including T-1 and DS1 lines, it declined to do so. (WorldCom Ex. 6.0, pp. 20-22). Having had ample opportunity to illustrate how it complies with state regulations, WorldCom argues, it has opted to ignore those opportunities and gamble that the Commission will ignore SBC-Illinois' history of disobeying Commission orders and state laws.

1581. For all of these reasons, WorldCom believes that it is wholly appropriate, in this proceeding, to focus on the issue of Ameritech's failure to comply with Commission orders and state laws and regulations. Without considering such information, WorldCom contends, the Commission will not be prepared in its consultative role under the TA96 to provide information that the FCC believes is relevant to its evaluation of Ameritech's 271 application. To this end, the Commission should consider all of the evidence concerning Ameritech's non-compliance with Illinois laws and regulations, and also require Ameritech to demonstrate with specificity how it has complied with the Commission's directives in the special construction order in Docket 99-0593, the AADS certification order in Docket 94-0308, and Section 13-801(d)(5) maximum intervals for the provision of UNEs, and in particular the intervals for the provision of high speed data lines, including T-1 and DS1 lines. (*See* WorldCom Ex. 6.0 at 19-20). Absent such a demonstration, WorldCom argues, the Commission is left only to base its decision on the evidence that demonstrates a pattern of non-compliance and disregard for pro-competitive state regulations.

4. RCN's Position

1582. The FCC, RCN asserts, recognized the considerable importance that Congress placed on the public interest standard by noting that it was given "broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region market is consistent with the public interest." Michigan 271 Order at para. 383. As part of this broad authority, the FCC determined that it should consider factors relevant to the achievement of the goals and objectives of the 1996 Act. (Id. at 385.)

1583. In the Louisiana 271 Order, RCN notes, the FCC reaffirmed that it will consider "whether approval of a Section 271 application will foster competition in all relevant telecommunications markets (including the relevant local exchange market), rather than just the in-region, interLATA market." Id. para. 361. So too, RCN points out, FCC stated that it would not be satisfied that the public interest standard has been met unless there is an adequate factual record that the "BOC has undertaken all actions

necessary to assure that its local telecommunications market is, and will remain, open to competition." Michigan 271 Order at para 386.

1584. Indeed, RCN observes, the FCC has determined that:

> The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof), in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large). Michigan 271 Order at para. 391.

1585. This Commission, RCN asserts, is given a vital consultative role in providing recommendations to the FCC as to Ameritech's application and in developing a detailed record that the FCC will use in evaluating Ameritech's application. Before this Commission can recommend that the FCC approve Ameritech's application, it must determine if such approval would be in the public interest of the citizenry of Illinois. Central to its determination RCN asserts, is the question of whether Ameritech has made the local market in Illinois fully and irreversibly open to competition. The FCC has stated that it would not be satisfied that the public interest standard has been met unless there is an adequate factual record that the "BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."

5. AT&T's Position

1586. The level of local competition that currently exists in Illinois, AT&T contends, is narrowly focused and uncertain. According to AT&T, the same arguments it set forth under Track A eligibility also demonstrate that Ameritech has failed to meet it burden of proving that the "local market is open and will remain so" even after Section 271 authorization is granted. See Michigan Section 271 Order.

1587. For local competition that is both sustainable and irreversible, the FCC and the state commission must assure themselves that the RBOC will continue to comply with the market-opening requirements, even after the "carrot" of 271 relief no longer exists. There is no question, AT&T maintains, but that an adequate Performance Remedy Plan is crucial to ensure that Ameritech does not "backslide" on the service quality it provides to CLECs. Another readily available way that the FCC and the state commission can alleviate any concerns about whether the RBOC will comply with the market-opening requirements of the FCC and the state commission is to examine the RBOC's history of compliance.

1588. According to AT&T, the Commission's Order on Rehearing dated September 26, 2001 in Docket 00-0393 required Ameritech to file a tariff that "mirrors" the tariff language attached as Appendix A, as modified. On cross examination, AT&T contends Ameritech witness Johnson admitted that the tariff Ameritech actually filed differed significantly from the tariff the Commission ordered Ameritech to "mirror." Another instance of Ameritech's noncompliance, AT&T asserts, is its failure to timely comply with the FCC's and the Commission's requirement to provide interim shared transport ("ULS-IST"), the predecessor to its permanent shared transport offering. Recently, AT&T notes, Ameritech has filed tariffs in alleged compliance with the Commission's Order in Docket 01-0614 implementing the broad unbundling obligations of Section 13-801 of the Illinois Public Utilities Act, enacted into law last June. AT&T comments that it is currently engaged in the process of reviewing those tariffs.

1589. AT&T recognizes that while certain of Commission orders (with which the CLECs and Staff advocate strict compliance) impose obligations that are broader than those imposed by federal law, the bulk of them simply require Ameritech to comply with what federal law demands. AT&T further takes issue with Ameritech Illinois' statement that:

> Staff's proposed assessment of compliance with state law is unnecessary. As the discussion below and throughout this brief makes clear, this Commission has numerous other mechanisms at hand to assess and enforce compliance with state law, and no one contends that it has not made sufficient use of those means. In many cases, the very issues raised by Staff or the other intervenors are being or have been addressed by separate dockets, and any public interest involved is already being served. (Ameritech Initial Br. at 187).

1590. Contrary to AI's view, AT&T maintains that the public interest determination cannot be relegated, delegated or deferred to other state proceedings. It is a necessary prerequisite to a successful 271 application, and, AT&T argues, a BOC that repeatedly violates or persists in violating federal or state law requirements, simply cannot pass this public interest test.

1591. AT&T further believes Ameritech to have summarily disposed of several state law compliance issues posed by Staff by contending that the tariff it filed to implement the Commission's Order in Docket 01-0614 (implementing newly enacted Section 13-801 of the PUA) has essentially mooted those issues. (Am. III Br. at 194). To be sure, AT&T notes that on August 23, 2002, Staff and Ameritech filed a Joint Stipulation indicating that various Section 13-801 compliance issues have been resolved vis-à-vis the stipulating parties. AT&T, however, does not so readily agree that these issues are no longer relevant for Section 271 purposes. AT&T maintains that whether Ameritech's tariff complies with the order, or is useful for providing the CLEC what the Commission intended, cannot be evaluated on the basis of language alone.

True compliance, AT&T contends, can only be evaluated when one attempts to order and implement the tariffed element and/or service. As such, AT&T intends to address any noncompliance issues arising from the Commission's Order in Docket 01-0614 and the resulting tariff in Phase II of this proceeding.

6. Z-Tel's Position

1592. Z-Tel submits that Ameritech's application is contrary to the public interest for at least three reasons. First, according to Z-Tel, Ameritech has utterly failed to comply with provisions of the Illinois PUA, signed into law more than a year ago. Second, Z-Tel asserts, Ameritech's "winback" campaign, (through which it lures consumers away from CLECs and back to Ameritech), is anticompetitive and discriminatory. Third, Z-Tel contends that Ameritech's performance remedy plan cannot guarantee that poor performance will be identified or corrected because Ameritech's metrics are bad, Ameritech scores its own performance, and CLECs have no way of verifying Ameritech's data.

7. Cook County's Reply Position

1593. To the extent that state law or Commission orders are consistent with a 271 requirement, Cook County asserts, Ameritech Illinois must be in compliance with those laws and orders to meet with the 271 requirements. This proposition, it notes, was set out by Staff on brief: "To the extent that Commission Orders and state law requirements effectively mirror federal requirements, it is self evident that compliance with such laws, orders and regulations must be demonstrated for Section 271 compliance." (Staff Initial Brief at 16). Cook County agrees that Ameritech Illinois needs to comply with Commission orders and state laws that are related to the various Section 271 provisions. (Cook County Initial Brief at 6-8,10).

1594. While recognizing that the FCC seeks consultation with the state commission in respect to the competitive checklist, Cook County points out that the Commission's Initiating Order has opened this docket to consider the "public interest" provision as well. Initiating Order at 3. Sound public policy, Cook County asserts, allows and encourages such consideration.

1595. The record in this docket, Cook County maintains, demonstrates that certain corrective action must be taken by Ameritech Illinois with respect to several issues before the Commission can conclude that the "public interest" will be fully protected on grant of Section 271 approval. Cook County expresses its desire for Ameritech Illinois to meet with Staff and take the corrective action that is necessary to satisfy this public interest.

1596. Cook County supports the concept of Ameritech Illinois obtaining Section 271 approval at the earliest possible time. This, however, should not come at the expense of other carriers or Illinois consumers. Some subjects still need to be

addressed before the Commission should provide a favorable consultation to the FCC. In Cook County's view, the Commission should issue a Phase 1 A order, listing the provisions where compliance has not been shown. Further, the Commission should provide Ameritech Illinois with the opportunity to remedy the various shortcomings. Additionally, the Commission should analyze whether the market is irrevocably open to competition in Illinois. Finally, Ameritech Illinois should be required to meet the relevant Illinois state law requirements before the Commission grants its approval under the Section 271 framework.

8. Staff's Position

1597. In the FCC's review of Section 271 applications, Staff notes, it has consistently viewed regulatory compliance by the applicant as a significant indicator of whether the applicant has in fact opened its network and markets to competition. For example, back in 1997, the FCC stated that:

> Furthermore, we would be interested in evidence that a BOC applicant has engaged in discriminatory or other anticompetitive conduct, or failed to comply with state and federal telecommunications regulations. Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority. Ameritech Michigan 271 Order, 397.

1598. Since 1997, Staff contends, the FCC has reiterated its determination that a BOC's history of regulatory compliance must be considered in assessing that BOC's Section 271 application. In the Verizon New York 271 Order, the FCC observed that:

> In this instance, we do not find that the various incidents cited by commenters constitute a pattern of discriminatory conduct that undermines our confidence that Bell Atlantic's local market is open to competition and will remain so after Bell Atlantic receives interLATA authority. Verizon New York 271 Order, 444.

1599. Likewise, in evaluating SBC's Texas 271 application, the FCC noted that:

> We have previously stated that we will not deny Section 271 authorization on the basis of isolated instances of allegedly

> unfair dealing or discrimination under the Act. In this instance, we do not find that the various incidents cited by commenters constitute a pattern of discriminatory conduct that undermines our confidence that SWBT's local market is open to competition and will remain so after SWBT receives interLATA authority. SBC Texas 271 Order, 431

1600. Even more recently, in the Kansas/Oklahoma 271 proceeding, the FCC observed that:

> [With respect to regulatory compliance,] we are looking for patterns of systematic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete. SBC Kansas/Oklahoma 271 Order, 179

1601. It is clear from the forgoing, Staff asserts, that the FCC considers the existence of a pattern of discriminatory conduct or regulatory violations to militate against a grant of Section 271 authority. In Staff's view, Ameritech Illinois has compiled precisely such a history in its refusal to comply with this Commission's orders relating to competition.

1602. According to Staff, Ameritech's history of regulatory non-compliance is illustrated by the Commission's prolonged efforts to make shared transport available to competitors. Staff sets out its assessment of the history of shared transport in Illinois and summarizes same as follows: in its 1999 Wholesale Order, the Commission ordered Ameritech to provide shared transport and unbundled local switching, finding that it was in the public interest and would further competition. The Telecommunications Act of 1996, the FCC's First Report and Order, Third Order on Reconsideration, and UNE Remand Order, the Merger Order entered by the FCC and this Commission's Wholesale Order, the TELRIC Order, the Merger Order and the TELRIC II Order, all required Ameritech to provide shared transport and unbundled switched transport. During this time, Staff comments, the Eighth Circuit and the US Supreme Court have reviewed the FCC's rules. Ameritech's obligation to provide shared transport, has, in all cases, been sustained at every level. The point that Staff attempts to make, is that AI has only recently provided shared transport in compliance with these requirements.

1603. Staff provides other examples that, in its view, reveal a distinct pattern of regulatory non-compliance and associated discriminatory conduct. In the recent matter of Z-Tel Communications, Inc. v. Illinois Bell Telephone Company, Staff comments, the Commission found that Ameritech had impeded competition in violation of Section 13-514 of the Public Utilities Act by providing Z-Tel with line loss notifications that were markedly inferior to those it provided its own retail arm. Order at 17 et seq., Docket 02-0160 (May 8, 2002). This enabled Ameritech "winback" personnel to attempt to recapture lost customers more quickly than a competing CLEC would be able to do so. Id. In addition, this discriminatory practice resulted in CLECs billing customers lost to

Ameritech long after those customers were lost, making the competing CLECs appear to customers as unscrupulous, incompetent, or both. Id. at 16. This Commission, Staff comments, found that Ameritech knew of this problem more than one year before Z-Tel complained about it. Z-Tel Order at 18. Rather than fix the problem, Staff argues, Ameritech continued to give itself a competitive advantage.

1604. In yet another matter, Staff contends, the Commission found Ameritech to have unlawfully attempted to "win back" customers in the course of three-way PIC change verification calls, in violation of Section 13-514. Order at 25 et seq., Docket 97-0540 MCI Telecommunications Corp. v. Illinois Bell Telephone Company (December 17, 1997). Likewise, Staff asserts, the Commission found that Ameritech refused to permit a carrier to adopt another carrier's interconnection agreement in its entirety, in violation of Section 13-514 and Section 251(i) of the Telecommunications Act of 1996. Order at 32 et seq., Docket 98-0603, QST Communications Inc. v. Ameritech Illinois, (November 5, 1998). Subsequently, Staff notes, the Commission determined that Ameritech had imposed discriminatory "special construction" charges upon competitors seeking to purchase UNEs from Ameritech. Order at 255, et seq., Docket 99-0593, Illinois Commerce Commission on its Own Motion v. Illinois Bell Telephone Company: Investigation of Special Construction Charges, (August 15, 2000). All of these regulatory violations, Staff argues, are not mere allegations but findings based on evidence.

9. The Commission's Preliminary Review and Discussion

1605. Up to this point, we have set out the general positions of the parties, that for the most part urge the Commission to make a statement to the FCC on the public interest concern that the FCC alone must address. In their respective presentations, the parties suggest that one factor to be taken into account is Ameritech's compliance with this Commission's orders. It is appropriate to address these arguments at the outset and on a stand-alone basis.

Regulatory Compliance

1606. AT&T, Staff and others allege that AI did not fully comply with the Commission's orders in the past. We believe it critical at the outset to reassert just what compliance is. In looking to dictionary definitions, we see that:

> To comply is to act in accordance with another's command, request, rule, or wish. American Heritage Dictionary.
>
> To yield; to accommodate, or to adapt oneself to; to act in accordance with; to accept. Black's Law Dictionary

1607. Non-compliance, accordingly, and in this instance, would indicate the failure, in a material sense, to follow with the directives established in a Commission order. As such, arguments and positions presented to the Commission prior to the

entry of an order are simply litigation strategy having absolutely no probative value on the issue of compliance. Interpretations of the Act are ever evolving and litigation has added to its definition. To be sure, the complexities and lack of assuredness in the Act's meaning, is well illustrated in this very proceeding, where parties have not evenly decided under which particular checklist item their issues might actually lie.

1608. We make clear, thus, that non-compliance is not to be found in advancing a particular position for litigation purposes or in the pursuit of review afforded by law.

1609.

1610. In a more factual sense, we see Staff to point out that, in the TELRIC docket, i.e., 98-0396 we ordered the Company to file tariffs and cost studies assuming a flat rate for ULS. Despite this directive, Staff continues, AI ultimately filed a usage rate (and presumably, not just as an alternative proposal). This is a troubling matter.

1611. Further, we pay mind to the FCC's finding, reported by Staff, that SBC failed to offer shared transport in the former Ameritech states in violation of the SBC/Ameritech Merger Order. While Staff does not provide all of the specifics of the matter, this finding alone disturbs us.

1612. To be sure, and in accord with Staff's recommendations, we will closely review and consider the Company's conduct prior to, and during Phase II of this proceeding, as we continue assessing the public interest concerns.

1613. The other three dockets that Staff would make much of, are but briefly mentioned. Each of these matters, we note, were resolved in years 1997, 1998, and 2000. No complaints with respect to the directives included in any of these orders are indicated.

1614. The particular tariff, said by AT&T and WorldCom to be non-compliant with our order in Docket 00-0393, is part of our Phase II assessment. While these CLECs alert us to a potential problem, the whole of the matter has not yet been considered or settled, and, as such, cannot be deemed relevant to the instant analysis. See Commission Conclusion, Checklist Item 4. (above).

1615. It is well-apparent that, there are viable measures in place to correct errant behavior. Z-Tel certainly availed itself of these processes in a recently resolved complaint. Staff itself recognizes and recommends that the Commission make clear that it will utilize, if necessary, the following enforcement tools at its disposal whenever necessary:

- Conduct management audits pursuant to Section 8-102 of the PUA.

- Conduct tariff investigations pursuant to Section 9-250 of the PUA.
- Order refunds pursuant to Section 9-252.
- Seek mandamus or injunction under Section 13-303.
- Impose fines for general violations pursuant Section 13-305.
- Impose tariffs - Section 13-501(b).
- Impose penalties for inter-carrier complaints -Section 13-516.

1616. As such, the mechanism of state law is a viable anti-backsliding vehicle that Staff and the CLECs can use with respect to matters related to the state public interest. Our public interest inquiry, however, does not end with a mere recitation of the available enforcement tools.

E. Specific Proposals for Meeting the Public Interest

1617. To be sure, our Initiating Order made clear that where a public interest is unrelated to the competitive checklist, but a party believes that it is important to the development of competition in Illinois, the party is free to comment on the issue. In response, both Staff and other interested parties, set out a number of proposals that the public interest, in their view, requires.

1618. As we review these proposals, the Commission questions whether the underlying situation rises to the level of such "relevant factors" that would override the "strong indicator" that showing of checklist compliance brings to the public interest table. New Jersey 271 Order, 166. To the extent that any of these suggestions fall outside the federal checklist requirements we must ascertain whether they attempt to expand those requirements, raise novel issues, or fall within our sole jurisdiction.

Proposal No. 1 - State Tariffing

a. Ameritech Illinois Position

1619. It is readily apparent from the discussion of the Checklist Items, AI maintains, that the rates, terms, and conditions for virtually all of Ameritech Illinois' wholesale products and services are reflected in Commission-ordered tariffs. (Am. Ill. Ex. 15.0) at 28-29; Am. Ill. Ex. 15.1). Further, Ameritech Illinois has committed to include the handful of products that are not tariffed in its next broad-based UNE filing. (Id.) Nevertheless, Staff would have the Commission not recommend approval under

Section 271 until "all telecommunications offerings provided to competing carriers" are tariffed. (Staff Ex. 1.0 at 34).

1620. According to AI, however, Staff's own witness recognized that neither Section 271 nor the provisions of section 251 that it references, mention, much less require, tariffs. See Tr. 1736 (witness stating "No, there is no express reference to tariffs."). To the contrary, AI asserts, the federal Act states a clear preference for negotiated or arbitrated agreements. As such, Section 271(c)(1)(A) expressly states that a BOC "meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252." 47 U.S.C. 271(c)(1)(A). Section 251(c)(1), likewise states that incumbents are to "negotiate . . . agreements to fulfill the duties described" in section 251(b) and (c). Id. See 251(b)(c). And, section 252 sets forth a detailed framework pursuant to which such agreements are to be reached. Id. See 252.

1621. In accord with this statutory language, AI maintains, the FCC has expressly held that an incumbent need not tariff all – or any – wholesale products for purposes of Section 271. In the Maine 271 proceedings, AT&T argued that Verizon had not proven that it provides nondiscriminatory access to UNEs because Verizon had "neither a wholesale tariff approved by the Maine Commission nor a Statement of Generally Accepted Terms (SGAT)." Maine 271 Order, 43. The FCC, however, "disagree[d] with AT&T's argument." Id. It found that "Verizon provides access to unbundled network elements pursuant to interconnection agreements" and reasoned that "this legal commitment is sufficient for our Section 271 analysis." Id.

1622. So too, AI notes, courts have found that forced tariffing is fundamentally inconsistent with and pre-empted by the 1996 Act's preference for negotiation and agreements, and the carefully detailed structure according to which agreements are to be reached. MCI Telecomms. Corp. v. GTE Northwest, Inc., 41 F. Supp. 2d 1157, 1177-78 (D. Or. 1999) (invalidating state-imposed tariff covering all UNEs because by "dispens[ing] with the interconnection agreement" and "allowing CLECs to order services 'off the rack' without an interconnection agreement," the State Commission had illegally "bypass[ed] the Act entirely and ignore[d] the procedures and standards that Congress had established."); Verizon North, Inc. v. Strand, 140 F. Supp. 2d 803, 809-10 (W.D. Mich. 2000) (finding state-imposed tariff invalid because it would "evade[] the exclusive process required by the 1996 Act, and effectively eliminate[] any incentive to engage in private negotiation, which is the centerpiece of the Act"). Similarly, AI observes that those SBC states that have obtained Section 271 approval have relied principally on interconnection agreements, not tariffs. (Am. Ill. Ex. 15.0 at 26).

1623. Staff's own witness, AI argues, effectively acknowledged on cross-examination that tariffing cannot be squared with the negotiated interconnection agreement model established in the federal Act. At the hearing, he agreed that "the law" to which he is referring i.e., the PUA, must be read in conjunction with federal law, which calls for carriers to negotiate interconnection agreements. As such, Staff's witness acknowledged that it is appropriate and necessary for carriers to go "off tariff"

as federal law contemplates. See Tr. 1736-38 (witness agreeing that Ameritech Illinois and CLEC's may negotiate interconnection agreements which address all aspects of a wholesale offering). And, Staff's witness went on to explain that these "off tariff" arrangements would be consistent with the PUA for wholesale offerings, but only for wholesale offerings (Tr. 1742-43). The irregularity as such, AI contends, is that the tariff provisions of the PUA on which Staff would rely contain no basis for Staff's wholesale/ retail distinction. In other words, Staff's position took no account of the fact that nothing in the PUA that establishes separate tariffing requirements for wholesale services as opposed to retail services (Tr. 1743):

1624. AI notes that Staff's witness was also unable to reconcile state and federal law. Having conceded both that the ability to negotiate rates is required under the 1996 Act and that there is no basis in state law for requiring wholesale tariffs, Staff is left only with a policy preference that tariffs should be filed for wholesale products prior to negotiating rates that differ from the tariff.

b. Staff Position

1625. Staff's proposal to have Ameritech file state UNE tariffs, it contends, is supported by certain provisions of the Public Utilities Act. To begin, Section 13-203 of the PUA states as follows:

> "Telecommunications service" means the provision or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of information, by means of electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission and includes access and interconnection arrangements and services. 220 ILCS 5/13-203 (emphasis added)

1626. Likewise, Staff notes, Section 13-501(a) provides that:

> No telecommunications carrier shall offer or provide telecommunications service unless and until a tariff is filed with the Commission <u>which describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange, exchanges or other geographical area or areas in which the service shall be offered or provided. The Commission may prescribe the form of such tariff and any additional data or information which shall be included therein</u>. 220 ILCS 5/13-501(a) (emphasis added)

1627. Staff sees Ameritech to believe that the Company need not, for Section 271 approval, file tariffs pursuant to Illinois law. (Am Ill. Ex. 15.0 at 26). According to Staff, Ameritech concedes that it does not currently comply with the tariffing requirement, but assures the Commission that it will come into compliance " the next time that these tariffs are updated on an across-the-board basis[,]" (Id. at 29).

1628. While Ameritech appears to believe that tariffing is a matter totally outside the scope of the federal Act, Staff holds to a different view. In the recent case of US West v. Sprint, 275 F.3d 1241 (10th Cir.) it notes, the court upheld a Colorado Public Service decision that permitted a carrier to "opt in" to tariffed interconnection provisions. Id. at 1250-1252. The Court, Staff contends, found that such "opt in" requirements were consistent with the federal Telecommunications Act. Id. Staff notes that other federal courts have reached similar conclusions. See, e.g., MCI Telecommunications Corp. v. GTE Northwest, Inc., 41 F. Supp. 2d 1157 (D. Ore. 1999); Michigan Bell Telephone Co. v. Strand, 26 F. Supp. 2d 993 (W.D. Mich. 1998) (both upholding state tariffing requirements provided that such requirements do not entirely displace interconnection agreements).

1629. According to Staff, at least one carrier in this state, i.e., McLeod USA, has an agreement with Ameritech that permits it to take services at tariffed rates at its election. See WorldCom Record Data Request No. 15 (McLeod USA has such a provision in its interconnection agreement with Ameritech). As such, Staff argues, Ameritech's refusal to tariff all rates, terms, and conditions associated with its provision of interconnection, collocation and UNEs might prejudice McLeod, as well as other carriers that might have such provisions in their agreements.

1630. Staff contends to have shown that Ameritech's tariffed rates, which are Commission-approved and based on TELRIC costs are, in many cases, lower than those offered in its GIA. (Staff Ex. 22.0 at 3-4). It is unreasonable, Staff argues, to deny CLECs the opportunity to negotiate with Ameritech based on an understanding of what Ameritech's cost-based rates actually are. So too, if a CLEC cannot obtain these rates through negotiation, the Commission might impose them through the arbitration process. In either instance, Staff contends, Ameritech is obligated to have them on file.

c. Ameritech's Reply Position

1631. Ameritech Illinois reasserts that the only issues on "tariffing" of wholesale products and services presented here are relatively minor disagreements on policy. Staff contends that all wholesale offerings must be tariffed. Virtually all of them are, Ameritech Illinois maintains, and it has committed to include the remainder in its next broad-based UNE filing, so the only difference is one of "timing" on a handful of offerings. Ameritech Illinois contends that the 1996 Act gives carriers the ability to negotiate "off tariff" and Staff agrees; the only difference is again a question of timing, in that Staff thinks that tariffs should be in place before negotiation.

1632. On brief, however, AI notes Staff's wholly unwarranted accusation that "Ameritech is – by its own admission – currently violating Section 13-501(a), and appears to have only the most desultory plans to rectify this." (Staff Br. at 234). With this charge, AI maintains, Staff is not only misstating Ameritech Illinois' position, but also glossing over the complexities of its own position on tariffing. At the hearing, AI recalls, Staff's witness had to acknowledge that "there is nothing in the PUA" as would to support Staff's allowance for off-tariff negotiations in the wholesale context. (Tr. 1743). Thus, AI views Staff's position on the timing of such negotiations (that parties should tariff first before complying with the 1996 Act) to ultimately represents a policy preference, not a rule of law. (Am. Ill. Br. at 188-190).

1633. A minor disagreement on policy preferences does not a violation of law make, nor can it be said that Ameritech Illinois is violating the PUA when "there is nothing in the PUA" to support Staff's preference. To foreclose any confusion on this point, Ameritech Illinois will reiterate just what "the law" is, in a 5-point argument:

(1) Section 271, the foundation of this proceeding, does not require tariffs or even make any reference to them; instead, it contemplates that carriers are to demonstrate compliance by means of interconnection agreements. (Am. Ill. Br. at 187-188).

(2) The FCC, has not ordered tariffing of all or any offerings; instead, it has held that tariffing is not required for purposes of Section 271. (Id. at 188).

(3) The remainder of the 1996 Act does not breathe the word "tariff"; instead, it calls for interconnection agreements, and it goes to a great deal of trouble to specify how such agreements are to be established. (Id. at 187-189).

(4) No court applying the 1996 Act has ever held the Act to require tariffing. To the contrary, courts have held that an "all-tariff, all-the-time" regime conflicts with the Act's preference for interconnection agreements. AI notes that a decision that Staff cites to support its position actually holds: "Before purchasing finished services or unbundled elements from an ILEC, each CLEC must enter into an interconnection agreement." MCI Telecommunications Corp. v. GTE Northwest, Inc., 41 F. Supp. 2d 1157, 1177 (D. Or. 1999). If anything, AI argues, a state commission conflicts with the Act if it "dispense[s] with the interconnection agreement altogether and is allowing CLECs to order services 'off the rack' [by tariff] without an interconnection agreement." Id.

(5) While section 13-512 of the Illinois PUA requires tariffing of "telecommunications services," it is not altogether clear whether that applies to unbundled network elements (Staff simply assumes it does): more importantly, even Staff's witness acknowledged that section 13-512 contains an implied exception that allows carriers to negotiate interconnection agreements "off tariff" pursuant to the 1996 Act.

Ameritech rests on these arguments.

Commission Review and Conclusion

1634. The federal act does not require or rely on tariffs. As such, Staff bears the burden of proof with respect to its state-based tariffing proposal. Insofar as wholesale tariffing being required under Section 5-13-501(a) of the PUA, we do not believe that Staff has provided a sufficient statutory analysis to support its position. Indeed, other than setting out the statute, there is no analysis at all.

1635. Nevertheless, the Commission concludes that tariffing of wholesale products serves the public interest insofar as state law sets out this requirement.

Proposal No. 2 - Ameritech Illinois' GIA Offer

a. Staff Position

1636. SBC has adopted a GIA available throughout its 13-state region, Staff informs, and this document (the text of which is available on Ameritech's CLEC website), contains certain Illinois-specific rates, terms and conditions. As this document is typically a starting point in the negotiation of interconnection agreements, Staff asserts, that a careful evaluation of the GIA Illinois-specific rates is warranted. On such evaluation, Staff maintains, it appears that the collocation services and prices in the GIA, as well as the uniform service ordering codes necessary to order such services, are markedly different from those set forth in the Illinois tariff. (Staff Ex. 5.0 at 10). The GIA webpage also, Staff notes, does not contain or incorporate any reference to the rates contained in Commission-approved tariffs. (Staff Ex. 22.0 at 2).

1637. In order to secure the Commission's positive consultation on Section 271 approval, Staff believes that Ameritech should reflect its Illinois tariffed collocation rates in the GIA. On surrebuttal, Staff notes that Ameritech described a change to its website in an attempt to address Staff's concerns. (Am. Ill. Ex. 1.2 at 32). Upon review, Staff has determined that the change, while an improvement over what existed previously, still does not make the path to Ameritech's collocation rates sufficiently apparent to its CLEC customers. While Ameritech technically complies with this requirement, its tariff collocation rates, which tend to be lower than rates contained in the GIA, are difficult for CLECs to find and use. The Commission should direct Ameritech to modify the webpage consistent with Staff's recommendations, or to develop some other method by which its tariffed rates will be readily and easily available to CLECs, prior to endorsing the Company's Section 271 application.

b. Ameritech Illinois Position

1638. AI observes Staff to recommend that the Ameritech Illinois be required to offer CLECs a "Commissionized" version of its Generic Interconnection Agreement ("GIA") to initiate the negotiation process. (Staff Ex. 3.0 at 26-27; Staff Ex. 20.0 at 44-

54). As an end, CLECs would then be entitled to take the agreement without negotiation or arbitration. (Id. at 47). Under such circumstances, Ameritech Illinois observes, it would have to obtain Commission approval prior to changing any rate, term or condition in this GIA. (Id. at 46). In the alternative, AI notes Staff to recommend that all wholesale products be tariffed. (Staff Ex. 20.0 49).

1639. According to AI, Staff's GIA proposal is unnecessary under its own terms. Virtually all of the Company's wholesale products are already tariffed, AI notes, and Staff does not contend otherwise. (Am. Ill. Ex. 15.0 at 28-29; Am. Ill. Ex. 15.1 at 13-14). So too, Ameritech Illinois has committed to include the few remaining products in its next broad-based UNE filing. (Id.)

1640. Staff's GIA proposal, AI argues, raises significant legal and administrative issues. At the outset, AI contends, Section 271 compliance does not have to be demonstrated through a single interconnection agreement, as Staff suggests. (Staff Ex. 20.0 at 28-29). To the contrary, Track "A" expressly states that a BOC can demonstrate that it provides the required access and interconnection pursuant to "one or more binding agreements." 47 U.S.C. § 271(c)(1)(A) (emphasis added).

1641. So too, AI asserts, a Commission-approved GIA is not required under the Act's obligation to engage in "good faith" negotiations. (Staff Ex. 20.0 at 52). In its First Report and Order (148), the FCC stated that "good faith" necessarily depends on the "subjective intent with which the person in question has acted." The FCC provided specific examples of what would constitute a per se violation, including the use of duress or misrepresentation and actions intended to block or delay negotiations so as to delay competitive entry (Id. 148,154). There is no question that Ameritech Illinois will execute the GIA with CLECs which accept its terms: CLECs have voluntarily done so, and, AI maintains, the Commission has approved the resulting agreements. (Am. Ill. Ex. 1.1 at 43; Tr. 1507, 1608-1609).

1642. Congress put forth great effort, AI maintains, to establish a framework of negotiation, arbitration and approval, and it clearly expected private parties, to negotiate the terms of interconnection in the first instance. Indeed, AI observes, the Act specifically allows parties to negotiate a voluntary agreement without regard to the Act's substantive provisions. 47 U.S.C. § 252(a)(1). It would undermine this statutory construct for the Commission to dictate the form of Ameritech Illinois' offer before either party requested Commission intervention under the Act's arbitration or approval provisions. It would also be inconsistent with the "deregulatory national policy framework" Congress chose. H.R. Conf. Rep. No. 104-458.

1643. In AI's view, Staff's approach would delay, not expedite, the negotiation process. The GIA it maintains, is a fluid document that needs to be updated in a timely manner to reflect changes in regulatory requirements, products and policies over SBC's 13-state region. (Am. Ill. Ex. 1.1 at 12-13). Staff's proposal could work to require months of regulatory proceedings to make even minor changes. (Id). Even Staff is seen to agree that significant changes would take "much more time to implement."

(Staff Ex. 20.0 at 46-47). Thus, AI contends, the GIA could remain frozen in amber for years while proposed changes work their way through the regulatory process. (Am. Ill. Ex. 1.2 at 17).

1644. Finally, AI contends, to the extent Staff's objective is to ensure that the negotiation process does not delay carrier entry into the marketplace, its proposal is unnecessary. AI points out that Congress established an exceptionally fast track for the negotiation/arbitration/approval process in section 252(b). Nor is the GIA in any way a CLEC-"unfriendly" document. AI reasserts that CLECs have willingly entered into interconnection agreements that are substantially identical to the GIA. In addition, CLECs can opt into approved agreements that contain provisions that better meet their needs. (Am. Ill. Ex. 1.1 at 7,11). AI views Staff's proposal as an extremely complex, time-consuming and paternalistic "solution" to a process that is working exactly as the 1996 Act contemplated.

Commission Review and Conclusion

1645. Staff's proposal with respect to Ameritech Illinois' GIA is both unnecessary and burdensome. It might also be viewed as interfering with the parties' negotiations. Our role is directed to the approval or the arbitration of agreements and we are assigned no duty, nor will we inject ourselves at the offerings stage. Hence, we reject Staff's proposal.

Proposal No. 3 - To Freeze or "Cap" Rates (Wholesale Products)

a. AI Position

1646. Many of the intervenors' comments on pricing, AI observes, do not contest the Commission-approved rates for unbundled access and interconnection, but simply complain that the Company might someday propose higher rates. According to AI, however, the analysis under Section 271 focuses on the rates that are in effect, not on rates that might someday be proposed.

1647. Here, AI notes Staff and WorldCom to suggest that rates be capped at current levels for five years. But, AI contends, the 1996 Act does not require that rates be fixed for any particular period of time. It does require, however, that the rates be right, i.e., based on cost. In AI's view, a cap that would preclude Ameritech Illinois from proposing, and the Commission from considering, adjustments to rates, is contrary to the Act's mandate. To be sure, AI argues, costs inevitably change and evolve over time as new data is gathered and models are updated in the normal course of business. (Am. Ill. Ex. 10.1 at 13-14).

1648. The FCC has itself recognized that "rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions." Massachusetts 271 Order, 36. So too, it is well-established that before any new rates go into effect, interested parties will have the opportunity to comment and the

Commission will decide then, based on the evidence, whether the new rates are lawful. See Maine 271 Order ("[T]o the extent Verizon proposes a DUF rate that is excessive and non-TELRIC based, WorldCom will have an opportunity to challenge that rate at the state level."). Id at Para. 24. No intervenor, AI observes, has or can dispute the Commission's aggressive application of the FCC's TELRIC pricing rules. In AI's view, Staff's proposal essentially asks the Commission to pre-judge the outcome of a proceeding that might take place at some future date, before any evidence is received and before any proceeding is even opened.

b. Staff Position

1649. Staff recommends that the Commission decline to favorably recommend Ameritech's application unless Ameritech agrees to cap its UNE rates. (Staff Ex. 6.0 at 40-42, 44; Staff Ex. 23.0 at 21, 24.) Such a cap should remain in effect for five years, Staff contends. (Staff Ex. 23.0 at 24). This measure is necessary, Staff asserts, for several reasons.

1650. In order for a competitive market to develop in Illinois. Staff maintains that UNE rates must be stable. (Staff Ex. 23.0 at 27; AT&T Ex. 3.0 at 7-11.) As AT&T witness James F. Henson testified, it is very difficult for a competitor to make a business case in favor of large-scale entry into a market if it cannot ascertain UNE rates. (AT&T Ex. 3.0 at 7.)

1651. Staff believes Ameritech to possibly be concerned that a rate cap would result, (presumably at some point in the future), in its failure to recover its costs. But, Staff sees even Ameritech to concede that at the very least, its switching costs are declining, which in turn, and all else being equal, reduces the costs associated with providing UNE-P, as well as ULS-ST. (Tr. at 33-32). Since it is accepted that telecommunications is generally a declining cost industry, Staff contends, the effect upon Ameritech cannot be very dramatic.

c. Ameritech Illinois Reply Position

1652. All in all, Ameritech Illinois asserts the FCC evaluates checklist compliance based on existing rates, and has consistently rejected CLEC arguments about possible future rates.

1653. The mantra of "price certainty," AI argues, is used to support the intervenors' requests that the Commission affirmatively impose caps on future rates – effectively pre-judging future rate proposals. (See Staff Br. at 238; WorldCom Br. at 16-17). While discussing the certainty they crave, AI notes, the intervenors fail to mention the certainties they already have, to wit:

1. If Ameritech Illinois does propose new wholesale rates, those rates will not go into effect unless this Commission, after investigation and notice to

interested parties, determines that those rates (and the supporting cost studies) comply with the federal pricing rules. As the FCC has held, it must be presumed that if Ameritech Illinois does file new cost studies, this Commission will correctly apply the FCC's rules. Texas 271 Order, 237. And Staff Witness Koch agreed at the hearing that "rates for wholesale services will not exist . . . without the underlying cost model being examined, unless the Commission permits that to happen." (Tr. 1776).

2. The 1996 Act does not say that prices must be "certain" or fixed for any particular period of time. It does say that prices are to be "based on cost." 47 U.S.C. § 252(d)(1). A cap on rates necessarily means that prices are to be held at a certain level even if Ameritech Illinois proves (and even if the Commission, absent a cap, would agree) that the existing rates are not based on cost, and are, therefore, no longer lawful.

3. Likewise, the FCC has never held that prices must be certain or fixed. To the contrary, it has acknowledged that "rates may well evolve over time to reflect new information on cost inputs and changes in technology or market conditions" and it has accordingly decided that "[n]o carrier is immune from the effect of future resolutions of disputed issues." Massachusetts 271 Order, 36.

4. The only "uncertainty" that carriers face is that they may someday be legally obligated to pay prices that are right (i.e., prices that comply with the 1996 Act and the FCC's rules), albeit different from those in effect now. There is no legal basis for precluding that result, nor is there any public interest in doing so.

1654. None of these indisputable facts AI contends, are mentioned or discussed by the intervenors. If Ameritech Illinois proposes new rates, and if those rates are too high (as the CLECs presume before even seeing them), then the Commission will reject them on the merits. Conversely, if the Commission agrees that the new rates are correct, it should accept them. In the former situation, a cap would be unnecessary; in the latter, a cap would be unlawful. Either way, the intervenors' cap proposals are improper.

Commission Review and Conclusion

1655. Certain CLECs and Staff propose that the Commission-approved rates for "unbundled access" and "interconnection" be capped at current levels for a period of five years. The action they propose has nothing to do with enforcing compliance with the correct rates but with maintaining current rates for a 5-year term in disregard of circumstance. We are wary of such a proposal in light of the familiar just and reasonable state standard and the federal law's mandate that prices be based on cost.

1656. We cannot, and will not, in the course of a section 271 compliance investigation, or on the record presented, impose the requested rate cap. To do so would be arbitrary and capricious.

1657. There are processes in place to protect the interests of all parties. In other words, there is no way that AI can unilaterally propose and put into effect its desired rates. See Maine 271 Order (noting the viability of this process). As such, if AI seeks to raise rates without good cause, it will be found out. If the evidence shows it is entitled, a finding as such will be rendered. There is no way to make a judgment now to interfere or prejudge the situation. The Commission cannot, and will not, speculate in these premises or interfere with a party's right to make its case. We flatly reject the instant proposal, further noting that the arguments on Exceptions are not persuasive.

Proposal No. 4 - Preview of Cost Models

a. AI Position

1658. Ameritech Illinois sees Staff to also propose that the Company obtain Commission approval of any changes to its cost models even before Ameritech Illinois proposes updated or new UNE rates based on the updated models. (Staff Ex. 6.0 at 43). This proposal, AI contends, would promote a significant and unnecessary increase in the time and expense associated with rate proceedings. (Am. Ill. Ex. 15.0 at 29). It would put Ameritech Illinois in the position of having to litigate two dockets in order to change or introduce a UNE rate – one proceeding to approve any new models or model changes, and a second proceeding to approve the rates. Ameritech Illinois' cost models are updated on a continuing basis, AI contends, such that it makes little sense to occupy the Commission's time (as well as that of Ameritech Illinois and interested parties) in approving these updates in the abstract. (Am. Ill. Ex. 15.0 at 30). The most efficient approach – and the one that this Commission has long followed – is to address cost models and rates in a single proceeding.

b. Staff Position

1659. In objecting to the proposal that AI be required to submit its cost models for Commission review prior to using such models as a basis for revisions to UNE rates, Staff notes the Company to contend that this requirement would create a cumbersome procedure, and require it to litigate two dockets to revise UNE rates. Id. According to

Staff, however, rejecting Ameritech's cost models, as the Commission has been compelled to do in numerous matters, is what results in additional proceedings. Staff anticipates that Ameritech will propose to introduce no fewer than six new cost models, only one of which may have been previously used in Illinois. (Staff Ex. 6.0 at 40; Tr. at 336 et seq.). It cannot be doubted Staff argues, that Ameritech's use of these new models will considerably alter the UNE rate structure. (Staff Ex. 6.0 at 40.) Moreover, the one enlightening thing that Ameritech's cost analyst was able to state regarding the new cost models was this: the LOOPCAT model resulted in rates for the loop UNE more than doubling. (Tr. at 313.)

1660. According to Staff, the evaluation of cost models is a difficult, time-consuming, and resource-intensive undertaking for the Commission Staff. (Tr. at 1808 et seq.) First, the analyst often must obtain additional computing capacity. (Id.) Second, the sensitivity of the model must be tested to determine whether changing the model's inputs will have the expected resulting output changes. (Id.). Conducting one such sensitivity run can require several hours, and a proper sensitivity analysis requires a number of such runs. (Id.) In order for the Staff to evaluate the models, the only responsible course is for Ameritech to submit them for approval, prior to submitting cost studies generated by them. As such, Staff argues, good sense and administrative economy would dictate that its recommendation be approved.

Commission Review and Conclusion

1661. Ameritech Illinois tells us that the Commission has always addressed cost models and rates in a single proceeding. Staff proposes that we change course prospectively and require Ameritech to put forth the cost models for review prior to using them for a rate matter. Staff, however, gives no reason for this novel position other than the suggestion of greater convenience based on speculation as to what Ameritech Illinois may be expected to file. This does not persuade the Commission or meet with our purposes at this point in time. If and when the situation arises, there may be a way for the Company to accommodate Staff.

Proposal No. 5 - Wholesale DSL Transport To End Users

a. Attorney General's Position

1662. According to the AG, AI admits that its affiliate, Ameritech Interactive Media Services (AIMS), offers high speed Internet access to retail customers bundled with DSL. (AI Initial Brief at 183). Relying on the Arkansas & Missouri 271 Order, the AG notes AI to further assert that the FCC does not require that the bundled Internet access service or the underlying wholesale DSL (digital subscriber line) be made available pursuant to the section 251(c)(4) resale obligation. Staff does not dispute AI's position, but argues that AI's policies bundling DSL and Internet access with voice service are contrary to the public interest and anti-competitive. (Staff Initial Brief at 215-218).

1663. In the case of the ASCENT decision, the AG notes, the court held that an ILEC could not be permitted to avoid the obligations contained in section 251(c)(4) by offering advanced services through a wholly owned affiliate. According to the AG, Ameritech Illinois' affiliate AADS (Ameritech Advanced Data Services) purchases the HFPL from AI so that it can offer data service over DSL. Then AADS sells DSL to AIMS, and to other ISPs, so it can be bundled with an internet service provider for sale to the end-user. AI claims it need not offer DSL transport on a resale basis because it does not sell DSL "at retail" as required by section 251(c)(4). The AG contends, however, that the Commission must examine the structure of AI's DSL offering to determine whether the affiliate structure unlawfully shields AI from its resale obligation, particularly when the parent company of both AI and the advanced services affiliate, offers the service to end-users. (Staff Ex. 10.0 at 26; Staff Initial Brief at 217).

1664. DSL is not offered directly to the public, the AG argues, because AI utilizes two wholly owned affiliates to shield AI from its retail customers. Nevertheless, AI advertises DSL service under its SBC/Ameritech name, provides service for DSL under that name, and AI's customer service representatives regularly discuss DSL availability with customers who call with service related questions or complaints. (Staff Ex. 10.0 at 26-27). Given the fact that SBC/Ameritech is conducting the marketing for the AIMS product, the Commission should conclude that AI's use of affiliates to provide DSL does not relieve AI of its obligation to offer DSL at wholesale rates.

1665. The AG recognizes the FCC to have held that when an ILEC sells DSL to ISPs, and not directly to the public, it is not selling the service at "retail" and therefore is not subject to the resale obligation of section 251(c)(4). In ASCENT v. FCC, 253 F.3d 29 (D.C. Cir. 2001) ("ASCENT II"), the AG observes that the Court upheld the FCC's rules which exempted DSL services sold to ISPs from the section 251(c)(4) resale obligation. According to the AG, the Court noted the difference between wholesale service to an ISP and retail service in the following example: "An ILEC may offer DSL service directly to residential and business end-users, in which event the ILEC itself performs such collateral functions as marketing, billing, and maintenance. In addition, the ILEC may offer DSL service designed specifically for ISPs (such as America Online), which package and sell the service to end-users and perform the marketing and other collateral functions." 253 F.3d at 31. The court did not address the situation where the ILEC sells the vast majority of its service to an affiliated ISP, and the ILEC presents itself to the public as available to offer DSL service.

1666. In Indiana Bell Telephone Co. v. Indiana Utility Regulatory Commission, 764 N.E.2d 734 (Ind. App. 2002), the AG notes, the state court addressed the status of DSL service offered by an Ameritech wholly owned subsidiary. There, Indiana Bell argued that DSL services should not be included in OSS testing because they are only sold at wholesale to ISPs, and are not sold in Indiana to retail end-users. 764 N.E.2d at 737.

1667. The Court, however, upheld the Indiana Utility Regulatory Commission's order that the operating support systems, or OSS, for Indiana Bell's DSL offerings be

included in the Commission OSS testing and audit being conducted for section 271 purposes, stating that:

> It is undisputed that AADS is Ameritech's affiliate offering DSL service to ISPs. However, one of those ISPs is another Ameritech affiliate, AIMS. While ASCENT II holds that the discount-for-resale provision of § 251(c)(4) does not apply to an ILEC's offering of DSL service to an ISP, it did not address whether one of those ISPs could be an affiliate of the same ILEC. The purpose of the Act was to ensure that ILECs do not use their control over local exchanges to squeeze out competitors. Bell Atlantic-New Jersey, Inc. V. Tate], 962 F.Supp. 608 (D.N.J. 1997). Here, Ameritech controls the local exchange, its affiliate AADS then provides DSL services to another affiliate AIMS, which sells DSL service to the consuming public.
>
> As a result, the possibility of anticompetitive pricing for DSL services is very real. We do not imply any sinister intent on the part of Ameritech, but arguing that Ameritech can (1) make its local exchange available to its affiliate, AADS; (2) provide DSL service through AADS to ISPs, including its other affiliate, AIMS; and (3) avoid testing of its OSS to determine compliance with the checklist, is plainly contrary to Congress's intent to establish competition in the telecommunications industry. Therefore, we find no error in the IURC's order. 764 N.E.2d at 739-740.

1668. According to the AG, the same concern of anticompetitive pricing that the Indiana state court recognized, also arises in Illinois. Thus, consistent with Indiana, the AG argues, this Commission should find that the DSL service AI offers through its affiliates AADS and AIMS are sales "at retail", and thus, subject to the resale pricing obligations found in section 251(c)(4).

1669. The ASCENT II court, the AG observes, noted that DSL is retail only when the ILEC sells DSL service without collateral functions for end users, such as marketing, billing and maintenance. Id. at 33. In AI's situation, where the majority of its DSL service is taken by its affiliate AIMS, and the public receives retail or "collateral" functions from "SBC-Ameritech," the protections against monopoly abuse that might arise when DSL is sold only to unaffiliated, wholesale ISPs vanishes, and the protections afforded by the section 251(c)(4) resale obligations should apply.

1670. Taking ASCENT and ASCENT II together, the AG urges, the Commission should find that AI cannot escape its section 251(c)(4) resale obligation by offering the vast majority of its DSL service to the public through its wholly owned affiliate, particularly when "SBC Ameritech" engages in joint marketing and performs other

"collateral" functions. If AI offered its DSL service to independent ISPs, and not primarily through its sister company, the goal of furthering competition in the retail, advanced services local market would not be hindered, and the section 251(c)(4) resale requirement would not apply because the service would truly be offered on a wholesale basis only. Given the facts that exist in Illinois, and limited number of independent ISPs purchasing DSL from AI (or its affiliate AADS), the AG contends that the Commission should find that the resale obligation of section 251(c)(4) attaches, and AI should be required to offer its DLS service to CLECs according to the Commission's wholesale formula.

1671. The AG observes AI to rely on the Arkansas & Missouri 271 Order as support for its position that the FCC does not require it to offer its DSL services under the section 251(c)(4) resale obligations. That Order erroneously concludes that "neither the Act nor Commission precedent explicitly addresses the unique facts or legal issues raised in this case" and then declines to address the issue. Id. at para. 82. AI points out that the FCC observed that "Congress did not define the term at retail as used in section 251(c)(4) and the meaning of the term 'at retail' is not clear and unambiguous from the language of the [A]ct." Id. (internal quotation marks omitted). The FCC, however, did not analyze whether SBC and its affiliates were marketing or offering DSL through wholly owned affiliates in such a way that it only reached the end-user bundled with AI affiliate's ISP. Further the FCC did not mention or consider either of the ASCENT cases. See Arkansas & Missouri 271 Order, para. 78-84.

1672. According to the AG, the FCC's order should not be considered precedent in this proceeding, where the Commission is charged with verifying resale compliance, and the evidence shows that AI has used a layered affiliate structure, with only minimal service to independent ISPs, to avoid its resale obligation. Until AI offers the "AIMS" DSL service in accordance with the section 251(c)(4) resale obligations, the AG urges. this Commission should not find AI compliant with Checklist Item 14.

1673. By its Motion to cite additional authority filed on October 10, 2002, the AG draws attention to an order recently issued by the California Public Utilities Commission. According to the AG, this agency held that Section 251 (c)(4) requires Pacific Bell to make DSL service it sells to ISP available for resale.

1674. Tying into these arguments, the AG further contends that by bundling its ISP (via the AIMS affiliate), with DSL transport, together with AI voice service, the AG contends that AI has been able to shut competitors out of the retail market. The anti-competitive effects of AI's policies on the development of the advanced services and DSL market, the AG argues, demonstrate that AI is not irreversibly committed to competition in the advanced services market. It would not be in the public interest for AI to receive in-region long distance authority unless AI demonstrates its commitment to an open advanced services and DSL market by removing the bundling restrictions it currently imposes on DSL subscribers (voice and DSL).

1675. The AG notes Ameritech Illinois to contend that, "the market does not want stand-alone DSL transport." (AI Initial Brief at 200). AI argues in testimony and in its Initial Brief that consumers do not want to shop for the best service for their needs, and do not want to "give up the convenience of dealing with a single provider." Id. This argument, in the AG's view, is not convincing. According to the AG, many consumers might agree that they "gave up conveniences" when the AT&T system was broken up in 1983 and the local market was opened to competition in 1996. Yet, the federal Act is based on the premise that consumers ultimately benefit, in terms of price and innovation, when markets are open and consumers have choices. The same premise, the AG argues, applies to broadband service offerings. AI should give consumers their greatest choice for DSL transport, internet service provider, and voice provider, in order to advance the pro-competitive goals of the federal Act and this Commission. Unless AI offers DSL in a manner that allows, rather than stifles, competition, the AG contends, its entry into in-region long distance should not be found to be in the public interest.

b. Ameritech Illinois Position

1676. Under Checklist Item 14, AI maintains, it showed that Ameritech Illinois' advanced services affiliate, i.e., AADS, fully complies with FCC rules regarding resale, and that it need not offer DSL transport service for resale because that is a wholesale service. AI notes Staff to agree that AADS need not offer DSL transport for resale. In an attempt to circumvent this FCC precedent, however, AI sees Staff to set out the novel theory that AADS should be forced to sell DSL Transport to retail end users, such that AADS will thereafter be forced to offer DSL Transport service to CLECs at a wholesale discount under 47 U.S.C. § 251(c)(4). According to AI, this is clearly an unvarnished attempt to have AADS do something that the FCC expressly found it is not required to do.

1677. Even on its own perceived "public interest" grounds, AI asserts, Staff's theory fails. First, AI contends, the market does not want stand-alone DSL transport; end users buy integrated "Internet access service" from ISPs that combine high-speed transport with Internet access services. Under Staff's position, end users would buy "high-speed transport" from one provider and "Internet access" from a second provider: giving up the convenience of dealing with a single provider. As such, end users would be required to coordinate the installation of two separate services; would receive two separate bills; and would need to contact the two separate providers to investigate and repair service problems. (Am. Ill. Ex. 13.1 at 5). Just at the time when end users are rewarding those providers who can sell simple, integrated services, AI observes, Staff would require end users to give-up that convenience when it comes to high-speed internet access. (Id. at 6).

1678. So too, AI contends, there is no evidence that Staff's proposal would make high-speed Internet access service more competitive. The market is already competitive, AI comments. Indeed, cable modem providers already offer about two-thirds of all high-speed Internet access, and the remaining one-third is offered by satellite providers, wireless technologies and DSL providers (such as AADS and

Covad). (Am. Ill. Ex. 13.0 at 7). Ameritech Interactive Media Services, Inc. ("AIMS"), the Ameritech Illinois affiliate responsible for selling the integrated DSL internet access service to end users, AI observes, must already compete not only with cable modem providers but also with other ISPs using DSL transport, such as America Online, MSN, and Earthlink. (Am. Ill., Ex. 13.0 at 10-11). It defies logic to suggest that, in the name of competition, this Commission must radically restructure the competitive internet access marketplace.

1679. Further, AI contends, Staff's position is exactly the type of "novel interpretative issue" which the FCC refuses to consider in Section 271 proceedings. Arkansas & Missouri 271 Order, 82. This is particularly true in this instance, AI points out, given that broadband issues are pending in other FCC proceedings. To be sure, AI comments, the FCC is undertaking no less than four proceedings to address the structure of the Advanced Services (i.e., high-speed internet access) industry.[26] Given the extensive review at the federal level, and given that the DSL Transport services in question are interstate services, AI maintains that Staff's proposal should be disregarded.

1680. According to the Company, AADS provides DSL Transport by "sharing" lines with Ameritech Illinois. AI sees Staff, and also WorldCom, to argue that AADS should be forced to provide DSL Transport service if the end user served by that loop does not buy its voice service from Ameritech Illinois. (Staff Ex. 10.0 at 34-36; WorldCom Ex. 3.0 at 15-17). In AI's view, this it is not a legitimate 271 issue because the FCC has granted 271 relief in each of the five SWBT states without imposing the restrictions that Staff would suggest. And, AI maintains, there are good reasons why this is so.

1681. To begin with, AI notes that the FCC has consistently held that an ILEC need not provide the "HFPL" UNE when it does not also provide voice service to the end user on that same local loop. Line Sharing Order 70, 72; Texas 271 Order 324. Since there is no "HFPL" UNE available by operation of this FCC rule when the ILEC

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[26] Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, GN Docket No. 00-185 and CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77 (rel. Mar. 15, 2002) ("Cable Modem Declaratory Ruling"); Review of Regulatory Requirements for Incumbent LEC Broadband Services; SBC Petition for Expedited Ruling That it is Non-Dominant in its Provision of Advanced Services and Forbearance From Dominant Carrier Regulation of These Services, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC-01-360, 16 FCC Rcd. 22745 (rel. Dec. 20, 2001) ("Incumbent LEC Broadband NPRM"); Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd. 22781 (rel. Dec. 20, 2001) ("Triennial UNE Review NPRM"); and FCC Release 02-42, In Re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings…, CC Docket Nos. 02-33, 95-20 and 98-190, 2002 FCC LEXIS 824 (rel. Feb. 15, 2002)("Broadband Internet Access NPRM").

does not provide the voice service, AADS (like any other data CLEC) will be unable to provision a DSL Transport service using HFPL. To the extent Staff and WorldCom might argue that this issue should be addressed by imposing affirmative obligations on AADS rather than Ameritech Illinois, their position must likewise be rejected.

1682. In the first place, AI contends, such an argument attempts to avoid the FCC rule and suggests a collateral attack on a settled issue. Second, AADS' decision to purchase the HFPL UNE only from Ameritech Illinois and not from other CLECs is completely justified by business considerations. AI witness Habeeb testified that using a single supplier has permitted AADS to design its operation support systems and business practices to a standard platform that, in turn, makes it easier for ISPs to do business with AADS. (Am. Ill. Ex. 13.0 at 17-18). If AADS were required to modify its systems and practices to accommodate other HFPL providers, or to otherwise share a splitter with other CLECs, the Company contends, AADS' services could deteriorate and costs for both AADS and its ISPs customers would increase. (Id. at 18; Am. Ill. Ex. 13.1 at 21). Staff's proposal would require AADS to use vendors against its will and against its better business judgment. But, AI argues, AADS must be given the freedom to compete with the dominant cable modem providers without regulatory micro-management.

a. Staff Position

1683. Staff believes that it is in the public interest for the Commission to require Ameritech Illinois to offer "DSL transport" directly to end users on a stand-alone basis and to order Ameritech to eliminate the company's practice of bundling DSL and voice services. (Staff Ex. 10.0 at 34-36; Staff Ex. 24.0 at 49-53).

1684. Staff notes that Ameritech Illinois currently offers DSL services through its affiliate, Ameritech Advanced Data Service ("AADS"), which offers DSL transport services to its affiliated Internet service provider ("ISP"), Ameritech Interactive Media Services, Inc. ("AIMS"), and unaffiliated ISPs (under either Interconnection Agreements or AADS' FCC Tariff No.1). (Staff Ex. 10.0 at 26.) AADS has interconnection agreements with ISPs, including Ameritech Illinois' affiliate, AIMS, but has no DSL wholesale customers under AADS' FCC Tariff No.1. (Id.)

1685. Although it offers other services (e.g., retail DSL to business customers, ATM, etc.), Staff contends that AADS' chief business plan is to provision DSL transport services to Ameritech Illinois' ISP, AIMS, and other unaffiliated ISPs. (Ameritech Ex. 13.1, Sched. A at 14; Staff Ex. 10.0 at 26.) ISPs (AIMS and unaffiliated ISPs) "combine" DSL transport services from AADS with their own Internet Access services or Internet related functionalities (e.g., servers, routers, web sites, etc.) in order to provision DSL Internet Access service to end-users. ISPs (or their agents) market DSL transport service to end-users as part of the DSL Internet Access package, but not on a stand-alone basis.

1686. According to Staff, SBC Ameritech, (the parent company of AADS and AIMS), serves as an agent for AIMS. (Staff Ex. 10.0 at 26). Thus, although AADS does not offer DSL services to end-users directly, its parent, SBC Ameritech, does so in its capacity as AIMS' agent. By leveraging its parent's brand name (SBC Ameritech), Staff contends, Ameritech Illinois has been playing a major role in marketing DSL to end users directly as part of its DSL Internet Access package. This is illustrated, it argues, by the series of aggressive commercial television and radio campaigns for DSL Internet services that Ameritech Illinois has launched. (Staff Ex. 10.0 at 26.)

1687. Staff explains that requiring Ameritech Illinois (through AADS) to offer DSL transport to consumers on a stand-alone basis would benefit consumers in several ways. First, it would give consumers a choice of DSL transport providers. Consumers could elect not only the ISP, but also the DSL transport provider, creating increased choices for consumers and likely at prices lower than existing prices for "combined" DSL service. (Staff Ex. 10.0 at 29-31.) At least two other incumbent LECs, Staff notes, i.e., Verizon and Qwest, offer DSL transport directly to end users on a stand-alone basis. (Staff Ex. 24.0 at 39-40.)

1688. In addition, Staff argues, requiring Ameritech Illinois to offer DSL transport on a stand-alone basis would provide additional benefits to consumers through increased competition for DSL transport. DSL transport would be subject to Section 251(c)(4)'s resale requirements and competitors could purchase DSL transport at discounted prices. Resale would help to exert more competitive pressure on DSL transport providers, which in turn would further drive down the prices of DSL transport, thereby lowering the total cost to end users for DSL Internet Access. (Staff Ex. 10.0 at 31-33).

1689. In Staff's view, Ameritech Illinois' (through AADS) self-imposed bundling practice and policy erects a barrier in the local service market and reduces a customer's willingness to switch from Ameritech Illinois' voice service to an alternative carrier's voice service. It is undisputed that Ameritech Illinois (through AADS) restricts its DSL transport offering to loops in which Ameritech Illinois provides the voice service. (Staff Ex. 24.0 at 49.) Ameritech Illinois does not provide DSL transport to a customer (or over the customer's line) that elects a LEC other than Ameritech Illinois for voice telephone services.

1690. In other words, Staff contends, Ameritech Illinois effectively bundles its wholesale DSL transport service with its retail voice service offering. As a result, a customer currently subscribing to Ameritech Illinois' voice service and DSL Internet service would be less willing to switch to a different voice provider if the customer has a preference for Ameritech Illinois' DSL Internet service (offered through AIMS). This bundling practice, Staff claims, ties a customer's choice of voice service provider to his or her choice for DSL Internet service provider. Ameritech Illinois' role in the DSL service market makes it more difficult for CLECs to compete with it in the local voice service market. Thus, as Staff established, Ameritech Illinois' bundling practice

impedes competition in the local service market and it is not in the public interest. (Staff Ex. 10.0 at 34-36.)

1691. Staff believes that there is no merit to the arguments that Ameritech advances in opposition to its proposal. For example, Staff observes that Ameritech provides no evidence to support its claim that end users do not want stand-alone DSL transport. According to Staff, Ameritech Illinois' (through AADS) failure to offer or provide DSL transport on a stand-alone basis, in and of itself, provides no support for the conclusion that end users do not want stand-alone DSL transport. Staff notes that at least two RBOCs, Verizon and Qwest, apparently disagree with Ameritech Illinois' view, as they offer stand-alone DSL transport to end users. (Staff IB at 236).

1692. Contrary to Ameritech Illinois' contention that Staff's proposal would require end users to sacrifice convenience (when it comes to high-speed Internet access) Staff's believes its proposal would provide end users with greater choice: end users could elect to obtain DSL transport and Internet Access from separate providers or elect to obtain an integrated Internet Access package from one provider. (Staff Ex. 24.0 at 45-46). In point of fact, Staff argues, an end user may find it more "convenient" to purchase DSL transport and Internet access separately, obtaining a lower total monthly charge in exchange for performing additional legwork. See Staff Ex. 10.0 at 30-32 (indicating that stand-alone DSL transport would produce lower prices for DSL than the existing exclusive DSL marketing arrangement).

1693. Staff also observes Ameritech to contend that requiring it to provide stand-alone DSL transport is "completely unnecessary" because the market is already competitive. (Ameritech IB at 200). Further, Ameritech contends that there is no evidence that requiring it to provide stand-alone DSL transport would make high-speed Internet access more competitive. (Id.) Staff explains, however, that requiring Ameritech Illinois to offer stand-alone DSL transport will help to exert more competitive pressure on DSL transport providers (as well as other broadband service providers). (Staff Ex. 10.0 at 28, 30-33; Staff Ex. 24 at 37-39, 45). Accordingly to Staff, there is no evidence that AADS prices its services at cost or is unable to sustain its prices above cost, two features indicative of a competitive market. (Staff Ex. 24.0 at 37-38).

1694. As there is no federal requirement that an ILEC provide stand-alone DSL transport, there is no interpretation of federal law needed regarding stand-alone DSL transport, in Staffs' view. The question here is whether it is in the public interest for this Commission to require Ameritech Illinois to offer stand-alone DSL transport to end users.

d. Ameritech Illinois Reply Position

1695. AI sees Staff to argue that AADS should be required to sell DSL Transport directly to end users as a retail service. (Staff Br. at 236). Staff has narrowed its position to two points. First, Staff clings to the belief that consumers can buy two services (standalone DSL Transport and Internet access) cheaper separately than in

combination. (Staff Br. at 236). Staff offers absolutely no evidence to support this assertion and does nothing to rebut Ameritech Illinois' evidence that the reverse is true. (Am. Ill. Ex. 13.1 at 8-9). Among other reasons, the total cost will be lower if the services are purchased in combination because the providers will not have to duplicate overhead costs such as retail sales, marketing and distribution. (Id. at 9). In addition, wholesale DSL Transport services are sold more cheaply to ISPs, which enjoy the economies of scale associated with serving a large number of subscribers. (Id.)

1696. Moreover, AI suggests, consumers are already benefiting from the extremely competitive market for high-speed Internet access services. (Am. Ill. Ex. 13.1 at 15). There are multiple providers of the service and, cable modem providers – not DSL-based service – dominate the field with about two thirds of the market. (Am. Ill. Ex. 13.0 at 7). All providers compete fiercely for the customer's business AI asserts and offer a variety of promotions ranging from free installation, to free modems, to reduced rates for the first six months of service. (Am. Ill. Ex. 13.1 at 15). Staff is simply ignoring that "intermodal" competition.(the same oversight that led the D.C. Circuit to invalidate the FCC's Line Sharing order). (Am. Ill. Br. at 33).

1697. Staff's second argument, AI suggests, follows on the concept that "the ends justify the means." Staff argues that if AADS is required to sell DSL Transport on a retail basis, it will then be required to sell DSL Transport to its competitors at a wholesale discount and those discounts would (presumably) be passed along to the end users. (Staff Br. at 236). This is not a policy justification. It is, rather, a brazen attack on the Act's distinction between wholesale and retail services. The wholesale discount applies only to wholesale services – if an incumbent can be forced to provide wholesale services at retail, there is no need to limit the discount.

1698. As a point AI notes that: The FCC has held that DSL Transport used to access the Internet is an interstate service subject to federal jurisdiction. Memorandum Opinion and Order, In re GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, 13 F.C.C. Rcd. 22466, 1 (rel. Oct. 30, 1998) (DSL Transport service "which permits Internet Service Providers (ISPs) to provide their end users with high-speed access to the Internet, is an interstate service and is properly tariffed at the federal level"). As such, AI asserts there is a serious question whether this Commission jurisdiction to issue orders impacting AADS' DSL Transport service – much less to order the overhaul proposed by Staff.

1699. AI notes Staff to also allege that AADS' business decision to provide DSL Transport service only when an end user is served by Ameritech Illinois voice service is contrary to the public interest, and that this "bundling" should "cease." (Staff Br. at 236-237). In AI's view, Staff is improperly using the public interest analysis to re-write the FCC's unbundling and line splitting rules. As such,, Staff is proposing that AADS be required to enter into line splitting arrangements with voice CLECs. See Id. But the FCC has held that line splitting is a purely voluntary arrangement, and that incumbents need not continue providing DSL service to end users that obtain voice service from a

voice CLEC. See Line Sharing Order, 72; Line Sharing Reconsideration Order, 16, 26; Texas 271 Order ¶ 330.

1700. At the same time, AI notes, Staff is apparently proposing that the Company be required to unbundle and provide to the voice CLEC the low frequency portion of the loop while providing the high-frequency portion of that loop ("HFPL") to AADS, while Ameritech Illinois itself provides no service to the end user. The FCC has already concluded that the low frequency portion of the loop need not be unbundled (Texas 271 Order, ¶330), and that incumbent LECs need provide the HFPL only where they provide the end user's voice service (Line Sharing Order, ¶72; Line Sharing Reconsideration Order, ¶¶ 17, 26).

Commission Discussion and Conclusion

1701. While Staff and the AG's arguments may have some merit, it is not within the scope of this docket for the Commission to examine and decide such complex matters in the first instance. To be sure, Staff puts out the issue based precisely on the claim that there is no federal requirement for an ILEC to provide stand-alone transport. Clearly thus, there is no compliance issue to be addressed. What the AG and Staff seek to have the Commission here do, necessitates an adjudication of party's rights and accordingly, would require proper notice and the opportunity to be heard in that particular context.

1702. The California PUC decision, on which the AG would rely, has not been discussed or analyzed in any meaningful way. We have no particulars of the evidence in California or how the matter was decided or how the situation relates to Ameritech. It is not clear from it presentation just why the AG believes California to be good authority or any authority for that matter. The AG is certainly aware that our decisions arise from the evidence taken and considered in the right context. We cannot merely adopt conclusions of other state agencies in place of such evidence.

1703. To the extent that AI is in compliance with ASCENT I, and ASCENT II, we need not and ought not go further. In ASCENT I, the Court determined that the data affiliates of incumbent LECs are subject to all obligations of Section 251 (c) of the Act. Connecticut 271 Order. In ASCENT II, the Court upheld the FCC order which determined that the discount-for-resale provision of section 251(c)(4)(A) applies when an incumbent offers DSL services to an end-user, but not where it offers DSL services to an ISP. There is no showing of non-compliance with this authority. Furthermore, AI informs, and neither Staff nor the AG dispute, that broadband issues are being pursued by the FCC in a number of active proceedings. We might reasonably assume that the FCC is aware of the issues raised here that we are in no position to address for the first time in this type of proceeding.

Proposal No. 6 - Structural Separation.

a. Ameritech Position

1704. AI observes AT&T to contend that this Commission should require Ameritech Illinois to implement "structural separation" as a condition of a positive recommendation to the FCC. Under AT&T's proposal, the Company comments, Ameritech Illinois would need separate itself into a network company and a retail company, which would have to obtain service from the network company. The network half would at first continue serving Ameritech Illinois' existing retail customers, but it could not serve new customers, could not serve any customers who changed locations and could not introduce new services. Over time, customers would be required to elect a new retail provider (either Ameritech Illinois' retail company or a CLEC). (AT&T Ex. 2.0 at 24-25, 29-30).

1705. Structural separation, AI asserts, is not required by the FCC as a condition of Section 271 approval. In the New Jersey Section 271 proceeding, AI observes, the New Jersey Division of the Ratepayer Advocate ("NJDRA") contended – just as AT&T does here – that Verizon's application was not in the public interest absent structural separation. AI points out that the FCC rejected this proposal out-of-hand by stating:

> . . . the Act [TA96] does not require structural separation as condition to Section 271 approval, and we do not require it here. New Jersey 271 Order, ¶183.

1706. Indeed, AI asserts, structural separation is at odds with the 1996 Act. The methods Congress adopted to reach the goal of local competition are set forth in section 251 of the Act, and plainly assume that incumbent LECs such as Ameritech Illinois would act in both a wholesale and a retail capacity. Forced structural separation would interfere with the methods Congress relied upon to facilitate local competition, AI maintains, and it would be particularly out of place here. This is a proceeding to carry out the 1996 Act, AI argues, and not to discard it in favor of a regime preferred by AT&T.

1707. As a matter of state law, AI asserts, this Commission likewise does not have the authority to impose structural separation. Its powers and authority are defined by the terms of the Public Utilities Act. Business and Professional People for the Public Interest v. Commerce Comm'n, 136 Ill.2d 192, 201, 240 (1989). Under Section13-508 of the PUA, AI observes, the Commission may order a telecommunications carrier to establish a separate subsidiary for its "competitive" services, but only when it finds, after notice and hearing, that:

> (a) no less costly means is available and effective in fully and properly identifying and allocating costs between

such carrier's competitive and noncompetitive telecommunications services; and

(b) the incremental cost of establishing and maintaining such subsidiary would not require increases in rates or charges to levels which would effectively preclude the offer or provision of the affected competitive telecommunications service.

1708. This provision is a companion to Section 13-507, AI informs, which requires the allocation of all costs between competitive and noncompetitive services for ratemaking purposes. This purpose of the required cost allocation is to prevent the subsidy of competitive services by noncompetitive services.

1709. This Commission resolved this issue of cost allocations over a decade ago in Ameritech Illinois' 1989 rate case, the Company notes, and there is no basis on which Section 13-508 can be invoked, even for that purpose. Order on Remand at 189-92, 199-203, Docket 89-0033 (Nov. 4, 1991). The Commission specifically rejected the use of a separate subsidiary at that time because an "available and effective" means of allocating costs had been developed. Id. at 203-204. This decision by the Commission was also affirmed on appeal, AI observes. People ex. rel. O'Malley v. Ill. Comm. Comm., 239 Ill.App.3d 368, 384-87 (2d Dist. 1993).

1710. According to AI, AT&T's structural separation proposal does not meet with any of the requirements of Section 13-508. First, AI contends, its purpose is not to separate costs between competitive and noncompetitive services. AT&T is recommending the separation of retail services (some of which are competitive and some of which are not) and network or wholesale services. (Am. Ill. Ex. 15.0 at 23). Second, AI asserts, AT&T's proposal is not designed to allocate costs at all, but to restructure the local exchange marketplace. Third, AI maintains, AT&T has not demonstrated that the methodology adopted by the Commission in Docket 89-0033 is inadequate. In fact, Ameritech Illinois has been using this methodology consistently for a decade. (Am. Ill. Ex. 15.0 at 22-23). As such, AI argues, the separate subsidiary requirement in Section 13-508 cannot be used to require structural separation.

1711. The Commission Staff came to the same conclusion, AI informs, in a Report submitted for Docket 98 NOI-1. Staff Telecommunications Division Report, Docket 98 NOI-1, February 9, 1999, at 18-19. According to AI, the Commission initiated that docket to review a petition filed by LCI International Telecom Corp. ("LCI") that requested a structural separation plan essentially identical to that proposed by AT&T here. (Am. Ill. Ex. 15.0 at 22). The Commission, AI comments, took no further action on LCI's petition following the Staff Report. Id.

1712. So too, AI contends, structural separation represents poor public policy. Ameritech Illinois explained, in Docket 98 NOI-1, that structural separation would be enormously complex to implement, would impose significant inefficiencies on the

Company, would degrade the quality of both retail and wholesale services, and would be confusing to customers. Moreover, wholesale customers would see higher rates as a result of the restructuring. Ameritech Illinois' views on structural separation have not changed in the interim. (Am. Ill. Ex. 15.0 at 22). Nowhere, AI notes, does AT&T address these policy issues. For all the reasons, AI maintains that AT&T's structural separation proposal should be rejected.

b. AT&T Position

1713. AT&T takes the position that the Commission needs to continue aggressive regulatory oversight of Ameritech Illinois -- including signaling that it is prepared to require the structural separation of Ameritech Illinois' wholesale and retail operations as a predicate to any positive finding by this Commission on the "public interest" component of Section 271 even if it determines that, at a particular point in time, Ameritech Illinois appears to be in technical compliance with the specific Section 271 checklist items and the requirements of Section 801 of the Illinois Public Utilities Act. (AT&T Ex. 2.0, at 2-3.) As such, AT&T recommends that the Commission initiate a formal evaluation of the precise form of a structural solution by requiring Ameritech Illinois to prepare and file a preliminary implementation plan in Phase II of this proceeding.

1714. This is a path to lasting local competition, AT&T maintains, that is efficient and would address Ameritech Illinois incentives, even after it is authorized to provide long distance service. By separating Ameritech's wholesale and retail operations into distinct entities – coupled with an appropriate capital structure that assures independent decisions and behavior – the Commission can create an environment where Ameritech's own commercial success depends upon its ability to offer efficient access to the existing network. With its own commercial success as stake, Ameritech is sure to comply and the benefits would extend to CLECs as well as to Ameritech's own retail operations. (AT&T Ex. 2.0, at 23.)

1715. The goal of the structural approach that AT&T recommends is to fundamentally change Ameritech's incentives so that its wholesale operation proactively seeks to offer the most efficient provisioning system, while its retail operation designs products and sets prices that accurately reflect the rates it is charged for UNE access. In simple terms, the key is to place the ILEC's retail operations in the shoes of a true CLEC – ordering UNEs, establishing customer accounts, and incurring UNE charges just like any other provider. (AT&T Ex. 2.0, at 24.) To accomplish this goal, the Commission should order Ameritech to establish (subject to rules and procedures discussed below) two distinct entities: a network company (Network Company) and a retail entity (Retail Company). The Network Company would manage the existing network, offering carriers access to its components (and combinations) as unbundled network elements. The Retail Company would compete like all other CLECs – gaining access to the existing network by leasing its components (and combinations) as well. (AT&T Ex. 2.0, at 24.)

1716. AT&T asserts that the Commission has the legal authority to require this "structural separation." The Staff's tentative conclusion in 98 NOI-1 that the Commission did not have such authority, AT&T contends, suggests, rests on a fundamental misunderstanding.

1717. AT&T notes Section 13-508 to state that the Commission is authorized to:

> … order a telecommunications carrier which offers or provides both competitive and noncompetitive telecommunications service to establish a fully separated subsidiary to provide all or part of such competitive service …

1718. According to AT&T, Ameritech Illinois provides both competitive and telecommunications services, and the Commission by the terms of this section may require that the competitive (i.e., retail services) be offered through a separated subsidiary. Whereas the Commission must reach a number of findings concerning cost and justification, the statute on its face appears to contemplate the relief AT&T seeks here. (AT&T Ex. 2.0 at 29).

1719. A structural plan AT&T contends, must hold two key principles inviolate. First, the Retail Company must initially be established like any other CLEC – that is, without customers and dependent upon the same provisioning systems to obtain customers as any other CLEC. Second, Ameritech must "freeze" in place its retail operations – it could not initiate service to any new account, transfer service to a different location, or introduce any new service. These joint recommendations would create a process whereby all new customers and services would be served by competitive providers, including (for those customers that made it their choice), Ameritech's Retail Company, while Ameritech-ILEC would become the "Network Company" offering nondiscriminatory access to the existing network. (AT&T Ex. 2.0, at 32-33.)

1720. According to AT&T, the Network Company (i.e., Ameritech) would to continue to serve the embedded base on a transitional basis, thus providing both retail and wholesale services for a limited period of time. With natural churn, however, and as customers migrate to new services, this embedded base would grow smaller. Ultimately, the Commission might well decide to use balloting or some other "close-out" procedure to complete a full separation -- but, at least initially, it is likely that a natural market evolution should produce substantial benefits and acceptable results. During the interim, however, Ameritech would not be permitted to jointly market or otherwise offer services in partnership with the Retail Company, which must remain at arms length like all other CLECs. (AT&T Ex. 2.0, at 33-34.)

1721. The effect of AT&T's recommendation would assure that the Retail Company is established at a scale comparable to other entrants. This would make it simpler for the Retail Company to do what all other CLECs must do – establish their

own infrastructure for customer care, ordering and provisioning to interface with the Network Company's operating support systems (OSS). Further, like any other CLEC, the Retail Company would be forced to earn – not inherit through a transfer -- its customers, striving to win customers as they move into the area and to attract "embedded" customers from the incumbent. As such, the Retail Company would be able to grow as fast as its management chooses (and its skills permit), with the ability to gradually adjust to a growing customer base and the complexity that would follow. (AT&T Ex. 2.0, at 34.)

1722. In short, AT&T recommends that the Commission declare that it does have the authority (subject to the findings of Section 13-508) to require the separation of Ameritech Illinois' wholesale and retail functions as part of its public interest assessment. The Commission should require Ameritech to file in Phase II, a preliminary implementation plan that would include Ameritech Illinois' claimed costs to comply with the structural regime described above. Such information, AT&T contends, would enable the Commission to determine that (a) no less costly means is available and effective in fully and properly identifying and allocating costs between such carrier's competitive and noncompetitive telecommunications services; and (b) the incremental cost of establishing and maintaining such subsidiary would not require increases in rates or charges to levels which would effectively preclude the offer or provision of the affected competitive telecommunications service. With the full information before it, the Commission would be in a position to order structural separation under 13-508 of the Illinois PUA, or as a prerequisite to finding that Ameritech Illinois' interLATA authority is in the public interest.

Commission Review and Conclusion

1723. We reject the structural separation proposal outright. This novel issue is not so new, having been reviewed by the Commission on previous occasions.

1724. On the whole, this issue is inappropriate to the instant proceeding.

Proposal No. 7 - Waiver of Review

a. Staff Position

1725. Staff recommends that the Commission condition any endorsement of Ameritech's Section 271 application upon the Company's agreement to forgo all appeals and rehearing of the TELRIC II Order, the various Line Sharing Orders, the TELRIC 2000 Order, and the Section 13-801 Order. (Staff Ex. 6.0 at 43-44.) At the same time, Staff is fully cognizant of the fact that this is a controversial recommendation. While the Commission cannot order Ameritech Illinois to relinquish its due process rights, Staff maintains that it can certainly withhold its approval unless Ameritech's agrees to not exercise same.

1726. In Staff's view, the Company's ultimate satisfaction of the Checklist items is contingent on completion of the named proceedings. A rehearing for any of these proceedings it argues, would change the required analysis in the immediate proceeding. (Staff Ex. 6.0 at 43-44.)

1727. Staff notes Ameritech to argue that it is not required by the FCC, and it is improper, to require a 271 applicant to forego legal rights. (Staff Ex. 23.0 at 22). Staff however, sees no compelling reason why any party to this proceeding should demonstrate any particular solicitude for Ameritech's rights.

1728. According to Staff, Ameritech can agree – or not agree – to cede review of the above-named dockets. The Commission can endorse – or decline to endorse – Ameritech's Section 271 application. If Ameritech does not agree to forgo review, the Staff recommends that the Commission similarly decline to endorse Ameritech's claim that its network is open.

b. Ameritech Position

1729. AI takes issue with the proposal suggesting that this Commission require Ameritech Illinois to drop petitions for rehearing or judicial challenges to Commission decisions in certain rate proceedings. (Staff Br. at 242-44; WorldCom Br. at 17). In any event, AI notes, Staff's proposal regarding rehearings is now moot, as the Commission has already rendered final decisions on rehearing requests in the four dockets identified by Staff (Nos. 98-0396, 00-0393, 00-0700, and 01-0614). According to AI, Staff's proposal regarding judicial review was added on without evidentiary support or further argument. (Staff Br. At 243).

1730. AI notes that, although Staff claims to be "fully cognizant of the notion that this is a controversial recommendation" it cites no legal authority or precedent for its novel request. Id. There is none, AI maintains. Staff's witness even acknowledged that "it is my understanding that the Commission cannot order Ameritech Illinois to relinquish its due process rights" (Staff Ex. 6.0 44-45), and ultimately Staff acknowledges its position to be nothing more than an attack on due process. See Staff. Br. at 244 ("There is no compelling reason why any party to this proceeding should demonstrate any particular solicitude for Ameritech's rights."). Nor is there any contention that Ameritech Illinois' challenges are in any way frivolous. Indeed, Staff's concern appears to be that Ameritech Illinois might prevail, and that reduces "continuity" in the Commission's pricing decisions. (Staff Br. at 243).

1731. There is simply no legitimate basis the Company asserts, for requiring an applicant such as Ameritech Illinois to check its legal and constitutional rights at the door to in order pursue Section 271 relief. Clearly, AI argues, such a requirement would not be in the public interest. To be sure AI notes Staff's own witness acknowledged that he had not taken into account the public policy implications of Staff's proposal. (Tr. 1798-99). Staff provides no supporting analysis on brief either setting out. Its rationale is as follows:

> The recommendation is very simple, and needs little explication. Ameritech can agree – or not agree – to cede review of the above-named dockets. The Commission can endorse – or decline to endorse – Ameritech's Section 271 application. (Staff Br. at 244)

1732. While both halves of Staff's truism are correct AI sees a problem in that Staff gives no reason for linking one to the other. The Commission can rule on applications for rehearing on the merits, and it can endorse, or decline to endorse, Ameritech Illinois' application on its merits. The responsible and bottom line is that Commission decisions should and must be made on the merits – not bestowed as rewards for favors or withheld as threats at the instance of Staff or WorldCom.

1733. Ameritech Illinois fully understands that the Commission intends to strike a proper balance among competing interests on complex issues, no agency or court is infallible. The law establishes a procedure for rehearing to give the Commission a chance to correct mistakes. The law gives parties the right to apply for rehearing so they can advise the Commission of a mistake. It is for the Commission to decide whether to grant rehearing in any particular case. (Tr. 1790). The Commission has taken advantage of the opportunities provided by law, and the arguments presented by parties, and it has granted applications for rehearing in several cases.

1734. Suspending the right of rehearing does not benefit the Commission, nor does it benefit the public. Staff's proposal ultimately means that Ameritech Illinois and the Commission would have to rely on the news media, or the good graces of Staff (which has demonstrated its opposition to the rehearing process here) or of Ameritech Illinois' opponents, to take the place of the rehearing application procedure established by law. (Tr. 1790-94). Staff's own witness was not aware of any contested case in which the Commission granted substantive rehearing (aside from the correction of clerical errors) on its own motion. (Id. at 1793).

1735. AI considers suspending the right of judicial review to be at least as improper. By terminating the right to seek rehearing, the Commission would be pre-judging the outcome of its own proceedings, and by suspending judicial review the Commission would be attempting to dictate the outcome of proceedings that are now before a court. That reverses the traditional rule of law, AI maintains, under which courts review agency action. Moreover, there are some issues the Commission does not reach, and in those circumstances judicial review represents the first real opportunity to be heard. For example, AI notes, the Commission's June 11, 2002 Order in Docket 01-0614 (at 18) expressly declined to adjudicate Ameritech Illinois' claims that certain requirements were inconsistent with and pre-empted by federal law. A lack of judicial review in such a case would deny Ameritech Illinois the right to be heard even once.

1736. There is no public interest in the "continuity" or "certainty" of an erroneous or unlawful order or in the curtailment of due process. In the final analysis, AI maintains, rehearing and judicial review benefit everyone by clarifying the law.

Commission Review and Conclusion

1737. Staff cites no law or other authority holding proper its attempt to have AI waive its rights to appeal or rehearing. In our view, this proposal fails on public policy grounds.

1738. To be sure, public policy has no precise definition and each case must be judged according to its own peculiar circumstances. Hartford v. Burns Int'l Security Services, 526 N.E. 2d 463 (1st Dist. 1988). In this instance, public policy is put into effect through the acts of the General Assembly.

1739. Section 10-201 of the PUA grants the right of judicial review to any person or corporation affected by, among other things, an order or decision of the Commission. 220 ILCS 5/10-201. The prerequisite to the exercise of this right is the filing of an application for rehearing with the Commission setting out the matters complained of. Id. According to case law, the purpose for the statutory rehearing requirement is to inform the Commission of the alleged legal and factual errors in its order. Citizens Utility Board v. ICC, 651 N. E. 2d 1089.

1740. In certain instances, and despite assertion of public policy violations, parties have been held to contract away their right to seek review on the basis of agreed-upon consideration. It is established, however, that contracts founded on immoral consideration or contrary to law are void, such that courts will not lend aid to enforce them. Sanitary Commercial Services, Inc. v. Shank, 566 N.E. 2d 1215 (Ohio Supreme Ct. 1991).

1741. Staff need recognize that this Commission can offer no consideration for AI to barter away its statutory-given rights. Certainly not the consideration Staff would suggest. While this Commission is not sitting as an adjudicatory body, it nevertheless must maintain its integrity. As such, its recommendation on the matter, no different that any decision otherwise issued, must rest on the basis of the evidence. We simply cannot bargain away the rule of law. Our recommendation on Ameritech's application will be based on the record and not on a promise that is neither valid nor enforceable nor in accord with law.

F. Disputes Driven by State Law

1742. Included also in this Part IV are a number of disputes between Staff and/or the CLECs and Ameritech arising solely on the basis of state law or otherwise outside checklist requirements. As best as we can determine, there are three such issues. One by one, we set out the arguments, showings and positions of these parties and follow along with our discussion and conclusion as to these matters.

Dispute 1 – Migration "as is" Orders

1743. As previously indicated, we consider here the issue as to whether Section 13-801(d)(6) of the PUA requires SBC-Illinois to provide a type of form or process allowing a CLEC to indicate a migration just "as is" without confirming all of the specifics of that migration.

1744. On the basis of the arguments presented, we are lead to believe that the language and intent of the Section 13-801 (d)(6) language at issue has not been previously been construed, relative to the pending assertions, in any Commission order. Thus, and in effect, AT&T is asking that we interpret the statute for the first time in this investigative proceeding (without it having set out a constructive analysis thereon).

1745. Section 13-801(d)(6) of the PUA sets out, in part, that:

> A requesting telecommunications carrier may order the network element platform *as is* for an end user that has such existing local exchange service without changing any of the features previously elected by the end user." 220 ILCS 5/13-801(d)(6) (emphasis added).

1746. The plain language of this provision, AT&T argues, means that Ameritech is required to offer carriers "the ability" to migrate customers just as is – that is migrate "without changing any of the features previously elected by the end user." (AT&T Br. on Exceptions). As we understand AT&T's complaint under the statute, there is no actual OSS functionality in place for the CLECs to simply process orders by indicating the migration should be as is, meaning that, a CLEC must specify on each order the exact type of each feature to be provisioned for a customer.

1747. In SBC-Illinois' view, Section 13-801(d)(6), does not mandate the use of any particular order form, but simply refers to the substantive provisioning of the end user's existing features. And, contrary to AT&T's assertions, the statute does not specify that CLECs need not identify the features an end user is using. SBC Illinois asserts that it satisfies the substantive requirement of Section 13-801 (d)(6) by allowing CLECs to obtain the UNE-P without changing any of the end user's features. AT&T does not and cannot dispute this matter, the Company asserts, given that there are over 335,000 UNE-P lines in Illinois. See Am. Ill. Ex. 14.0 (Heritage Rebuttal) at 26.

1748. From what appears to be a substantive directive, (in our view and without benefit of a laborious statutory assessment that this Commission should not be required to perform in such a proceeding), we see AT&T to derive the notion that there is also the requirement of a certain type of process or format. Contrary to its assertions, resort to plain language alone does not indicate the requirement for which AT&T specifically argues (as even it adds terms not visible in the statute).

1749. We are not persuaded by AT&T assertions that, SBC Illinois is statutorily "required" to develop and implement new ordering and processing capabilities that would allow AT&T to check some type of "as is" box on a UNE-P migration form, without specifying the particular services an end user is receiving. On the evidence and arguments here made, we do not find a state compliance issue to have been shown.

1750. To be sure, AT&T would want an OSS that would simply allow it to specify that the migration will be "as is" – meaning that all of the end users current features will be retained when the CLEC becomes the provider, without having to confirm each and every feature with the customer or manually read the customer's CSR. Ameritech points out that, as a matter of good business practice, the CLEC should specify the features it wishes to have included in its UNE-P arrangements, such that the CLEC knows and understand exactly what it has ordered, and to prevent any subsequent misunderstandings over what unbundled network elements were requested and what network elements were actually being provided (and billed). We believe that such a comfirmation under the customer is also beneficial to the end-user who might not readily recall all of the features currently assigned.

1751. The reason for the Company not supporting SBC-Illinois retail to CLEC migration "as is" orders, AT&T notes, is due to the uncertainty that such a migration would not also cause a non-telecommunications service to also be migrated to the CLEC end user. According to AT&T, however, Ameritech's witness admitted that the Company had not investigated any means (OSS or otherwise) to prevent the migration of non-telecommunications services from migrating in a migration "as is" scenario. (Tr. 1282).

1752. AT&T would have the Commission use this Phase I order as the means to compel Ameritech to investigate migration "as is" in the sense of allowing the CLECs the ability to place orders using the Req. Type M, Activity W migration "as is" format. We have indicated, time and again, that the purpose of this proceeding is "not to entertain novel issues or . . . to impose new obligations. The latter would be most inappropriate given that this proceeding is not set up to adjudicate the rights of any parties." See Kansas & Oklahoma 271 Order, ¶ 19 (the purpose of a section 271 proceeding is not to litigate "new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors").

1753. In any event, there is an OSS "change management" process designed to have SBC-Illinois investigate a means by which it could provision "as is" orders while excluding features (such as Linebacker) that it is not required to migrate. To have its concerns on this non-section 271 issue further explored, AT&T might well submit this issue to SBC- Illinois through the Change Management Process.

Dispute 2 - "All Equipment List" or AEL

a. Staff Position

1754. On August 15, 2002, Staff observes, the Commission issued an order in Docket 99-0615, addressing collocation matters. Order, Docket 99-0615. In this Order, Staff notes, the Commission directed the Company to post on its website information regarding the list of all compliant equipment that could be collocated in its COs (the "AEL"). Order at 17, 26. Staff sees Ameritech to assert here, that the Order requires AI to only post a list of equipment that meet AI's safety standards and not, as Staff would have it, all equipment that is "necessary" for interconnection with its network or access to its UNEs. (Am.Ill. Ex. 1.1 at 22-3; 1.2 at 25-26).

1755. Contrary to Ameritech's position, Staff contends, the Commission clearly indicates that identifying equipment satisfying safety standards is only one of the reasons forming the basis of its directive that Ameritech post on its website the list of compliant equipment at its premises. Among other reasons are the need to give CLECs the information and certainty of a complete source to consult. The Commission also concluded that, "whatever minor burden, if any, is imposed on" Ameritech in posting the AEL on its website, is outweighed by the benefits to the CLECs. Collocation Tariff Order at 17, 26.

1756. To some extent, Staff considers Ameritech to misapprehend its position. Staff is not suggesting that AI provide CLECs with a list of "all" equipment that a CLEC would need in order to collocate in its premises. Rather, Staff's position is that Ameritech list all equipment that meets safety and other considerations that Ameritech itself would impose prior to permitting collocation at its premises. Id. at 17, Docket 99-0615.

1757. Staff's concern arises from two caveats that Ameritech includes in its AEL. (Staff Ex. 21.0 at 11). First, Staff notes Ameritech to state that the AEL "includes equipment that is known to not meet the criteria to be allowable for collocation." Collocation Tariff Order at 17. Second, Staff observes Ameritech to also state "other equipment on the AEL may not have been reviewed to determine if it is allowable for collocation and may not, meet the criteria for placement for Collocators." Id. These caveats, in Staff's view, make it virtually impossible to determine which of the equipment listed on the AEL Ameritech permits to be collocated, and thus, compromises the reliability and usefulness of the listing.

1758. To the extent that Ameritech does not impose any restrictions on collocation other than on the basis of safety considerations, and provided further that Ameritech agrees to amend (or delete entirely) the two caveats referenced in its AEL to reflect this, it is Staff's position that the only issue still in dispute between the parties regarding the AEL format is that Ameritech does not specifically identify the equipment that is permitted in Illinois.

1759. Specifically, Staff maintains, the ARL format does not meet all the requirements of the Collocation Tariff Order because it is over-inclusive (in that it lists virtually all of the equipment in the SBC network, including equipment in Ameritech's COs). While the AEL identifies virtually all equipment that can be obtained in SBC's regional network, Staff maintains that it is impossible to discern which equipment can be specifically deployed in Illinois.

1760. In addition, Staff believes Ameritech to claim that it is not necessary to update its AEL. (Am. Ill. Ex. 1.1 at 22-3). In the Collocation Tariff Order, however, this Commission ordered it to update or modify its AEL either as soon as new equipment is added or on a quarterly basis. Id. As Staff testified, Ameritech does not currently comply with this requirement. Staff however, sees Ameritech to claim that this failure to update was due to an administrative error and it promises to update quarterly for the future. (Am. Ill. Ex.1.1 at 25).

1761. This state law issue, Staff argues, is relevant to Section 271 requirements because of the importance the Commission attaches to the list as a source that CLECs could use to ascertain reliable information about compliant equipment that could be collocated with Ameritech. Although the Company has posted on its website information regarding all equipment in the SBC's central offices, i.e., SBC All Equipment List (AEL), the AEL as it currently exists, Staff maintains, is still not in compliance with Docket 99-0615. (Staff Ex. 21.0 at 9-14; Staff Ex. 4.0 at 24).

1762. In Staff's view, the Commission should continue to monitor Ameritech's compliance on this issue during Phase II of this proceeding. This will require periodic checking of the AEL as it is posted on SBC website. Staff recommends that AI's compliance with Docket 99-0615 (which requires updates either quarterly or as soon as new equipment is added) be considered in Phase II, to the extent necessary.

b. Ameritech Illinois Position

1763. According to AI, federal law requires an ILEC to provide CLECs with a list of all equipment located within a central office within 5 days of denying a collocation request based on safety standards along with an affidavit attesting that all of the equipment in that office meets or exceeds the safety standard that the ILEC contends the competitor's equipment fails to meet. Advanced Services Order at ¶36; Advanced Services Reconsideration Order at ¶57. The purpose of the FCC's requirement, AI maintains, is to ensure that the ILEC does not impose safety standards on CLECs that are more stringent than those it imposes on its own equipment. Id.

1764. In Docket 99-0615, AI notes, this Commission imposed an additional obligation on Ameritech Illinois under state law: to post a list, known as the "All Equipment List" ("AEL") of all collocation equipment which meets Ameritech Illinois' safety standards. Order at 17, Docket 99-0615. Hence, this expanded state law obligation is to maintain a list in advance of all equipment located in all of its central

offices, not just after it actually denies a CLEC collocation request and not just for the office where collocation is denied.

1765. Staff does not dispute Ameritech Illinois' compliance with the federal requirement, but has two objections with respect to Ameritech Illinois' AEL. First, AI observes, Staff objects to the AEL's advisory that not all equipment on the AEL may be eligible for collocation, due to reasons other than "safety" standards. Staff takes the position that Ameritech Illinois' AEL must be a list of equipment that is compliant with all collocation requirements. (Staff Ex. 4.0 at 24-26). Here, AI contends, Staff is misinterpreting the Commission's order, i.e., the AEL requirement only addresses equipment that meets "safety" standards.

1766. The plain terms of the Order in Docket 99-0615, AI asserts, specify that the AEL is intended to provide a CLEC with a "…single, complete source to consult to determine whether equipment it wishes to collocate meets Ameritech's safety standards". Order at 17, Docket 99-0615 (emphasis added). Indeed, AI notes, one premise underlying the Commission's decision was its determination that the state AEL obligation would impose, at most, a "minor burden" on Ameritech Illinois, because the FCC's Advanced Services Order already required the preparation of such a list when collocation is denied. Id.

1767. According to AI, it would be extremely burdensome for the Company to analyze every piece of equipment in its network to determine whether it is approved for collocation, in advance of receiving a single CLEC request to collocate that equipment. Under the FCC's rules, AI maintains, these kinds of eligibility reviews are performed only in response to specific CLEC requests and the results depend, to some degree, on the specific use to which the CLEC intends to put the equipment. (Am. Ill. Ex. 1.2 at 28-29). Nothing in the Commission's Order in Docket 99-0615, AI contends, provides support for Staff's newly expanded view of its requirements.

1768. Second, AI notes, Staff objects to the fact that the AEL lists the equipment located in all of the SBC 13 states, rather than just the equipment located in Ameritech Illinois' central offices. (Staff Ex. 4.0 at 25). But the 13-state AEL is more, not less, useful to CLECs than an Illinois-specific AEL, AI comments. It provides CLECs with a broader range of equipment to consider when making determinations about safety compliance. In addition, AI maintains, many CLECs deploy equipment on a multi-state basis and the AEL enables CLECs to use the list as a reference in all of the SBC states in which they operate. (Am. Ill. Ex. 1.1 at 22-23).

1769. In any event, AI argues, Staff's view that CLECs need a complete list of all collocation-compliant equipment is misplaced. CLECs make their own equipment decisions and CLEC engineers generally know what types of equipment are suitable for collocation. They would not rely on Ameritech Illinois' AEL in the network design process. (Am. Ill. Ex. 1.2 at 29-30). Even with regard to safety standards, the importance of an AEL has declined over the last few years, because equipment manufacturers now build to the NEBS Level I Safety Standards specified by the FCC in

the Advanced Services Order. Id. In short, the Company argues, Staff is attempting to impose obligations on Ameritech Illinois that go well beyond the Commission's order (and certainly well beyond what is required by federal law as well); that would be extremely burdensome to implement; and that, in the final analysis, are not required by the CLEC audience for which the AEL is apparently intended.

1770. Since there are restrictions on the CLECs' right to collocate equipment in Ameritech Illinois' central offices other than safety standards, Staff's reading of the Commission's order would require the Company to review thousands of pieces of network equipment to determine whether they meet all collocation standards. (Am. Ill. Ex. 1.2 at 28-29). This is an extremely burdensome obligation which was not imposed on the Company by either the FCC, or under the plain terms of this Commission's order in Docket 99-0615.

1771. According to AI, Staff also suggests that the Company took the position that "it is not necessary to update the AEL." (Staff Br. at 78). Staff has misread Mr. Alexander's testimony, AI contends, for he takes no such position. The Company recognizes its obligations in this regard and will update the AEL quarterly in the future. (Am. Ill. Ex. 1.1 at 78).

Commission Review and Conclusion.

1772. Staff maintains in its exceptions that the AEL is a federal requirement and, as such, should be addressed under Checklist Item 1. In asserting this position, however, Staff fails to recognize that the federal AEL requirement - being that a ILEC, within 5 days of denying a collocation request, provide CLECs with a list of all equipment within a given central office - is not the matter put at issue. Rather, Staff has raised a compliance issue with respect to this Commission's expansion of that requirement in Docket 99-0615 (requiring AI to post a list of all collocation equipment that meets its safety standards in advance of a CLEC request). This is clearly a state law requirement and a state compliance issue.

1773. In Docket 99-0615, the Commission's Order imposed an obligation on AI, to wit:

> posting a compliant equipment list on its website…[for] the benefit of giving CLECs the information and certainty of having a single, complete source to consult to determine whether equipment it wishes to collocate meets Ameritech's safety standards. Order at 17, Docket 99-0615.

1774. Taking this language as a whole and in context with the rest of the Order, the Commission clearly meant to have Ameritech post a safety-compliant listing and not an all equipment listing. We further required the list to be kept current.

1775. Going to the merits, Staff's main complaint is that the AEL that AI provides, does not conform to the Commission's directives because it is over-inclusive,

i.e., it identifies all equipment that can be obtained in SBC's regional network and not just Illinois equipment only.

1776. To the extent that the AEL does not comply with the Order for Docket 99-0615 it must remedy the situation or otherwise seek appropriate relief. To bring the Company into compliance with our Order, we can and do require AI to post and update as needed, a list that includes all equipment that meets its safety standards in Illinois.

1777. SBC-Illinois agrees that, under the terms of the Order. It must post safety-compliant equipment "located at its premises." According to the Company, it has done so and nowhere does Staff contend that the safety-compliant equipment located in SBC-Illinois' offices is not on the list. It does, however, put more than just Illinois specific information in the AEL on the belief that this is more useful to the CLECs. The question, however, is not whether the currently posted AEL is more useful to CLECs. Even if that is the case, our Order requires something different. We are in no position here to relieve SBC-Illinois of any of its existing obligations and even if they arise solely on the basis of state law.

1778. As SBC-Illinois well argues, nothing in our Order precludes the Company from posting more than just Illinois -specific information in the AEL. In doing so, however, AI must, in some fashion, mark off, code or otherwise note the items in such a way as to give effect to our Order. And it must update the information, as our Order requires.

1779. Staff notes that, due to an administrative error, AI failed to update the list as required. Ameritech recognizes that it failed this obligation at some point and will, it promises, make the requisite quarterly updates. Staff will monitor AI's actions and keep us informed of any failings on the matter.

Dispute 3 - Installation of Network Interface Devices (NIDs)

a. AI Position

1780. AI sees Staff to contend that Ameritech Illinois is not in compliance with the NID deployment requirements established in Dockets 86-0278 and 94-0431. AI witness Mr. Muhs testified at the hearing, Ameritech Illinois has deployed NIDs at 99 percent of customer locations. Tr. 765. Further, Ameritech Illinois is not aware of which locations may lack a NID, and absent a house-to-house search of the state Ameritech Illinois has no way of determining where the few remaining locations without a NID would be. (Tr. 765). Ameritech Illinois technicians continue to install NIDs at any customer premises where they do not find a NID. (Am. Ill. Ex. 16.0 at 7). If a NID is not in place at a customer location, Ameritech Illinois maintains that it will not charge a CLEC for the work unless the CLEC has a time and material contract with Ameritech Illinois and a CLEC wants Ameritech Illinois to perform additional maintenance work with the inside wire. (Id. at 8). In any event, the Company asserts, Ameritech Illinois

filed a waiver petition with the Commission on August 27, 2002 (Docket 02-0555); seeking approval of an accelerated program to complete the installation of the few NIDs that remain.

1781. At the very least, AI contends, these facts show nearly complete compliance with the deployment requirement, and are sufficient to satisfy the federal public interest standard. AI points out that NID is not required for the customer to have working service, nor does it affect a CLEC's ability to serve customers in the vast majority of cases. It can facilitate maintenance in some circumstances, but in the event maintenance is necessary the Ameritech Illinois technician will perform that maintenance and will install a free NID at the same time. (Id. at 7-8).

1782. If, however, Staff maintains this is insufficient to fully comply with state law, the Commission has ample authority to resolve the matter elsewhere. In fact, AI notes, the Commission is currently addressing this issue in its review of the Part 730 service quality rules, now pending in Docket 00-0596. The Commission will also be reviewing Ameritech Illinois' waiver application in Docket 02-0555.

1783. AI observes that Staff, not the CLECs, also argues that NIDs must be located externally (i.e., mounted on the exterior of the building) and that internal NIDs must be eliminated. The Commission's Third Interim Order in Docket 86-0278, however, expressly "grandfathers" all internal NIDs installed prior to the date of that order. In that proceeding, Staff proposed that existing internal NIDs remain in place. "For existing installations that already have an internally mounted demarcation, however, no further action would be required." Third Interim Order, at 2 Docket 86-0278, Sept. 30, 1987. The Commission adopted Staff's proposal, and its findings on the subject are expressly limited to the installation of external NIDS "on all new service installations" and "all old installations that do not have any type of demarcation plug and jack now." Id. at 5, 6. Staff simply ignores that ruling.

b. Staff Position

1784. Staff arguments appear under Checklist Item 2 and 4.

c. Cook County's Position

1785. Cook County notes Staff to question Ameritech Illinois' failure to take action with respect to Network Interface Devices. To be sure, Staff points to Ameritech Illinois' violation of prior Commission orders with respect to NIDs (Dockets86-0278 and 94-031) as evidence of this failure. (Staff Initial Brief at 125.) Ameritech Illinois argues in its brief that it allows non-discriminatory access to NIDs, which may be true. In the view of Cook County, however, Ameritech Illinois needs to comply with Commission orders to install NIDs and report annually on its efforts. Cook County agrees with Staff's argument that, this lack of compliance will have an adverse impact on opening the market to competition. If left unremedied, Cook County observes, it will inhibit a CLECs

ability to access NIDs in a manner consistent with the FCC's requirements. (Staff Brief at 126.)

Commission Review and Conclusion

1786. Staff contends that AI is out of compliance with our Orders in Dockets 86-0278 and 94-0431, both requiring the installation of NIDs. The Company informs that it has filed a pleading in Docket 02-0555 to address this concern.

1787. We are told that our order in Docket 86-0278 required all ILECs to install external combination protector/demarcation interfaces for all one and two-line customers in single tenent residence and commercial building installations after September 30, 1987, and for all old installations that do not have any type of demarcation plug, by September 30, 1997. (Staff Br. on Exceptions at).

1788. Subsequently, our order in Docket 94-0431 extended the original deadline of September 30, 1997, by five years, to September 30, 2002. Prior to the expiration of this new deadline, i.e., on August 27, 2002, AI filed a Petition for Temporary and Limited Waiver alleging an inability to comply with the period set out in Docket 94-0431.

1789. Other than asserting that AI is non-compliant with the specifics of these Commission orders, Staff does not rely on any federal rules or regulations detailing installation requirements. For its part and with respect to its federal obligations, AI maintains that it provides "unbundled access to NIDs" under the terms and conditions of its interconnection agreements. Federal law, AI maintains, does not require that NIDs be installed at every one and two-line single tenant locations or that they be installed externally. Such terms, it argues, are requirements of state law via Commission order.

1790. According to AI, it has already installed NIDs in approximately 99 percent of all customer locations in its service territory. Further, it continues to install NIDs at any premises where they are lacking whenever the Company is doing on-site installation or repair work either on its own behalf or on behalf of a CLEC. So too, AI contends, it will install a NID upon a request of a customer (either end-user or CLEC) at no charge.

1791. Noting AI to admit that it is unable to meet the directives set out in the NID installation orders for Dockets 86-0278 and 94-0431, Staff contends that the Commission should completely ignore the Company's timely and formal request for a waiver currently pending in Docket 02-0555 when assessing compliance. This we cannot do.

1792. There can be no non-compliance finding in the situation where legal process is timely and properly invoked to alter the terms of an existing obligation. SBC-Illinois has taken just such action in this matter.

Dispute 4 - Power Cabling.

a. Staff Position

1793. Staff notes that on January 16, 2002, the Commission issued an Arbitration Decision pursuant to Section 252. Order, Docket 01-0623. Under Section 252, Staff maintains, a state commission is to set forth standards that "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251." 47 U.S.C. §251(c)(1). The Docket 01-0623 Order, Staff contends, set out findings in compliance with those guidelines: Therefore, Staff argues, Ameritech must comply with the Commission's decision in order to be found in compliance with the Section 271 requirements.

1794. This issue relates to Ameritech's power cabling policy for both physical and virtual collocation. Prior to a request for interconnection arbitration instituted by McLeodUSA against Ameritech in Docket 01-0623, Ameritech's standard practice was to provide a power cabling to all collocation sites regardless of whether they were physical or virtual. See Order in Docket 01-0623. In fact, the existing tariff, prior to the arbitration in question, delineated that Ameritech would provide power cabling for both physical and virtual collocation.

1795. In Docket 01-0623, Staff notes, Ameritech insisted that the CLEC should undertake to provide power cabling, not just with respect to physical collocation, but also for virtual collocation. Staff indicates that it opposed this policy position in Docket 01-0623 because such would have set the stage for a steady and gradual undermining of the Commission's method of ensuring that the virtual collocation characteristics and arrangements are specific, predictable and affordable to CLECs. In the end, Staff notes, the Commission directed that Ameritech continue to provide power cabling for virtual collocation sites. Id.

1796. While Ameritech has indicated that it would comply with the Commission's Order in Docket 01-0623, Staff believes that the Company is choosing to limit its obligations in a manner that should not be allowed because of the dangers it portends for creating a competitive marketplace. The Commission, Staff contends, should require that power cabling, especially for virtual collocation, continue to be provided by AI according to its approved tariff on the subject matter in Docket 99-0615. If Ameritech wants to change its policy, Staff contends that it must file, for Commission review, a notice of tariff change governing virtual collocation power cabling. Staff recommends that Ameritech's compliance with the power cabling be examined further during Phase II of this proceeding.

b. Ameritech Position

1797. Contrary to the assertions put forth, Ameritech Illinois maintains that its policy regarding power cabling, where the CLEC subscribes to collocation under the

tariff, is fully consistent with the tariff, i.e., Ameritech Illinois provides the cabling. (Tr. 1449-1450). The policy to which Staff objects, applies only in the context of negotiated interconnection arrangements. In this regard Ameritech Illinois maintains that its expectation that CLECs will provide the power cabling is consistent with FCC requirements. According to AI, power cabling is handled in SBC's other states, including those states which have received approval of their Section 271 applications, in just this way. To the extent that McLeodUSA objects, AI notes that it has already arbitrated this issue and prevailed. Ameritech Illinois will comply with the Commission's arbitration order and nothing further is required to meet its concerns. (Am. Ill. Ex. 1.1 at 24-25); Order at 27-28, 31, Docket 01-0623 (Jan. 16, 2002).

1798. AI notes Staff to misapprehend the Company's position. Ameritech Illinois will provide the power cabling as required by its tariff to all CLECs subscribing to collocation under tariff. (Am. Ill. Br. at 197). Therefore, contrary to Staff's suggestion, no "notice of tariff change" is required.

1799. The power cabling policy to which Staff objects only arises in the context of negotiated interconnection agreements, AI asserts. Even there, Ameritech Illinois recognizes that CLECs can opt into the McLeodUSA collocation arrangement ordered by the Commission in Docket 01-0623 under Section 252(i) of the 1996 Act. (Staff Br. at 87). In short, CLECs can avail themselves of this option if they so desire either under tariff or under the terms of the McLeodUSA agreement.

c. Commission Review and Conclusion

1800. This issue, in our view, has effectively resolved itself in the course of the arguments on brief. AI indicates that the issue first surfaced in the McLeod interconnection agreement arbitration and was ultimately resolved in favor of the CLEC. According to AI, any CLEC that desires to opt into the provision for power cabling in the Mcleod agreement may do so. We will hold Ameritech to its promise.

G. Commissions Overall Review

1801. The Act specifies that the FCC's approval of a Section 271 application is contingent on the its finding, in part, that, the requested authorization is consistent with the public interest, convenience and necessity. 47 U.S.C. Section 271 (d)

1802. With respect to this finding, the FCC recognizes that the competitive checklist and compliance therewith, is a strong indicator that long distance entry is consistent with the public interest. It, however goes further and reviews the particular circumstances presented by the application in order to ensure that no other relevant factors are present such as would frustrate the congressional intent that markets be open to competition as the checklist requires.

1803. At this juncture, the Commission has examined the parties' respective arguments, disputes and proposals and rendered findings thereon. There remains in

this investigation, significantly, the review of the performance assurance plan and OSS matters, as well as a number of remedial actions that need be taken so as to ensure full checklist compliance. It is only after all these items are fully addressed that the Commission will be able to assess its own actions for consulting with the FCC on the public interest concerns. Our work continues as Phase II of this proceeding is now beginning.

V. COMMISSION FINDINGS ON THE PHASE I INVESTIGATION

1804. On the whole of the record for this Phase I proceeding established by our Initiating Order on October 24, 2001, the Commission finds as follows:

1 Ameritech Illinois satisfies Section 271 (c)(1)(A) of the Telecommunications Act of 1996.

2 With respect to the provisions of Section 271 (c)(2)(B), our individual assessments as regard these many matters, indicates that:

a. Ameritech Illinois is in compliance with checklist items (iii), , , (vii), (viii) (ix), , (xi), (xii), (xiii), and (xiv). To the extent that there is no showing in Phase II, as would alter this view, the Commission is prepared to find Ameritech Illinois compliant with these requirements.

b. There are certain remedial actions deemed necessary by the Commission with respect to the satisfaction of its obligations under checklist items (i), (ii), (iv) (v) and (x). The specifics of the remedial action we find necessary, is set out under our respective conclusions for each of those sections. Ameritech's implementation of the requisite action or refusal thereof, will factor into our final assessment of checklist items (i), (ii), (iv), (v) and (x), to be performed in Phase II of this proceeding.

c. With respect to Checklist Items (v) a definitive finding of compliance depends on confirmation that the Company's recently filed compliance tariffs meet with our division.

d. As regards Checklist (vi) there are certain issues being continued to Phase II.

3. Our review of the public interest further suggests certain remedial actions to be taken by the Company and describes the showings that we will require in the Phase II proceeding.

By Order of the Commission this 6th day of February, 2003.

(SIGNED) KEVIN K. WRIGHT

Chairman