STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

| | | |
|---|---|---|
| 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 | ) | Docket No. 00-0312 |
| Agreement with Illinois Bell Telephone | ) | |
| Company d/b/a Ameritech Illinois, and for an | ) | |
| Expedited Arbitration Award on Certain | ) | |
| Core Issues. | ) | |
| | | |
| RHYTHMS LINKS, INC. | ) | |
| | ) | |
| Petition for Arbitration Pursuant to | ) | |
| Section 252(b) of the Telecommunications | ) | |
| Act of 1996 to Establish an Amendment for | ) | Docket No. 00-0313 |
| 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. | ) | |

SUPPLEMENTAL VERIFIED STATEMENT OF
TERRY L. MURRAY
ON BEHALF OF
COVAD COMMUNICATIONS COMPANY
AND RHYTHMS LINKS, INC.

FILE

00-0312/0313

Rhythms/Covad

1.4

DATED: JUNE 22, 2000

6-29-00

CB

# SUPPLEMENTAL VERIFIED STATEMENT OF TERRY L. MURRAY ON BEHALF OF RHYTHMS LINKS INC. AND COVAD COMMUNICATIONS COMPANY DOCKET NO. 00-0312 and 00-0313

## INTRODUCTION AND SUMMARY

**1. Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

A. My name is Terry L. Murray. I am President of the consulting firm Murray & Cratty, LLC. My business address is 227 Palm Drive, Piedmont, CA 94610.

**2. Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?**

A. Yes, I filed a Verified Statement on May 15, 2000, on behalf of Covad Communications Company ("Covad") and Rhythms Links Inc. ("Rhythms"). My curriculum vitae provided as Attachment TLM-1 to that verified statement presents my qualifications and experience as they relate to the issues in this proceeding.

**3. Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL VERIFIED STATEMENT?**

A. My Supplemental Verified Statement responds to the Verified Statement of Robert F. Koch on behalf of the Telecommunications Division, Illinois

Commerce Commission ("Staff") regarding line-sharing prices. Despite Staff's apparent agreement, at least on an interim basis, with many of the Covad and Rhythms recommendations in this arbitration, several of the conclusions that Mr. Koch draws in his statement do not accurately reflect the state of the record in this proceeding. Mr. Koch largely chose not to address the Covad and Rhythms pricing testimony; therefore, it is not always clear precisely why he arrives at different conclusions from the ones that I reached — and for which I provided supporting analysis, evidence and authority — in my Verified Statement. To ensure that the Commission has a clear evidentiary record on which to base its decision, I will respond in some detail to Mr. Koch's conclusions, even where it appears that Staff's ultimate recommendations may be consistent with the Covad and Rhythms position.

**4. Q. PLEASE SUMMARIZE YOUR SUPPLEMENTAL STATEMENT.**

A. In my supplemental statement, I will explain the basis for the following conclusions:

- A positive price for what Ameritech and Mr. Koch call the High Frequency Portion of the Loop ("HFPL") is neither necessary nor sufficient to encourage facilities-based competition. Moreover, if a positive price for the HFPL does cause carriers to construct their own loop facilities, such facilities-based entry would be uneconomic and undesirable from society's perspective. Indeed,

allowing the market to choose correctly among competing providers and technologies requires a price of zero for the HFPL.

- The FCC has indicated a clear and strong preference for a zero price for the HPFL.
- Any positive price for the HFPL, even if Ameritech-IL charges the same price to its data affiliate, confers a competitive advantage on SBC. Unless Ameritech-IL reduces other prices for loop-related services to offset the revenue gained from the HFPL, the positive price for HFPL also results in double recovery and the resulting financial advantage to SBC/Ameritech. Arbitrators in Texas have agreed that a zero price for the HFPL is consistent with the pro-competitive purposes of the FCC's *Line-Sharing Order*.
- A zero price for the HFPL is consistent with cost causation, at least in the case of all-copper loops, and does not result in a subsidy from voice to data services.
- As Mr. Koch acknowledges, Ameritech-IL has provided no evidence that the OSS development costs it proposes to recover through an OSS modification charge are reasonable, much less that they are solely the result of the institution of line sharing for unaffiliated competitors. Therefore, the Commission cannot approve Ameritech-IL's proposed OSS modification charge, even on an interim basis.

- Ameritech-IL's unilateral decision to deny competitors access to its Main Distribution Frame ("MDF") is the cause of any increased costs associated with splitter deployment at locations other than the MDF. Therefore, Ameritech-IL should bear the costs of such inefficiency.
- Mr. Koch's testimony does not provide a reasoned basis on which the Commission could accept Ameritech-IL's proposed splitter price. In particular, there is no evidence to demonstrate that Ameritech-IL's proposed installation expenses and shared cost factor are reasonably cost-based.
- The issue of line sharing over fiber is clearly in this proceeding, both because Covad and Rhythms identified the issue in their petitions for arbitration and because Staff witness Mr. Graves has agreed that Ameritech-IL is obliged to make this capability available to unaffiliated competitors. The Commission should decide this issue in principle, as Mr. Graves and the petitioners have recommended, but may defer pricing for this option and permanent prices for all line-sharing-related elements to the docket that considers Ameritech-IL's proposed line-sharing tariff.

## I. ALTHOUGH STAFF PROPERLY RECOMMENDS AN INTERIM PRICE OF $0 FOR THE HFPL, MR. KOCH'S STATEMENT REFLECTS SEVERAL MISCONCEPTIONS CONCERNING THE ECONOMIC AND PUBLIC POLICY PRINCIPLES APPLICABLE TO PRICING THIS ELEMENT.

5. **Q. AT PAGE 5, MR. KOCH FINDS THAT "A POSITIVE RATE FOR HFPL ENCOURAGES FACILITIES BASED COMPETITION." DOES MR. KOCH'S DISCUSSION DEMONSTRATE THAT ASSERTION?**

A. No. Mr. Koch's support appears to consist entirely of the opinion that "a zero rate HFPL would cause the CLECs to lose some of their incentive to build facilities." He presents no factual or other support to form a basis for that opinion. Although a $0 rate for the HFPL may have *some* effect on the incentive to build facilities, it is neither necessarily true nor is it obvious that any effect that might occur would be meaningful.

A positive price for the HFPL might influence a new entrant to seek alternatives to access to the Ameritech-owned copper loop, if such alternatives were available, and *if the new entrant were already committed to entry.* The FCC's finding that the HFPL satisfies the 'necessary and impair' standard of the Telecommunications Act of 1996 ("Act") implies that reliance on such alternatives is not a meaningful option.[1] Unfortunately, denying competitors non-discriminatory access to the HFPL, which requires a price of zero, will influence not just the 'make or

[1] FCC 99-355, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 2000) (FCC *Line-Sharing Order*), at ¶ 25.

buy facilities' decision, but also the entry decision. Competitors facing discriminatory terms of access to the HFPL, such as a non-zero price, are likely to limit the scope of their entry or choose against entry entirely; in that event, the competitor never reaches the 'make or buy' decision.

The Commission should consider line sharing in context. Prior to the FCC's requirement that Ameritech-IL and other incumbents provide line sharing, unaffiliated competitors such as Covad and Rhythms had to offer DSL-based services over stand-alone loops, whether they built the loops themselves or acquired the loops from the incumbent or a third-party provider, and incurred the full cost of those loops as a cost of their DSL-based services. In contrast, the incumbents and their affiliates were able to offer DSL-based services over the same loops that the incumbent used to provide basic local exchange services and thus avoid incurring any incremental loop cost as a consequence of offering DSL-based services. This asymmetry of costs conferred a substantial and unfair competitive advantage on the incumbents and their affiliates, even where unaffiliated competitors were equally or more efficient in supplying the competitively provided portions of DSL-based services (such as the Digital Subscriber Line Access Multiplexer or "DSLAM," related customer premises equipment and the retailing of DSL-based services). The primary purpose of the FCC's *Line-Sharing Order* was to eliminate this unfair competitive advantage by placing unaffiliated competitors in the same position as incumbents (and their affiliates).

It is my understanding that most (if not all) current xDSL competitors, such as Covad and Rhythms, are in fact not in the business of building their own loop plant. That is true even though the only available (albeit discriminatory relative to the incumbent) option for those companies prior to mandated line sharing was to pay the full price for a complete loop. Given that the potential to avoid the entire cost of a loop was not sufficient economic incentive to cause providers of DSL-based services to construct loops, I doubt that any of those competitors will be motivated to do so by any plausible HFPL price.

That leaves carriers that are in fact building loops today as the only potential parties who might "lose some incentive." Again, however, as the FCC decision to order line sharing suggests, such carriers are not offering alternative loops to competitive DSL providers in sufficient quantity to eliminate the Ameritech-IL bottleneck on loops. Therefore, to date, the incentive to compete against Ameritech-IL's full loop price to provide an HFPL option has not motivated substantial facilities-based competition; a lower, non-zero price for the Ameritech-IL HFPL would certainly provide even less motivation.

**6. Q. SHOULD THE COMMISSION SEEK TO "ENCOURAGE FACILITIES-BASED COMPETITION," TO USE MR. KOCH'S WORDS, THROUGH ITS PRICING OF THE HFPL?**

A. No, at least with respect to the loop facility itself. Facilities-based competition is not a goal in and of itself. Instead, such competition is desirable where new construction results in less costly (or superior) facilities. But a non-zero HFPL price would only encourage inefficient, uneconomic construction of loop facilities. As I demonstrated in my May 15, 2000 Verified Statement and address in further detail below, Ameritech-IL does not incur any incremental cost to make the high frequency portion of the loop available. If a competitor's cost to build facilities is more than Ameritech-IL's, then that construction is inefficient. All competitors incur at least some cost to build new stand-alone loops, whereas Ameritech-IL incurs no loop cost to make an existing all-copper loop available for line sharing. Thus, by definition, construction of new loop facilities is an economically inefficient alternative to line sharing over existing all-copper loops.

A non-zero price for the HFPL would limit competition among providers of xDSL technologies that rely on copper loops and distort construction of copper loop facilities away from efficiency. Beyond its deleterious impact on competition among xDSL providers, a non-zero price would also distort competition between xDSL technologies and other competing wireless or coaxial cable based technologies that do not rely on copper loops. For competition between technologies to reach an efficient result, providers of services that rely on the high-bandwidth capabilities of copper loops must be able to reduce prices without being hampered by an

arbitrary allocation of costs to the HFPL. The HFPL is a crucial input to production under some technologies (xDSL) but not others (wireless, cable); competition among these technologies can reach an efficient result only if the HFPL has a price equal to its cost — zero.

**7. Q. AT PAGE 5, MR. KOCH AGREES WITH AMERITECH THAT, "THE FCC DOES NOT MANDATE A ZERO RATE FOR THE HFPL." IS THAT ANALYSIS CORRECT?**

A. No. The FCC has interpreted its own rules to dictate a zero rate for the HFPL. In its May 31, 2000, *Access Charge Order*, the FCC reiterated its prescription for pricing shared lines, stating:

> We also reject the argument that elimination of the PICC is inconsistent with the Line Sharing Order. The Line Sharing Order concluded that states should not permit incumbent LECs to charge more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services. To date, we are not aware of any incumbent LECs that have allocated any loop costs to ADSL services.[2]

As I pointed out in my Verified Statement, SBC is clearly one of the incumbents that the FCC had in mind. Indeed, SBC has claimed that the impropriety of assigning any loop cost to its comparable retail services, such as its low-speed data-over-voice, was established long ago.

[2] FCC 00-193, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45 (rel. May 31, 2000), at ¶ 98.

8. Q. **NEITHER AMERITECH-IL NOR ITS DATA AFFILIATE PREVIOUSLY OFFERED A LINE-SHARED VERSION OF DSL-BASED SERVICE. DOES THAT FACT CHANGE YOUR RESPONSE TO STAFF'S ANALYSIS?**

A. No. Even if Mr. Koch's point is to suggest that Ameritech-IL is technically exempt from the FCC mandate because it did not previously offer line-shared DSL-based services, no incumbent should be exempt from the spirit of the FCC's mandate. Presumably, this Commission had established prices for Ameritech-IL's retail and wholesale services that were designed to recover all allowable loop-related costs. Ameritech-IL does not propose to reduce any of these other loop-related prices in conjunction with the establishment of a positive price for the HFPL. Thus, any revenues that Ameritech-IL receives for line-shared loops will represent double-recovery of the previously allowed loop costs. This Commission should not reward Ameritech-IL with bonus revenue for its delay in offering efficient, line-shared xDSL-based services to Illinois consumers.

9. Q. **AT PAGE 6, MR. KOCH STATES THAT, "[I]F THE SAME PRICES FOR THE HFPL ARE CHARGED TO THE CLECS AND AMERITECH, THEN THERE IS NO COMPETITIVE ADVANTAGE TO ANY PARTY." DO YOU AGREE?**

A. No. As I discussed in my Verified Statement, prices charged by SBC to a competitor relative to prices charged by one SBC affiliate to another do not have the same effect on competition. Every dollar that SBC is able to add to the cost structure of its competitors for a bottleneck facility increases SBC's profits and decreases its competitors' margins. In contrast, from SBC's perspective, a transfer payment from one SBC affiliate to another has no effect on its overall corporate profits whatever. Contrary to Mr. Koch's belief, therefore, every additional dollar of cost assigned to the HFPL increases SBC's competitive advantage.

**10. Q. HAVE OTHER REGULATORS CONCLUDED THAT A $0 PRICE FOR THE HFPL IS AN IMPORTANT PROTECTION FOR COMPETITION?**

A. Yes. The Arbitrators' Report in the first phase of the Texas line-sharing proceeding adopted a $0 price for a shared loop. The Arbitrators explained their rationale as follows:

> During the hearing, SWBT testified that the amount of the local loop costs allocated to its retail ADSL offering, in its cost study, was $0.00. Therefore, the Arbitrators find the monthly recurring rate SWBT should charge for the HFPL UNE, is $0. The Arbitrators believe that not only would this rate address the FCC's concern regarding a potential price squeeze, but it would also be consistent with the general pro-competitive purpose underlying the TELRIC principles.[3]

[3] Texas Public Utility Commission, Interim Award, in Docket Nos. 22168 and 22469, June 6, 2000 at 26.

Notably, the Arbitrators reached this conclusion even though Southwestern Bell Telephone Company ("SWBT") had testified that it would charge the same non-zero price for the HFPL to both SBC-affiliated and unaffiliated xDSL competitors.

**11. Q. AT PAGES 6-7, MR. KOCH SUGGESTS THAT A ZERO HFPL PRICE "GOES AGAINST COST CAUSATION PRINCIPLES." DOES APPLICATION OF COST CAUSATION PRINCIPLES MANDATE A POSITIVE PRICE FOR THE HFPL?**

A. Not in the all-copper loop case. A zero price for the HFPL would only go "against cost causation principles" if Ameritech-IL incurred some incremental cost as a result of providing the HFPL to competing carriers. As I established in my Verified Statement, Ameritech-IL does not incur any incremental cost relative to the HFPL when Ameritech-IL provides line sharing over all-copper loop facilities. In other words, the incremental cost to use the high frequency portion of an existing all-copper local exchange access loop is zero.

This view of cost causation with respect to line-shared loops is widely held. In addition to the examples cited in my Verified Statement, BellSouth has proposed that permanent pricing for line-shared loops exclude any cost attribution to high-bandwidth services:

> The New Entrants state that 'no cost should be attributed to the loop facility over which line sharing will be provided.' (New Entrants' Proposal at 2.) BellSouth agrees with this

> proposition, and thus its cost studies do not reflect costs attributed to the loop facility.[4]

Indeed, even SBC/Ameritech has not claimed that the HPFL causes Ameritech-IL to incur any cost. Assigning a zero price to something that causes zero cost is fully consistent with cost causation principles. In the present instance, the zero price is essential to allow efficient competition among providers of xDSL services and to allow efficient competition between xDSL services and similar services that use different technologies for which HFPL is not a required input.

**12. Q. IN THE SAME PORTION OF HIS TESTIMONY, MR. KOCH ALLEGES THAT A ZERO PRICE FOR THE HFPL WOULD MEAN THAT VOICE SERVICES ARE CROSS-SUBSIDIZING DATA SERVICES. IS THIS CORRECT?**

A. No. A cross-subsidy can only exist if one service is recovering less than its direct incremental cost, whereas another service is recovering more than its stand-alone cost. As I have established repeatedly, there is no direct incremental loop cost associated with line sharing over all-copper loops. Thus, there can be no cross-subsidy from voice to data services, even with a zero price for the HFPL. Furthermore, Covad and Rhythms do not propose any increase in prices for voice services. Thus, unless the

[4] Comments before the North Carolina Utilities Commission In the Matter of Proceeding to Determine Permanent Pricing for Unbundled Network Elements, Docket No. P-100, Sub 133d, April 28, 2000 at 4.

Commission has previously approved prices for those services that exceed the relevant stand-alone cost, it is impossible for voice services to be subsidizing any other service. Certainly, the Commission's decision with respect to pricing for the HFPL will not change the current relationship between the price and cost of voice services.

## II. AS STAFF ACKNOWLEDGES, AMERITECH-IL HAS FAILED TO MAKE THE SHOWING THAT THE FCC REQUIRES BEFORE AN INCUMBENT CAN RECOVER ANY COSTS FOR OSS MODIFICATIONS IN CONNECTION WITH LINE SHARING.

**13. Q. IS MR. KOCH'S POSITION SUPPORTING AMERITECH-IL'S OSS MODIFICATION RATE ELEMENT, AT PAGES 8-10 OF HIS STATEMENT, REASONABLE?**

A. No. Mr. Koch begins his analysis by quoting the FCC Line Sharing Order as the authority that allows Ameritech-IL to establish a price for line-sharing-related OSS modifications. However, the single sentence that he quotes does not reflect important conditions relative to the recovery of OSS costs that the FCC sets in that same order. At paragraph 106 of that same order, the FCC states:

> We expect that incumbent LECs may decide to develop new OSSs to accommodate their inventory needs as their product and service offerings increase, or to seek increased OSS efficiency. We find, however, that further incumbent LEC OSS development is not likely to be solely driven by unbundling requirements. Consequently, we urge the state commissions not to permit incumbent LECs to delay the availability of access to the high frequency portion of the loop while they implement automated OSS solutions, *nor will we permit incumbent LECs to attribute an unreasonable portion of their OSS development costs to our*

> *spectrum unbundling requirements*. (Emphasis added, footnote omitted.)

As Mr. Koch acknowledges, "Ameritech has not yet provided proof that its charge for OSS modification is reasonable." Indeed, Ameritech has not provided any detail concerning what is included in its cost estimate or how it developed the demand estimate across which it distributes its claimed cost. Thus, there is no basis for the Commission to find that Ameritech-IL's proposed OSS modification charge meets the standard that the FCC established in paragraph 106 of its Line Sharing Order. Without such a showing, the Commission should not approve Ameritech-IL's proposed charge, even on an interim basis.

Moreover, Mr. Koch fails to address the evidence presented in my Verified Statement that the demand estimate Ameritech-IL uses in its calculation is substantially less than the estimates SBC has presented to shareholders and the financial community. That evidence indicated that Ameritech-IL's proposed OSS modification charge would over-recover the amount of OSS development costs that SBC/Ameritech claims to have incurred to implement line sharing. Therefore, even if the Commission were to agree that Ameritech-IL should be allowed to recover the full amount of its claimed OSS development costs, the application of SBC's own public claims concerning DSL demand would mandate a lower monthly price to amortize that cost over the three-year period reflected in the Ameritech-IL cost study.

14. Q. **ARE THERE ANY OTHER FACTORS THAT STAFF SHOULD HAVE CONSIDERED, BUT APPARENTLY DID NOT TAKE INTO ACCOUNT, IN DETERMINING WHETHER AMERITECH-IL'S PROPOSED OSS MODIFICATION CHARGE IS REASONABLE?**

A. Yes, there are at least two. First, the charge for OSS modifications, like any other price for unbundled network elements, should be TELRIC-compliant. In a true TELRIC cost study, one does not study the cost of modifying existing systems to accommodate current requirements. Again, TELRIC is "based on the use of the most efficient telecommunications technology currently available and *the lowest cost network configuration*, given the existing location of the incumbent LEC's wire centers."[5] The FCC has found that prices for interconnection and unbundled network elements should be based on the cost of a "reconstructed local network" deploying "the most efficient technology for reasonably foreseeable capacity requirements."[6] In other words, the network design and technology assumptions in a TELRIC study should reflect the least-cost, most-efficient options currently available, not the attributes of SWBT's embedded plant. The FCC's TELRIC methodology explicitly precludes the consideration of embedded costs (*i.e.*, costs "incurred in the past and that are recorded in the incumbent LEC's books of accounts").[7]

---

5 47 C.F.R. § 51.505(b)(1), emphasis added.

6 FCC First Report and Order at ¶ 685.

7 47 C.F.R. § 51.505(d).

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

Second, as I noted above, the Ameritech-IL OSS modification charge represents a *pro rata* recovery of OSS upgrade costs that SBC has allegedly incurred for its entire 13-state region. Thus, one would expect that the SBC-proposed per-line charge for recovering this cost would be the same in each of the 13 states. That is not the case. In California, Texas and Kansas, all states in which I have participated in line-sharing arbitrations involving SBC-owned incumbents, SBC has proposed a per-line charge of $0.61 per month. In Illinois, however, SBC/Ameritech has proposed a considerably higher charge, apparently as a result of its reflexive and inappropriate application of previously adopted shared and common cost factors to elements that were not included in the original development of those factors.

The Commission should anticipate that competitors such as Covad and Rhythms will pass along any OSS modification charge to their customers in Illinois and elsewhere. Thus, a disproportionately high charge for OSS modifications in Illinois is likely to result in Illinois customers' paying more than their proportionate share of any OSS upgrade costs that SBC may have legitimately incurred.

## III. TELRIC PRICING MUST BE BASED ON THE MOST EFFICIENT NETWORK CONFIGURATION, WHICH STAFF ACKNOWLEDGES TO BE PLACEMENT OF THE SPLITTER AT THE MDF.

**15. Q. AT PAGE 10, MR. KOCH DISAGREES WITH THE COVAD AND RHYTHMS POSITION THAT THE PRICE OF TIE CABLES AND JUMPERS TO THE SPLITTER SHOULD BE BASED ON THE MOST EFFICIENT ARRANGEMENT, WHICH IS A SPLITTER ON THE MDF. SHOULD THE COMMISSION ALLOW AMERITECH-IL TO BASE PRICES FOR ACCESS TO THE SPLITTER ON A LESS EFFICIENT ARRANGEMENT?**

A. No. Mr. Koch agrees that the MDF is the most economically efficient location for the splitter. Having reached this conclusion, Mr. Koch should have determined that pricing for tie cables and jumper placements/removals must be based on this most efficient configuration, as TELRIC pricing principles require. The FCC's TELRIC methodology is unambiguous in this respect:

> The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and *the*

> *lowest cost network configuration*, given the existing location of the incumbent LEC's wire centers.[8]

As I explained in my Verified Statement, this principle applies to pricing regardless of the actual network configuration that the incumbent selects.

Mr. Koch does not, however, rely on this fundamental TELRIC principle to determine the number of tie cables and jumper placements/removals for which Ameritech-IL should be allowed to charge competitors such as Covad and Rhythms. Instead, he concludes that prices should not be based on splitter placement at the MDF because the only place in the central office which would allow competitors 24-hour access to the splitter is a common area and the "MDF is never located in a common area of a central office."

This position is not only inconsistent with TELRIC, it is also inconsistent with the principle of cost causation. Ameritech-IL has made a unilateral decision to deny competitors access to the MDF. It is my understanding that US West has granted competitors access to MDF-mounted splitters. If Ameritech-IL chooses to be more restrictive, it should absorb the cost of the more inefficient interconnection arrangements necessitated by that choice.

Strict application of the principle of cost causation in this instance is an important protection for competition. Contrary to Mr. Koch's recommendation, the Commission should not allow Ameritech-IL to

[8] 47 C.F.R. 51.505(b)(1), emphasis supplied.

impose inefficient costs on its competitors by the convenient practice of denying access to parts of its central office. The party that chooses the less efficient interconnection arrangement (in this case, Ameritech-IL) should bear the cost of that decision. This rule will provide a self-policing incentive for all competitors to make efficient, cost-minimizing choices concerning their preferred splitter placement.

**16. Q. HAS STAFF PROVIDED ANY BASIS FOR ENDORSING THE LEVEL OF AMERITECH-IL'S PROPOSED NONRECURRING CHARGE FOR JUMPER PLACEMENT/REMOVAL (AS OPPOSED TO SIMPLY THE NUMBER OF SUCH CROSS-CONNECTS FOR WHICH AMERITECH-IL SHOULD BE ALLOWED TO CHARGE)?**

A. No. Mr. Koch's testimony does not appear to endorse Ameritech-IL's cost analysis, nor does he provide any response or rebuttal to the Covad/Rhythms cost analysis presented along with my Verified Statement. I continue to recommend that the Commission adopt the nonrecurring charge for cross-connects presented in my Verified Statement and supported by Mr. Riolo's expert engineering opinion.

## IV. THE RECORD IN THIS PROCEEDING DEMONSTRATES THAT AMERITECH-IL'S PROPOSED SPLITTER PRICE IS NOT REASONABLE.

**17. Q. AT PAGES 11-12, MR. KOCH ENDORSES AMERITECH-IL'S PROPOSED SPLITTER PRICE AS "APPARENTLY"**

**REASONABLE. IS MR. KOCH'S ANALYSIS BASED ON A SUBSTANTIAL ASSESSMENT OF AMERITECH'S STUDY?**

A. No. Mr. Koch appears to base his support of Ameritech's installation and shared cost factors entirely on the fact that the Commission has approved Ameritech's use of a similar approach in other studies, in other proceedings. His analysis misses the point. The question is not whether the use of factors is, or can be, appropriate in a TELRIC study. Instead, the question is whether the factors that Ameritech-IL has chosen to apply for installation of splitters and shared costs have been developed in a manner that provides a reasonable estimate of the efficient, forward-looking cost of activities applicable to splitters. By focusing solely on the Commission's approval of Ameritech-IL's similar use of factors in other contexts, Mr. Koch sidesteps any comment on whether the application of those factors in the context of the new splitter study actually at issue in this new proceeding makes sense. Thus, his analysis provides no basis for the Commission to draw any conclusion as to the reasonableness of Ameritech-IL's proposed price.

Splitters were not included in the prior analysis that led to the development of the installation and shared cost factors that Ameritech-IL seeks to apply to splitters in this proceeding. Thus, as I explained in my Verified Statement, one cannot simply presume, as Ameritech-IL has done, that previously determined shared costs for some preexisting group of elements and/or services have any reasonable application to splitter

costs. Nor can one simply presume, again, as Ameritech-IL has done, that an installation factor developed by analyzing a group of elements that existed before Ameritech-IL deployed any line-sharing splitters has any relevance at all to the efficient, forward-looking cost that Ameritech-IL will actually incur to install splitters. Both of those conclusions require an analysis of comparability and relevance of costs; neither Ameritech-IL nor Mr. Koch has performed such an analysis.

Had Mr. Koch performed a more extensive analysis of the Ameritech-IL splitter cost study, he would have found that the factors Ameritech-IL has applied lead to a substantial overstatement of the efficient, forward-looking cost of installing and maintaining splitters. A simple comparison of the expenses that result from Ameritech-IL's factors to the direct estimate of splitter installation and maintenance costs supported by Covad/Rhythms witness Mr. Riolo, based on his expert engineering knowledge, suggests that the Ameritech-IL factors make no sense for a simple, passive device such as a splitter. As further evidence of the unreasonableness of the Ameritech-IL proposed price, I note that the Texas Arbitrators approved a price of $0.89 per splitter port — which was the price that SWBT-Texas proposed in the Texas line-sharing arbitration.[9] Based on representations that SBC representatives have made in other line-sharing proceedings, it is my understanding that SBC is

[9] Texas Public Utility Commission, Interim Award, in Docket Nos. 22168 and 22469, June 6, 2000 at 27.

purchasing the same splitter model in bulk for deployment throughout the SBC region. Moreover, labor rates in Illinois should not be substantially different from those in Texas. Therefore, I cannot imagine any valid reason that Ameritech-IL should incur a significantly higher cost per splitter port than would SWBT-TX if the two companies use the same efficient practices to install and maintain the splitters.

18. Q. **IS THE STAFF RECOMMENDATION TO ACCEPT AMERITECH-IL'S SPLITTER PRICE, INCLUDING ITS USE OF EXISTING FACTORS TO APPROXIMATE SPLITTER INSTALLATION AND MAINTENANCE COSTS, REASONABLE "ON AVERAGE"? THAT IS, CAN THE COMMISSION ACCEPT PRICES BASED ON FACTORS THAT OVERSTATE COSTS FOR SOME PIECES OF EQUIPMENT AND UNDERSTATE COSTS FOR OTHER PIECES OF EQUIPMENT?**

A. No, because Ameritech-IL has applied preexisting cost factors in a way that leads to a systematic upward bias in unbundled network element prices. The direct estimate of splitter installation and maintenance costs that Mr. Riolo supports shows that the ratio of those expenses to splitter investment is lower than the average ratio of expenses to investment that underlies the factors Ameritech-IL used in its cost study. Presumably, the existing factors were calculated in such a way that costs will be correct "on average" for the entire pool of equipment included in the development of those factors. But splitters were not included in that pool of equipment.

Had Ameritech-IL included splitters, its overall cost factors — applicable to all services and elements in the relevant cost pool — would have been lower because the low splitter-specific costs would have brought the average down.

Neither Ameritech-IL nor Staff has proposed to institute an offsetting price reduction for all services and elements to which the preexisting cost factors applied. Thus, application of those preexisting cost factors to the splitter price would result in windfall profits to Ameritech-IL, just as approval of a non-zero price for the HFPL grants Ameritech-IL windfall revenues where it incurs no incremental costs. Instead, the Commission should adopt the splitter price proposed in my Verified Statement, which compensates Ameritech-IL for the incremental costs associated with a splitter, but no more.

## V. THE COMMISSION SHOULD DETERMINE THAT AMERITECH-IL MUST PROVIDE LINE SHARING OVER FIBER-FED LOOPS; HOWEVER, PRICING FOR THIS OPTION AND PERMANENT PRICES FOR OTHER LINE-SHARING-RELATED ELEMENTS CAN BE DEFERRED TO THE NEWLY OPENED DOCKET CONCERNING AMERITECH-IL'S LINE-SHARING TARIFF.

**19. Q. AT PAGE 12, MR. KOCH ARGUES THAT THE "ISSUE OF PROVISIONING FIBER-FED LOOPS IS NOT WITHIN THE SCOPE OF THIS PROCEEDING." IS MR. KOCH'S POSITION CONSISTENT WITH THE OTHER VERIFIED STATEMENTS PRESENTED BY STAFF IN THIS PROCEEDING?**

A. No. At pages 8-9 of his verified statement, Mr. Graves states that Ameritech-IL is required to provide line sharing over fiber-fed loops unless Ameritech-IL demonstrates that doing so is technically infeasible. Mr. Graves then states that Ameritech-IL does not appear to have made such a showing. Therefore, it appears that Staff's position is that Ameritech-IL is required to provide line sharing over fiber feeder facilities. (Moreover, as I established in my Verified Statement, it is clear that Ameritech-IL intends to supply that capability to its own data affiliate.) It is also clear that Covad and Rhythms have established this issue as a subject for this arbitration. Mr. Koch's contention that the Commission need not set prices for the elements required to provide line sharing over fiber-fed loops seems inconsistent with Staff's position that Ameritech-IL must offer that capability.

Nonetheless, I understand that Covad and Rhythms are willing to defer the issue of pricing for line sharing over fiber-fed loops to the proceeding that this Commission has established for review of Ameritech-IL's proposed line-sharing tariff. Covad and Rhythms request, however, and I recommend that the Commission endorse the conclusion that Staff witness Mr. Graves has reached concerning Ameritech-IL's obligation to provide line sharing over fiber-fed loops. The Commission should accordingly direct Ameritech-IL to submit a cost study for that functionality in the tariff proceeding and should allow Covad and

Rhythms both to critique that study and to offer their own affirmative evidence concerning the costs of line sharing over fiber-fed loops.

**20. Q. STAFF HAS ALSO TAKEN THE POSITION THAT THE PRICES TO BE ESTABLISHED IN THIS ARBITRATION SHOULD BE INTERIM PRICES, SUBJECT TO REVISION IN THE TARIFF PROCEEDING. WHAT DO YOU UNDERSTAND COVAD'S AND RHYTHMS'S POSITION TO BE ON THE ISSUE OF INTERIM PRICING?**

A. To achieve the public policy goals of the Act, arbitrations should within the time frames set forth in the Act establish final terms and conditions, including prices. Nonetheless, it is my understanding that Covad and Rhythms are willing to accommodate the Commission's scheduling needs by accepting Staff's recommendation to defer permanent pricing to the tariff proceeding and only to establish interim prices in this arbitration. That being said, there is no reason to defer permanent resolution of *all* issues, including terms and conditions, in this tariff proceeding. Both companies must make important business decisions concerning their xDSL offerings in Illinois. Each issue that is left unresolved in this arbitration will make it more difficult for Covad and Rhythms to develop business plans and may discourage the rollout of advanced services that would be beneficial to Illinois consumers and the Illinois economy.

**21. Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL VERIFIED STATEMENT?**

A. Yes, it does.

## VERIFICATION

I, Terry L. Murray, being first duly sworn upon oath, depose and state that I have read the foregoing Supplemental Verified Statement and that the facts stated therein are true to the best of my knowledge, information and belief.

/s/
Terry L. Murray

Subscribed and sworn to before me
this 22nd day of June, 2000.

_____