that SBC Illinois passed with "flying colors," Ms. Weber notes that the BearingPoint review had limited coverage to the array of billing functions SBC Illinois provides[110]. In addition, there were no bill reconciliation or dispute functions tested other than having the specific procedures reviewed[111] and for those billing functions that were tested it took more than one full year and multiple retests for SBC Illinois to pass the BearingPoint billing tests conducted. Also, during the test period the company did not apply all rate changes, etc. that usually occur on an account to the test CLEC bills and therefore the test did not reflect the day-to-day reality of the business[112]. Moreover, SBC's statement that BearingPoint confirmed that its wholesale bills are clear and auditable is incorrect. BearingPoint in fact made no such statement; rather it is an interpretation by SBC based upon the fact that BearingPoint said the bills conform to the detail and format of the BOS or industry specifications. These two statements are, the Staff notes, different from one another.

~~1127.~~1130. Simply because a bill conforms to the detail and format of the BOS or industry specifications does not mean that a bill is clear and auditable. Industry specifications are guidelines and not exact standards and therefore do not comport directly to audit specifications. Also, Staff notes that if SBC believed its bills were completely auditable, it would not have filed an improvement plan for bill auditability with the Michigan Commission in its 271 proceeding there. In addition, SBC Illinois indicates it will make modifications to the Bill Auditability improvement plan filed in Michigan on March 13, 2003 and that the improvement plan will apply equally to SBC Illinois' operations. However, nowhere within the reply affidavits of SBC Illinois has it made a specific commitment to carry out these improvements plans in Illinois or to provide periodic updates to us on its plan. The company also has not sought input from Staff or all Illinois CLECs on this billing auditability issue.

~~1128.~~1131. SBC Illinois also indicates that many of the claims raised by the CLECs describe incidents that are either outdated, involve small disputed amounts, or stem from one time system changes and, thus, have no competitive impact on CLECs. CLECs, on the other hand, state that the incidents are occurring repeatedly, SBC takes too long to correct the issues[113], and these issues are impacting CLECs' ability to provide service to their customers.

~~1129.~~1132. It is the Staff's position that the Commission need to be sure that the billing concerns of the CLECs are reconciled before granting a positive Section 271

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[110] Tr. at 2355-2356. "BearingPoint reviewed the aspects of SBC billing processes as specified in the master test plan with the exception of the following: the timeliness of daily usage feed (DUF) records return process, the timeliness of the DUF returned status mechanism, the prioritization of calls for billing support, the completeness and accuracy of debit and credit adjustments, the completeness and accuracy of late charges."

[111] Tr. at 2352-2353.

[112] Tr. at 2351-2352.

[113] Initial Phase II Comments of McLeodUSA Telecommunications Service, Inc. and TDS Metrocom, LLC (Confidential) at 24-26., Initial Phase II Affidavit of Sarah DeYoung and Walter W. Willard on Behalf of AT&T Communication of Illinois, INC., TCG Chicago, TCG Illinois and TCG St. Louis. AT&T Ex. 3.0 (P) ¶44-49., Phase 2 Initial Affidavit of Sherry Lichtenberg on Behalf of Worldcom, Inc. WorldCom Ex. 3.3 ¶7-16. Initial Phase II Affidavit of Forte Communications, Inc. ¶5.

recommendation to the FCC. If we decide to grant approval without ensuring these deficiencies or areas of concern are addressed, then SBC Illinois should provide specific commitments to improve its billing deficiencies as a condition of Section 271 approval and work collaboratively with Staff and the CLECs in the state of Illinois to develop an action plan of the steps it will take to correct its deficiencies.

(3) Performance Measurement Data Analysis

~~1130.~~1133. Checklist item 2, concerns access to network elements/OSS, and encompasses the following PMs: 1.1, 1.2, 2, 4, 5, 7, 7.1, 10, 10.1, 10.2, 10.3, 10.4, 11, 11.1, 11.2, 13, 14, 15, 16, 17, 18, 19, 22, 25, 27*, 28*, 29*, 30*, 31*, 32*, 33*, 35*, 43*, 44*, 45, 46, 47, 48, 49, 50, 55, 55.1, 56, 56.1, 58, 59, 60, 61, 62, 63, 73, 74, 75, 95, 120, 121, IN 1, WI1, WI 2, MI 2, MI 13, MI 14, MI15, CLECWI 6, CLECWI 7, CLECWI 8, CLECWI 9. PMs 27 through 44, highlighted with a "*", were assessed relative to the UNE loop and port combinations sub-measures only. All worksheets are included in Schedule 29.02.

~~1131.~~1134. Staff's review of the remedied Checklist Item 2 sub-measures provides the following information:

Checklist Item 2

Summary of Performance

Access to Network Elements - OSS

	Sept. '02	Oct. '02	Nov. '02	Total
Number of Sub-measures Missed	20	20	18	13
Number of Sub-Measures Passed	174	176	175	181
Total Number of Sub-Measures	194	196	193	194
Percentage of Sub-Measures Passed	89.7%	89.8%	90.7%	93.3%

Pre-Ordering

~~1132.~~1135. There are four pre-ordering PMs applicable to checklist (ii), PMs 1.1, 1.2, 2 and Pre-ordering measurements track the activities and transactions that carriers initiate to gather information regarding customers, or the availability of services to provide to customers, prior to submitting a formal request or service order to SBC Illinois. If pre-ordering information is inaccurate, or delayed, CLECs may be placed at a competitive disadvantage, since pre-ordering functions are usually executed live while a customer or potential customer is speaking with a CLEC representative. SBC Illinois passed these four pre-order PMs.

~~1133.~~1136. Pre-ordering measurements track the activities and transactions that carriers initiate to gather information regarding customers, or the availability of services to provide to customers, prior to submitting a formal request or service order to SBC Illinois. Ms. Weber notes that, if pre-ordering information is inaccurate, or delayed, CLECs may be placed at a competitive disadvantage, since pre-ordering functions are usually executed live while a customer or potential customer is speaking with a CLEC representative. Accordingly, benchmarks and parity standards have been developed for the pre-ordering measures collaboratively by SBC Illinois and the CLECs.

Pre-Ordering Measurement Results

PM	Description	# of sub-measures	Parity/ Benchmark
1.1	Average response time to provide loop qualification for xDSL	1	Parity
1.2	Percent of accurate DSL actual loop makeup information provided to carrier	2	Parity
2	Percent of responses received within X seconds for pre-order interfaces by function	66	Benchmark
4	Percent of time OSS interface is available compared to scheduled availability by OSS interface	18	Benchmark

~~1134.~~1137. In her affidavit, Ms. Weber examined four pre-ordering measures that apply to checklist (ii), performance measure 1.1, 1.2, 2 and 4. PM 1.1 and 1.2 are both parity measures with limited or no sub-measures and PM 2 and 4 both have sub-measures and have a benchmark standard. Based upon Ms. Weber's analysis, SBC Illinois passed these four pre-order performance measures.

~~1135.~~1138. Performance measure 1.1 and 1.2 (and both sub-measures for PM 1.2) are within parity for the three months of data filed, as well as for December 2002 results. However, the average response time for manual loop make-up information, PM 1.1, increased significantly in the months of November and December 2002, to 14.75 and 16.24 hours respectively from 4.81 hours in October 2002. Mr. Ehr's explanation provided at the hearings sufficiently explained the shift. Tr. at 3064-3069. In addition, the response time for SBC Illinois' affiliate also arose at a similar rate. Accordingly, Ms. Weber does not believe that the company performance in this area should be a concern.

~~1136.~~1139. For the three months of data submitted by the company for performance measure 2, Ms. Weber opines that the company met the benchmarks defined for 48 of the 66 sub-measures, and failed the benchmark standard for three sub-measures according to the statistical guidelines. The remaining 14 sub-measures did not have sufficient data to evaluate. Therefore, if the sub-measures without sufficient data are eliminated, Ms. Weber notes that the company met the benchmark standard for 49 of 52 sub-measures, or 94% of the sub-measures.

~~1137.~~1140. For the three sub-measures the company failed, it did not meet the benchmarks in two of each of the last three months. For sub-measure 15.2, Percent responses received within 13 seconds for a request for customer service record – EDI LSGO4/CORBA, the company missed the 95% benchmark by 2.72% for November and by 4.5% in September. By

December 2002 the result was a passing 99%. For sub-measure 16.1, Percent responses received within 8.0 seconds – Directory listing Inquiry – EDI LSOG4/CORBA, the company failed to meet the benchmark for September and October 2002 but was well above the 90% benchmark at 96% in November 2002 and was at 98% for December 2002. For sub-measure 18.1, Percent responses received within 1.0 second – Service Appointment Scheduling (due date) – EDI LSOG 4/CORBA, the company's performance has dropped quite substantially the last few months. The sub-measure has a benchmark of 90% and performance for October was at 86%, November at 84% and December down at 35.38%. However, for the companion sub-measure 18.2, Percent Responses Received within 2.0 seconds – Service appointment scheduling (due date) – EDI LSOG4/CORBA, the company has consistently exceeded the 95% benchmark. If the company had missed both of these measures, then Ms. Weber views it as a potential cause for concern.

~~1138.~~1141. Performance measure 4, according to the statistical guidelines developed, exceeded the benchmark for each of its 18 sub-measures.

Ordering

~~1139.~~1142. Ordering PMs track the various activities and transactions that are involved in the submitting and processing of service orders for requesting new service, modifying existing service or for requests to remove services or features. Delays in the processing or receipt of ordering related transactions may competitively disadvantage CLECs, since CLECs rely on SBC Illinois to process and provide status of service orders on their behalf for their own customers.

~~1140.~~1143. Ordering performance measurements track the various activities and transactions that are involved in the submitting and processing of service orders for requesting new service, modifying existing service or for requests to remove services or features. Delays in the processing or receipt of ordering related transactions may competitively disadvantage CLECs, since CLECs rely on SBC Illinois to process and provide status of service orders on their behalf for their own customers.

Ordering Performance Measurement Results

PM	Description	# of sub-measures	Parity/ Benchmark
5	Percent of Firm Order Confirmations (FOCs) returned within "X" hours	54	Benchmark
7	Percent mechanized completion notices returned within one hour of completion in ordering systems	3	Benchmark
7.1	Percent mechanized completions notices returned within one day of work completion	4	Benchmark
10	Percent mechanized rejects returned within one hour of receipt of the reject in MOR	1	Benchmark
10.1	Percent mechanized rejects returned within one hour of receipt of order	1	Benchmark
10.2	Percent manual rejects received electronically and returned within five hours	1	Benchmark
10.3	Percent of manual rejects receive manually and returned within five hours	1	Benchmark
10.4	Percentage of orders given jeopardy notices (as percent of total orders completed in period)	10	Parity
11.1	Mean time to return manual rejects received via an electronic interface	1	Benchmark
11.2	Mean time to return manual rejects received through a manual process	1	Benchmark
12	Percent of mechanized orders completed as ordered	1	Parity
13	Percent of orders from receipt to distribution that progress mechanically through to the company provisioning systems (flow through)	6	Both Benchmark and Parity
MI13	Percent loss notifications sent within one hour of service order completion	4	Benchmark

~~1141.~~1144. There are thirteen non-diagnostic ordering performance measures applicable to checklist (ii) that Staff ~~I~~ evaluated. SBC Illinois has only passed 4 of the 13 ordering performance measures; PM 7, 10, 11.2 and 12. The company failed the remaining 9 ordering performance measures reviewed and the degree of failure is extremely significant. In her affidavit, Ms. Weber provides examples of these significant failures.

Resolution of Problems with Key PM 5 — Percent Firm Order Confirmation Returned within X Hours

~~1142.~~1145. PM 5 is a benchmark measure with 54 sub-measures. The company met the benchmark for 29 sub-measures, missed the benchmark for 4 sub-measures and there was not sufficient data for the remaining 21 sub-measures. Overall the company met the benchmark standards for 29 of 33 sub-measures (if sub-measures with insufficient data are removed) or 88% of the sub-measures, which by the statistical guidelines established by Staff for this proceeding indicates that the company has failed in its performance for PM 5, and is not delivering timely firm order confirmations ("FOCs") to CLECs. CLECs require timely FOC notices in order to serve their own customers. FOC notices are returned to CLECs by SBC Illinois and indicate that the CLECs request/order has been accepted and it also communicates the committed due date for completion of the order.

~~1143.~~1146. Performance measure 5 is a benchmark measure with 54 sub-measures. The company met the benchmark for 29 sub-measures, missed the benchmark for 4 sub-measures and there was not sufficient data for the remaining 21 sub-measures. Overall, the company met the benchmark standards for 29 of 33 sub-measures (if sub-measures with insufficient data are removed) or 88% of the sub-measures, which by the statistical guidelines established by Staff for this proceeding indicates the company has failed in its performance for PM 5, and is not delivering timely firm order confirmations ("FOCs") to CLECs. The specific sub-measures SBC Illinois has failed are electronically and manually submitted UNE-P complex business (1-200) < 24 hours, electronically submitted LNP Only (20+), manually submitted UNE xDSL Loop (1-49) < 24 hours. CLECs require timely FOC notices in order to serve their own customers. FOC notices are returned to CLECs by SBC Illinois and indicate that the CLECs request/order has been accepted and it also communicates the committed due date for completion of the order. Ms Weber advises us to require the company to address these deficiencies prior to our providing a positive Section 271 recommendation to the FCC.

~~1144.~~1147. Mr. Ehr in his reply affidavit provides a response to the concerns Staff ~~I~~ raised in Mr. McClerren's ~~my~~ initial affidavit regarding PM 5, percent firm order confirmations (FOCs) returned within "X" hours. Mr. Ehr further states that the four sub-measures for PM 5 that Mr. McClerren ~~I~~ identified as "misses", represent in total only 0.04% (191) of the 503,632 FOCs reported for September through November 2002. Ehr Reply Affidavit, ¶18. Mr. Ehr is correct in that the four performance measures the company missed have a lower volume of orders than the remaining sub-measures. The Staff is of the opinion that the company should address these deficiencies, but is no longer of the opinion that they must be addressed prior to us

providing a positive Section 271 recommendation to the FCC given the minimal number of FOCs affected given the data reported.

Problems with Key PM 7— Percent Mechanized Completion Returned within One Day

~~1145.~~1148. PM 7.1 measures the percent of mechanized completion notices returned within one day of work completion. PM 7.1 has four sub-measures and according to the statistical guidelines the company has failed all four sub-measures.

~~1146.~~1149. PM 7.1 measures the percent of mechanized completion notices returned within one day of work completion. PM 7.1 has four sub-measures and according to the statistical guidelines the company has failed all four sub-measures. The fourth sub-measure tracks the completions returned for LNP only orders and the benchmark established is that 99% of completions will be returned within one day. SBC Illinois has reported 53.57%, 46.09% and 69.84% completion rates for the months from September – November 2002, which is far short of the 99% benchmark standard. BearingPoint in its December 20, 2003 report that the company is also failing in its performance of PM 7.1, with respect to the Test CLEC data. While Ms. Weber understands that SBC Illinois is currently working to correct these deficiencies she recommends that we require SBC Illinois to address the issues submit independent third party verification to ensure that the issues have been resolved.

~~1147.~~1150. For PM 7.1, percent of mechanized service order completions (SOCs) returned within one day of work completion, Mr. Ehr points solely to the fact that the six month review collaborative agreed to decrease the benchmark from 99% to 97% and that if the new benchmark is applied then the company would have met the standard for three of the four sub-measures for PM 7.1. Ehr Reply Affidavit, ¶25. Regardless of any future change to the performance measure, which actually will not be implemented by the company until March 2003, Ms. Weber conducted her analysis based upon the business rules filed by the company in this proceeding. These business rules state that the company is to meet a 99% benchmark and clearly from the data presented in the table below (see the bold entries) one can see the company has consistently failed to meet the standard for all four disaggregations.

	Sept 2002	Oct. 2002	Nov. 2002	Dec. 2002	Jan. 2003
LNP	***53.57 %***	***46.09 %***	***69.84 %***	***72.46 %***	***92.01 %***
Resale	**97.27 %**	**98.89 %**	**98.83 %**	***95.27 %***	**97.28 %**
UNE	99.24 %	***96.65 %***	99.08 %	**97.42 %**	**98.17 %**
Combinations	**98.74 %**	**98.65 %**	**97.04 %**	99.59 %	**98.83 %**

~~1148.~~1151. The Staff also reiterates that BearingPoint in its December 20, 2003 Report found that the company failed in its performance of PM 7.1 (evaluation criteria TVV1-28), with respect to the Test CLEC data and continues to fail as of today. It appears SBC Illinois is currently working to correct these deficiencies but, as one can see from the most available data on this matter (i.e., December 2002, January 2003), the company has not satisfied this deficiency. **This failure has been determined in light of all related and relevant facts and circumstances, and accordingly this PM will be added to the list of Key PMs requiring Improvement provided in our overall conclusion.**

Problems with Key PM 10 — Percent of Manual and Mechanized Rejects

~~1149.~~1152. PM 10.1, 10.2 and 10.3 all report on percent of reject messages returned within X hours from receipt of the order. PM 10.1 specifically captures mechanized rejects, PM 10.2 captures manual rejects received electronically and 10.3 reports manual rejects receive manually. In the last year, the only instance where performance has been above the 97% benchmark is for PM 10.1, in the months of August and October 2002. For all other months, and for each of the three performance measures, the company failed to meet the benchmark.

~~1150.~~1153. PM 10.1, 10.2 and 10.3 all report on percent of reject messages returned within X hours from receipt of the order. 10.1 specifically captures mechanized rejects, PM 10.2 captures manual rejects received electronically and 10.3 reports manual rejects receive manually. In the last year, the only instance where performance has been above the 97% benchmark is for PM 10.1, in the months of August and October 2002. For all other months, and for each of the three performance measures, the company failed to meet the benchmark. Ms. Weber recommends that we require the company to address these deficiencies as CLECs require timely notification of errors on their orders in order to be able to provide efficient and timely service to their customers.

~~1151.~~1154. As Ms. Weber noted in her original affidavit PM 10.1, 10.2 and 10.3 all report on percent of reject messages returned within X hours from receipt of the order. 10.1 specifically captures mechanized rejects, PM 10.2 captures manual rejects received electronically and 10.3 reports manual rejects received manually. The company has failed to meet the 97% benchmark consistently for PM 10.2 and 10.3 and has problems off and on with 10.1. The Staff is of the opinion that the company should be required to address these deficiencies, as CLECs require timely notification of errors on their orders in order to be able to provide efficient and timely service to their customers. **We agree with Staff since the Company has failed to meet 97% benchmark consistently for PM 10.2 and 10.3, and has frequent problems with 10.1. Thereby giving rise to our concern, and which we find needs to be improve. This failure has been determined in light of all related and relevant facts and circumstances, and accordingly this PM will be added to the list of Key PMs requiring Improvement provided in our overall conclusion.**

~~1152.~~1155. PM 10.4 is a parity measure that reports the percent of orders given jeopardy notices and has 10 sub-measures. The company has repeatedly failed to meet the parity standard for the majority of the 10 sub-measures of PM 10.4.

Resolution of Problems with Key PM 11.1 — Mean time to return manual rejects received via an electronic interface

~~1153.~~1156. For PM 11.1, mean time to return manual rejects that are received via an electronic interface, Mr. Ehr states that SBC Illinois' performance was outside the five hour benchmark during two of the three study period months but that the difference was not material, exceeding the benchmark in September and November by .48 and .04 respectively. Ehr Reply Affidavit, ¶21. Mr. Ehr further states that the issue has been addressed in the most recent six-month collaborative process. In that collaborative process, the parties agreed: to revise the benchmarks to reflect the industry's expectation that a reject or a FOC be delivered within the same specified interval; the mean time to return manual rejection notices would be consolidated under PM 11; and SBC Illinois would have met the newly agreed-upon benchmarks. Id. However, the newly agreed upon performance measure for PM 11 removed the benchmark all together. Therefore, the company would have "met" the new benchmark if applied, since in fact there is no benchmark to speak of. Simply because the new definition of the performance measure does not specify a benchmark, it does not mean that it is acceptable for SBC Illinois' performance in this area to degrade. SBC Illinois' performance for PM 11.1 reported in December 2002 and January 2003 (the two months of performance measure data posted since the study period) was 5.47 hours and 5.74 hours respectively, which are outside the current 5-hour benchmark. Therefore, the company's performance for PM 11.1 is not within benchmark limits for four of the last five data months. Simply because the six month collaborative process agreed to remove the benchmark for this measurement, starting with data to be reported on May 20, 2003, the company should not allow its performance with respect to the return of manual rejects received electronically to fall and currently the company is not meeting the defined performance standards.

Problems with Key PM 13 -- Percent of Orders from Receipt to Distribution that Progress Mechanically through to the Company Provisioning Systems (i.e "flow through").

~~1154.~~1157. PM 13 has six sub-measures (with data) that are disaggregated by product type. The company failed to achieve the 2 out of 3 month standard for 4 of those 6 disaggregations. In a study of the data for December 2002 and January 2003 the company continued to fail to meet the standards for 4 out the 6 sub-measures (UNE-P, Resale, LSNP and UNE-Loops). Therefore, this remains a Key PM that needs to be improved.

~~1155.~~1158. For PM 13, order process percent flow through, Mr. Ehr states that the measure is a classic example of a measure that must be viewed in the context of related measures. Ehr Reply Affidavit, ¶26. The Staff concurs with this, and therefore believes it is important to look at the diagnostic results for performance measure 13.1, Total Order Process Percent Flow Through along with the results for PM 13.

~~1156.~~1159. First, if one is to look closely at the results for PM 13, which has six sub-measures (with data) that are disaggregated by product type, the company failed to achieve the 2 out of 3 month standard for 4 of the 6 disaggregations. In a study of the data for December 2002 and January 2003 the company continued to fail to meet the standards for 4 out the 6 sub-

measures (UNE-P, Resale, LSNP and UNE-Loops). Mr. Ehr further states in his reply affidavit that the parity standard, which is applied for all but one of the disaggregations, requires comparison of dissimilar processes and therefore the "apples-to-oranges" comparison means one should take the parity results with a grain of salt. Ehr Reply Affidavit, ¶27. If this is the case, the company has utterly failed to explain why it failed to suggest the parity comparison be done away with, and ask that benchmark standards be applied in the latest six-month review session. Absent a change in the business rules the company is required to meet the parity requirement and benchmark requirements established and it clearly is not meeting these for PM 13.

~~1157.~~1160. If one were to look at the company's performance reported in PM 13.1, which is the companion performance measure to PM 13, (as Mr. Ehr suggested be done), the company has decreased its total order process percent flow through for three of the six disaggregations over the past year. This means that the company on a whole is flowing through fewer orders for UNE Loops, Resale and LNP now than it did 12 months ago. In addition, the total percent flow through statistics for Resale are in the low 60% range, UNE loop in the high 60% range, LNP in the 30% range and LSNP floating between 15-30%. CPO is doing much better at 80% and line sharing is at the high 80% mark. The total percent flow through rates the company is currently reporting are not impressive, therefore it is all that more important for the product categories the company communicates to the CLECs that are supposed to flow through actually do. Regardless of Mr. Ehr's remarks excusing the company's performance for PM 13 my review of its companion measure PM 13.1 indicates that the Staff's original conclusion that the company fails to perform with respect to PM 13 remains valid and effectively unrebutted.

~~1158.~~1161. It appears that the company's performance with respect to performance measure MI 13, percent mechanized line loss notifications returned within one day of work completion, has improved in the data reported for December 2002 and January 2003. However, as Ms. Weber stated in her initial affidavit, the measure as currently defined does not accurately reflect the company's performance in delivering line loss notices to CLECs, Staff Ex. 31.0, ¶15, therefore this data can not be proof of the company's commitment to deliver accurate or timely line loss notices. In addition, the company has failed to include in performance measure MI 13 any line loss notices generated in winback situations (when SBC takes a customer that had previously left and gone to another local carrier back as a customer)[114]. It appears that the majority of CLEC losses are due to winback situations by SBC and SBC does not currently report these line loss notices as part of MI 13. Therefore, Staff submits ~~I repeat~~ that data reported for MI 13 by the company cannot be used to support its position that the company is sending timely or accurate line loss notices. The company does not plan to implement corrections to MI 13 until April 20, 2003.

Provisioning Accuracy

~~1159.~~1162. According to Staff, the Company failed PM 29. Still worse, in Staff's view, sub-measure 29-7, i.e., installations not completed as a result of a company caused missed due date for UNE-P business field work, has been increasing in the three months of data reviewed for this proceeding. Company caused missed due dates for CLEC customers means

[114] FCC Docket No. 03-16. AT&T Filing, Joint Reply Declaration of Karen W. Moore, Timothy M. Connolly, and Sharon E. Norris on Behalf of AT&T Corp., March 4, 2003.

that the customer expected service to be provisioned by a certain date, and SBC Illinois did not provision that service on the expected date. The Company's performance for PM 35-7, trouble reports received within 30 days of installation regarding UNE-P business field work, was also fail. Trouble reports received within 30 days of installation typically means that the service was not properly provisioned in the first place.

~~1160.~~1163. SBC Illinois reported data indicates that for PM 37-4, UNE business, there is a statistically higher number of trouble reports for SBC Illinois facilities provisioned to CLEC customers than there are numbers of trouble reports to SBC Illinois customers.

Problems with Key PM MI-2 — Percent of Orders Given Jeopardy Notices within 24 Hours of the Due Date

~~1161.~~1164. With a statistical guideline of 90%, and an actual sub-measure pass rate of 50%, SBCI failed to provide MI 2 in a non-discriminatory manner. SBC Illinois failed sub-measure MI 2-2, regarding residential field work, sub-measure MI 2-8, regarding unbundled loops without LNP, and sub-measure MI 2-10, regarding UNE-P. PM MI 2 assesses the percent of orders given jeopardy notices within 24 hours of the due date. Jeopardy notices to a CLEC inform it that its' customer's order may not be provisioned as it was promised by SBC Illinois. The CLEC may either contact SBC Illinois to expedite efforts, or contact their customer to let the customer know the order may not be provisioned as expected, or both.

~~1162.~~1165. SBCI alleges the problem with this PM is that it is a parity measurement with no retail comparison. Further, SBCI states that it has reached an agreement with the CLECs on a benchmark for this measure, and that the agreed-upon change is before the Commission for approval. However, Staff responds that this change has not been approved by the Commission, ~~not do~~ that we do not know how SBCI will operate in relation to this new measure – it is an unknown, and that this change is something which this Commission cannot rest upon. Staff points out that what ~~What~~ we can firmly decide this issue upon is what is known, which is the evidence that has been provided in this proceeding. SBC Illinois' reported data does not support its argument that the reliance on parity is the problem. Staff submitted ~~Consider~~ the following table for the sub-measures failed by SBC Illinois in PM MI 2:

SBC Illinois PM Performance - PM MI 2 Percent Orders Given Jeopardy Notices Within 24 Hours			
Sub-measure	Sep. 02	Oct. 02	Nov. 02
MI 2-1	66.10%	64.71%	59.21%
MI 2-8	12.50%	14.45%	13.59%

MI 2-10	40.47%	46.98%	64.33%

ICC Staff Ex. 41.0 ¶73 (citing Ehr Direct Affidavit, Attachment A)

1166. ~~1163.~~ SBC Illinois' performance on PM MI 2 would not appear to be resolved by the simple adoption of a benchmark, given that SBC Illinois would need to meet or exceed the standard for more than 95% of the occurrences.[115] As of March 5, 2003, there was no information posted by SBC Illinois to the CLEC Online web site pertaining to SBC Illinois' performance relative to PM MI 2. Accordingly, ~~the Commission agrees with~~ Staff recommends that we find this PM to continue to remain a "Key PM's for Improvement." **This failure has been determined in light of all related and relevant facts and circumstances, and accordingly this PM will be added to the list of Key PMs requiring Improvement provided in our overall conclusion.**

Problems with Key PM MI-14 — Percent of Completion Notifications Returned within "X" Hours of Completion of Maintenance

~~1164.~~1167. With an actual sub-measure pass rate of 20%, and considering SBCI's overall performance, SBCI failed to meet provide MI 14 in a non-discriminatory manner. MI 14 assesses the percent completion notifications returned within "X" hours of completion of maintenance. SBC Illinois failed to provide adequate service for sub-measure MI 14-1, regarding resale manual, sub-measure MI 14-3, regarding UNE Loops Manual, sub-measure MI 14-4, regarding UNE Loops Electronic, and sub-measure MI 14-5, regarding UNE-P Manual. Completion notifications are important because they indicate to the CLEC when they have a new customer, and may begin billing.

~~1165.~~1168. SBCI affiant Ehr points out that as of February 1, 2003, SBCI has replaced the fax process (through discussions and agreement with CLECs in the CLEC User Forum) with the posting of completion notices to its CLEC Online web site,[116] and that the PM business rule has been changed to also note this change in process. However, as of March 5, 2003, SBC Illinois has not updated its information posted to the CLEC Online web site regarding its performance relative to PM MI 14. Since there has been no definitive action to affirm SBCI's statement the Commission agrees with Staff that PM MI 14 remains an issue and should be listed as a "Key PM's for Improvement." **This failure has been determined in light of all related and relevant facts and circumstances, and accordingly this PM will be added to the list of Key PMs requiring Improvement provided in our overall conclusion.**

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[115] There are three exclusions added to PM MI 2's new business rule in Version 1.9. However, there is no evidence in this proceeding that those exclusions would drive the table's percentages up to 95%. Further, as previously indicated, it remains Staff's position that revisions to Version 1.8 of the business rule should not be addressed in this proceeding.

[116] Ehr Rebuttal Affidavit, paragraph 34.

Billing

~~1166.~~1169. Billing has eight performance measures: 14, 15, 16, 17, 18, 19, 22 and 25. SBC Illinois passed seven of these performance measures and failed one performance measure – PM 17. These worksheets may be found in Schedule 29.02.

Problems with Key PM 17— Percent of On-time ***Service*** Orders in Both ACIS and CABS that Post within a 30-Day Billing Cycle

~~1167.~~1170. PM 17 examines the percent of on-time service orders in both ACIS and CABS that are reported ("posted") within a designated interval. Orders are measured from order completion to bill posting.[117] For performance measure 17 there were on average three hundred thousand transactions per month over the September to November time period. SBC Illinois issues a lot of bills and Competitive Local Exchange Carriers are entitled to receive their bills in a timely manner. Timely billing enables CLECs to know what their charges are and also enables them to quickly spot errors in billing.

~~1168.~~1171. Staff witness Genio Staranczak, a principal economist in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to performance measures related to billing. ICC Staff Ex. 30.0 at ¶¶ 1, 5. Mr. Staranczak explained that there are 8 non-diagnostic performance measures – PMs 14, 15, 16,17, 18, 19, 22 and 25 -- associated with billing. *Id*. at ¶ 25. For the three month test period, SBC Illinois' failed PM 17 under Staff's statistical guidelines discussed above, but passed the remaining seven. *Id*. Mr. Staranczak explained that PM 17 examines the percent of on-time service orders in both ACIS and CABS that post within a designated interval. *Id*. at ¶ 26. Orders are measured from order completion to bill posting. For UNE-P and line sharing, an order is considered on time if it is posted accurately within the first bill cycle after a ten business day processing interval, which begins with order completion. All other orders will be considered on time if posted within the first bill cycle following order completion. *Id*.

~~1169.~~1172. Mr. Staranczak explained that although the applicable standard for PM17 is parity with SBC retail, SBC uses affiliate data as the standard when computing hits or misses in its HOMR report. *Id*. at ¶ 27. Nevertheless, SBC does not attain parity with its affiliate during any month over the September to November three month period for which SBC has filed data. *Id*. Whereas affiliate service orders were billed within the designated interval approximately 99% of the time during the three month period in question, only 94% of competitors' orders were billed within the designated interval. *Id*. Data for December 2002 also indicates that SBC has not achieved parity with its affiliate operations in the most recent month for which data is available. *Id*. Mr. Staranczak stated that billing timeliness is a persistent problem for SBC given that the data also indicates that the company has achieved parity with affiliate operations in only two months during calendar year 2002. *Id*. Similarly, SBC has achieved parity with its retail operations in just 2 months of calendar year 2002. *Id*.

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[117] ACIS and CABS are acronyms for customer information and billing systems utilized by SBC Illinois.

~~1170.~~1173. Mr. Staranczak pointed out the large number of observation for performance measure 17, with an average of three hundred thousand transactions per month over the September to November time period. *Id*. at ¶ 28. Mr. Staranczak explained why Competitive Local Exchange Carriers ("CLECs") must receive their bills in a timely and accurate manner. *Id*. Timely billing enables CLECs to know what their charges are and also allows them to quickly spot errors and unexpected fees. If CLECs receive untimely and inaccurate bills from SBC Illinois, then CLEC customers may in turn receive untimely and inaccurate bills from CLECs. Furthermore, end user customers may blame the CLECs for billing problems that were caused by SBC Illinois. In this situation, SBC Illinois billing inaccuracies could cause CLEC customers to become dissatisfied with their CLEC service and switch back to SBC Illinois. *Id*.

~~1171.~~1174. Accordingly, Staff recommended that the Company explain in its rebuttal affidavits why this problem is occurring and demonstrate that proper steps have been taken to ensure that this problem is corrected and will not recur on a going forward basis. *Id*. at ¶ 29. Staff cautioned that failure to make this showing may force the Commission to find that SBC's provisioning in this regard with respect to billing is discriminatory. *Id*. Alternatively, even if the Commission does not find SBC Illinois ' performance to constitute non-compliance with the applicable checklist item, Staff recommended that the Commission condition a positive consultation on SBC Illinois' agreement (i) to devise a specific action plan (to be outlined in SBC Illinois' rebuttal affidavits) that addresses the billing problems associated with performance measure 17, and (ii) to demonstrate that billing timeliness has significantly improved by year end. Staff maintained that billing in a timely and complete manner is a chronic problem for SBC, and the company must identify the steps it will take to correct its shortcomings in this area. That is, once the action plan is outlined, it must then be implemented and, finally, performance for measure 17 must become satisfactory.

~~1172.~~1175. Staff notes that in response to its observation that SBC Illinois was consistently failing PM17, SBC Illinois witness Mr. Ehr responded (i) that the company uses a higher standard than called for in the PM17 business rules; (ii) that even though SBC Illinois is failing on this measure, the performance at 91% is high; and (iii) that adjustments to PM17 have been agreed to in the recently completed six-month collaborative, and are before the Commission for approval, that will provide for more appropriate comparisons of like products to the retail equivalent process. ICC Staff Ex. 42.0 at ¶ 8.

~~1173.~~1176. Staff asserts that Mr. Ehr's explanations with respect to PM17 are not acceptable. Id. at ¶ 9. First, Mr. Staranczak noted that SBCI claims it uses a higher standard than is required by the PM 17 business rules, and then argues that it is alright to fail because it has voluntarily used a higher than necessary standard. *Id*. Staff countered that if SBCI voluntarily chose to use a higher standard, then they should be judged by this standard -- and they are failing by the standard they themselves have chosen. Second, with respect to the company's contention that 91% is good enough, Staff points out that PM 17 is not a benchmark measure and 91% is not the benchmark. The agreed to standard for this measure is parity, and SBCI is not reaching parity. Finally, Staff observed that there is no guarantee that just because adjustments to PM17 have been recently agreed to, that SBCI will now pass PM17 whereas before these adjustments it consistently failed PM17. The comparisons in the new business rules may be more appropriate, but Mr. Ehr did not indicate what steps SBCI has taken to ensure it will pass PM17 under what it alleges are more suitable comparisons of like retail products. Staff

concluded that according to the data available, SBC Illinois has consistently failed PM17 whether its performance is compared to its affiliate or its retail operations. Staff also noted that SBC Illinois failed this performance measure in January 2003, both against its affiliate and against its retail operations. *Id*.

~~1174.~~1177. Therefore, Staff concluded that Mr. Ehr's explanations of SBC Illinois' shortcomings with respect to PM 17 are unsatisfactory.

Staff Recommendation for Checklist Item 2 PM Data

~~1175.~~1178. Staff points out that it has modified its initial conclusions and recommendations based upon comments filed by SBC Illinois on March 3, 2003. According to the statistical guidelines and additional analysis provided in Staff's initial and reply affidavits, the Company has passed all but 8 performance measures (PM 7.1, 10.1, 10.2, 10.3, 10.4, 11.1, 13, MI 13).

~~1176.~~1179. The Staff is of the opinion that the three months of performance measurement data provided by the company in support of checklist (ii) does not demonstrate that, with respect to the ordering performance measures, SBC Illinois is providing non-discriminatory service to the CLECS. SBC Illinois should be required to correct the deficiencies associated with the ordering performance measures prior to receiving a positive Section 271 recommendation from this Commission. If the Commission elect, to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key performance measures related to checklist (ii) then it should:

a) require the Company to identify the steps it will take to remedy its current unsatisfactory performance with respect to the ordering performance measurements and

b) require the Company to demonstrate substantially improved performance by November 2002 or face additional penalties.

e. AT&T's Position.

Introduction

~~1177.~~1180. AT&T presented evidence on (a) the issue of whether the BearingPoint test establishes SBC Illinois' checklist compliance, and (b) whether AT&T's own Illinois-specific commercial experience rebutted SBC Illinois' claim that its OSS provides the means for an efficient carrier to compete against SBC Illinois in its local markets.

The BearingPoint Test

~~1178.~~1181. AT&T's primary argument with regard to the BearingPoint test rests on the terms of the Master Test Plan. AT&T contends that SBC Illinois has not satisfied

the Global Exit Criteria of the MTP, and therefore, SBC Illinois cannot be considered to have passed the test. AT&T's second line of attack points to the BearingPoint test reports themselves. AT&T claims that the test reports establish that significant test deficiencies have been and are still be uncovered by BearingPoint. All of these points add up to the conclusion, according to AT&T, that SBC Illinois cannot be found as yet to have successfully completed the BearingPoint third party test.

"Master Test Plan – Global Exit Criteria"

~~1179.~~1182. AT&T reminds that the MTP was developed in collaboratives that began following the Commission's Merger Order, and was first issued in March, 2000. A subsequent MTP was issued as a result of updates or proposed changes; the current MTP was issued on May 2, 2002 and is known as Version 2.

~~1180.~~1183. As explained by AT&T, in the collaborative process leading to the Master Test Plan, the following fundamental question arose: Given the fact that a completed OSS test is a necessary prerequisite to this Commission's consideration of whether nondiscriminatory access to OSS is being provided, what must be accomplished before the test process is deemed complete? AT&T states that the parties – including SBC Illinois – agreed that the testing would not be complete until four "Global Exit Criteria" were met. AT&T Exh. 1.0(P), ¶ 173. AT&T discussed in its testimony each criterion, explaining what each requires and why each has not been met.

> Global Exit Criterion No. 1:
>
> For each test, all fact finding and analysis activities must be completed. All results and test methodologies have been documented. Any exceptions must be resolved or retesting completed, unless specifically exempted by the Commission.

~~1181.~~1184. AT&T states that the plain language of this criterion requires that all test activities called for by the Master Test Plan be completed. Such completeness is, according to AT&T, fundamental to the military-style test approach embraced by the Master Test Plan because all of the test components are necessary to determine operational readiness and none of the test elements has a lesser importance than another. Therefore, AT&T concludes, the Commission must provide equal weighting, and afford equal importance, to the evaluation of each individual test result. AT&T Exh. 1.0(P), ¶ 174.

~~1182.~~1185. AT&T contends that SBC Illinois has not satisfied this first criterion because the test is continuing and the test activities are incomplete. Numerous aspects of the testing require more work: the requisite fact-finding continues; analysis work must be completed; results and test methodologies have not been fully documented; Exceptions have not been fully resolved; and re-testing is ongoing. As AT&T points out, testing is incomplete in each of the three testing domains – PPR, TVV and, most of all, PMR.

Global Exit Criterion No. 2:

> The results of test activities must be documented and reviewed for accuracy. Any results that require clarification or follow-up are confirmed.

~~1183.~~1186. AT&T contends that this criterion is not satisfied until all change control, verification, and confirmation steps have been completed. AT&T Exh. 1.0(P), ¶ 175. In other words, all test administration and management responsibilities must be fully discharged, and the onus is on the test manager, Staff, and SBC Illinois to certify that all such tasks have been completed, including finalization of the OSS test report. While this may appear to be a monumental, highly detailed task, AT&T explains that the sophisticated technology BearingPoint employs to test administration processes, coupled with the demonstrated experience of its testing management staff, essentially reduce this endeavor to the relatively simple matter of "final analysis" and verification. Its importance, AT&T asserts, cannot be over-emphasized.

~~1184.~~1187. AT&T submits that this criterion remains unsatisfied for two reasons. AT&T Exh. 1.0(P), ¶ 176. The first is the simple fact that Global Exit Criterion No. 1 must be satisfied before this one can be satisfied; No. 1 has not been satisfied. The second reason is because incomplete test results might influence BearingPoint's determination of the success or failure of related test activities. As AT&T's witness Connolly explains: "A process may provide successful test results as it stands-alone, but when considered in the context of the way the particular process has been incorporated into the SBC Illinois' OSS, that process may be inadequate, resulting in outright failure. Global Exit Criteria No. 2 cannot be satisfied until BearingPoint is given the opportunity to complete the tests, collect the results, and evaluate the OSS against the Master Test Plan in the context of the entire test as a whole." *Id.*

Global Exit Criterion No. 3

> The test will not be considered complete until the ICC has determined that KPMG Consulting has tested the series of modifications and enhancements to its OSS ordered by the Commission in 98-0555. These modifications and enhancements have been negotiated between Ameritech and CLECs in collaborative work sessions conducted under the auspices of the Illinois Commerce Commission and at the Federal Communications Commission (Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Dkt. No. 98-141, FCC 99-279, 1999 WL 809551 (rel. Oct. 8, 1999), app. pend. ,sub. nom. Telecommunications Resellers Ass'n v. FCC, Case No. 99-1441 (D.C. Cir.) (*The Merger Order*).

~~1185.~~1188. As AT&T notes, this third Global Exit Criteria represents the culmination of months of negotiations with SBC Illinois to arrive at a set of system and process

improvements that CLECs needed implemented, and SBC Illinois agreed to implement them. AT&T Exh. 1.0(P), ¶ 177. The negotiations had two catalysts. One was the FCC's imposition of conditions on the SBC-Ameritech merger (Conditions 27 and 28). The other was this Commission's imposition of obligations to improve SBC-Ameritech's OSS as a condition of its approval of the SBC-Ameritech merger (Condition 29 in the ICC's Order in Docket No. 98-0555.)

~~1186.~~1189. This Commission's merger order obligated SBC Illinois to participate in industry collaborative meetings to develop a plan for OSS improvement. This improvement plan was termed the "Plan of Record." AT&T Exh. 1.0(P), ¶¶ 177-179. The 3rd Global Exit Criterion requires BearingPoint to complete testing of all the negotiated modifications and enhancements (known as "A-AA" commitments by the numbering convention assigned to each commitment), which were achieved in the POR collaboratives that followed the Merger Case. This criterion was agreed upon as a means to demonstrate Ameritech's successful implementation of the A-AA list, despite the then ongoing negotiations regarding resolution of the A-AA list. In other words, the precise manner in which SBC Illinois would resolve each particular A-AA item had not been determined, but the parties agreed that whatever resolution was reached on those issues would be defined and satisfactorily tested before the test would or could be considered complete. *Id.*, ¶ 179. The concession made by the CLECs was that the A-AA list would be Exit Criteria and not Entrance Criteria to the BearingPoint test. *Id.*

~~1187.~~1190. From AT&T's perspective, at this point, the BearingPoint Report lacks any real detail regarding BearingPoint's testing of the A-AA list of items detailed in Table III-5 of the Master Test Plan and in Appendix F to the Master Test Plan, but merely provides a high-level statement of the verification status of the A-AA list in the POR Compliance Verification Summary Appendix to the BearingPoint Report. Indeed, BearingPoint acknowledges the significant commitment to this testing in the footnote on page 18 of the Master Test Plan, which addresses both Table III-5 and Appendix F:

> At this point, Ameritech and the CLECs have agreed that these modifications and enhancements should be implemented, and they have further agreed that *the third-party test cannot be deemed complete until these modifications and enhancements have been tested.*" (emphasis added).

~~1188.~~1191. AT&T states that it assumes that the reasons behind BearingPoint's inability to complete this testing are the same as those holding up completion of the PPR, TVV and especially PMR testing and the requisite reporting activities necessary to fully reflect that testing – SBC Illinois's dilatory approach to, or even effective refusal to participate in, the third-party OSS testing process. (We discuss AT&T's evidence on this issue later in this order.)

~~1189.~~1192. According to AT&T, BearingPoint's final report presumably will give the Commission a comprehensive exposition on each of the A-AA items. Absent that information, AT&T submits that the BearingPoint Final Report cannot provide the Commission with any

assurance that the A-AA agreements have been implemented and validated in an independent and comprehensive review, and it cannot be shown that Global Exit Criteria 3 has been satisfied.

> Global Exit Criterion No. 4:
>
> The set of performance measures to be used in the test are being negotiated between Ameritech and CLECs in collaborative work sessions conducted under the auspices of the Commission. The measures to be used for this test will include: 1) the baseline measures used by Ameritech Illinois, and 2) measures for any new processes, policies, products or services. The test will not conclude until (1) Ameritech has implemented the modifications, deletions, and additions to the baseline measures resulting from the collaborative (either by agreement of the collaborative parties or as otherwise ordered by the Commission) and (2) those modifications, deletions, and additions encompassed as part of the third-party test and reviewed.

~~1190.~~1193. AT&T notes that the final Global Exit Criterion represents an express agreement by SBC Illinois that the complete system of performance measures will be fully and successfully tested before the test will be deemed complete. AT&T contends (as we have noted elsewhere in this order) that the depth and breadth of the BearingPoint findings showing that the PMR test is far from complete and are sufficient, by themselves, to overwhelmingly demonstrate to the Commission that this Global Exit Criterion is not yet satisfied. Of the more than 300-plus test references in the PMR domain, a mere 64 are satisfied.

~~1191.~~1194. AT&T concludes that If the preceding discussion of each of the four Global Exit Criteria did not make obvious the fact that the Global Exit Criteria are not satisfied, a plain reading of the BearingPoint OSS Report Executive Summary (at page 5) (Commission Phase II Exhibit 2, p. 5) will confirm to the Commission that BearingPoint does not consider the test complete:

> It should be noted that BearingPoint has been directed to continue its evaluation activities through the end of April 2003 for its performance metrics tests. SBC Ameritech continues to engage in retesting activities to address issues found during this evaluation. Consequently, in those areas in which BearingPoint is still conducting testing, particularly in the areas in which retesting is occurring, the results of the evaluation as described herein are subject to change.

The BearingPoint Test Results

~~1192.~~1195. AT&T addresses the recently released testing results by BearingPoint. According to AT&T, the BP Report contains numerous findings of OSS failure. These findings, AT&T claims, which are based on the tests conducted by BearingPoint and Hewlett Packard, demonstrate that SBC Illinois's OSS simply do not function well.

~~1193.~~1196. As AT&T explains, the BP OSS Report (Commission Phase II Exhibit 2) contains four principal sections: an Executive Summary, the Test Description and Methodology, Test Results, and Appendices. The test is comprised of three "families," namely the Performance Metrics Audit, the Processes and Procedures Review, and the Transaction Verification and Validation testing. (MTP at 13). For purposes of administration, the test is organized into functional "domains" of the OSS: Pre-Order, Order, and Provisioning (POP), Maintenance and Repair (M&R), Billing (BLG), and Relationship Management and Infrastructure (RM&I) (id. at 12-13). The result of the test demonstrates conclusively that CLECs, including the Test CLEC, have significant difficulty using the SBC Illinois OSS, and therefore SBC Illinois does not provide nondiscriminatory access to its OSS. The records of the test, which include 185 Exceptions and the 799 Observations – which, AT&T witness Connolly would notes, *constitute far more defect findings that in any other OSS test conducted to date of which he is aware* – show systems, processes and procedures that have been partially rehabilitated by dint of the work contributed by SBC Illinois, CLECs, Staff, BearingPoint, and HP. AT&T Exh. 1.0(P), ¶ 204. AT&T states, however, that work is not complete until the test is successfully concluded, and the remaining work must be done in order for SBC Illinois to comply with the applicable state and federal standards necessary to qualify for Section 271 relief. The BP Report reveals the following failures that remain in each of the three key OSS testing areas:

~~1194.~~1197. Processes and Procedures Review – involving Ameritech's wholesale business processes and management practices.

Not Satisfied:

PPR 13-4	"The bill production process includes reasonability checks to catch errors not susceptible to pre-determined balancing procedures."

Indeterminate:

PPR5-12-B	"Test Environments are subjected to version control and carriers are notified prior to changes in the carrier-to-carrier Test

	Environments."
PPR5-14-B	"On-call technical support is provided for production versions of interfaces."

Transaction Verification and Validation – involving transaction-based tests.

<u>Not Satisfied</u>:

TVV 1-4	"SBC Ameritech provides required order functionality."
TVV 1-26	"SBC Ameritech provides timely Non-Mechanized Firm Order Confirmations (FOC) in response to electronically submitted orders."
TVV 1-28	"SBC Ameritech provides timely Completion Notices."
TVV 2-4	"SBC Ameritech systems provided timely responses to Customer Service Information Inquiries via EDI."
TVV 2-5	"SBC Ameritech systems provided timely responses to Customer Service Information Plus Listing Inquiries via EDI."
TVV 2-6	"SBC Ameritech systems provided timely responses to Loop Qualification Inquiries via EDI."
TVV 2-9	"SBC Ameritech systems provided timely responses to Listing for Telephone Number Inquiries via EDI."
TVV 2-10	"SBC Ameritech systems provided timely responses to Scheduling Inquiry/Availability – Due Date Inquiries via EDI."
TVV 2-12	"SBC Ameritech systems provided appropriate responses to the pre-order inquiries submitted via GUI."
TVV 2-15	"SBC Ameritech systems provided timely responses to Customer Service Information Inquiries via GUI."
TVV 2-17	"SBC Ameritech systems provided timely responses to Loop Qualification Inquiries via GUI."

	Qualification Inquiries via GUI."
TVV 2-26	"SBC Ameritech systems provided timely responses to Customer Service Information Inquiries via CORBA."
TVV 2-27	SBC Ameritech systems provided timely responses to Customer Service Information Plus Listing Inquiries via CORBA."
TVV 2-37	"SBC Ameritech systems provided timely Reject Messages for orders submitted via EDI."
TVV 4-27	"Post-order CSRs were consistent with required field inputs from submitted pre-order CSRs."
TVV6-16	The Trouble Ticket Test (MLT) transaction response time during peak volume testing for Plain Old Telephone Service (POTS) was consistent with benchmark data.
TVV7-14	Specials circuit end-to-end trouble reports contained closeout codes that accurately defined the trouble condition.

Indeterminate:

TVV 4-19	"Unbundled Dark Fiber was provisioned by completing documented M&P tasks."
TVV 4-20	"Unbundled Dark Fiber circuits were provisioned on the due date."
TVV 4-21	"Unbundled Dark Fiber circuits were provisioned accurately."
TVV4-22	EEL circuits were provisioned by completing documented M&P tasks.
TVV4-23	EEL orders were provisioned on the due date.

~~1195.~~1198. AT&T rejects the notion that SBC Illinois is actively cooperating with BearingPoint to correct the test deficiencies outlined above. SBC Illinois claims that it has co-developed a "detailed" work plan with BearingPoint that will facilitate the progress of the OSS Testing that remains to be completed (SBC Illinois Exh. 2.0, ¶ 243) (*i.e.,* "… there are detailed

plans to bring the performance testing to a successful conclusion.") Similarly, SBC Illinois states (*id.*, ¶ 251), that it and "BearingPoint have jointly developed a detailed project plan to complete the PMR1 evaluation, along with specific tasks and target dates." Whether these are written plans or not (and SBC Illinois does not disclose this fact), the plans have not been made public, and the incongruity of secretly developed plans with the collaboratively developed Master Test Plan calls into question the comprehensiveness of such other "plans."

~~1196.~~1199. Further, whether these "plans" are being implemented accordingly – and particularly whether SBC Illinois is actually acting in a vigorous manner to resolve the substantial defects that have been solved thus far – is truly suspect, when one reviews SBC Illinois' recent actions. Mr. Connolly prepared and attached to his affidavit an Exhibit excerpting several pages from the (then) most recently published Open Observations Status Report. AT&T Exh. 1.0(P), Attachment 7. This report that reflects the actions taken during the February 11, 2003 Exceptions and Observations conference call. This data provides current information (as opposed to SBC Illinois' unsupported statements) showing SBC Illinois has engaged in a systematic program of stalling BearingPoint's efforts.

~~1197.~~1200. As Mr. Connolly explains, SBC Illinois' decreasing level of responsiveness to BearingPoint is a departure from its posture even six months ago, which makes it all the more troubling given the speed with which it pursues its § 271 objectives. AT&T Exh. 1.0(P), ¶ 189. Earlier in the BearingPoint testing, SBC Illinois would typically reschedule discussion of its response to an Observation or updated information on the subject of an Observation for one week at a time (i.e., "we'll talk about that on next week's call…"). *Id.* Its current practice, according to Mr. Connolly, is to seek deferrals of two and three week durations. AT&T questions how this mode of operations can be consistent with its bespoken commitment to work through these negative test findings quickly and efficiently.

~~1198.~~1201. In particular, AT&T points to pages 29 through 31 of Attachment 7 to Mr. Connolly's Affidavit (AT&T Exh. 1.0(P)), which provide information about Observation 584 "SBC Ameritech is using inaccurate data in the calculation of Performance Measures 10 ('Percent Mechanized Rejects Returned within 1 hour of receipt of reject in MOR') and 11 ('Mean Time to Return Mechanized Rejects'), which was issued on July 29, 2001. As Mr. Connolly explains, between its issue date and September 22, SBC Illinois deferred its response and any discussion of the Observation for one week 8 consecutive times. AT&T Exh. 1.0(P), ¶ 190. BearingPoint was performing its analysis on SBC Illinois' response during the period of September 24 to October 15 (3 weeks). When BearingPoint sent additional information about the Observation to SBC Illinois on October 22, a period of 3 months went by during which SBC Illinois requested one week deferrals 7 times and 2 week deferrals 3 times and a one week deferral once; the last three deferrals – totaling 7 weeks – finally eclipsed on the February 4 call. *Id.*

~~1199.~~1202. Similarly, Mr. Connolly reports that Observation 625 ("KPMG Consulting has been unable to replicate SBC Ameritech's January 2002 reported results for Performance Measurement 29 ('Percent Ameritech Caused Missed Due Dates')"), was released on August 27 and is detailed on pages 43 and 44 of the Status Report. AT&T Exh. 1.0(P), ¶ 191. According to Mr. Connolly, SBC Illinois' response to this Observation has never been discussed on an Exceptions and Observations conference call because of SBC Illinois deferrals: 13 for one week,

2 for two weeks, and 1 for three weeks. The two most recent deferrals are for two weeks each. *Id.*

~~1200.~~1203. AT&T states, therefore, that whatever SBC Illinois' "plans" are for actively responding to these findings by BearingPoint, these plans do not appear to accelerate the speed at which it responds. According to AT&T, SBC Illinois appears less and less able to respond in a timely fashion, which might also imply that SBC Illinois is finding it more difficult to commit the resources to respond or it reflects management's priorities. As it pursues its other strategies concerning its desire for long-distance authority, ~~I~~ AT&T believe the Commission should be concerned about whether SBC Illinois is truly committed to completing the Performance Measure Reporting systems requirements of the Master Test Plan.

Other Testing Issues.

~~1201.~~1204. In addition to the two-part test discussed above, AT&T notes that the FCC has developed several additional requirements regarding nondiscriminatory access that BearingPoint did not address in the course of its OSS testing. According to AT&T, the BearingPoint test reports do not provide adequate information to enable the Commission to determine whether, in fact, SBC Illinois has satisfied these requirements as a precondition to Section 271 relief. AT&T Exh., ¶ 205.

~~1202.~~1205. These requirements include: (1) instituting a proper "change management" process (*i.e.* the process through which an ILEC communicates to CLECs information regarding the performance of and changes to the OSS); (2) conducting OSS testing on the most current LSOG interface; and (3) producing complete, accurate, and *auditable* wholesale bills. *Id.* AT&T submits that SBC Illinois has failed each of these requirements as well.

Change Management Process

~~1203.~~1206. According to AT&T, an ILEC's change management process contains the methods and procedures by which the ILEC conveys information to CLECs concerning the performance of and changes to its OSS. AT&T Exh. 1.0, ¶ 206. The FCC has established criteria for evaluating a change management plan.[118] In applying those criteria in the recent *Second Georgia/Louisiana 271 Order*, the FCC stated:

> . . . the Commission has explained that it must review the BOC's change management procedures to determine whether these procedures afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS. In evaluating whether a BOC's change management plan affords an

[118] See, Memorandum Opinion and Order, In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana, CC Docket No. 02-35 ¶ 179 (May 15, 2002) ("Second Georgia/Louisiana 271 Order").

> efficient competitor a meaningful opportunity to compete, we first assess whether the plan is adequate by determining whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway. After determining whether the BOC's change management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan. (footnotes omitted.)

~~1204.~~1207. SBC Illinois's change management plan is the SBC-Ameritech 13-State Change Management Plan ("13-State CMP") that was developed on a collaborative basis in the course of developing the SBC-Ameritech Plan of Record. AT&T Exh. 1.0(P), ¶ 207. The process outlined by the 13-State CMP, which is documented on the CLEC OnLine website, describes the ways in which a CLEC can request a change to SBC Illinois's OSS and the way in which changes to OSS interfaces are to be implemented. BearingPoint subjected the SBC Illinois CMP to testing, but not to the standard that the FCC has established and affirmed in recent orders. *Id.*

~~1205.~~1208. As AT&T witness Connolly explained in his affidavit: "I have learned, as has BearingPoint and anyone who reviews the BearingPoint Report in detail (*see* Commission Phase II Exhibit 2, pp. 443 to 451), that the change management process SBC Illinois actually employs is *not* fully documented on the website, or anywhere else for that matter." AT&T Exh. 1.0(P), ¶ 208. Moreover, points out Mr. Connolly, the BearingPoint OSS Report discloses an additional, disturbing and critical step in the process that SBC Illinois has apparently adopted in processing CLEC change requests. Specifically, CLEC change requests are submitted to a "review board" composed of unspecified SBC Illinois or SBC personnel who have the final say on the priority SBC Illinois assigns to a change request. SBC Illinois refers to this body as the "LSR Review Board." *Id.* This fact was uncovered by the test and reported in Test References PPR 1-2 and PPR 1-5, but BearingPoint did not conduct test PPR 1-1 to determine whether the full change management process is defined and documented.

~~1206.~~1209. Mr. Connolly further points out that not only is the role of the LSR Review Board in the change management process undocumented, but the existence of an LSR Review Board and what role it would play in the CMP was never agreed upon or even negotiated with the CLECs. AT&T Exh. 1.0(P), ¶ 209. This newly created (and previously undisclosed) LSR Review Board and its apparent role completely undermines the collaborative prioritization process that lies at the heart of the 13-State CMP. The unilaterally-created LSR Review Board also introduces new factors into the prioritization process in that it assigns priorities to CLEC change requests based on characteristics the CLECs never agreed to, such as the monetary and non-monetary benefits that SBC Illinois alone attributes to CLEC requests. This adjunct process

also severely weakens or effectively eliminates the agreed upon dispute resolution process by establishing a higher authority that resides beyond the reach of a CLEC that wishes to escalate or dispute the decisions reached by SBC Illinois regarding CLEC change requests.

~~1207.~~1210. AT&T emphasizes that the 13-State CMP is silent as to the existence of an LSR Review Board and its behind-the-scenes role in evaluating CLEC change requests. AT&T Exh. 1.0(P), ¶ 211. It claims that the 13-State CMP simply does not subject the prioritized list of CLEC Change Requests to another set of decision-making by this additional layer of in-house "expertise." Thus, according to AT&T, the very existence of the LSR violates the 13-State CMP pursuant to which SBC Illinois agreed to operate. To make matters even worse for CLECs and the customers they serve and hope to serve, the procedure employed by the LSR Review Board undercuts the negotiated balance of authority and control over the change process by allowing SBC Illinois's "expertise" to overturn CLEC priorities and subvert the dispute resolution process. While the 13-State CMP does allow for a final internal review of the prioritized CLEC change requests, nowhere is that review designed to result in requests being rejected and delayed for several months until they can be re-prioritized as part of the next release. Moreover, the application of subjective criteria to CLEC requests by SBC Illinois (e.g., the monetary and non-monetary benefits for the implementation of a request) clearly is not part of the agreed-upon 13-State CMP.

~~1208.~~1211. In sum, in AT&T's view, SBC Illinois (and SBC generally in the "Ameritech" region) has altered, unilaterally, the change management process called for by the 13-State CMP in direct violation of the CMP and in blatant defiance of the spirit of cooperation and collaboration in which the CMP was created. AT&T Exh. 1.0(P), ¶ 212. SBC Illinois does not practice the plan according to the documented practice and procedures; rather, it has wrested unwarranted control over the CLEC requests, thereby eliminating the collaborative nature of the plan and side-stepping the established dispute resolution procedure.

Testing The Most Current LSOG Interface

~~1209.~~1212. AT&T also asserts that when testing the LSOG interface for Section 271 OSS purposes, that testing should be conducted on the most current version of that interface. AT&T Exh. 1.0(P), ¶ 213. According to AT&T, common sense dictates that the Commission insist on testing the most current interface because that ensures that its approval, to the greatest extent possible, is made on a "forward-looking" basis. In its view, it makes no sense, in making a 271 determination affecting the future of competition, to rely on a soon-to-be retired interface.

~~1210.~~1213. According to AT&T witness Connolly, the present case presents a paradigmatic example of that point. AT&T Exh. 1.0(P), ¶ 214. As explained above, BearingPoint conducted its EDI testing on the LSOG 4 interface, which is currently used by almost all EDI-user CLECs in the Ameritech region due to their fear of moving to the next generation, LSOG 5. However, according to the SBC 12-Month Development view revised by SBC on November 1, 2002, SBC Illinois will retire LSOG 4 in *June 2003*. *Id.* SBC Illinois therefore asks this Commission to attest to the ability of its OSS to support competition into the indefinite future based on the test results from an interface that will be supplanted by a newer one in only five months. To ensure that the gains seen in competition are irreversible, AT&T

urges the Commission to require SBC Illinois to submit test result for the OSS interface that will be in use at the time of any SBC Illinois § 271 application.

Billing Auditability

~~1211.~~1214. Next, AT&T addresses the question of whether SBC Illinois' billing invoices are auditable. The FCC concluded in the Verizon Pennsylvania case that bills produced by ILECs for wholesale products and services must be auditable, a standard distinct from, but on equal footing with, the standards of bill correctness, completeness, and accuracy. *See*, Memorandum Opinion and Order, *In the Matter of Application Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services In Pennsylvania*, CC Docket No. 01-138, FCC 01-269 ¶ 22 (September 19, 2001). According to AT&T, SBC Illinois's bills are not auditable, and BearingPoint has made no finding that they are. AT&T Exh. 1.0(P), ¶ 215. According to AT&T, auditability can be demonstrated by being able to process the wholesale bill into a system that verifies the charges on the bills versus orders placed (new and change charges) against existing customer records (recurring charges) and against payments and adjustments from previous bills. Because BearingPoint did none of these, and there is no record by SBC Illinois that its bills are auditable, AT&T claims that the Commission has no assurance that the auditability has been resolved.

Commercial Experience

~~1212.~~1215. AT&T also introduced extensive evidence regarding its commercial experience using SBC Illinois' OSS interfaces. In the Joint Affidavit of Sarah DeYoung and Walter W Willard (AT&T Exh. 3.0(P), AT&T argues that its commercial experience corroborates the negative findings of BearingPoint and Ernst & Young of SBC Illinois' systemic OSS deficiencies. The FCC has consistently indicated that commercial experience, where it is available, is a primary indicator of the adequacy of the ILEC's OSS systems. Since its first Michigan 271 Order in 1997, the FCC has repeatedly emphasized that "nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition." *Michigan 271 Order*, ¶403. The DeYoung/Willard Affidavit details the many (and varied) problems AT&T has encountered with SBC Illinois' OSS, including problems AT&T has encountered using both LSOG 4 and LSOG 5 and the numerous and varied problems AT&T encountered in upgrading from LSOG 4 to LSOG 5. AT&T Exh. 3.0, ¶¶ 16-50. Even more disturbing, according to AT&T's witnesses, is that SBC Illinois' commercial performance, which was never good compared to other ILECs, has seriously deteriorated in recent months. *Id.*, ¶¶ 9-19. According to AT&T, the undeniable reality is that SBC Illinois' OSS do not provide CLECs in Illinois with access to OSS equivalent to what SBC itself enjoys.

~~1213.~~1216. Ms. DeYoung and Mr. Willard describe the ways in which AT&T's operations have experienced constant disruptions due to such problems as SBC Illinois' chronic, repeated failure to provide advance notice of changes to its OSS as explicitly required by the existing Change Management process. As their affidavit attests, according to AT&T, these problems make it virtually impossible for AT&T to maintain its interface with SBC. AT&T

Exh. 3.0, ¶ 14. Ms. DeYoung and Mr. Willard provide actual data (including dates and numbers) documenting the severity and frequency of the failures AT&T has experienced in attempting to use SBC Illinois's OSS. In fact, approximately 95% of the OSS issues escalated by AT&T over the past six months have been for the Ameritech region. *Id.*, 15. According to AT&T, this preponderance of problems in the "Ameritech" region arises from the poor maintenance historically of these legacy systems. In AT&T's view, since the Commission's Merger Order in ICC Docket No. 98-0555, SBC has attempted to play "catch up" to bring SBC Illinois's OSS up to par with those of other RBOCs and the rest of the SBC region. *Id.*, ¶ 16. Despite these attempts, AT&T states that the SBC Illinois' Ameritech region OSS are unreliable and unstable and are the worst OSS AT&T has encountered from any other BOC or ILEC. Indeed, many of the problems, restrictions and limitations AT&T encounters in conjunction with SBC Illinois' OSS are unique to the Ameritech region and do not exist, for example, in the remainder of the SBC region. *See, e.g., id.,* ¶ 170.

~~1214.~~1217. Ms. DeYoung and Mr. Willard detail several problems that AT&T has encountered. According to their affidavit: "Not a month passed during 2002 (and in 2003) when AT&T did not experience substantial disruption of its operations, due to the instability and inadequacy of the SBC OSS. The disruptions have included the rejections of tens of thousands of orders in error, outages in SBC Illinois' systems, SBC Illinois' failure to send thousands of line loss notifications, and SBC Illinois' failure to resolve problems in a timely manner." AT&T Exh. 3.0(P), ¶ 21.

~~1215.~~1218. Moreover, they note that the OSS problems that AT&T has recently experienced are particularly noteworthy because *none* of them are captured in SBC Illinois' self-reported monthly performance data. AT&T Exh. 3.0(P), ¶ 27. For example, AT&T states that when it submits supplemental orders after the original orders are erroneously rejected because SBC Illinois failed to provide advance notice of changes in its systems, no data regarding the original order will be reflected in the performance results. *Id.* Thus, even if the due date on the original order was not met, the reported data is skewed, because it reflects only SBC Illinois' ability to meet the due date on the *supplemental* order. According to AT&T, even when an order is accepted into SBC Illinois' systems, the reported data will not capture situations when SBC fails to provide CLECs with notices such as line loss notifications. *Id.*

~~1216.~~1219. AT&T further notes that the inclusion of these OSS problems in the reported data would show their dramatic impact on AT&T. AT&T Exh. 3.0(P), ¶ 28. AT&T estimates that, if such problems had been reflected in the data, SBC Illinois would have been required to pay AT&T at least an additional $10 million pursuant to its performance assurance plan based on late FOCs and missed due dates alone. Id. Moreover, even if only some of the disruptions in AT&T's service were included in the performance data, the additional payments would be substantial. Id. For example, as discussed in Ms. DeYoung's and Mr. Willard's affidavit, in October, November and December 2002, AT&T submitted (for customers in Illinois, Michigan and Ohio) nearly 38,000 orders that were erroneously rejected, and that therefore did not receive a FOC. Based on AT&T's marketing activities in the SBC Midwest region, AT&T estimates that approximately 35% – or 15,540 – of those orders were submitted in Illinois. Id. If each of these 15,540 orders was installed after the due date on the original order, AT&T has calculated that SBC Illinois would have been required to pay more than $4.6 million to AT&T for failing to meet Performance Measurement 28 (which measures the percentage of customer

orders completed within the customer-requested due date) with respect to these orders. Id. SBC Illinois would also have been required to make additional payments for failing to meet other performance measurements, such as PM-5 (percentage of FOCs returned within "X" hours).

OSS Billing Functionality

~~1217.~~1220. According to AT&T witness Ms. Shannie Marin, SBC Illinois fails to provide CLECs with accurate, timely and auditable billing and usage information in compliance with the requirements of the federal Telecommunications Act of 1996. As Ms. Marin explained in detail, AT&T has experienced – and continues to experience -- ongoing problems with the accuracy of SBC's wholesale billing, usage data and rate application. For example, Ms. Marin explained, SBC's ongoing inability to provide timely and accurate line loss notifications ("LLN") has caused AT&T and other CLECs to continue billing former customers, leading to double billing. AT&T Ex. 5.0, p. 2. While SBC Illinois told AT&T that a January 2003 "data bash" would determine the extent to which the LLN problems have caused errors in the wholesale bill, SBC Illinois now claims that the "data bash" did not address the LLN problems, and such problems continue to persist. The purpose of the "data bash," according to SBC, was to compare its CABS UNE-P records to its ACIS records used for provisioning to determine if its CABS UNE-P records were accurate and conformed to the information in the ACIS system. AT&T Ex. 5.0, pp. 2-3. Ms. Marin noted that SBC's "data bash" demonstrated pervasive problems with SBC's wholesale billing – billing problems she has also raised at the FCC in conjunction with SBC Michigan's pending 271 proceeding, WC Docket 03-16. *Id.*

~~1218.~~1221. Ms. Marin testified to the specific nature of some of SBC's systemic and pervasive wholesale billing problems in addition to the LLN-related billing problems. For example, Ms. Marin related, SBC has been providing AT&T with inaccurate bills in Illinois for various UNEs, products and services AT&T purchases from SBC. Ms. Marin explained that AT&T opened a billing issue with SBC on December 12, 2002 and advised SBC that it was sending AT&T usage records for repeat dial calls when, in fact, AT&T's customers were not using that feature but were instead using the call return feature. AT&T advised SBC that its EMI (Exchange Message Interface) coding for these two features was transposed – that is, that it had transposed the OBF coding for repeat dial calls and the OBF coding for the call return feature and the one was being depicted as the other. As a result, the Daily Usage File (DUF) records SBC had been sending to AT&T and which AT&T uses to bill its end user customers were incorrect, thereby causing billing errors and AT&T customer dissatisfaction. AT&T Ex. 5.0, p. 3. On January 10, 2003, SBC admitted it had been using the wrong codes for quite some time and that its billing codes failed to comply with industry standards and guidelines, and agreed to investigate a fix. On March 4, 2003, SBC advised AT&T that while it realized that its feature codes were inconsistent with industry guidelines, it has been using these incorrect codes in the 5 state Ameritech region since it first implemented the coding and it has no plans to change it. SBC further indicated that its incorrect coding is documented on the CLEC website under the DUF guide, and that it was not going to correct the problem. SBC suggested instead that AT&T open an issue in the CLEC forum. Ms. Marin testified that as SBC is well aware, these are the usage records that AT&T uses to bill its end user customers, and AT&T's reputation as a reliable local service provider is damaged when SBC refuses to follow industry guidelines and knowingly continues to deliver incorrect usage records to AT&T. AT&T Ex. 5.0, pp. 3-4.

~~1219.~~1222. Ms. Marin provided yet other examples of SBC's systemic and pervasive wholesale billing problems. SBC has overbilled AT&T for nonrecurring charges, monthly recurring charges and per message Daily Usage Feed charges. AT&T opened a billing issue with SBC in October 2002 for the overbilling of nonrecurring charges applicable to AT&T's purchase of new UNE-Platform combinations. Specifically, the SBC-billed rates for the two Commission-approved interim nonrecurring charges applicable to new UNE-Platform combinations have exceeded the allowed rates for both of those NRCs. In addition, SBC has been billing AT&T a basic port installation charge of $53.01 for new UNE-P combinations – a charge that is inapplicable to new UNE-P combinations. Moreover, SBC has also been billing other port service order charges for new UNE-Platform combinations in violation of the Commission's Orders in ICC Docket No. 98-0396. AT&T Ex. 5.0, pp. 4-5. According to Ms. Marin, after investigating, SBC agreed to credit AT&T for some of the overages it billed and has indicated to AT&T that it intends to credit AT&T for some of the overbilled amounts, but the billing inaccuracies have yet to be finally resolved. AT&T Ex. 5.0, p. 5.

~~1220.~~1223. AT&T claims that SBC has also been overbilling AT&T the basic monthly port rate, also known as the Unbundled Local Switching (ULS) element. According to Ms. Marin, SBC was required to reduce its monthly recurring port rate in Illinois from $5.01 to $2.18 as a result of an Illinois Commerce Commission Order dated July 10, 2002 in ICC Docket No. 00-0700. SBC's tariff implementing this July change ordered by the Commission became effective September 21, 2002. Ms. Marin is concerned that AT&T continues to see the $5.01 port rate on its bills for ports purchased after the $2.18 rate became effective. When AT&T raised this issue with SBC in the December 2002 time frame, SBC initially contended that AT&T was not entitled to the lower port rate without amending its interconnection agreement. AT&T Ex. 5.0, p. 5. According to Ms. Marin, another stumbling block then arose. SBC informed AT&T that it uses two USOCs in Illinois for billing AT&T for ULS charges: UJR (for residential ports) and UPC (for business ports). Originally, SBC contended that the UJR was not a valid USOC for Illinois and that it would only reduce business ports to $2.18 per month; thus, according to SBC, it would continue to bill AT&T's residential ports at the monthly rate of $5.01. Ms. Marin indicated that SBC agreed to reduce the business port rate to $2.18 and to credit AT&T for the overbilled amounts. To date, SBC has only agreed to provide credit for the UPC USOC even though it has finally acknowledged that the UJR USOC is a valid Illinois USOC. Ms Marin expressed frustration that this is yet another classic example of the incorrect rates AT&T is being billed by SBC and the delay AT&T experiences when working with SBC, even at an escalated level, to obtain credit for overbilling. AT&T Ex. 5.0, pp. 5-6.

~~1221.~~1224. Finally, Ms. Marin stated, SBC Illinois has also been overbilling AT&T for Daily Usage Feeds. The Commission-approved DUF rate in Illinois is $.000459 (as of July 10, 2002), yet SBC is charging the old rate of $.000918 per message. This overbilling has been occurring since at least September 2002. As recently as March 7, 2003, the only response SBC has given AT&T was that the case was being reviewed by product management and SBC hoped to be able to update AT&T by March 12. AT&T Ex. 5.0, p. 6.

Line Loss Notices:

~~1222.~~1225. AT&T submitted specific evidence regarding SBC Illinois' failure to provide timely and accurate Line Loss Notices ("LLNs"). Further, AT&T claims that SBC

Illinois does not provide nondiscriminatory access to billing functions, because it has not consistently provided CLECs with timely, complete, and reliable Line Loss Notifiers.

~~1223.~~1226. According to AT&T, SBC Illinois' provisioning of timely and complete LLNs to CLECs is a matter of critical importance to CLECs, because failure to provide such notification directly affects their ability to correctly bill end-user customers. AT&T Exh. 3.0(P), ¶ 95. A CLEC must rely upon SBC Illinois' line loss notifiers to learn that a customer has switched carriers. Without that notice, a CLEC could erroneously double-bill the customer – an error that can have serious effects on the reputations of competitive providers. *Id.*

~~1224.~~1227. AT&T states, however, that SBC Illinois has fallen far short of meeting its obligations to provide CLECs with timely and complete LLNs (which are also commonly referred to as "836" records). AT&T Exh. 3.0(P), ¶ 96. Time after time during the last year, SBC Illinois has failed to send thousands of LLNs to AT&T at all, or has sent LLNs that are so flawed that they cannot be processed. *Id.* According to AT&T's witnesses, rarely a month went by in the last year when AT&T did not encounter yet another LLN issue, or another outage in SBC Illinois' LLN systems. *Id* AT&T further states that although SBC has attempted to correct the defects in its LLN systems since mid-2001, AT&T encountered serious problems with SBC Illinois' Line Loss performance through 2002. AT&T Exh. 3.0(P), ¶ 97. Simply stated, SBC Illinois' "corrections" have not worked, and there is little reason to expect that SBC will render satisfactory performance on a long-term basis. *Id.*

~~1225.~~1228. According to AT&T, SBC Illinois' performance with respect to LLNs is a textbook example of the numerous shortcomings in its OSS. That performance shows that its OSS are unstable; that SBC is slow or inadequate in correcting flaws in its OSS; that SBC fails to provide advance notice of changes in its OSS to CLECs, with resulting disruption of CLEC operations; and that the OSS are riddled with errors. AT&T Exh. 3.0(P), ¶ 98.[119]

~~1226.~~1229. AT&T states that it has encountered line loss problems almost from the time it entered the residential market in Illinois in June 2002.[120] Between August 15, 2002, and September 11, 2002, a major outage occurred in SBC Illinois' Line Loss Notifier systems. For several days, SBC failed to send AT&T *more than 6,900* LLNs for Illinois, Michigan and Ohio. SBC later explained to AT&T that there were three "root" causes for this problem. *See* AT&T Exh. 3.0(P), ¶¶ 99-102.

~~1227.~~1230. After SBC identified the 6,900 LLNs had not been sent to AT&T, SBC "reflowed" them to AT&T from September 16 to September 17, 2002. Even after September 17,

[119] AT&T sets forth in a table (Exh. 3.0(P), Attachment 8) a chronology of the LLN problems that it has experienced during 2002.

[120] According to AT&T, SBC Illinois' LLN problems actually *predate* AT&T's entry into Illinois's residential market, and adversely affected operations in Michigan, where AT&T began offering residential and small business consumers competitive local telephone service in February, 2002. For example, early in March 2002, without warning, SBC began sending AT&T Line Loss Notifiers with the relevant telephone number omitted. AT&T received a total of 1,257 LLNs with this deficiency. AT&T Exh. 3.0(P), ¶ 99 & n. 28. Obviously, a LLN record that omits the telephone number of the customer who is leaving AT&T's service is of little use to AT&T. Despite promises to expeditiously fix the problem, AT&T did not start receiving correct LLNs until April 8, 2002. *Id.*

however, AT&T continued to experience intermittent Line Loss failures by SBC. Equally disturbing to AT&T, AT&T received a series of erroneous rejection and/or completion notices that affected the ability of AT&T to accurately track the status of its customers. For example, AT&T continued to receive LLNs for customer lines that had not left AT&T service, received rejection notices when it should have received completion notices, learned that SBC had incorrectly transferred end-users to AT&T due to errors by SBC Illinois' representatives, and found that SBC had failed to update information on customer service records to show that AT&T was now the customer's service provider. AT&T Exh. 3.0(P), ¶ 103.

~~1228.~~1231. According to AT&T, in November 2002, more LLN problems occurred. On November 12, 2002, SBC issued an Accessible Letter (CLECAMSO2-122) indicating that it had experienced yet another major line loss outage. SBC disclosed that as a result of "software release implemented November 9, 2002, errors have been noted on EDI 836 LLNs sent to the few customers using the EDI version 5.02." Although this announcement would have been troublesome to any CLEC, it was particularly disturbing to AT&T, which was preparing to migrate in December to EDI version 5.02 (the most advanced level of SBC Illinois' OSS systems at that time). AT&T Exh. 3.0(P), ¶ 104.

~~1229.~~1232. SBC Illinois' Accessible Letter, however, also stated that a "second issue has been detected affecting LLNs sent to customers using version 4.02 of EDI" – which AT&T (like most CLECs in Illinois) was then using in the Ameritech region. This "issue," according to SBC, was the omission of conversion dates from the LLN, due to an "EDI mapping error." More than 1,000 LLNs sent to AT&T lacked conversion dates. Without those dates, AT&T could not ensure that it would avoid double-billing these end-users. SBC acknowledges in its Application that the problem lasted for three days. AT&T Exh. 3.0(P), ¶ 105.

~~1230.~~1233. In December 2002, AT&T states that it experienced another major line loss problem, caused by SBC, this time in connection with AT&T's migration to LSOG 5.02 earlier the same month. Between December 9 (when AT&T migrated to LSOG 5.02) and December 16, 2002, SBC continued to send LLNs to AT&T in LSOG 4.02 format. As a result, AT&T's systems were unable to "read" these files. This problem impacted 2,966 AT&T end-user accounts. AT&T Exh. 3.0(P), ¶ 106. When AT&T notified SBC of the problem on December 13, 2002 SBC determined that the problem had occurred because SBC had failed to update all of its tables with AT&T's LSOG 5.02 trading partner ID. This December problem represented at least the second time that SBC Ameritech had mistakenly changed table information that affected AT&T's ability to receive and process Line Loss Notifier records. *Id.*, ¶ 107.

~~1231.~~1234. Further, AT&T states that SBC Illinois' table updating error in December caused yet another problem for AT&T. Typically, when AT&T has either failed to receive LLNs or has received LLNs that are invalidly formatted, the process for correcting the LLNs involves "reflowing" the records. AT&T Exh. 3.0(P), ¶ 108. In other words, under the "reflowing" process SBC re-sends the records (correctly formatted), and AT&T's systems then accept and process the information in the LLNs. However, AT&T determined that the "normal" reflowing process would not resolve the problem experienced in December. Because AT&T's systems did receive LLNs (albeit in the incorrect LSOG 4.02 EDI format), the receipt of those records (associated with a telephone number) was registered by AT&T's systems. Thus,

AT&T's systems rejected (or did not read) the reflowed record and did not properly update AT&T's system records. *Id.*

~~1232.~~1235. To overcome this problem, AT&T created a new process to capture the data that was sent by SBC in an invalid format. AT&T Exh. 3.0(P), ¶ 109. Under this process, AT&T was required to manually prepare the "reflowed" LLNs in a format that would "force" the information into AT&T's system. According to AT&T, this manual process was costly and time-consuming. *Id.*

~~1233.~~1236. According to AT&T's testimony, the previously described line loss problems in December 2002 were experienced by AT&T Consumer Services, which receives LLNs through the EDI interface. However, AT&T Business Services, which uses the web-LEX interface to receive LLNs, also experienced LLN problems in December. AT&T Exh. 3.0(P), ¶ 110. For example, four of the line loss notices that ABS received on December 26 lacked either a telephone number or a circuit ID number – effectively rendering them useless. Furthermore, the conversion dates listed on all four LLNs was April 23, 2002 – more than *eight months earlier*. Another four LLNs (received on December 11, 2002) had conversion dates of August 14, 2002, about *four months earlier* than the LLN, and another seven LLNs (received on December 16) were each a month late, with disconnect dates of November 19, 2002. *Id.*[121]

~~1234.~~1237. In AT&T's view, SBC Illinois cannot reasonably claim that it is proactive in addressing line loss issues. Certainly the numerous LLN problems that AT&T experienced during 2002 would not have occurred if SBC had maintained adequate LLN systems in the first place. Furthermore, although SBC may have fixed certain isolated problems, the recurrence of line loss notifier problems throughout 2002 shows that SBC has not developed an OSS that can ensure that SBC will reliably provide complete and timely LLNs to CLECs. AT&T argues that SBC Illinois cannot plausibly contend that its "enhancements" have been effective, when its OSS adversely affected 10,000 of AT&T's line loss records during the last five months of 2002 alone. Indeed, these lost and/or delayed line loss notices do not appear to be accurately captured in the relevant performance measure (PM MI 13), which was intended to detect these types of problems.

~~1235.~~1238. According to AT&T, the fact that the recurring SBC errors and system defects described above have repeatedly affected tens of thousands of AT&T's orders throughout 2002, and into 2003, demonstrates that SBC is not yet providing nondiscriminatory access to its OSS. These repeated errors, affecting a substantial percentage of AT&T's order volumes and customer base, preclude a finding that SBC has met its OSS obligations.

~~1236.~~1239. AT&T argues that these system errors have adversely affected AT&T's ability to compete with SBC. The percentage of prospective AT&T customers who cancelled

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[121] According to AT&T, even more recent experience provides further confirmation that SBC Illinois' line loss systems are unstable and unreliable. Inexplicably, on January 31, 2003, SBC *faxed* a single LLN involving a single telephone number to AT&T – even though SBC is supposed to send all LLNs *electronically*. AT&T Exh. 3.0(P), ¶ 99 & n. 29. LLNs received by fax are far more burdensome on a CLEC that an LLN sent electronically, because faxed LLNs are prone to being lost or delayed, and require the CLEC to perform extensive manual work to process the lost customer out of the CLEC's systems. *Id.*

their service after ordering it – but before receiving it – increased between September and November 2002 in the SBC Midwest region. AT&T Exh. 3.0(P), ¶¶ 113.

~~1237.~~1240. Although it is difficult to trace every particular cancellation or disconnect to a single root cause, AT&T claims that there is no question that interface outages, erroneous rejects and other delays in provisioning orders, failure to send accurate line loss notices, and other such errors by SBC Illinois' OSS all severely compromise AT&T's ability to respond promptly with answers to customer inquiries, provision their service accurately, and support that service reliably. AT&T Exh. 3.0(P), ¶ 114. According to AT&T, Ms. DeYoung's and Mr. Willard's testimony also demonstrates that the poor quality of SBC Illinois' OSS has a significant and direct adverse impact on AT&T's ability to provide prompt and quality service to its local customers. *See, e.g., id*. Specifically, the deficiencies in SBC Illinois' OSS have impaired AT&T's ability to attract and retain customers in Illinois. As the performance of SBC Illinois' OSS has deteriorated in recent months, AT&T's customer disconnect rate has increased, as has AT&T's cancellation rate in Illinois. AT&T Exh. 3.0(P), ¶¶ 19-20.

~~1238.~~1241. AT&T claims that the problems it is experiencing in Illinois are primarily due to SBC Illinois' failure to comply with its own change management process. AT&T Exh. 3.0(P), ¶ 24. Specifically, all efforts SBC Illinois makes to comply with the change management process are limited to placing new interfaces into production. AT&T contends SBC has no effective change management process in place once SBC has deployed interfaces and makes a subsequent change to the operation of those interfaces.

~~1239.~~1242. Finally, Ms DeYoung and Mr. Willard detail in their affidavit AT&T's heightened concerns about receiving adequate OSS support from SBC due to the fact that, as a result of a December 2002 reorganization, AT&T has lost its dedicated SBC account team. AT&T Exh. 3.0, ¶ 29. AT&T and other CLECs will now be required to share fewer SBC resources, including those supporting SBC Illinois' OSS. *Id.*

Further Rebuttal Arguments.

~~1240.~~1243. In its rebuttal testimony, AT&T responds to the SBC Illinois claims that CLECs (including AT&T) have not raised serious or material concerns regarding the sufficiency of SBC Illinois' OSS. AT&T notes that in its direct testimony, it pointed out a series of outstanding testing issues, which in their totality, make it highly improbable that SBC Illinois can satisfy the applicable FCC checklist standards for OSS. *See* AT&T "Exh. 1.0(P), ¶¶ 194-220. More importantly, AT&T rejects SBC Illinois witness Cottrell's suggestion that these issues would not impact his view that SBC Illinois' OSS are essentially "sound". AT&T asserts that this reflects exactly the misguided approach it ~~I~~ cautioned against in ~~my~~ its opening affidavit. AT&T responds that the Commission must review the test results in a comprehensive manner, and in particular, must consider *both* PMR and operational testing results (in addition to the actual commercial experience described by AT&T in the affidavits of Ms. DeYoung and Mr. Willard) before drawing any conclusions. AT&T Exh. 1.1, ¶ 94.

~~1241.~~1244. Similarly, AT&T rejects the SBC Illinois' suggestion that testing issues should be resolved exclusively in "business to business" context. SBC Illinois witness claims: "I have shown that the examples raised by the CLECs are almost exclusively problems that are

quickly corrected and resolved on a business-to-business basis between the parties."[122] AT&T responds that it cannot be the case, however, that SBC Illinois believes that it is appropriate to resolve third-party test issues through business-to-business negotiations. The MTP does not allow for this type of approach. AT&T recommends that to avoid any suggestion that this method is acceptable, the Commission must reaffirm the principle that test exceptions and observations must either be subject to successful retest or remain open (unless the Staff specifically authorizes closure).

~~1242.~~1245. Ms. DeYoung and Mr. Willard note in their rebuttal affidavit that although the ultimate conclusions Mr. Cottrell reaches on OSS issues is very different from the views expressed in our Direct Affidavit, his affidavit does acknowledge, time and again, that SBC Illinois has repeatedly made mistakes, taken actions that had unanticipated consequences for CLECs, and given out erroneous information. AT&T Exh. 3.1, ¶ 5. According to AT&T, the major concession by Mr. Cottrell, however, appears at paragraph 125 of his Phase II Rebuttal Affidavit, where he states:

> Both the LSOG 4 and 5 releases were not the usual order of business. As AT&T notes, CLECs in the SBC Midwest region were on various dot releases of LSOG 1 when LSOG 4 was implemented. LSOG 4 introduced CLECs to new systems and new functionality. The system changes required by LSOG 5 and the U&E POR affected nearly all aspects of system design and development and imposed the unique requirement of uniform systems and requirements throughout the SBC regions. Both of these releases were notable for their size and scope…."[123]

~~1243.~~1246. In its rebuttal, AT&T notes its agreement with this statement: "We agree (and have testified previously) that the implementation of LSOG 4 and then LSOG 5 by Ameritech have in fact entailed massive system changes. Ameritech's OSS had languished throughout the period of the SBC/Ameritech merger, and Ameritech began the upgrade process with its systems in much the same state they were in back in 1997, when the FCC rejected Ameritech Michigan's first §271 petition. Ameritech following the merger was in the position of attempting to play catch-up with its OSS, bringing its Ameritech systems in line with the rest of SBC and the industry generally, and in the process it was "leapfrogging" two full generations of LSOG releases." AT&T Exh. 3.1, ¶ 6.

~~1244.~~1247. Moreover, from a systems perspective, that was a daunting undertaking, and it is precisely the scope and magnitude of these systems changes that no doubt accounts for the many problems that have plagued Ameritech's OSS over the past two-plus years. SBC

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[122] SBC Illinois Exh. 1.2, ¶ 144.

[123] It is worth noting that previously in this proceeding, Mr. Cottrell has strongly resisting the contention of Mr. Willard that SBC's pre LSOG 4 systems in fact remained at the equivalent of LSOG 1.x. *See, e.g.*, Ameritech Illinois Ex. 4.2 (Cottrell Phase I Surrebuttal, June 5, 2002), p. 8. The point is not inconsequential, because the transition from a "dot" release of LSOG 1 to LSOG 4 implies systems changes spanning three full LSOG releases.

Ameritech's legacy back-end systems were both different from the rest of SBC and they were in a relatively unadvanced state. Taking them to LSOG 4 and then LSOG 5 over the course of two years and attempting to bring them into uniformity with the rest of SBC necessarily and undoubtedly has posed a major challenge. SBC could hardly expect to go that far, that fast without running into massive problems . As Ms. DeYoung and Mr. Willard testified in their previous affidavits, not only did SBC encounter such problems, those problems continue today.

~~1245.~~1248. **Line Loss Notifications**. AT&T also responded to SBC Illinois on the issue of Line Loss Notifications. In their Direct Affidavit, Ms. DeYoung and Mr. Willard described repeated lapses by SBC Illinois in providing Line Loss Notifiers – lapses that affected some 10,000 LLN records in the last five months of 2002 alone. AT&T noted that the Commission in its Phase I Interim Order has underscored the importance of this issue for Phase II:

~~1246.~~1249. 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 . . . will be given substantial weight when the Commission makes its final analysis of this matter in Phase II.

~~1247.~~1250. Phase I Interim Order, at ¶ 694. Plainly, Line Loss Notifications have been and remain a major concern for CLECs seeking to enter SBC's local markets in the Midwest, and for the Commission.

~~1248.~~1251. According to AT&T, SBC Illinois attempts to minimize the LLN problem, or reassure the Commission that it is under control. AT&T Exh. 3.1, ¶ 9 First, AT&T notes that Mr. Cottrell points to the BearingPoint test results for LLNs. Referring to SBC's "process enhancements" for LLNs, he states: "In my initial Phase 2 Affidavit, I was pleased to report that the success of these efforts has been confirmed by BearingPoint, which concluded its testing of SBC Midwest's LLN process in October 2002, and found both the timeliness and accuracy test criteria to be satisfied." SBC Illinois Exh. 1.2, ¶ 31. As Mr. Cottrell indicates, however, BearingPoint examined a discrete time period, and as AT&T's Direct Affidavits showed, notwithstanding the BearingPoint report, repeated and recurring problems with LLNs in the period since October 2002. Indeed, as AT&T points out, hardly a month has passed without significant Line Loss Notifier incidents. AT&T Exh. 3.1, ¶ 9.

~~1249.~~1252. AT&T notes that Mr. Cottrell also proceeds to attempt to explain away the repeated LLN system failures by portraying them as affecting only a small number of orders, relative to the total order volumes processed by SBC Illinois, as well as being in the now-distant past. AT&T responds that, as for the number of affected orders, there can be no denying that the magnitude of this problem has been serious, and CLEC customer-affecting, as the Commission's Interim Phase I Order in these proceedings implicitly recognizes. AT&T Exh. 3.1, ¶ 10. As Ms. DeYoung and Mr. Willard point out, "the potential for double-billing of customers magnifies the concerns of CLECs over even a small number of missing or inaccurate LLNs, and as we and other CLECs have demonstrated, the numbers in question most definitely are not small." *Id.*

~~1250.~~1253. As to Mr. Cottrell's assurances that LLN outages are a thing of the past, AT&T states in its rebuttal testimony that "just last week SBC issued an Accessible Letter stating that, in certain orders involving partial migrations, "notifications were sent on lines that CLECs did not lose." AT&T Exh. 3.1, ¶ 11. SBC explained in the Accessible Letter that, when the "winning" CLEC used LSOG 5 and assumed only the main billing telephone number on a multi-line account, LLNs were sent not only on the BTN but also "on the new main billing number, when it was not an actual loss."[124] Not only that, SBC has also recently acknowledged to AT&T that it between October 10, 2002 and February 10, 2003 it erroneously provided some 1700 LLNs in the Ameritech region by fax, rather than by electronic interface. SBC agreed to provide LLNs to AT&T by GUI interface (rather than by fax) last October at AT&T's request, because processing LLNs received by fax requires extensive manual work, and SBC assured AT&T at the time that its systems were prepared to do so. As it turns out, according to AT&T, substantial numbers of LLNs continued to be faxed to AT&T on a daily basis for the next four months. AT&T Exh. 3.1, ¶ 11.

~~1251.~~1254. Thus, according to AT&T, SBC's subsequent explanation for this error is patently illogical,[125] but even if SBC's explanation is correct, its transmission of LLNs to AT&T by fax, along with the erroneous LLNs on partial migrations, represent only the latest of its continuing failures to provide LLNs to CLECs in a satisfactory manner. AT&T contends that these recent failures show that SBC has not properly configured its OSS to provide LLNs as requested and required by the CLECs.

Post to Bill (BCN) Notifications.

~~1252.~~1255. In its Direct Affidavits, AT&T explained SBC Illinois' failure, in January 2003, to send some 70,000 'post-to-bill' (PTB) or billing completion notices ("BCNs") to AT&T in response to orders that AT&T sent under the LSOG 5 version of EDI. AT&T Exh. 3.0, ¶ 76. As it explained, a BCN advises a CLEC that the information in the service order has completed its transmission through SBC's legacy systems, and that the service order has been posted to SBC's billing systems, thereby switching the customer's account to the CLEC placing the order. *Id.* The BCN thus notifies the CLEC when it is possible to supplement the customer's order, for example, to change features – a not-uncommon desire on the part of new customers. *Id.*

~~1253.~~1256. According to AT&T, prior to the introduction of LSOG 5, CLECs were forced to rely on a service order completion (SOC) notice, which signifies that the order has been processed through SBC's service order processes but not through its billing systems. AT&T

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[124] Accessible Letter No. CLECAMSO3-019, dated March 6, 2003. Although SBC claimed in its letter this problem appears to have affected "less than 3,000 transactions over a period of several months", it acknowledged that it was concluding an "additional analysis" to determine the exact number of LLNs sent in error. *Id.*

[125] SBC has "explained" that the systems it had used to return LLNs to the Test CLEC in BearingPoint's third-party test, which employed "Issue 7" (LSOG 1), did so by fax, and that it had not properly reprogrammed the systems to return LLNs to actual CLECs by electronic interfaces. Issue 7 (LSOG 1) was retired by SBC in September 2002, however, a month before the erroneously-faxed notices commenced.

Exh. 3.1, ¶ 13. AT&T was forced to wait 3 – 5 business days after receipt of the SOC before sending any changes to the order, to allow for posting of the order to SBC's billing systems.[126] *Id.* CLECs requested this change as part of the Plan of Record collaboratives, and SBC agreed. *Id.*

~~1254.~~1257. In SBC Illinois' rebuttal affidavits, AT&T claims that Mr. Cottrell once again attempts to minimize the problem by saying that only AT&T has complained. According to AT&T, Mr. Cottrell observes that AT&T only moved to LSOG 5.0 in December, 2002, and that AT&T got along perfectly well relying on service order completion notices prior to that time. AT&T responds that that only AT&T has raised this problem is not surprising, given that few if any other CLECs have yet moved to LSOG 5. AT&T Exh. 3.1, ¶ 14. AT&T in fact advanced its move to LSOG 5 in part at SBC's urging: SBC contended that LSOG 5 would resolve many of the problems AT&T was experiencing under LSOG 4. *Id.* Be that as it may, according to AT&T, the BCN was an important functionality that the CLECs sought and to which SBC agreed in the POR for LSOG 5, and SBC has failed to deliver with the requisite quality and consistency. *Id.* Indeed, as Ms. Deyoung and Mr. Willard testify: "SBC's handling of the BCN issue evidences a disregard for the needs of CLECs; it presumes to know CLECs' needs and the manner in which they conduct their operations better than CLECs do." *Id.*

~~1255.~~1258. AT&T also respond in rebuttal to SBC Illinois' has suggestion that in lieu of relying on BCNs, AT&T should institute a query process in AT&T's systems, i.e., that it do a post-migration query of the CSR to determine whether posting has been completed. AT&T Exh. 3.1, ¶ 15. But according to Ms. Deyoung and Mr. Willard, the CSR query process proposed by SBC is not a suitable substitute for BCNs, however. *Id.* First of all, the CSR query is a GUI-based functionality in SBC's *pre-ordering* interfaces. It is not a practical *order* tracking tool for CLECs like AT&T, which submit large order volumes. To use this function the CLEC would be required to expend significant manual efforts to match information in the GUI to the status of orders in AT&T's own order management system. If (as occurred in January 2003) AT&T failed to receive tens of thousands of BCNs, it would be extremely expensive and time-consuming for AT&T to use CSR queries to determine the status of each such order. A CLEC using LSOG 5 should not be required to expend additional time and resources to obtain the same information that SBC agreed to provide through BCNs in LSOG 5. *Id.*

~~1256.~~1259. SBC Illinois' proposed process, moreover, would only further heighten the discrimination inherent in the OSS access it affords CLECs. To be competitive with SBC Illinois, a CLEC needs the same ability as SBC to submit change orders, and to have those orders provisioned with the same timeliness, accuracy, and reliability that SBC experiences in its retail operations. Unlike CLECs, SBC's retail operations do not need to receive BCNs to determine whether an order has posted to the billing systems and completed its journey through the legacy

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[126] According to AT&T, if it were to send a supplemental order before the LSR was posted to SBC Illinois' billing systems, AT&T would likely receive a rejection notice indicating that the order was not for an AT&T customer. AT&T Exh. 3.1, ¶ 13 & n. 5. Even with a "holding period," problems could nevertheless arise when the order fell out to manual processing and was further delayed. In fact, AT&T has frequently encountered delays by SBC in posting completed orders to the billing systems. *Id.* It is thus only with LSOG 5 and the BCN that the CLEC gained a reliable indicator that the initial order had been processed through SBC's systems and that it could modify the customer's order.

systems. Instead, SBC's retail representatives have direct, real-time access to such information. When a retail customer requests the addition or deletion of a feature, the SBC retail representative can determine, on the spot, whether the preexisting order has posted and has passed through the legacy systems and can implement the customer-desired change on the date requested by the customer. The BCN is thus itself a "second-best" solution.

~~1257.~~1260. Finally, according to AT&T, the "query" process SBC has suggested is but a further impediment to CLEC access to OSS. AT&T Exh., ¶ 17. It would, moreover, be a non-uniform process applicable to the Ameritech region alone. Although AT&T has only recently upgraded to LSOG 5 in the Pacific and Southwest regions, Ms. DeYoung and Mr. Willard testified, "we are not aware of any problems other SBC regions have had in connection with flowing BCNs in accordance with LSOG 5 and the POR commitment." *Id.* According to them, CLECs like AT&T that have operations across the SBC service territory should not be forced to institute and follow different processes for the Ameritech region. That was in fact the rationale behind the SBC merger commitment to develop "uniform and enhanced" OSS across SBC's post-merger thirteen state footprint.

~~1258.~~1261. AT&T states that SBC has acknowledged that its failure to send BCNs was a systems problem -- that the root cause of the problem was a flaw in its OSS. AT&T Exh. 3.1, ¶ 18. In an Accessible Letter dated January 29, 2003, SBC admitted that the "issue that prevented the [billing completion] notifications from going out was related to a billing file not being generated properly." SBC stated that the problem had been "corrected as of January 24, 2003."[127] Because the "correction" was installed so recently (SBC finally began to flow the missing BCNs on February 3), it is premature to conclude that it will eliminate the underlying OSS problem.

~~1259.~~1262. Moreover, states AT&T, the "way" in which SBC went about attempting to resolve the problem evidences ongoing deficiencies in the OSS. SBC made its "fix" without providing any advance notice to the CLECs of the change that it was making in its OSS. AT&T Exh. 3.1, ¶ 19. In fact, according to AT&T, SBC waited for nearly two months before it advised the CLECs that a problem even existed. *Id.* In its Accessible Letter, SBC admitted that it "discovered on December 5, 2002 that it seemed not all [BCNs] were being distributed." SBC stated that after this "discovery," it "continued to investigate the issue and did determine recently that a correction was required to ensure the process operated properly." *Id.* In other words, SBC grappled with a problem for nearly two months before deciding that CLECs should be told about it – even though SBC was undoubtedly aware of the adverse impact that CLECs would experience from missing or late BCNs. Finally, although SBC announced in the Accessible Letter that it was willing to provide the missing BCNs to CLECs, it became clear that SBC had not even developed a process for providing the BCNs at the time it issued the Letter. See AT&T Exh. 3.0(P), ¶ 76-85.[128]

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[127] Accessible Letter No. CLECAMSO3-008, dated January 29, 2003.

[128] According to AT&T, SBC's "offer" to transmit the BCNs reflects an ongoing failure to provide CLECs with adequate assistance. AT&T Exh. 3.1, ¶ 19 & n. 7. Rather than contacting CLECs to arrange an

Change Management.

~~1260.~~1263. Finally, AT&T responded in its rebuttal testimony to SBC Illinois' responses regarding its inability to follow its own Change Management Process. In its Direct Affidavits, AT&T discussed numerous order-affecting shortcomings of SBC's OSS traceable to its failure to honor its Change Management Process. As AT&T described, SBC Illinois routinely makes unannounced changes to the OSS without notifying CLECs in advance. When this occurs AT&T, because it is unaware of the change, continues to submit orders using the same methods and procedures that it has previously (and successfully) used to submit orders to SBC. Consequently, AT&T has experienced and continues to experience order rejections and other disruptions of its operations, thereby impairing AT&T's ability to compete in the local service marketplace.

~~1261.~~1264. AT&T contends that the examples are many, and the number of affected orders is striking. AT&T Exh. 3.1, ¶ 21. For example, according to AT&T, SBC erroneously rejected 15,000 AT&T orders in November – December 2002 because SBC made an unannounced change in its rules for populating certain fields relating to PIC and LPIC on the LSR without providing advance notice of the change to CLECs. *Id.* Some 10,000 of these orders were also adversely affected by changes that SBC had made (apparently inadvertently) to AT&T's trading partner ID. SBC also erroneously rejected approximately 15,000 of AT&T's orders because SBC had changed its EDI coding without notifying AT&T. In December 2002, approximately 2,800 of AT&T's orders were rejected in error because SBC mistakenly began applying LSOG 5 edits to AT&T's LSOG 4 orders. *Id.* And in January 2003, AT&T experienced yet more order rejections, apparently due to a human error that occurred during an unannounced change by SBC. *Id.*

~~1262.~~1265. According to AT&T, SBC Illinois' implementation of systems changes without advance notice to CLECs flatly violates the CMP, which "manages changes to OSS interfaces that affect CLECs' production or test environments." SBC 13-State Uniform Change Management Process, § 3.0. AT&T Exh. 3.1, ¶ 22. These changes include, among other things: (1) Operations Changes, which the CMP defines as "changes to existing functionality that impact the CLEC interface(s) upon SBC's release date for new interface software"; (2) Technology Changes, which the CMP defines as "changes that require CLECs to meet new technical requirements upon SBC's release date"; and (3) changes to add additional functionality. *Id.* [129]

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acceptable time for transmission, SBC in its Accessible Letter placed the onus on CLECs to "make arrangements" through their account manager to receive their missing BCNs. *Id.*

[129] In Ms. DeYoung's and Mr. Willard's Direct Affidavit, they described the process under CMP whereby SBC may accelerate the notice period to accommodate a need to implement a change on its production systems (or a release change, for that matter) on an expedited basis. *See* AT&T Exh. 3.1, ¶ 22, and n. 8. Specifically, the CMP provides that if "SBC . . . wishes to propose that a specified change . . . be handled on an exception basis, SBC will issue a Release (or Retirement) Requirements Exception Accessible Letter." *Id.* § 6.3.2. The CMP then states that "SBC may proceed to implement the change . . . on an exception basis . . . if there are not outstanding issues, or CLEC objections at the end of the CLEC response cycle." *Id.* § 6.3.2.3.

~~1263.~~1266. In response, SBC Illinois' witness Cottrell acknowledged that many of the OSS problems discussed by AT&T do in fact relate to change management issues. He rejected, however, AT&T's basic contention that interface-affecting changes must be handled by a CMP-mandated exception notification process, however. See SBC Illinois Exh., 1.2 ¶ 72. Specifically, he states:

~~1264.~~1267. Nothing in the CMP precludes SBC Midwest from making changes to its interfaces that do not represent changes to the EDI specifications and business rules to which the CLECs have programmed their interfaces. The exceptions process specifically applies to release requirements, regulatory mandates, and emergency situations and applies when SBC seeks to make a change to those requirements. The exceptions process does not apply to programming undertaken by SBC Midwest to make its systems run more efficiently, or to address defects on its side of the interface, so long as these is no impact to the release requirements and business rules. *Id*.

~~1265.~~1268. In AT&T's view, Mr. Cottrell's position cannot be justified by the existing Change Management Process. AT&T notes Mr. Cottrell cites *no provision* of the CMP that supports this position. Moreover, as explained by Ms. DeYoung and Mr. Willard, the above-quoted provisions regarding the Exception Process do not restrict its use to "release requirements, regulatory mandates, and emergency situations." AT&T Exh. 3.1, ¶ 23. They simply state that the process applies when SBC wishes to make a "specified change" without following the requirements of the CMP. *Id.* Nor do the provisions of the CMP regarding its scope anywhere suggest that it is limited to changes to EDI specifications and business rules, and not to the other situations that, according to SBC, fall outside of the CMP's scope. *Id.*

~~1266.~~1269. Mr. Cottrell also describes in his rebuttal affidavit the various incidents, embellishing upon and in some instances taking issue with AT&T's discussion for getting the facts wrong as to the "root cause" of various problems. In response, AT&T states that it can only say that was reported what SBC has told AT&T. As Ms. DeYoung and Mr. Willard testify: "SBC's description of the root causes of many of the problems we described is significantly different from that which it previously provided to AT&T (e.g., that L100/101 had different requirements in LSOG 4 and 5, or that there were actually two mishaps in the TPID errors for L100/101), and in some instances this is the first time SBC has disclosed relevant facts. Standing alone, SBC's inconsistent statements cast doubt on the credibility of the explanations it now provides in its latest affidavit."[130] AT&T Exh. 3.1, ¶ 25. Even if that SBC's latest description of the root causes of each specific problem correct, its explanations simply highlight the instability and inadequacy of its OSS. Mr. Cottrell does acknowledge "certain missteps on its part with regard to the incidents of which AT&T complains. . . ." Cottrell Reb. Aff. ¶ 74.

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[130] For example, although did not address in its rebuttal affidavits all of the incidents discussed by Mr. Cottrell, Ms. DeYoung and Mr. Willard did issue with his account of the "G408" problem. *See* SBC Illinois Exh. 1.2, at ¶¶ 81-83. Mr. Cottrell claimed the confusion was caused by SBC Illinois directing AT&T to the wrong documentation (LSOG 5), which, as Ms. DeYoung and Mr. Willard states, did occur. However, once that problem was straightened out, AT&T states that there still remained a discrepancy between two documents where USOC/FID information resides, as we indicated previously. AT&T Exh. 3.1, ¶ 25 & n. 9.

The larger issue is the proper interpretation and implementation of change management, as noted above.

~~1267.~~1270. On that point, SBC Illinois has now acknowledged that changes do need to be made on its part. In its Compliance Plan, SBC first proposed to strengthen the notification process by issuing "courtesy accessible letters" in certain circumstances. In subsequent collaboratives in Michigan, however, SBC committed to revise that plan to provide for CMP "Exception" notification in certain instances. Just this past Monday, March 10, 2003, SBC circulated a revised Compliance Plan in Michigan. At this point AT&T states that it is uncertain whether or when SBC Illinois will make a similar proposal in Illinois, and in any event it has not submitted a revised proposal on this record. But as AT&T further notes, from the very brief review that has been possible of the latest Michigan plan, "we can only say that the document raises myriad questions, and it is not at all clear that Ameritech has modified its stance on the proper scope of change management notification requirements at all." AT&T Exh. 3.1, ¶ 26.

~~1268.~~1271. Finally, AT&T raises what it considers to be the larger issue: how will SBC Illinois remedy non-compliance with its CMP in the first place. SBC Illinois in this and other areas is attempting to employ a compliance plan mechanism as the answer to any demonstrated failure to meet §271 obligations. But, according to Ms. DeYoung and Mr. Willard: "[A]ny such plan -- even if the text appears adequate -- is only a paper promise, and promises will not suffice. It is only demonstrated, actual compliance that can satisfy the RBOC's checklist obligation. For this or any other compliance proposal, SBC Illinois should be required to implement its plans and demonstrate that they are adequate and effective in operation before it can be said to meet the requirements of §271."

~~e~~f. McLeodUSA and TDS Metrocom's Position

OSS Testing and Results

~~1269.~~1272. McLeodUSA and TDS Metrocom state that the BearingPoint testing of SBC Illinois' OSS is not complete, and that the Commission should not provide a positive Section 271 recommendation to the FCC for SBC Illinois until SBC Illinois has successfully completed the independent third-party testing of its OSS in accordance with the Illinois Master Test Plan. They emphasize that the ability of CLECs to provide local telecommunications services to Illinois retail customers and to compete effectively with SBC Illinois is vitally dependent on the provision and maintenance by SBC of an efficiently functioning OSS that allows CLECs to efficiently order and use UNEs and resale services in competition with SBC Illinois. They state that access to SBC's OSS must be available and operational on a daily basis as well as being accurate and timely. (MTSI-TDS Br., pp. 36-37)

~~1270.~~1273. McLeodUSA and TDS Metrocom state that Staff had also concluded that based on the BearingPoint OSS test results to date, SBC Illinois' OSS has not been demonstrated to be performing at a level that supports a positive Section 271 recommendation to the FCC.

Staff concluded that based on the BearingPoint testing, SBC Illinois' OSS is not sufficient with respect to the OSS functions of ordering, provisioning, maintenance and repair and billing, with specific evaluation criteria relating to these OSS functions remaining unsatisfied. McLeodUSA and TDS Metrocom also note that Staff concluded that the three months of performance data submitted by SBC Illinois does not demonstrate that SBC provides wholesale service to CLECs in a non-discriminatory manner, and that SBC Illinois is continuing to miss 17 important performance measures. They point out that Staff considered these failures to be significant relative to the development or maintenance of a competitive telecommunications market. McLeodUSA and TDS Metrocom also state that, as Staff has pointed out, SBC Illinois' currently has a strong incentive to demonstrate good performance in order to secure a positive Section 271 recommendation; therefore, if the Commission does not require, at a minimum, that SBC Illinois bring its significant areas of deficient performance into compliance with applicable parity or benchmark requirements, prior to issuing a positive Section 271 recommendation, then the areas of deficient performance may never be satisfactorily addressed. (MTSI-TDS Br., pp. 37-40)

~~1271.~~1274. McLeodUSA and TDS Metrocom also state that SBC Illinois' position that its three months of performance data showed it is meeting the Section 271(c) competitive checklist requirements was based on meeting the applicable parity or benchmark standards for a high percentage (87.7%) of the performance measures in two of the three months. McLeodUSA and TDS Metrocom contended that this "test" is too weak. They stated that from the CLECs' perspective, for SBC Illinois to meet the applicable standard for a performance measure for only two out of every three months is not good wholesale service quality. They state that, particularly in light of the fact that SBC Illinois' wholesale service quality performance for the three months for which it chose to present performance data is likely to be "as good as it gets", the Commission ought to require that SBC Illinois' performance satisfy the applicable parity or benchmark standard for three consecutive months for a high percentage of the performance measures, in order to merit a positive Section 271 recommendation. They noted that for the three months for which it presented performance data, SBC Illinois satisfied the applicable parity or benchmark standard in every month for only about 75% of the performance measures.

~~1272.~~1275. Alternatively, these CLECs assert, the Commission could require that SBC Illinois meet the applicable parity or benchmark standard in two of three consecutive months for 100% of the performance measures. However, McLeodUSA and TDS Metrocom also emphasized that, in light of the incomplete state of the BearingPoint performance metrics verification, and the myriad problems with SBC's performance measurement data integrity, calculation and reporting, as disclosed by both the BearingPoint and E&Y reviews, the Commission should not rely on SBC Illinois' September – November 2002 performance measurement data to establish the effectiveness of SBC's OSS or, more generally, its checklist compliance. As Staff has correctly concluded, until SBC Ilinois' performance measurement data can be demonstrated to be accurate and reliable on a consistent basis, those data cannot be relied upon to establish current or future compliance with the competitive checklist requirements. (MTSI-TDS Br., pp. 40-42)

~~1273.~~1276. McLeodUSA and TDS Metrocom reiterate that they and other CLECs have placed substantial reliance in the BearingPoint independent third-party OSS testing and performance metrics verification and validation that have been conducted in an open, public manner pursuant to the Illinois Master Test Plan under the close supervision of the Commission Staff, and that this Commission should not arrive at a positive Section 271 recommendation for SBC Illinois until the independent third-party OSS testing process the Commission initiated has been successfully completed. (MTSI-TDS Br., p. 42)

Wholesale Billing

~~1274.~~1277. McLeodUSA and TDS Metrocom stated that SBC's wholesale billing systems and processes have not produced accurate and reliable wholesale bills. They stated that they and other CLECs have encountered, and continue to encounter, serious and significant billing problems. TDS Metrocom stated that since it began operations in 1998, it has never received an accurate bill from SBC, and that SBC Illinois has not disputed this fact. TDS Metrocom witness Rod Cox, who was formerly employed by McLeodUSA, described numerous instances of erroneous wholesale billing by SBC that TDS Metrocom has experienced, including failure to bill for, or under-billing of, products or services for extended periods, following by submission of substantial back bills; billing TDS Metrocom for services or products not provided, or that TDS Metrocom is not to be billed for under the parties' interconnection agreement; double-billing; application of incorrect rates; failure to implement price changes on a timely basis; improper application of payments; and failure to provide source or back-up data to support billing adjustments. He stated that McLeodUSA had experienced similar wholesale billing problems when he was employed by McLeodUSA.

~~1275.~~1278. McLeodUSA and TDS Metrocom state that although SBC Illinois pointed to the fact that it issues a high volume of wholesale bills, the error rates experienced in SBC's wholesale bills are unacceptable. They stated that, if SBC cannot consistently and reliably issue accurate bills to its wholesale customers, without the need for frequent error correction and issuance of large back bills covering extended periods of time, then SBC is not providing adequate, nondiscriminatory access to this component of its OSS in a manner that will support sustained competitive activity in its local service markets and meet its obligations (and the preconditions for Section 271 authority) under checklist item 2. They contended that the Commission would clearly find such billing performance by SBC Illinois unacceptable if it were occurring at the retail level. (MTSI-TDS Br., pp. 43-45)

~~1276.~~1279. McLeodUSA and TDS Metrocom dispute SBC's contention that no "systemic" problems had been shown to exist within SBC's wholesale billing. They stated that the frequency and variety of billing errors and problems experienced by CLECs, as well as the fact that, according to SBC's explanations of the causes for the various billing problems identified by CLECs, these problems emanate from problems throughout SBC's OSS, demonstrate that SBC's inability to consistently issue accurate bills, without the need for frequent error corrections and back-billings, is indeed systemic. They noted that SBC's announcement that it would conduct a CLEC-by-CLEC review of wholesale bills to identify

errors in applying correct rates to the products and services purchased by each CLEC was an acknowledgement of widespread problems, but that even this review was too limited in scope. Further, they stated that from the perspective of an affected CLEC, it does not matter what problem in SBC's OSS causes a billing error or results in a back bill; the impact on the affected CLEC is the same regardless of the underlying root cause. McLeodUSA and TDS Metrocom also stated that although SBC Illinois said that "human error" was the cause of some of the identified billing problems, "human error" can result from employees not receiving adequate training, not having sufficiently clear and detailed written procedures to follow, not receiving adequate supervision, or not being exposed to significant consequences for the commission of errors in job performance. (MTSI-TDS Br., pp. 45-48)

~~1277.~~1280. McLeodUSA and TDS Metrocom also take issue with SBC Illinois' assertions that there was no dispute as to the timeliness of usage or billing information provided by SBC Illinois and that Illinois CLECs receive the necessary information from SBC Illinois to correctly bill their customers. They stated that, as detailed in Mr. Cox's affidavits, SBC's wholesale bills have a high frequency of inaccuracy. They pointed out that not only do SBC's wholesale bills consistently contain errors that must be corrected, but, as also detailed in Mr. Cox's affidavits, SBC has issued a number of significant back-billings to TDS Metrocom, covering lengthy prior periods of service. McLeodUSA and TDS Metrocom stated that it is of no value to CLECs that SBC sends CLECs "timely" bills, *i.e.*, that SBC issues the bill for a billing period to the CLEC on or before the scheduled issuance date, if that bill is incomplete or inaccurate, particularly if months later SBC back bills the CLEC for charges that were omitted from, or inaccurately calculated on, the so-called "timely" bill. They stated that inaccurate bills are not "timely", regardless of when they are issued. (MTSI-TDS Br., p. 48)

~~1278.~~1281. McLeodUSA and TDS Metrocom state that the persistent recurrence of large back bills from SBC, covering lengthy prior periods of service, has been particularly problematic. They state that the issuance of large back bills covering lengthy prior periods of service is indicative that SBC is not proactively monitoring its wholesale bills, and lacks an adequate validation process to insure the accuracy of the bills it issues. They state that if SBC's billing systems were reliable and produced accurate wholesale bills, as SBC contends they do, there would be no need for frequent back billings because wholesale bills would be correct when first issued. They also stated that if SBC had a competent process for reviewing and auditing its own bills, then if any errors did occur, they would not go undetected for a year or more before SBC discovered the error and issued a back bill, as has occurred on several occasions.

~~1279.~~1282. McLeodUSA and TDS Metrocom describe some of the problems that are engendered for a CLEC when SBC issues a back bill covering a lengthy prior service period. Where wholesale charges from SBC can be billed by a CLEC directly to its retail customers, the receipt of an inaccurate bill from SBC followed many months later by a back-bill for additional charges means any opportunity to recover the wholesale charges from the CLEC's retail customers is lost, either as a matter of customer relations in a competitive marketplace, or because some of the end users who were customers of the CLEC during the period in question are no longer its customers. Even where the back-billed charges are ones that would not have

been billed directly to CLEC retail customers, the receipt of large back bills many months after the fact results in a mismatch of revenues and related costs for the CLEC across accounting and reporting periods, and wreaks havoc with financial plans and budgets. (MTSI-TDS Br., pp. 48-50)

~~1280.~~1283. McLeodUSA and TDS Metrocom also stated that the problem of back-billings from SBC is compounded by the fact that, in issuing back bills, SBC typically provides no source data to justify the claimed additional charges. They stated that without such source information it is impossible for the CLEC to audit and verify the back-billed charges on SBC's invoice. They also stated that experience has shown that attempting to acquire the necessary back-up information from SBC so that the back-billed charges can be audited and verified, or disputed, is a cumbersome and time-consuming process. They stated that SBC should be, but is not, explaining and justifying its back billings when they are submitted. (MTSI-TDS Br., p. 50)

~~1281.~~1284. McLeodUSA and TDS Metrocom also took issue with SBC Illinois' reliance on the fact that it has passed BearingPoint OSS tests relating to billing timeliness and accuracy. McLeodUSA and TDS Metrocom pointed out that Staff witness Weber, the Commission's project manager for the BearingPoint SBC OSS testing, had demonstrated that SBC Illinois' reliance on the BearingPoint test results as validating SBC's wholesale billing timeliness and accuracy is misplaced. Ms. Weber stated that if BearingPoint's test did not reveal a deficiency with SBC Illinois' OSS it does not mean that the OSS is free of problems, deficiencies, or other impediments to proper functioning, because BearingPoint's review of each evaluation criteria was conducted during defined time periods and the scope of BearingPoint's evaluation did not cover all aspects of SBC Illinois' OSS or all business processes that support its OSS. She also noted that the BearingPoint review had limited coverage to the array of billing functions SBC Illinois provides. She further observed that there were no bill reconciliation or dispute functions tested other than having the specific procedures reviewed, and for those billing functions that were tested it took more than one full year and multiple retests for SBC Illinois to pass the BearingPoint billing tests. Additionally, during the test period, SBC did not apply all rate changes, etc., that usually occur on an account to the BearingPoint "Test CLEC" bills, and therefore this testing did not reflect the day-to-day reality of the business. Finally, she explained that SBC's statement that BearingPoint confirmed that its wholesale bills are clear and auditable is incorrect. (MTSI-TDS Br., pp. 50-51)

~~1282.~~1285. McLeodUSA's and TDS Metrocom's witness Mr. Cox also testified that BearingPoint's test program, and the underlying performance measures, have not been sufficient to address the deep-seated deficiencies in SBC's wholesale billing systems and processes. He stated that one reason for this outcome may have been the heavy reliance by BearingPoint, in conducting its billing accuracy testing, on transactions by the "Test CLEC" under a template interconnection agreement, with the result that the transactions used by BearingPoint to test billing accuracy may have been a fairly limited universe of sample CLEC transactions.

~~1283.~~1286. For example, the BearingPoint OSS Report specifically notes that because BearingPoint did not submit payments to SBC, no late payment charge activity appeared on bills, or could be evaluated, as a result of transaction activity generated by the Test CLEC; similarly, BearingPoint could not test the accuracy of SBC's application of payments. He stated that many of the billing problems TDS Metrocom has encountered with SBC's billing accuracy would not have been included within the BearingPoint test cases. McLeodUSA and TDS Metrocom also observed that there may have been issues with transparency of the Test CLEC transactions being billed, i.e., that SBC personnel could have known that transactions being billed to the Test CLEC were in fact being billed to the Test CLEC, not to a real CLEC. (MTSI-TDS Br., pp. 51-52)

~~1284.~~1287. McLeodUSA and TDS Metrocom also states that the SBC Illinois performance measures relating to billing are not capturing information about such wholesale billing problems as application of incorrect rates, double billing, miscoding and back billing. They cited as an example, PM 14, Billing Accuracy, which measures whether CLEC and retail bills are consistent with billing tables. They stated that this is akin to measuring whether the printed receipt one receives at the grocery store matches the data in the bar code scanner that produced the printed receipt, and that it does nothing to assess whether the price in the scanner is correct or that it matches the posted price for the product (i.e., the tariffed rate for the UNE).

~~1285.~~1288. McLeodUSA and TDS Metrocom also notes that although the Michigan Public Service Commission ("MPSC"), in submitting a positive Section 271 recommendation to the FCC for SBC Michigan, relied on the results of the BearingPoint billing tests as the basis for its recommendation, any such reliance on the BearingPoint results here would be contrary to the record in this proceeding, including the conclusions and recommendations of Commission Staff. McLeodUSA and TDS Metrocom concluded that wholesale billing is one area in which actual performance demonstrates that the BearingPoint test results do not accurately depict the unacceptable state of SBC's performance; the record shows that the BearingPoint test results diverge considerably from TDS Metrocom's, McLeodUSA's and other CLECs' real-world experience with SBC's wholesale billing. McLeodUSA and TDS Metrocom cited Staff witness Weber's conclusion that the Commission needs to be sure that the billing concerns of the CLECs are reconciled before granting a positive Section 271 recommendation. (MTSI-TDS Br., pp. 52-53)

~~1286.~~1289. McLeodUSA and TDS Metrocom state that the need to deal with the frequent errors that emanate from SBC's wholesale billing function imposes a considerable cost and resource burden on CLECs. They state that CLECs must expend considerable resources to review and audit SBC's incorrect wholesale bills and dispute questionable or erroneous charges. Mr. Cox testified that in response to the repeated wholesale billing errors it has encountered, and the resultant loss of confidence in the reliability of SBC's wholesale bills that this experience has engendered, TDS Metrocom formed a dedicated billing team comprised of five employees who spend an estimated 30% of their time reviewing SBC bills and disputing billing inaccuracies and improper charges. He stated that TDS Metrocom devotes more than 50 employee-hours every week to review, correct and dispute SBC's invoices. He stated that reviewing and disputing SBC's billing errors imposes a significant administrative burden on TDS Metrocom, and requires

it to commit an unreasonable level of resources to reviewing the accuracy of the bills it receives from SBC.

~~1287.~~1290. Mr. Cox also stated that based on TDS Metrocom's prior experiences with SBC's billing, TDS Metrocom now has so little confidence in the accuracy of SBC's wholesale bills that when a complete reconciliation of the bill cannot be completed prior to the due date, TDS Metrocom finds itself compelled to delay payment, thereby incurring a late payment charge, in order to have adequate time to fully audit the bill. McLeodUSA and TDS Metrocom stated that the amount of time that CLECs must spend monitoring SBC's bills and disputing them is excessive and time consuming, negatively impacts CLECs' ability to compete with SBC, and gives SBC a competitive advantage. (MTSI-TDS Br., pp. 54-55)

~~1288.~~1291. McLeodUSA and TDS Metrocom conclude that because of the state of SBC's wholesale billing systems, SBC Illinois at this time fails competitive checklist item 2, nondiscriminatory access to UNE and OSS, and that SBC Illinois should not receive a positive Section 271 recommendation from the Commission until SBC's wholesale billing problems have been remedied and SBC Illinois has demonstrated that it provides accurate (the first time) and timely wholesale bills to its CLEC customers on a consistent and reliable basis. Specifically, they stated that SBC Illinois should be required to establish and implement a comprehensive and transparent wholesale billing system rehabilitation plan as a condition to receiving a positive Section 271 recommendation from the Commission.

~~1289.~~1292. They state that although SBC had filed in this case a Bill Auditability and Dispute Resolution Plan that SBC has submitted in MPSC Case No. U-12320 in response to the direction of the MPSC, this Plan would be a wholly inadequate response to SBC's wholesale billing problems, because the Plan only involves actions that are taken after SBC sends and inaccurate bill, and would not even address the accuracy of the bills themselves. Further, they stated that SBC's Bill Auditability and Dispute Resolution Plan does nothing to address the problem of back-billing that CLECs frequently experience; does not address the billing performance measurements that are useless in terms of capturing the problems with SBC's wholesale billing systems and processes; and does not provide for any third-party verification of successful implementation of the actions it does encompass. McLeodUSA and TDS Metrocom urged the Commission not to do what the MPSC did and provide a positive Section 271 recommendation before identified problems have been fixed and the corrective action has been verified. (MTSI-TDS Br., pp. 55-57)

~~1290.~~1293. McLeodUSA and TDS Metrocom stated that instead of just accepting the Bill Auditability and Dispute Resolution Plan as a solution to SBC's wholesale billing problems, the Commission should require SBC Illinois to implement a comprehensive wholesale billing system rehabilitation plan. They stated that the wholesale billing rehabilitation plan should include comprehensive "root cause" analysis for the problems that have been manifested in SBC's wholesale billing systems and processes. They stated that the root cause analysis should not focus on just the actual billing systems themselves, but should extend into all the OSS

components that can result (and have resulted) in erroneous or incomplete information being fed into SBC's wholesale billing systems, and thus in inaccurate wholesale bills.

~~1291.~~1294. McLeodUSA and TDS Metrocom state that the wholesale billing rehabilitation plan should include specific corrective action items and target completion dates; should provide for third party review and testing of successful completion and implementation of the corrective actions; should address, among other things, the adequacy of billing-related performance measures to realistically measure and depict SBC's billing performance; and should include a collaborative process to attempt to develop more meaningful billing-related performance measures. Finally, McLeodUSA and TDS Metrocom recommended that the Commission consider holding further evidentiary hearings, prior to issuing a Phase II order, in order to address the severity and specifics of SBC's wholesale billing issues. They stated that such hearings would also be used to develop the details of the wholesale billing rehabilitation plan that SBC Illinois should be required to establish and implement as a condition of receiving a positive recommendation from this Commission on its Section 271 application to the FCC. (MTSI-TDS Br., pp. 57-58)

Special and UNE Circuit Repair Coding Accuracy Plan

~~1292.~~1295. McLeodUSA and TDS Metrocom note that SBC Illinois submitted in this case a Compliance Plan for Special and UNE Circuit Repair Coding Accuracy ("Repair Coding Accuracy Plan") that SBC Michigan had submitted in MPSC Case No. U-12320. McLeodUSA and TDS Metrocom stated that the SBC Repair Coding Accuracy Plan is intended to address (among other things) some of the problems that McLeodUSA and TDS Metrocom have encountered with inaccurate coding of trouble tickets by SBC field technicians who are dispatched in response to trouble reports from CLECs or their customers. They noted that in Phase 1 of this docket, Mr. Cox described problems that McLeodUSA has encountered with erroneously coded trouble tickets, resulting in excessive and inappropriate trouble isolation charges ("TIC") being billed to McLeodUSA; and that in Phase 2, Mr. Cox testified that TDS Metrocom is also encountering similar problems on a recurring basis.

~~1293.~~1296. They stated that erroneous coding of trouble tickets results in erroneous billing of maintenance and repair charges to CLECs, as well as erroneous billing of TIC; can result in delays in fixing the problem on the UNE loop serving the end user; and can cause the customer to have a negative impression of the quality of service being provided by the CLEC, which places the CLEC at a competitive disadvantage to SBC; and prevents the CLEC from maintaining an accurate database of trouble reports to enable it to monitor whether the problem recurs for the CLEC's customer. McLeodUSA and TDS Metrocom pointed out that BearingPoint's testing of the accuracy of trouble ticket closure coding for resale, special and UNE circuits resulted in Exception 131, indicating that SBC did not meet accuracy standards for trouble ticket closeout coding in the five SBC Midwest states; and that SBC affiants Cottrell and Kagan acknowledged the existence of incorrect charges for trouble isolation and maintenance, stating that it has been the result of "human error." The Repair Coding Accuracy Plan also concludes that the root cause of incorrect closeout coding has been SBC repair technician error.

Under the Repair Coding Accuracy Plan, SBC proposes to address the problem of inaccurate trouble ticket closures primarily through additional training of its repair technicians, and also proposes third-party verification of its actions by BearingPoint. (MTSI-TDS Br., pp. 58-60)

~~1294.~~1297. McLeodUSA and TDS Metrocom express agreement with SBC that the root cause of the inaccurate trouble ticket closeout coding has been SBC repair technician error, and that the likely solution to the problem is additional training and management oversight. McLeodUSA and TDS Metrocom stated, however, that SBC's proposed Repair Coding Accuracy Plan shows a total lack of commitment to a long-term solution and that this is a major shortcoming. They stated that the increased training of repair technicians by SBC will only be temporary, and expressed concern that once SBC obtains Section 271 authorization and the BearingPoint review is completed, SBC will terminate the training and management oversight necessary to effectuate an effective long-term solution. McLeodUSA and TDS Metrocom also stated that there will be no mechanism in place to accurately measure SBC's performance over the long term to ensure that the problem has been permanently corrected. They expressed concern about the possibility of backsliding under SBC's Repair Coding Accuracy Plan. (MTSI-TDS Br., p. 60)

~~1295.~~1298. McLeodUSA and TDS Metrocom stated that the record shows the problems of inaccurate trouble ticket closeout coding are long-standing and widespread; therefore, a temporary commitment to increased training and oversight will not be sufficient to permanently overcome these problems. They stated that eliminating the long-standing problem of inaccurate trouble ticket closeout coding requires a long-term solution, not a temporary solution, and a long-term commitment to fixing the problem.

~~1296.~~1299. McLeodUSA and TDS Metrocom accordingly recommend that the Commission should require the following modifications to SBC's Repair Coding Accuracy Plan: (1) for each of the next three years, SBC should annually provide the technician training sessions described at page 7 of the Repair Coding Accuracy Plan; (2) for the next three years, SBC should be required to continue the management review and oversight activities described at pages 7-8 of the Repair Coding Accuracy Plan; (3) SBC should also be required to make a commitment to provide additional training that emphasizes correct coding of CLEC trouble tickets as a permanent part of the employee training for new repair technicians. McLeodUSA and TDS Metrocom assert that these proposals will help to insure that SBC does in the future what it should have been doing in the past, namely, properly train and supervise its employees who repair UNE loops serving CLEC customers. (MTSI-TDS Br., p. 61)

~~g~~h. Z-Tel's Position.

Wholesale Billing.

~~1297.~~1300. Looking to the evidence of other CLEC's, Z-Tel contends that SBC Illinois' wholesale bills are inaccurate, and the Company does not provide sufficient information to CLECs to perform reasonable bill audits.

~~1298.~~1301. Indeed, Z-Tel sees witnesses Cottrell and Kagan to state that "SBC Midwest continues to address concerns with bill auditability."[131] As evidence of SBC's effort to improve the auditability of its wholesale bills, SBC points to a Draft Improvement Plan for Bill Auditability filed in Michigan. Although Z-Tel welcomes SBC's acknowledgment of bill auditability issues, and Z-Tel looks forward to participating in the Michigan proceeding, SBC's draft Michigan proposal is deficient because it doesn't sufficiently address the systemic problems that are most damaging to CLECs. Moreover, SBC has not even filed its draft plan in Illinois, although Z-Tel expects that SBC would be willing to make such a filing.

~~1299.~~1302. In any event, fixing the billing auditability issue as required to satisfy the Section 271 competitive checklist boils down to two types of necessary improvement: (i) system changes and (ii) dispute resolution. Regarding system changes, Z-Tel submits that the Commission should require SBC to include on every CLEC invoice line item a billing reference that points to the underlying controlling document – either an Ameritech tariff or an interconnection agreement – that allows SBC to bill the rate element or USOC. Contrary to the Cottrell/Kagan reply affidavit, SBC does not do this today. In addition, other necessary audit information, such as the end user's telephone number and any CLEC purchase order (*e.g.*, those associated with repair charges and other non-recurring work), should be provided by SBC so that a CLEC can audit its SBC wholesale bill.

~~1300.~~1303. The Commission must recognize that SBC has always had an obligation to render an understandable bill – this basic obligation existed even before it ever rolled out its wholesale products. Assertions by SBC that it is difficult to provide a wholesale bill that is accurate and auditable are of no comfort. Had SBC focused on "doing it right the first time," its myriad billing deficiencies simply would not exist. Since that was not done, SBC now has the obligation to make the required system changes or, at the very least, produce cross reference tools that will allow CLECs to efficiently and accurately audit their wholesale bills. Just like the "rate flow-through interconnection agreement amendment," any such billing format changes or related cross-reference tools should be filed in this docket to ensure actual compliance, not just the issuance of another SBC "Accessible Letter."

~~1301.~~1304. As for the billing dispute resolution process, the bottom line is that radical improvement is necessary. First, SBC must actually explain why it is rejecting a billing dispute so that a CLEC may independently validate SBC's reasoning. For example, if SBC rejects a CLEC dispute regarding rate application, SBC should be required to provide the CLEC with a reference to a tariff or interconnection agreement that contains what SBC asserts is the correct

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[131] Cottrell/Kagan Rebuttal, ¶ 12.

rate. SBC's current dispute process is very deficient, and does not meet these basic requirements today.[132]

~~1302.~~1305. In Z-Tel's view, the Commission should also mandate tight deadlines for SBC to respond to billing disputes. To that end, SBC should be required to respond – with verifiable information – to CLEC billing disputes within 30 days, and formal dispute resolution processes should be completed within 60 days. In Z-Tel's experience, SBC simply does not resolve billing disputes in a timely manner. As one example (of many possible examples), Z-Tel launched formal dispute resolution with SBC on July 30, 2002 with a targeted completion date of September 30, 2002. Z-Tel states that it still has not received a written settlement offer from SBC on its position on key billing issues or on proposed settlement language.

~~1303.~~1306. According to Z-Tel, SBC needs some additional incentive to get its billing right, and tight time frames for information and formal billing dispute resolution will go a long way toward that end. The pleadings by all parties demonstrate that billing disputes are recurring in nature and similar billing disputes affect all CLECs. The Commission must incent SBC to fix identified billing problems, otherwise carriers will continue to have to expend substantial resources, including the time and energy of this Commission, on billing disputes.

LINE LOSS NOTIFICATIONS OR LLN.

~~1304.~~1307. Z-Tel believes Mr. Ehr to concede in his rebuttal affidavit that SBC continues to have problems providing timely and accurate line loss notifications to CLECs.[133] Indeed, SBC issued an Accessible Letter on March 6, 2003 describing a new batch of recent line loss errors that SBC is investigating.[134] SBC's line loss shortcomings are well documented in this proceeding, and Z-Tel incorporates all of its previous statements regarding line loss in these comments. Rather than recite the history of this issue, the fundamental point that the Commission should recognize is that line loss problems continue to emerge and re-emerge even after SBC claims that it has corrected the problems.

~~1305.~~1308. In Z-Tel's view, the Commission should adopt the line loss performance recommendations of Staff affiant Ms. Weber.[135] To that end, the Commission should require SBC to demonstrate six consecutive months of satisfactory line loss performance prior to any possible finding that SBC has complied with its obligation to provide nondiscriminatory access to OSS. Neither CLECs nor this Commission should be required to expend additional efforts briefing this issue until such time as SBC demonstrates an on-going pattern of compliance.

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[132] *See* Tab B (Claim Resolution Forms provided by Ameritech fail to: identify the telephone number and accounts that were adjusted; specify the source of the rate charged; specify invoices for which credit was already received; and to identify the telephone number and accounts that were adjusted).

[133] *See*, Phase II Rebuttal Affidavit of James D. Ehr, ¶ 31.

[134] SBC Accessible Letter CLECALL03-XXX (Mar. 6, 2003) (attached hereto as Tab C).

[135] ICC Staff Exhibit 31.0, Phase II Affidavit of Nancy B. Weber, ¶ 16.

~~h~~i. Commission Review and Conclusion on OSS.

1309. Operations Support Systems, or OSS, refers to the functions of wholesale Pre-ordering, Ordering, Provisioning, Maintenance and Repair and Billing. Efficient OSS functions are vital to a healthy competitive market, and therefore, necessary for Section 271 approval. The Commission's review considers all of the evidence relevant to each of the functions as well as the showings that concern the Change Management Process.

Pre-ordering.

~~1306.~~1310. The pre-ordering function includes those activities that a carrier undertakes to gather and verify the information necessary to place an order. With respect to this function, the complaints set out by AT&T and WorldCom are minor and credibly explained away by the Company. Both the BearingPoint results and the performance analysis review, support our view that there are no deficiencies with respect to the pre-ordering function. Stated another way, the record as a whole shows SBC Illinois to provide nondiscriminatory access to the pre-order functions.

Ordering.

The Minor Disputes.

~~1307.~~1311. SBC reports that the one outstanding finding by BearingPoint associated with the editing of CLEC orders will be addressed by March 15, 2003. Viewed in this context, the CLEC complaints about order rejection take on minor significance. Moreover, we see that individual CLEC problems, when raised with the Company, are quickly resolved through normal business channels. This type of action is to be condoned.

~~1308.~~1312. To the extent that CIMCO and Forte suggest the lack of a certain performance measure that they appear to want, we direct their attention to the well-established forum, i.e., the continuing 6-month collaboratives, where this issue can be raised and considered. Here too, we see that BearingPoints testing in this matter, yielded positive results.

~~1309.~~1313. Further, we are informed, BearingPoint used the SBC Illinois service centers of which CIMCO and Forte also complain, and it experienced no problems.

~~1310.~~1314. While AT&T appears to take issue with BearingPoint's testing of LSOG 4, without including LSOG 5, its arguments fail to take account of all relevant facts or law. These show that BearingPoint did test the agreed CMP pursuant to which LSOG 5 was implemented. Further, we see no requirement that OSS testing be repeated on each new interface introduced during the course of the test. This is only reasonable, for to require otherwise, testing would never be able to complete.

~~1311.~~1315. While still other problems were raised on record, e.g., post to bill notices, we are satisfied that the Company has taken prompt and aggressive actions to identify and fix them with minimal impact to the CLEC. We see no reason but to expect such activity to continue. In short, none of the issues raised by the CLECs demonstrate any defects with the Company's OSS.

1316. Staff has presented sufficient evidence to show that SBCI does not provide PM 13 in a non-discriminatory manner. Staff's review of the company's PM data shows that it failed to achieve the 2 out of 3 month standard for 4 of the 6 disaggregations. Further in the review of data for December 2002 and January 2003 the company continued to fail to meet the standards for the 4 sub measures (UNE-P, Resale, LSNP and UNE Loops). Therefore, Staff asserts this is a key performance measure requiring improvement. As suggested by SBCI, looking at the company's performance in a related PM, 13.1 helps to provide information about the measure in question. Looking at PM 13.1, the companion performance measure to PM 13, the company has decreased its total order process percent flow through for three of the six disaggregations over the past year. This means that the company on a whole is flowing through fewer orders for UNE Loops, Resale and LNP now than it did 12 months ago. Thereby giving rise to our concern, and which we find needs to be improved. This failure has been determined in light of all related and relevant facts and circumstances, and accordingly this PM is being added to the list of Key PMs requiring Improvement provided in our overall conclusion.

The Major Concern - Line Loss Notices (LLNs).

~~1312.~~1317. Throughout this investigation, we have given special attention to the Line Loss Notification issue and, indeed, already considered this issue in the Phase I proceeding. At that stage, we took the initiative of requiring certain remedial actions be taken by the Company in order to: a) emphasize the importance we give to this matter; and b) have SBC Illinois work on and resolve the situation at the earliest opportunity. In order to address this serious issue, Staff proposed and we accepted concrete and detailed improvements to the Company's procedures dealing with line loss notifications. The Company agreed to implement each of these improvements, expended a good amount of resources and, in most cases has already completed the implementation of these measures. This has resulted in improved performance, as demonstrated both in the positive BearingPoint test results, and in the marked reduction of line loss notification problems.

~~1313.~~1318. In our Phase I Order, we indicated that we would give "substantial weight" to the Company's implementation of Staff's recommendation, and we note favorably that the Company has complied with most of these recommendations. That is not to say, however, that the Company's performance is unblemished or that the problem is fully abated. The CLEC's point to line loss notification issues -- one of which has occurred as recently as March, 2003. While we remain deeply concerned with these issues, it is incumbent upon this Commission to note that, in nearly each case, the Company has acted quickly to analyze and resolve the problem on a business-to-business basis with the CLECs. We consider it vital to encourage this type of cooperative behavior, which inevitably, lends itself to lasting solutions.

~~1314.~~1319. So too, although not required for 271 compliance, we note favorably, that the Company has committed to a~~n~~ improvement program which should result in continued overall improvements to this process and we make clear that, unless otherwise directed, the Company will provide bi-monthly updates to the Commission outlining its activity and its progress in implementing the Line Loss Plan ~~of record~~ as finalized by the Michigan Commission. Our Staff will monitor and keep us informed of the situation. It is on the basis of our total account of the matter that we find the Company's line loss notification procedures together with SBC's implementation of the additional commitments proposed by Staff to comply with section 271 requirements.

1320. We are of the view, and find, that notwithstanding the company's efforts in this regard, the problem of defective line loss notification persists. We further find that implementation of the Staff's proposed measures to remedy and monitor this problem is, in addition to the company's proposed Line Loss Plan, both necessary and appropriate. Accordingly, we require the company to make the following commitments:

a) SBC will make line loss performance measure MI 13, a remedied performance measure. If tiers are applicable to the performance remedy plan then the measure will have a medium weight for both tier 1 and tier 2 payments or comparable remedy level;

b) SBC will implement all changes to performance measures MI 13 and MI 13.1 agreed upon in the last performance measurement six month review session including the clarification that all line loss notices generated due to SBC Illinois winback scenarios are included in the MI 13 and MI 13.1 performance measurements;

c) SBC is to file revised tariff pages with the Commission for the changes it will make to performance measure MI 13 and MI 13.1 based upon this Order and the company's commitments in this order such that the effective date of the tariff coincides with the implementation date of the performance measurement changes;

d) SBC Illinois is to closely monitor the line loss notifications it provides to CLECs until SBC Illinois provides six months of line loss notifications without any new problems being uncovered and without any of the existing or prior problems from re-emerging.

~~NOTE: Staff should explain in its exceptions, if and how its outstanding Phase I compliance recommendations for LNN remain viable (both in relationship to the Michigan Plan and to the Sec. 271 Performance Plan discussed below).~~

Provisioning.

~~1315.~~1321. Both SBC Illinois' commercial performance results, and the results of the OSS test, demonstrate that it provides nondiscriminatory provisioning. In our overall view, the few issues raised here are not material to overall compliance.

Maintenance.

The Special and UNE Circuit Repair Coding Accuracy Plan.

~~1316.~~1322. McLeodUSA and TDS Metrocom note that SBC Illinois submitted in this case a Compliance Plan for Special and UNE Circuit Repair Coding Accuracy ("Repair Coding Accuracy Plan") that SBC Michigan had submitted in MPSC Case No. U-12320. McLeodUSA and TDS Metrocom stated that the SBC Repair Coding Accuracy Plan is intended to address (among other things) some of the problems that McLeodUSA and TDS Metrocom have encountered with inaccurate coding of trouble tickets by SBC field technicians who are dispatched in response to trouble reports from CLECs or their customers.

~~1317.~~1323. McLeodUSA and TDS Metrocom have recommended that the Commission require certain modifications to SBC's Repair Coding Accuracy Plan to wit: (1) for each of the next three years, SBC should annually provide the technician training sessions described at page 7 of the Repair Coding Accuracy Plan; (2) for the next three years, SBC should be required to continue the management review and oversight activities described at pages 7-8 of the Repair Coding Accuracy Plan; (3) SBC should also be required to make a commitment to provide additional training that emphasizes correct coding of CLEC trouble tickets as a permanent part of the employee training for new repair technicians. McLeodUSA and TDS Metrocom assert that these proposals are meant to insure that SBC will properly train and supervise the employees who repair UNE loops serving CLEC customers well into the future.

~~1318.~~1324. The recommendations put to us by these CLECs appear reasonable. In its exceptions, SBC Illinois will further address and indicate its willingness to accept the proposal.

~~1319.~~1325. All total, SBC Illinois' commercial performance results and the results of the OSS test demonstrate that the Company provides nondiscriminatory access to repair and maintenance functions. The few issues raised in this area are minor, in our view, and do not affect overall compliance

Billing.

~~1320.~~1326. The Commission notes, at the outset, that ~~all~~ only certain aspects of SBC Illinois' billing systems were ~~thoroughly~~ reviewed by BearingPoint and that these billing tests have been completed and have shown positive results. ~~and virtually all of the billing tests have been resolved satisfactorily. Given that the BearingPoint Master Test Plan was adopted by this very Commission, with input from Staff and the CLECs, and that the BearingPoint test process was heavily monitored by those same parties,~~ While the Commission undoubtedly and reasonably attaches substantial weight to the positive overall BearingPoint results they are not the only aspect of the issue to be given weight in the Commission's decision. The parties have raised many serious billing issues in this proceeding and the Company has not provided sufficient evidence that these issues, many of which the Company admits exist, have been resolved or addressed. Therefore, this Commission cannot~~. These results, in our view,~~ support a positive overall Section 271 conclusion with respect to ~~b~~Billing OSS functionality or for checklist (ii).. ~~Other evidence and concerns appear of record, however, and must be considered~~

~~by the Commission in determining whether further improvements need be made in these premises.~~

~~1321.~~1327. With respect to billing accuracy, the majority of the issues appear to be related to UNE-P billing and involve rate changes ordered by the Commission in Docket Nos. 00-0700 and 98-0393. SBC Illinois concedes that errors were made but explains that they were limited in scope and resulted to a large degree from confusion over whether CLECs were taking service under contract or tariff. While the Commission accepts these explanations, we remain concerned.

~~1322.~~1328. The Commission firmly believes that any billing errors associated with the UNE-P must be corrected. We see that SBC Illinois already has committed to do so. As we understand it, the affected CLECs' billing tables have already been changed where appropriate and the credit process will be handled on a CLEC-by-CLEC basis. SBC Illinois' actions in this regard are appropriate and we hereby direct the Company to report back to the Commission when the current billing situation has been rectified, both with respect to updating CLEC billing tables to ensure that charges are correct on a going forward basis, and to its issuance of credits for past errors.

~~1323.~~1329. Information provided by SBC Illinois indicates that the UNE-P related billing errors had resulted from human error and do not reflect any systemic problems inherent in SBC Illinois' billing systems. We accept this showing but nevertheless believe that SBC Illinois needs to improve the "contract management processes" associated with updating rate tables in interconnection agreements to cover the events where this Commission orders changes to SBC Illinois' UNE rates.

~~1324.~~1330. In this regard too, the Commission would agree with SBC Illinois that CLECs should not assume that any Commission-ordered rate changes will flow through automatically to the rates in an interconnection agreement. To be sure, the effect of a Commission order is near certain to vary CLEC by CLEC, depending on the specific terms of each individual agreement. Based on the circumstances indicated in the record of this proceeding, CLECs might need to be more diligent in reviewing their interconnection agreements to determine whether further action is required, or permitted, to update UNE rates in their contracts. Effective communication resolves problems but it requires at least two willing participants.

~~1325.~~1331. We note SBC Illinois to outline a "five step" program by which it proposes to improve its "contract management process" on a going forward basis relative to these billing issues. Our review indicates that these steps are appropriate and will have the effect of substantially reducing the potential for errors on a going forward basis. The Commission is led to understand that certain of these steps require affirmative action by the CLECs as well. As such, the Commission strongly encourages CLECs with older agreements (particularly ones form the 1997-98 time frame) to take advantage of the process outlined by SBC Illinois, i.e., to update their agreements and eliminate gaps that have contributed to these billing issues. Important to this Commission also, is SBC Illinois' offer to file reports on a bi-monthly basis and we hereby direct the Company to outline the progress made to implement these process improvements accordingly.

~~1326.~~1332. With respect to the other billing accuracy issues raised by the CLECs, the Commission~~ fails to~~ finds there are ~~any~~ Section 271 compliance problems. Billing issues associated with the Line Loss Notices should be resolved, given the extensive progress made on line loss notices as developed on record and what we perceive as the Company's resolve to see this through. However, other billing issues remain which are of concern to this Commission and which, as specified in this order, the Company must address and demonstrate that the issues no longer exist before this Commission is able to provide a positive section 271 recommendation with respect to SBC Illinois billing OSS or checklist item (ii) ~~The remaining billing issues, largely raised by TDS, would appear to be isolated instances. Many, we are told, resulted from one-time conversion projects and many others do not even appear to have affected CLECs in Illinois. As, and even more importantly, we see that most of the billing situations TDS complains of occurred in the past and have been resolved.~~ Overall, we find ~~no~~ current compliance issues that need~~s~~ to be addressed.

~~1327.~~1333. Turning to billing auditability, the Commission is persuaded that SBC Illinois' bill formats are consistent with industry standards and that adequate resources are available to assist CLECs in understanding their bills. To this end, the Commission also relies on BearingPoint's test results that did not find any material problems with bill auditability.

~~1328.~~1334. That said, on the whole of the record before us, the Commission believes that the Bill Auditability and Dispute Resolution Plan on record (and that is being implemented in Michigan) is likely to be of benefit to Illinois CLECs. Therefore, the Commission accepts SBC Illinois' commitment to implement the same improvements in Illinois and to file the same progress reports here that are to be filed in Michigan and at the same frequency.

~~1329.~~1335. The seriousness with which we view and will treat billing concerns and issues on an on-going basis is well reflected in our remaining directives.

~~1330.~~1336. For its part, Staff reports that SBC's performance measures with respect to billing are generally satisfactory. There is, however, one exception noted by Staff as significant, i.e., PM17 - timeliness. SBC consistently gives its affiliate more timely bills than it gives the CLECs. According to Staff, this appears to have been a persistent problem over the last year with not much improvement over that time period. As such, Staff recommends that we have SBC Illinois identify the steps that it will take to correct its unsatisfactory performance with respect to PM17 - billing timeliness, implement such plan and demonstrate substantially improved performance six months hence. This recommendation is reasonable in our view and we direct the Company to comply in all particulars. **This failure has been determined in light of all related and relevant facts and circumstances, and accordingly this PM will be added to the list of Key PMs requiring Improvement provided in our overall conclusion.**

~~1331.~~1337. There is yet another measure we deem prudent and that the Commission here directs.

~~1332.~~1338. As already indicated, SBC Illinois will put into effect, for Illinois, the Billing Auditability and Dispute Resolution Plan of record in this proceeding in the manner finalized by the Michigan Commission. To the extent, however, that any CLEC in Illinois did not participate in the Michigan collaboratives on that Plan, SBC-Illinois will accept and further

consider that CLEC's input and/or any of our Staff's proposals, on the need to expand the scope or detail of said Auditability Plan. Further, the Company will file a report to this Commission outlining the basis for rejecting or accepting any and all of those recommendations. In that report, it will identify specific dates and timelines for implementing any new corrective tasks. SBC is to seek input from parties within 30 days of the order and is to file the report outlining the basis for rejecting or accepting the parties' recommendations within 60 days.

~~1333.~~1339. With these ~~is~~ additional road maps for demonstrating compliance ~~effort~~ and reporting commitments by the Company, the Commission believes that the Company will soon be able to satisfy the billing deficiencies noted. ~~the CLECs concerns will be satisfied.~~ However, at this time it ~~It further~~ leaves the Commission unable to find that, on the totality of the facts and circumstances, SBC Illinois is entitled to ~~benefit of~~ Section 271 approval on this function.

Change Management Process.

~~1334.~~1340. A "change management process" contains the methods and procedures by which the BOC conveys information to CLECs concerning the performance of and changes to its OSS. The FCC has established criteria for evaluating a change management plan.[136] In applying those criteria in the recent *Second Georgia/Louisiana 271 Order*, the FCC stated:

> In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, we first assess whether the plan is adequate by determining whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway. After determining whether the BOC's change management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan. (footnotes omitted.)

~~1335.~~1341. The Commission finds that the Company meets with its obligations under the Change Management Process ("CMP"). We are particularly persuaded to this end by the fact that the FCC has granted 271 authority to SBC affiliates in California, Missouri and Arkansas,

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[136] See, Memorandum Opinion and Order, In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana, CC Docket No. 02-35 ¶ 179 (May 15, 2002) ("Second Georgia/Louisiana 271 Order").

all of which use the same CMP as SBC Illinois. Another convincing factor and relevant to our analysis is the BearingPoint Test Report, which found that the Company satisfied all seven criteria specifically related to CMP.

~~1336.~~1342. To be sure, AT&T points to several instances where the Company might have invoked its change management process. But, in considering the Company's explanation that all but one of these instances, did not rise to the level of a change to the interface which would have required the use of the CMP process, we are satisfied. Nevertheless, we caution the Company to ensure that not even one failing be repeated.

~~1337.~~1343. While we find that no modifications to the CMP process are required for Section 271 approval, it is significant to our analysis that SBC Illinois has agreed to implement a "CMP Improvement Plan" in Illinois which should improve the overall management of the CMP process and which appears satisfactory to the CLECs concerns. In our review of the record detailing the provisions of the Plan we further observe a particular commitment, such that SBC Midwest will file quarterly progress reports to the Commission for one year starting on April 30, 2003. We will hold SBC Illinois to that commitment. For all of these reasons, we find that the Company has fully complied with its CMP obligations.

Overview and Account of Staff's Recommendations.

~~1338.~~1344. While there has been extensive and detailed commentary on particular aspects of the Company's OSS, the Commission's ultimate conclusion on checklist item 2 compliance is based, reasonably, on the totality of the circumstances.

~~1339.~~1345. At the outset, we see SBC Illinois' commercial performance results to demonstrate that the Company processes high volumes of commercial transactions with a high rate of success. SBC Illinois has presented a wide array of commercial performance measures, and the vast majority of those measures that relate to OSS have been passed. The few shortfalls in performance are not material to the overall perspective, when taking account of the fact, as we do, that SBC Illinois has committed to enforcing specific action plans in the most important areas. We, however, do direct compliance with each of those commitments.

~~1340.~~1346. Without doubt, SBC Illinois, BearingPoint and Hewlett Packard Consulting ("HP"), with the able assistance of the Commission Staff and with full CLEC participation, have successfully engaged in one of the most comprehensive OSS Operational tests in the nation, The BearingPoint independent test results, contrary to what certain of the CLECs would have us believe, persuasively reaffirm the results of commercial performance. Indeed, as we are shown, SBC Illinois fully satisfied 467 of 492, or 94.9% of the applicable test criteria. Of the remaining test criteria, 7 were categorized as "Indeterminate" due to a lack of demand for the product or function under evaluation. If one were to exclude these criteria, SBC Illinois' success rate would increase to 96.3% (467 of 485 applicable test criteria). Further, we are informed, one of the 18 remaining criteria was resolved subsequent to BearingPoint's Report.

~~1341.~~1347. So too, of the 17 test criteria now categorized by BearingPoint as "Not Satisfied", the results for twelve (12) were determined by this Commission to be such that no further testing should occur. For the remaining five (5), we would observe that the actual test

results are reasonably close to test benchmarks and/or equivalent commercial performance demonstrates little material impact on commercial transactions. Nonetheless, and worthy of note in our analysis, SBC Illinois appears committed to further action to resolve these issues with the Commission per our directive of January 14, 2003. Staff recommends, and we agree, that consistent with our direction on January 14, 2003, SBC Illinois is required to address its areas of deficiency with respect to timeliness of service order completion (SOC) responses (BearingPoint evaluation criteria TVV1-28), accuracy of updates to customer service records or CSRs (BearingPoint evaluation criteria TVV4-27), and accuracy of close out coding on end-to-end trouble faults (BearingPoint evaluation criteria TVV7-14).

~~1342.~~1348. To be abundantly clear in these premises, the Commission hereby directs as follows:

> For and each of these matters, i.e., TVV1-28; TVV4-27; and TVV7-14, we expect the Company to commit that it will (a) address the operational deficiencies by July 2003; and (b) that a full and complete good faith effort will be made to have the independent third party provide verification that these deficiencies have been addressed by November 2003. The verification plan, as such, will be proposed by the independent third party and approved by Staff before it is commenced.
>
> Further, with respect to BearingPoint evaluation criteria TVV1-4 and PPR13-4, we expect SBC Illinois to commit to addressing these deficiencies, with verification by an independent third party, and under the same good faith effort, by August 2003.

~~1343.~~1349. In looking to the performance measure analysis, we see Staff to conclude that ~~out of 67 measures,~~ the Company has failed~~passed all but~~ eight (8) measures. Those listed as deficient by Staff are: PMs 7.1; 10.1; 10.2; 10.3; ~~10.4; 11.1;~~ 13, 17, MI 2 and MI 14~~3~~.

~~1351.~~1350.

~~1344.~~1351. On the record, we see that the Company has committed to improving PM 7.1~~, and the disparity in performance is not significant in our view~~. So too, we are told, BearingPoint will test under those improvements. We further understand that the standard for PM 10.1 has been revised and, SBC Illinois would have met the revised standard. With respect to PMs 10.2 and 10.3 too, the standard has been revised such that the Company would have met the new standard. ~~In our further review of PMs 10.1, 10.2, 10.3, we also find the difference between standard and performance for these measures to be immaterial to checklist compliance. (We have already considered PM 17 in our Billing function review above). PM MI 2, shows disparity that is not significant in relation to the substance of the measure.~~ Finally, we are told, SBC Illinois implemented as of February 1, 2003, a new process to benefit MI-14. ~~Taking full and complete note of the deficiencies Staff would point out, we are satisfied nonetheless by the~~

~~Company's explanations and actions in each of these matters.~~ Staff has indicated that there are 8 Key PMs for Improvement impacting Checklist Item 2, and we have no reason to doubt Staff's statement that these 8 key PMs could have a significant negative impact on the competitive telecommunications market in Illinois. We note that, while the Company indicates it plans to address many of these key PMs, we believe it is appropriate that the Company's plans for all 8 key PMs identified by Staff relative to Checkilst Item 2 are reviewed, that those plans are successfully implemented, and that the implementation is verified by an independent third party.

[ALTERNATIVE LANGUAGE: If the Commission elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key, in support of our alternative position, Staff recommends that the Commission find the failure to be material, and to add language to the end of paragraph 1344, as it is set forth above:]

> The Commission's positive recommendation to the FCC will be conditioned on SBCI agreeing to (1) identify the steps it will take to remedy its current unsatisfactory performance on PMs 7.1, 10.1, 10.2,10.3, 13, 17, MI-2 and MI-14; (2) and demonstrate substantially improved performance on the said PMs by November 2003, or face additional penalties.

~~1345.~~1352. In quick review, we see that ~~all~~ many of the applicable OSS test criteria either have passed the BearingPoint testing process or are being aggressively pursued. However, ~~O~~our assessment of the Company's commercial performance shows deficiencies and its billing OSS requires further improvements. ~~appropriate and responsible response.~~ Taken collectively, i.e., the OSS testing results, ~~and~~ commercial data in Illinois, and the current OSS billing deficiencies ~~taken together with the Company's commitment to the completion of testing and the implementaion of improvement plans,~~ clearly do not support a favorable recommendation to the FCC.

~~1346.~~1353. The evidence further shows that many of the allegations set out by the CLECs ~~were and are quickly~~ have not all been resolved on a business-to-business basis between the parties. This showing is highly important. ~~Given the complexity of the systems, there will inevitably always be some operational issues that the parties will need to work out.~~ The remedial actions already and soon to be undertaken by the Company serve to demonstrate its continuing commitment to providing nondiscriminatory access to OSS. However, at this time~~, and give~~ this Commission does not have confidence in all aspects of the Company's OSS ~~its final assessment. In that final analysis,~~ in order for us ~~we are strongly moving~~ to provide a finding of checklist item 2 compliance.

UNE COMBINATIONS.

a. SBC Illinois Position and Evidentiary Case

~~1347.~~1354. SBC Illinois explains that, even with the enormous volume of CLEC UNE-P orders (with more than 340,000 UNE-P service orders in the three months in the study

period), it has provisioned UNE combinations on a timely basis, and with high quality installations and repairs. UNE-P orders fall into four categories: residential and business, with and without fieldwork. SBC Illinois explains that three of the categories account for nearly all UNE-P orders (about 99.7%), and the fourth category (business UNE-P that requires fieldwork) experiences a small volume of activity (about 0.3%). (SBC Ex. 2.2 (3/3/03 Ehr Rebuttal Aff.) ¶ 66.) For the three categories that account for the vast majority of UNE-P orders, SBC Illinois states that there are no performance disputes, as SBC Illinois' performance results show better-than-parity performance for all three months for timely installations, installation trouble reports, time to restore service, and repeat trouble reports.

~~1348.~~1355. SBC Illinois states that the chief issue concerning UNE combinations is limited to the fourth category, business UNE-P that requires field work. SBC Illinois explains that, with respect to this fourth category, it did not meet the parity standard for a limited number of sub-measures, but the shortfalls were insignificant and, given the small volume at issue (about 0.3% of the reported UNE-P volume), do not affect checklist compliance.

~~1349.~~1356. SBC Illinois notes that it performed better than parity with respect to the average installation interval for all four UNE-P categories, including business UNE-P that required fieldwork. While the rate of missed due dates for the fourth category was slightly higher than parity in two months, SBC Illinois explains that the difference was negligible – only about 1%, which translates to only 6 missed due dates in October and 8 in November. (SBC Ex. 2.2 (3/3/03 Ehr Rebuttal Aff.) ¶ 66.) Moreover, SBC Illinois explains, the reported shortfall was caused at least in part by a defect in the process of assigning due dates, whereby such orders were sometimes assigned a date three days early. (Id. ¶ 68.)

~~1350.~~1357. SBC Illinois states that it also did not meet the parity standard for the rate of installation trouble reports for the fourth category, but that shortfall was immaterial – SBC Illinois fell short of parity by just 10 installation trouble reports. (SBC Ex. 2.0 1/17/03 Ehr Aff.) ¶ 177.) Further, SBC Illinois explains that it has instituted improved procedures and, as a result, achieved parity performance for December 2002 and January 2003. (SBC Ex. 2.2 (3/3/03 Ehr Rebuttal Aff.) ¶ 69.)

~~1351.~~1358. Finally, SBC Illinois notes that it did not meet the parity standard for the trouble report rate for UNE-P business lines (PM 37-04), but explains that CLECs experienced a low trouble report rate for UNE-P business lines (ranging from 0.59 to 0.86 reports per 100 loops), and the shortfalls from parity were immaterial (ranging from 0.04 to 0.11 trouble reports). (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 179; SBC Ex. 2.2 (3/3/03 Ehr Rebuttal Aff.) ¶ 70.) In any event, SBC Illinois has instituted measures to improve performance, and proposes additional monitoring of PM 37. (SBC Ex. 2.2 (3/3/03 Ehr Rebuttal Aff.) ¶ 70; SBC Ex. 2.3 (Ehr Surrebuttal) ¶ 68.)

b. Commission Conclusion on UNE Phase II Issues.

~~1352.~~1359. The Commission finds that SBC Illinois provides CLECs nondiscriminatory access to UNE combinations, including the UNE-P, in accordance with the requirements of checklist item 2. SBC Illinois' performance results show that SBC Illinois is

processing a high volume of CLEC UNE-P service orders and achieving, on a whole, better than parity results.

~~1353.~~1360. The Commission would note that SBC Illinois' failure to meet a handful of sub-measures relating to business UNE-P with fieldwork orders is ~~not~~ significant overall. According to reasonable analysis standards, as guides the whole of our work, checklist compliance cannot be assessed simply and only by focusing on the few sub-measures that show a shortfall. Here, SBC Illinois' performance results show that it provides CLECs service that is better than parity **for better than two of three months**, and **the pattern continues beyond the three months reviewed in this proceeeding**~~for more than 99% of UNE-P service orders~~. **Further, the Commission understands that UNE trouble report rate is very important, and impacts all UNE customers.** ~~Further, there is no useful purpose to simply point out or dwell on a performance shortfall, without also examining, in full, the extent or impact of the shortfall.~~ This~~A~~ failure~~ing in and of itself tells nothing, it must be considered~~ has been determined in light of all related and relevant facts and circumstances. In addition, we find that SBCI fails to provide PM 37-4 in a non-discriminatory manner, which supports the finding that SBC Illinois has not yet adequately demonstrated that it meets Checklist Item 2.

[ALTERNATIVE LANGUAGE: If the Commission elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key PMs, in support of our alternative position, Staff recommends that the Commission find the failure to be material, and to add the following language to the end of paragraph 1353, as it is set forth above:]

> The Commission's positive recommendation to the FCC will be conditioned on SBCI agreeing to (1) identify the steps it will take to remedy its current unsatisfactory performance on PM 37; (2) and demonstrate substantially improved performance on PM 37 by November 2003 or face additional penalties.

~~1354.~~1361. As the Commission sees SBC Illinois to explain, the performance shortfalls with respect to business UNE-P with fieldwork were slight and affected a very limited number of UNE-P service orders. Its shortfall in the trouble report rate for UNE-P business lines was also negligible and, considering the low rate of trouble reports experienced by CLECs, insignificant under a big picture view. Taking account of the whole of the showings, the Commission concludes that SBC Illinois has demonstrated checklist compliance with respect to the UNE Platform.

~~1355.~~1362. At this point, having considered all the evidence on all the many facets of checklist item 2, the Commission finds SBC Illinois to be compliant in all respects.

CHECKLIST ITEM 3 – Access to Poles, etc.

AC. Checklist Item 3 Phase I AnalysisCHECKLIST ITEM 3 – Access to Poles, etc.

1. Description of Checklist Item

1356.1363. 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

1357.1364. The key elements of Section 224 are directed to access and rates.

Access

1358.1365. 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.

1359.1366. 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

~~1360.~~1367. 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).

~~1361.~~1368. 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.

~~1362.~~1369. 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).

~~1363.~~1370. (Adapted from New Jersey 271 Order, Appendix C with most cites and footnotes omitted.)

3. The State Perspective

~~1364.~~1371. 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

~~1365.~~1372. 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.

~~1366.~~1373. 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.

~~1367.~~1374. 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

~~1368.~~1375. 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

~~1369.~~1376. 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.

~~1370.~~1377. 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

~~1371.~~1378. 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.

~~1372.~~1379. 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.

B. Checklist Item 3 Phase II Showings.

8. Review – Phase I Compliance Matters.

9. Phase II Evidence. (Checklist Item 3).

a. SBC Illinois' Position.

~~1373.~~1380. SBC Illinois states that during the September - November 2002 study period, it processed *every* CLEC request for access to poles, ducts, conduits, and rights-of-way within the 35-day benchmark. In fact, SBC Illinois processed these requests within an average interval of only 13.5 business days. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 96 & Att. F.) Further, SBC Illinois states that it completed every request for make-ready work (work to prepare SBC Illinois' facilities to accommodate a CLEC's access request) and every request for a field survey (used to determine if there is sufficient space to accommodate a CLEC's access request) within the standard interval. (Id.)

~~1374.~~1381. SBC Illinois notes that some commenters, without actually contesting SBC Illinois' commercial performance or claiming that they experienced poor service with respect to poles, ducts, conduits, or rights-of-way, contest SBC Illinois' performance *reports* for this checklist item. As E&Y noted in its audit, SBC Illinois measures the time to process requests for access to structures in business days rather than calendar days. (See AT&T Ex. 1.0 (Connolly) ¶ 154.) But, SBC Illinois states, even on a calendar-day approach, it processes CLEC requests on average in fewer than 20 days, and that result is still well within the 35 day benchmark. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 96.)

b. CLECs' Position.

~~1375.~~1382. No CLEC raised any issues in Phase II specific to checklist item 3

c. Staff's Position.

Performance Measurement Data Analysis

~~1376.~~1383. Checklist item 3 concerns access to poles, ducts, conduits, and rights of way interconnection and collocation, and encompasses the following performance measures: PM 105, and 106.

~~1377.~~1384. According to Staff, there are two performance measures associated with access to poles, rights-of way, and conduits. These are PM 105 (Percent request processed within 35 days), and PM 106 (Average days required to process a request). SBCI witness James Ehr's conclusion that, although "the volume of CLEC requests was not sufficient to permit statistical analysis, SBC Illinois still met the benchmark on those requests that were submitted"[1] is consistent with the Staff's conclusions. No Intervenor expert submitted any testimony that contradicts this conclusion. Therefore, Staff has no basis upon which to disagree with SBCI's position that the company has met the requirements for the two performance measures associated with access to poles, rights-of-way, and conduits.

~~1378.~~1385. It is Staff's determination that SBC Illinois' reported performance relative to checklist item 3 is satisfactory.

d. Commission Review and Conclusion.

~~1379.~~1386. The Commission concludes the SBC Illinois satisfies checklist item 3 by providing "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224." 47 U.S.C. § 271(c)(2)(B)(iii). The sole dispute on record relates to AT&T's comment that SBC Illinois' commercial performance reports calculated the time to process requests in business days rather than calendar days. The Commission notes that the dispute is not material to checklist compliance. However the days are counted, neither AT&T nor any other CLEC alleges that SBC Illinois' actual provisioning of access to poles, ducts, conduits, or rights-of-way in any way fails to meet the requirements of checklist item 3. Even if one were to measure the interval in calendar days, SBC Illinois' commercial performance results would still be well within the applicable benchmark.

CHECKLIST ITEM 4 – Unbundled Local Loops

A~~D~~. Checklist Item 4 Phase I Analysis~~CHECKLIST ITEM 4 – Unbundled Local Loops~~

1. Description of Checklist Item

~~1380.~~1387. Section 271(c)(2)(B)(iv) of the Act, requires that a 271 Applicant provide:

[1] SBC EHR Phase II Rebuttal Affidavit at Paragraph 40, Page 17.

"[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:

1381.1388. 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.

1382.1389. 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.

1383.1390. 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.

1384.1391. 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.

1385.1392. 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.

~~1386.~~1393. 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.

~~1387.~~1394. (Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted.)

3. The State Perspective

~~1388.~~1395. 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.

~~1389.~~1396. 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.

~~1390.~~1397. 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.

~~1391.~~1398. 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;

~~1392.~~1399. 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).

~~1393.~~1400. 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

~~1394.~~1401. Ameritech Illinois witnesses Deere, Muhs, Brown, Chapman, Cottrell, and Habeeb have all testified on some facet of this Checklist Item 4.

Furnishing Loops

~~1395.~~1402. 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

~~1396.~~1403. 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

~~1397.~~1404. 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")

~~1398.~~1405. 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.)

~~1399.~~1406. 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).

~~1400.~~1407. 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.

~~1401.~~1408. 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.)

~~1402.~~1409. 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.)

~~1403.~~1410. 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

~~1404.~~1411. 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.)

~~1405.~~1412. 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.

~~1406.~~1413. 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").

~~1407.~~1414. 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"

~~1408.~~1415. 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).

~~1409.~~1416. 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

~~1410.~~1417. "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).

~~1411.~~1418. 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.

~~1412.~~1419. 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).

~~1413.~~1420. 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.

~~1414.~~1421. 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

~~1415.~~1422. 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

~~1416.~~1423. 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

~~1417.~~1424. 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).

~~1418.~~1425. "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.

~~1419.~~1426. 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

~~1420.~~1427. 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 .[137] 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.

~~1421.~~1428. 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 Broadband UNE that the Commission ordered in Docket 00-0393, to the extent the applicable facilities are deployed.

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[137] 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.)

~~1422.~~1429. 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.

~~1423.~~1430. 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.

~~1424.~~1431. 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.

~~1425.~~1432. 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.)

~~1426.~~1433. 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

~~1427.~~1434. 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.

~~1428.~~1435. 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.

~~1429.~~1436. 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.

~~1430.~~1437. 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

~~1431.~~1438. "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.

~~1432.~~1439. 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.

~~1433.~~1440. 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.

~~1434.~~1441. 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.

~~1435.~~1442. 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.

~~1436.~~1443. 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.

~~1437.~~1444. 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.)

~~1438.~~1445. 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:

~~1439.~~1446. 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).

~~1440.~~1447. 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.

~~1441.~~1448. 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.

~~1442.~~1449. 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.)

~~1443.~~1450. 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).

~~1444.~~1451. 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).

~~1445.~~1452. 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.

~~1446.~~1453. 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

~~1447.~~1454. 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.)

~~1448.~~1455. 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.").

~~1449.~~1456. 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.

~~1450.~~1457. 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.

~~1451.~~1458. 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).

~~1452.~~1459. 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"

~~1453.~~1460. 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.

~~1454.~~1461. 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.

~~1455.~~1462. 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.

~~1456.~~1463. 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.

~~1457.~~1464. 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.

~~1458.~~1465. 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*.

~~1459.~~1466. 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.

~~1460.~~1467. 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

~~1461.~~1468. 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.

~~1462.~~1469. 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).

~~1463.~~1470. 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.

~~1464.~~1471. 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

~~1465.~~1472. 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.

~~1466.~~1473. 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.

~~1467.~~1474. 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

~~1468.~~1475. 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.

~~1469.~~1476. 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.

~~1470.~~1477. 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)

~~1471.~~1478. 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

~~1472.~~1479. 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)

~~1473.~~1480. 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.

~~1474.~~1481. 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).

~~1475.~~1482. 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

~~1476.~~1483. 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).

~~1477.~~1484. 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).

~~1478.~~1485. 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.

~~1479.~~1486. 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.

~~1480.~~1487. 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

~~1481.~~1488. 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.

~~1482.~~1489. 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.

~~1483.~~1490. 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.

~~1484.~~1491. 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.

~~1485.~~1492. 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.

~~1486.~~1493. 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

~~1487.~~1494. 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).

~~1488.~~1495. 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.

~~1489.~~1496. 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.)

~~1490.~~1497. 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.)

~~1491.~~1498. 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.

~~1492.~~1499. 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).

~~1493.~~1500. 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

~~1494.~~1501. 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.

~~1495.~~1502. 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.)

~~1496.~~1503. 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.

~~1497.~~1504. 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.

~~1498.~~1505. 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.

~~1499.~~1506. 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.

~~1500.~~1507. 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

~~1501.~~1508. 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).

~~1502.~~1509. 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).

~~1503.~~1510. 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.

~~1504.~~1511. 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.)

~~1505.~~1512. 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

~~1506.~~1513. 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.

~~1507.~~1514. 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

~~1508.~~1515. 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

~~1509.~~1516. 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

~~1510.~~1517. 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.

~~1511.~~1518. 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.)

~~1512.~~1519. 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.

~~1513.~~1520. 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).

~~1514.~~1521. 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.

~~1515.~~1522. 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).

~~1516.~~1523. 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.

~~1517.~~1524. 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.

~~1518.~~1525. 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

~~1519.~~1526. 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

~~1520.~~1527. 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."

~~1521.~~1528. 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.

~~1522.~~1529. 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.

~~1523.~~1530. 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

~~1524.~~1531. 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.

~~1525.~~1532. 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).

~~1526.~~1533. 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.

~~1527.~~1534. 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"

~~1528.~~1535. 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.

~~1529.~~1536. 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.[138] (Am. Ill. Ex. 3.1 at 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.)[139]

b. AT&T Reply Position

Line Splitting Obligations

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[138] 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 pricing rules. See Section II.D.2(a) infra. Thus, the rates for splitters do not bear on compliance with the federal checklist.

[139] 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.

~~1530.~~1537. 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.

~~1531.~~1538. 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).

~~1532.~~1539. 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.

~~1533.~~1540. 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 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

~~1534.~~1541. 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.

~~1535.~~1542. 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.

~~1536.~~1543. 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

~~1537.~~1544. 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.

~~1538.~~1545. 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.

~~1539.~~1546. 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.

~~1540.~~1547. 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.

~~1541.~~1548. 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

~~1542.~~1549. 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

~~1543.~~1550. 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.

~~1544.~~1551. 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

~~1545.~~1552. 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*.

~~1546.~~1553. 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

~~1547.~~1554. 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.

~~1548.~~1555. 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.

~~1549.~~1556. 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.

~~1550.~~1557. 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.

~~1551.~~1558. 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.

~~1552.~~1559. 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

~~1553.~~1560. 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 and Conclusions– Checklist Item 4

~~1554.~~1561. We examine a number of different matters, as highlighted below, in order to assess AI's compliance with Checklist Item 4.

~~1555.~~1562. 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

~~1556.~~1563. 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

~~1557.~~1564. 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:

~~1558.~~1565. 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."

~~1559.~~1566. 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:

~~1560.~~1567. 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.

~~1561.~~1568. 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.

~~1562.~~1569. 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

~~1563.~~1570. 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.

~~1564.~~1571. 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.

~~1565.~~1572. 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

~~1566.~~1573. 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)

~~1567.~~1574. 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.

~~1568.~~1575. 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.

~~1569.~~1576. 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

~~1570.~~1577. 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.

~~1571.~~1578. 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.

~~1572.~~1579. 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.

~~1573.~~1580. 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

~~1574.~~1581. 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

~~1575.~~1582. 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

~~1576.~~1583. 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.

~~1577.~~1584. 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.

~~1578.~~1585. 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

~~1579.~~1586. 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.

~~1580.~~1587. 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.

~~1581.~~1588. 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

~~1582.~~1589. 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.

~~1583.~~1590. 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

~~1584.~~1591. 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

~~1585.~~1592. 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

~~1586.~~1593. 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

~~1587.~~1594. 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

~~1588.~~1595. 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

~~1589.~~1596. 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.

~~1590.~~1597. 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

~~1591.~~1598. 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.

~~1592.~~1599. (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.

~~1593.~~1600. (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.

~~1594.~~1601. 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.

~~1595.~~1602. 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

~~1596.~~1603. 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.

~~1597.~~1604. 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.

~~1598.~~1605. 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.

~~1599.~~1606. The Commission is pleased with this effort, but will require the Company to make a showing on the matter in Phase II.

Facilities Modification

~~1600.~~1607. 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.

~~1601.~~1608. 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.

~~1602.~~1609. Given that XO takes no account of the loop qualification process, its complaint is incomplete and, in our view, not viable.

Loop Tagging

~~1603.~~1610. 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

~~1604.~~1611. 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.

B. Phase II Showings

8. Review - Phase I Compliance Matters (Checklist Item 4).

a. SBC Illinois Evidence and Position.

The Line- Splitting Scenarios.

~~1605.~~1612. According to SBC Illinois, it has made the additional required showings on each of the three line splitting scenarios identified in the Phase I Order. Phase I Order, ¶¶ 941, 946, 948, 950. Before addressing each scenario, SBC Illinois points out that, with the exception of Scenario C (which is only available in Illinois) it provides the same line splitting terms and conditions in Illinois that it offers in California. The FCC reviewed those SBC California line splitting procedures and found them to satisfy the requirements of Section 271. California 271 Order, ¶ 132. For this reason alone, the Company argues, its line splitting procedures fully comply with the requirements of Section 271.

Scenario A:

~~1606.~~1613. Scenario "A" applies where a CLEC is currently providing voice service to an end user via UNE-P it purchases from SBC Illinois, and the CLEC elects to engage in line splitting so that it can provide voice and data services to that end user.

~~1607.~~1614. Paragraphs 941 and 945 of the Phase I Order requested more detailed information regarding the single order process for line sharing to line splitting, which SBC Illinois provided by explaining that it implemented the single LSR process on August 3, 2002 and announced this to the CLEC community in Accessible Letter CLECAM02-326, provided as Attachment CAC-7. (SBC Ex. 4.0 (1/22/03 Chapman Aff.) ¶ 8.) This order process is fully operational and is documented in the CLEC Online Handbook. Ms Chapman provided relevant excerpts of this Online Handbook with her affidavit, outlining the non-discriminatory order procedures that a CLEC would use when taking advantage of the order process. (See, e.g., SBC Ex 4.0 (1/22/03 Chapman Aff.), Attachment CAC-2.)

~~1608.~~1615. Ms. Chapman testifies that SBC Illinois has actually processed orders using this process. SBC Illinois further explains that it provides the single LSR process and the stand-alone UNEs to CLECs in a non-discriminatory manner, i.e., SBC Illinois makes no distinction in the way it processes orders from different CLECs for the UNEs necessary for line splitting. (SBC Ex 4.0 (1/22/03 Chapman Aff.) ¶ 10.)

~~1609.~~1616. Staff agrees that SBC Illinois has made the required showing on the single LSR issue, (Staff Ex. 40.0 (Hoagg Rebuttal) ¶ 23), and has no objections to the Company's showing on any of the three scenarios.

~~1610.~~1617. Ms. Chapman explains that while "AT&T expresses doubt that such process will work," Phase I Order at ¶ 941, in fact AT&T endorsed this same process when used by SBC California. In the California 271 proceeding, AT&T witness Eva Fettig told the FCC that "This operation [referring to SBC California's single LSR order process], takes an extremely short amount of time and creates no appreciable service disruption." Moreover, Ms. Chapman states that AT&T has used this process in California to process a substantial number of orders. (SBC Il. Ex 4.2 (3/17/03 Chapman Surrebuttal) ¶ 5. In short, she argues, AT&T cannot explain why it endorsed this very process in California, but now objects to it in Illinois.

~~1611.~~1618. The Company notes AT&T to argue that SBC Illinois provided no evidence that its UNE-P to line splitting process works. AT&T Ex. 3.1 (DeYoung/Willard) ¶¶ 31-33.) SBC Illinois responds that this argument should not be credited since it simply overlooks the clear testimony and exhibits offered by Ms. Chapman that shows the process is both available and operational today. (SBC Ex 4.2 (3/17/03 Chapman Surrebuttal) ¶ 5.)

~~1612.~~1619. AT&T also complains that the single LSR orders processed by SBC Illinois were handled on a managed basis. (AT&T Ex. 3.0 (DeYoung/Willard) ¶ 187.) The Company responds that these orders were managed at the request of the CLEC, not SBC Illinois, and that SBC Illinois should not be faulted for working cooperatively with a CLEC that is seeking assistance when using a new order process. The Company also argues that it made the single LSR process available in August 2002 and that it cannot be penalized because CLECs have not used the process yet for commercial volumes.

~~1613.~~1620. In response to AT&T's contention SBC has not made this line splitting order process "widely available anywhere in it's service territory" (AT&T Ex. 3.0 (DeYoung/Willard) ¶ 189), the Company asserts that the single LSR process is available in all 13 states within SBC's service territory. (SBC Ex 4.1 (3/3/03 Chapman Rebuttal) ¶ 7.)

1. Scenario B:

~~1614.~~1621. Scenario B involves a CLEC's request to change from an existing line sharing arrangement to a line splitting arrangement. SBC Illinois addresses two issues under this Scenario. First, the Proposed Order asks SBC Illinois to provide additional evidence showing that the 778 orders submitted by WorldCom were indeed rejected due to WorldCom's failure to provide the appropriate authorization from the data CLEC. Phase I Order, ¶ 943. SBC Illinois responds that, at WorldCom's request in April 2001, SBC Illinois performed a root cause analysis of 155 of these requests. In every instance, the reject reason was "Requested change impacts HFP(S)L services owned by another CLEC" -- the code used when a CLEC attempts to submit a request for line splitting without providing the proper authorization from the data CLEC. SBC Illinois provided a spreadsheet containing the information on these orders and stated that all of the 778 orders referenced by WorldCom were rejected for this reason. (SBC Ex. 4.0 (1/22/03 Chapman Aff.) ¶¶ 12-16 and Attachment CAC-4.)

~~1615.~~1622. SBC Illinois goes on to explain that the appropriate CLEC order process for this type of request (i.e., line sharing to line splitting) is documented on the CLEC Online website. This portion of the CLEC Online Handbook was provided as Scenario 3 of Attachment CAC-1 to Ms. Chapman's Affidavit. (SBC Ex 4.0 (1/22/03 Chapman Aff.) ¶ 14.) According to SBC Illinois, WorldCom did not follow this documented process. Instead, WorldCom simply submitted standard UNE-P requests. WorldCom filed nothing in Phase II to contest any of these facts.

~~1616.~~1623. The second issue under Scenario B relates to whether SBC Illinois' provisioning process requires a physical separation of the loop, switch port and transport that is serving the end user. SBC Illinois explains that if a CLEC uses the order process that SBC Illinois has made available for this scenario, no physical changes in these network components will occur. (SBC Ex 4.0 (1/22/03 Chapman Aff.) ¶ 16.) SBC Illinois states that the only reason that a physical modification would take place in this situation would be if the CLEC requested that the unbundled elements be terminated to a different collocation.

~~1617.~~1624. Staff raised no objection to the Company's processes under Scenario B.

2. Scenario C:

~~1618.~~1625. Scenario C applies when (i) SBC Illinois is currently providing voice service to an end user and is providing the high frequency portion of the loop ("HFPL") to a CLEC in a line sharing arrangement, (ii) SBC Illinois is providing the splitter, and (iii) a voice CLEC wins the end user's voice service and makes arrangements with the data provider to enter in to a line splitting arrangement.

~~1619.~~1626. SBC Illinois points out that the Proposed Order properly recognizes that there is no federal requirement for SBC Illinois to provide a splitter. Nonetheless, under the Commission's order in Docket 01-0164, SBC Illinois does have a limited obligation to provide a splitter in a line splitting situation when migrating from a line sharing arrangement using an SBC Illinois-owned splitter to a line splitting arrangement using the same SBC Illinois-owned splitter where the data provider remains the same. SBC Illinois describes this situation as "limited" because the vast majority of line sharing in Illinois occurs over CLEC-owned splitters. (SBC Ex 4.0 (1/22/03 Chapman Aff.) ¶ 17.) SBC Illinois explains that it has complied with this obligation and has been making this available since July 11, 2002, as announced in Accessible Letter CLECAM02-311. SBC Illinois adds that the ordering procedures for this offering are posted on SBC Illinois' CLEC Online website, relevant excerpts of which were provided as part of Attachment CAC-1. Nevertheless, SBC Illinois states that it has not yet received any orders for this scenario. (SBC Ex 4.0 (1/22/03 Chapman Aff.) ¶ 17.)

3. Neither Staff nor CLECs raised any specific concerns regarding Scenario C.

4. New Scenarios:

~~1620.~~1627. SBC Illinois notes that the CLECs raise issues with respect to two "line splitting" scenarios not addressed in the Phase I Order. The first new issue involves the conversion from a line splitting arrangement back to a voice service. (AT&T Ex. 3.1 (DeYoung

Rebuttal) at ¶¶ 34-37; WorldCom Ex. 3.4 (Lichtenberg Rebuttal) ¶¶ 42, 45).[140] In the situation described, the end user has cancelled the CLEC's DSL Internet service, but the voice service will remain.

~~1621.~~1628. As SBC Illinois witness Ms. Chapman explains in paragraphs 19-25 of her Rebuttal Affidavit, (SBC Ex. 4.1), if the requesting CLEC wishes to reuse both the existing DSL-capable loop and the port to provide the remaining voice service, the CLEC may simply connect the loop and port in its collocation arrangement. The CLEC can do this without any SBC Illinois involvement. Alternatively, if the CLEC wishes to provide service in a UNE-P arrangement, it may request that SBC Illinois provision a new UNE-P that combines the existing port with a new voice grade loop. Thus, SBC Illinois contends, CLECs have at least two options to disconnect data service and establish voice-only service.

~~1622.~~1629. AT&T objects to using a "new" loop – apparently under the mistaken belief that a DSL-capable loop is the same as a "voice loop." (AT&T Ex. 3.1 (DeYoung/Willard Rebuttal) ¶ 36.) SBC Illinois explains that AT&T is wrong as a technical matter. When SBC Illinois provides UNE-P for basic analog voice service to a CLEC, it uses a "voice-grade" loop, i.e., a loop that meets the technical standards for SBC Illinois voice service. In contrast, when a CLEC orders UNEs to use in a line splitting arrangement, it receives a *DSL-capable* loop, i.e., a non-loaded copper loop that may be used for the provision of DSL service but which does not necessarily meet the technical standard for SBC Illinois voice loops. For this reason, when a CLEC seeks to "convert back" a stand-alone ULS-ST port to UNE-P, SBC Illinois does not use the existing DSL capable loop, but instead provisions a voice grade loop to effectuate the arrangement. (SBC Ex. 4.2 (3/17/03 Chapman Surrebuttal) ¶¶ 9-12.)

~~1623.~~1630. The second new issue is AT&T's suggestion that the Commission's Phase I Order requires SBC Illinois to provide additional evidence regarding requests to go from line sharing to line splitting while changing the splitter and data provider. (AT&T Ex. 3.1 (DeYoung/Willard Rebuttal) ¶ 38.) This is simply wrong, SBC Illinois contends, because under both Scenario B and Scenario C, there is no change to the splitter arrangement. "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." Phase I Order, ¶ 947 (Emphasis added). According to SBC Illinois, AT&T's discussion involves an entirely new set of facts where there is a change in the splitter arrangement, and is well outside the scope of the Phase I Order. (SBC Ex. 4.2 (3/17/03 Chapman Surrebuttal) ¶ 13.)

~~1624.~~1631. Finally, AT&T argues that SBC Illinois "refuses to provide any information" about the scenario described above. AT&T Ex. 3.1 (DeYoung/Willard Rebuttal) at ¶ 39. SBC Illinois responds that if AT&T has specific operational questions about SBC Illinois' order practices, SBC Illinois will certainly respond to AT&T's questions through its account team. (SBC Ex. 4.2 (3/17/03 Chapman Surrebuttal) ¶ 14.)

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[140] WorldCom claims that SBC Illinois' process for going from line splitting back to UNE-P (what she calls a "disconnection of DSL") requires a 7 day disconnection and the loss of a customer's phone number. The Company points out that this accusation completely overlooks Ms. Chapman's testimony that the process has no such problems. (SBC Ex. 4.1 (3/3/03 Chapman Rebuttal) ¶¶ 19-25.)

Cross Connections, Line Splitters and Minimized Disruption – Docket 0614

~~1625.~~1632. Staff asserts that paragraph 968 of the Phase I Order requires SBC Illinois to prove that its compliance tariff in Docket 01-0614 meets three requirements:

(1) provides for cross connections between any UNE-P combination and facilities of any collocated carrier;

(2) provides for the use by CLECs (for line splitting purposes) of existing SBC Illinois' splitters; and

(3) provides for the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions and CLEC line splitting arrangements.

(Staff Ex. 28.0 (Hoagg) ¶¶ 27-31.)

~~1626.~~1633. SBC Illinois challenges the assertion that *any* of these three proposals are required by the Phase I Order and specifically challenges Staff's assertion that the third item is a requirement of Docket 01-0614. SBC Illinois further points out that the first two issues are moot because SBC Illinois witness Chapman demonstrated in her Rebuttal Affidavit that the Company's tariffs already contain the precise language Staff was looking for. (SBC Ex. 4.1 (3/3/03 Chapman Rebuttal) ¶¶ 16-18. Staff agrees (Staff Ex. 40.0 (Hoagg Rebuttal) ¶ 19), so these issues appear to be closed.

~~1627.~~1634. With respect to item 3, however, disagreement remains. SBC Illinois argues that the proposed language is nowhere required in Docket 01-0614. In fact, Staff does not contend that this is an express requirement of Docket 01-0614; rather, Staff argues that this requirement ought to be imposed because it flows from the portion of the Docket 01-0614 Order that requires SBC Illinois to provide a splitter as part of a network element platform. (Staff Ex. 28.0 (Hoagg) ¶ 31.) SBC Illinois argues that this is a unique interpretation of the Docket 01-0614 Order that Staff did not advance in Phase I of this docket.

~~1628.~~1635. Moreover, the Docket 01-0614 Order nowhere discusses whether the requirement under 801(d)(6) that "incumbent local exchange carriers should provide the requested network elements platform without any disruption to the end users services" has any relationship whatsoever to the CLEC line splitting situation Staff describes. The Company emphatically asserts that it does not, because a network element platform is distinctly different from a CLEC line splitting arrangement. A network element platform is a combination of UNEs that is provisioned and maintained on an end-to-end basis by SBC Illinois. In contrast, a line splitting arrangement is something the CLEC performs for itself by using SBC Illinois-provided loops and ULS-ST which the CLEC combines and maintains on an end-to-end basis for itself. In short, SBC Illinois argues that there is no support in the Phase I Order or in Docket 01-0614 for Staff's proposal. It is simply not a requirement of Section 271 and should be rejected. The Company also points us to paragraph 18 of our Phase I Order and argues that we are not to

"entertain novel issues or reconsider settled issues or to impose new obligations" as proposed by Staff.

~~1629.~~1636. In order to respond to Staff's concern, however, SBC Illinois has proposed tariff language that would establish some degree of parity between the Company's provisioning of the UNEs necessary to support a line splitting arrangement on the one hand, and the Company's provisioning of HFPL necessary to support a line sharing arrangement, on the other hand. (SBC Ex. 4.2 (Chapman Surrebuttal) Sch. CAC-8.) According to Ms. Chapman, if this type of language will address all of Staff's line sharing/line splitting concerns (including those discussed below regarding nondiscrimination), SBC Illinois is willing to make those tariff revisions.

"Parity" Between Line Sharing and Line Splitting

~~1630.~~1637. Staff takes the position that SBC Illinois is legally obligated to provide two distinct arrangements -- line sharing and line splitting – in parity with one another. (Staff Ex. 40.0 (Hoagg Rebuttal) ¶ 29.)

~~1631.~~1638. SBC Illinois contends that no such requirement exists and that the Commission should not go out of its way to create one in this proceeding. According to SBC Illinois, Staff urges the Commission to adopt this as a new requirement under a general "non-discrimination" theory. Id. In SBC Illinois' view, this is not the right time or the right place to consider this new theory. (SBC Ex. 4.2 (Chapman Surrebuttal) ¶¶ 15-16.)

~~1632.~~1639. On the merits, SBC Illinois contends that Staff's proposal should be rejected for a variety of reasons. First, Staff's claim that non-discrimination principles require SBC Illinois to treat line sharing (presumably the HFPL UNE) in parity with line splitting (presumably the UNEs that SBC Illinois provides to support line splitting, i.e., DSL-capable loop and ULS-ST port) is overly vague. It is not clear whether Staff is saying that this is a provisioning issue that applies to HFPL and loops, or whether, as AT&T argues, this would require SBC Illinois to achieve parity in "provisioning intervals, disconnection of DSL, ease of ordering, and customer downtime". (AT&T Ex. 3.1 (DeYoung/Willard Rebuttal) ¶ 45.)

~~1633.~~1640. Second, SBC Illinois observes that there are significant business and operational differences between line sharing and line splitting. In a line sharing arrangement, SBC Illinois provides the HFPL UNE. In a line splitting arrangement SBC Illinois provides a DSL-capable loop and an unbundled switch port with transport. In a line sharing arrangement, SBC Illinois continues to use the loop to provide retail voice service. By contrast, in a line splitting arrangement, SBC Illinois does not use the loop to provide service. In a line sharing arrangement, the data CLEC is SBC Illinois' customer for the HFPL UNE. In a line splitting arrangement, the data CLEC typically purchases the HFPL from the voice CLEC, who in turns purchases the UNEs from SBC Illinois. In a line sharing arrangement, the data provider may not condition the loop if doing so would degrade the end user's voice service below SBC Illinois' standards. In a line splitting arrangement, on the other hand, the CLECs can do whatever conditioning they like. These distinctions result in practical operational differences in ordering, loop conditioning, trouble reporting and maintenance obligations which prevent the parity standard Staff proposes. (SBC Ex. 4.1 (Chapman Rebuttal) ¶¶ 8-15.)

~~1634.~~1641. Third, the DSL-capable loops and ULS-ST ports and transport used to support line splitting – just like other UNEs – are already included in the relevant performance measurements and are subject to remedy payments if provisioning intervals fall below the required standard. For this reason, imposition of a new standard is unnecessary and Staff's argument that there is a danger that SBC Illinois will take 3 months to provision a loop for line splitting is simply untrue. (Staff Ex. 40.0 (Hoagg Rebuttal) ¶ 28.)

~~1635.~~1642. Fourth, Staff implies that line sharing is some special, exclusive relationship between SBC Illinois and its data affiliate, AADS – but according to SBC Illinois this is not at all the case. (Id. ¶ 27.) Line sharing is merely the provision of the HFPL UNE over an existing SBC Illinois retail analog voice line and it is available to all CLECs. SBC Illinois contends Staff is equally wrong to suggest that some special protections are required because SBC Illinois and its data affiliate can offer voice and DSL internet service via line sharing, while the CLECs cannot use line sharing to offer a bundled voice and data offering. (Id. ¶ 28. The FCC has specifically found that ILECs do not have to offer line sharing when they do not provide voice service to the end user on that line. That *right* under FCC rules cannot become the basis for a new *obligation* under state law.

~~1636.~~1643. Fifth, Staff argues that its parity standard is needed because "the FCC will phase out CLEC's ability to line share with SBC Illinois beginning this year". (Staff Ex. 40.0 (Hoagg Rebuttal) ¶28.) The Company points out that Staff is getting ahead of itself. Any new requirement in Illinois that is based on the FCC's Triennial Review Order should at least wait until that order is issued so that all parties can assess its impact.

Compliance Tariff for Docket 00-0393

~~1637.~~1644. In our Phase I Order, the Commission required SBC Illinois to show that its Broadband UNE tariff complies with our Order in Docket 00-0393. In particular, we asked the Company and Staff to report to us on the propriety of SBC Illinois' compliance tariff and we urged the parties to resolve their differences, if any. Phase I Order, ¶¶ 954-959.

~~1638.~~1645. SBC Illinois witness Patricia Fleck explained that SBC Illinois has made a number of recent changes to its Broadband UNE tariff and that, with these changes, there is no question that its tariff fully complies with our orders in Docket 00-0393. (SBC Ex. 5.0 (Fleck Aff.) ¶¶ 5-9.) In any event, SBC Illinois argues, this question is better addressed in Docket 03-0107, a proceeding which the Commission recently initiated to review this very issue. (SBC Ex. 5.1 (Fleck Rebuttal) ¶¶ 3-6.) SBC Illinois informs that this new docket arises from the suspension of an SBC Illinois tariff filing on January 17, 2003 that updated the Broadband UNE offering to more fully comply with the orders in Docket 00-0393. SBC Illinois further notes that in the FCC's February 20th Opening Meeting discussing the forthcoming Triennial Review Order, the FCC adopted new rules that, according to its press release, will provide substantial relief for broadband, including loops utilizing hybrid copper/fiber facilities. (SBC Ex. 5.1 (Fleck Rebuttal) ¶7.)

~~1639.~~1646. Staff disagrees with SBC Illinois' analysis of whether the Company's tariff complies with the Commission's requirements in Docket 00-0393, but nonetheless agrees with Ms. Fleck that in light of the tariff investigation initiated in Docket 03-0107, and in light of

the FCC's Triennial Review Order, this issue should not be addressed in this proceeding. (Staff Ex. 40.0 (Hoagg Rebuttal) ¶¶ 12-16.)

The Hot Cuts Process.

~~1640.~~1647. In response to an issue raised by XO, SBC Illinois described its "hot cut" process, in which a loop is transferred from SBC Illinois to a CLEC on a coordinated basis to minimize down time to the end user. With respect to hot cuts for loops served by integrated digital loop carrier ("IDLC") systems, XO complained of the 8-hour window for the IDLC hot cut process. In response, SBC Illinois indicated that work was underway to develop a 4-hour appointment window to improve the process. At the end of Phase I, we noted that we were pleased with the effort but required a more concrete showing by the Company. Phase I Order, ¶¶ 960-963.

~~1641.~~1648. SBC Illinois witness Justin Brown explains that, beginning November 9, 2002, SBC Illinois established a 4-hour commitment/appointment window for hot cuts involving IDLC. Under this new procedure, all coordinated hot cuts related to IDLC are scheduled during the commitment hours of 10:00 AM to 2:00 PM. If a CLEC requires a different 4-hour commitment window, the CLEC can request it by issuing a supplemental copy of a local service request ("LSR"). SBC Illinois states that the procedures surrounding this 4-hour commitment for IDLC hot cuts are set forth in an Accessible Letter dated November 9, 2002 that SBC Illinois provided to the CLEC industry, and according to SBC Illinois these procedures for 4-hour IDLC hot cuts are operational and in place today. (SBC Ex. 9.0 (Brown Aff.) ¶¶ 25-27.) No party to this proceeding disputes the Company's evidence regarding this process improvement.

b. Staff Position on Phase I Compliance Issues

Docket 00-0393 Compliance

~~1642.~~1649. Staff notes that we determined in Phase 1 of this docket that SBC should take certain remedial actions In Phase 2 concerning UNE loops:

> 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.[141]

~~1643.~~1650. The Staff further directs our attention to Paragraphs 958 and 959 of the Phase 1 Interim Order in which we require SBC to demonstrate compliance with the Commission's Orders in Docket 00-0393:

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[141] Phase 1 Interim Order On Investigation in Docket 01-0662 at paragraph 968.

> That said, AT&T has set out a matter of grave concern to this Commission. 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.
>
> As it stands, the Company and Staff will report to this Commission, in Phase 2, on the propriety of Ameritech's compliance tariff for Docket 00-0393 and we urge the parties to result their differences in the interim. Phase I Order, ¶¶ 958-59

~~1644.~~1651. The Staff believes that SBC Illinois witness Pat Fleck makes erroneous assertions concerning SBC's compliance with the Orders in Docket 00-0393. Nonetheless, the Staff notes that, in light of recent FCC actions concerning its Triennial Review (of federal rules governing availability of UNEs), this Commission should not rule on SBC Illinois' compliance with Docket 00-0393 requirements in this proceeding.

~~1645.~~1652. The Staff is now of the opinion that the Commission can and should rule on SBC Illinois' compliance with Docket 00-0393 requirements in the newly initiated Docket 03-0107. In Docket 03-0107, a compliance investigation, the Commission can assess any impacts on Docket 00-0393 requirements that arise from the FCC's 2003 Triennial Review Order.

~~1646.~~1653. Accordingly, the Staff now recommends that we find that the requirement set forth in paragraph 958 of the Phase I Interim remains vital, but refer this matter to the newly initiated Docket 03-0107. In the Staff's opinion, this would be an adequate resolution of this matter for purposes of Phase II of this proceeding.

Line Splitting – Single Order Process

~~1647.~~1654. In Phase 1 of this proceeding, Staff directed our attention to the necessity of a "single order process" to support line splitting by CLECs providing voice service via UNE-P. The Phase 1 Interim Order on Investigation addressed this issue, and concluded as follows:

> 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. Phase 1 Order, ¶ 946

~~1648.~~1655. Staff notes SBC witness Chapman to address this issue in her January 22, 2003 affidavit. There, she asserts that SBC's single order process is "fully operational" and that

it facilitates CLEC line splitting arrangements. However, the Staff contends that Ms. Chapman presents no evidence to support her claim. The Staff notes that we have already declared, "[a] simple claim is not sufficient for our purposes." Ms. Chapman's affidavit does not, in the Staff's view, provide the "evidence to show that [SBC] offers a workable single order process." Accordingly, the Staff urges further evidence to satisfy this directive. In response to questioning at the February 10, 2003 workshop in this proceeding, Ms. Chapman indicated that only a small number of orders (approximately 25) have been filled utilizing the single LSR process, and that these were "managed" by SBC. Therefore, as of yet, the Staff is of the opinion SBC has failed to make the required showing that SBC's single LSR process is viable under conditions of normal order flow through.

~~1649.~~1656. Ms. Chapman further asserts at paragraph 9 of her January 22, 2003 affidavit that the SBC single LSR process (in conjunction with CLEC cable pre-wiring from a collocation cage to SBC's main distribution frame) enables line splitting in UNE-P provisioning arrangements with "no appreciable service disruption". She asserts that AT&T has endorsed this process in California, and that this process is adequate for Commission purposes in this docket. The Staff professes to no direct knowledge concerning the validity of Ms. Chapman's assertion that AT&T finds the above-described processes acceptable in California, and reserves comment.

~~1650.~~1657. Staff's reply directs attention to paragraphs 3 - 7 of Ms. Chapman's March 3, 2003 rebuttal affidavit, wherein she addresses this issue. In Staff's view, Ms. Chapman adequately explains the reasons underlying SBC's management of the orders received thus far, and clarifies that there is no impediment to use of the single order process at commercial volumes. Thus, Staff considers this issue resolved for purposes of Phase II of this proceeding, and recommends that we find SBC Illinois in compliance with the requirements of paragraph 946 of the Phase I Interim Order.

Line Splitting and Parity

~~1651.~~1658. Staff observes that, in our Phase I Interim Order, this Commission concluded that SBC must take certain remedial actions to address Commission concerns regarding Checklist Item 4. Specifically, we found that:

> 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.
>
> Phase I Interim Order, ¶ 968 [emphasis added]

~~1652.~~1659. Further, we described a major line splitting requirement of the Phase I Interim Order as follows:

> [T]he Commission will require Ameritech to submit evidence of how the process [line splitting via UNE-P and CLEC owned splitters] works, <u>and evidence that it is being provided in a nondiscriminatory manner</u>, in Phase II of this proceeding.

Phase I Interim Order, ¶ 941 [Emphasis added]

~~1653.~~1660. The Staff views it as significant that Ms. Chapman presents, in its view, no cogent argument or evidence that the process described (relying upon CLEC cable prewiring) satisfies SBC's obligation to make available the line splitting functionality in a nondiscriminatory manner. In paragraph 10 of her affidavit, Ms. Chapman argues that the above-described SBC practice is nondiscriminatory because "…SBC Illinois makes no distinction in the way it processes orders from different CLECs for the UNEs necessary for line splitting."

~~1654.~~1661. This, in the Staff's estimation, fundamentally misses the point concerning SBC's obligations to provision line splitting in a non-discriminatory manner. The Staff views it as essential to a finding of non- discrimination generally is that SBC "treat" CLECs in a manner identical to (or sufficiently comparable to) its own operations or its own affiliate. In this application, SBC must show that parity (or sufficient comparability) exists between the provisioning of line splitting functionality to CLECs and the provisioning of data functionality to SBC's data affiliate (where SBC Illinois provides the voice service component). Staff contends that Ms. Chapman has provided no cogent argumentation or evidence to demonstrate that this requirement (as properly defined) has been satisfied. Unless and until SBC does so, it has not demonstrated that it has met all requirements concerning the provisioning of unbundled local loops.

~~1655.~~1662. Accordingly, the Staff recommends that we reject SBC Illinois' erroneous position and hold the company to the proper standard for nondiscrimination in line splitting. That standard is parity between line splitting functionalities provided to CLECs and line-sharing functionalities provided to SBC's own data affiliate (where achievable). For any specific functionalities where parity is not achievable for technical or operational reasons, the proper standard is sufficient comparability. In any event, SBC Illinois should demonstrate comparability sufficient to persuade us that this crucial aspect of SBC's local services market is irreversibly open to competition.

~~1656.~~1663. The Staff advises us that modest reflection is sufficient to reveal the fundamental flaw in SBC Illinois' position on this matter. SBC's combined voice/data offering to residential and small business end users is DSL and voice, provided via line sharing with its data affiliate. CLEC offerings that directly compete with this are enabled via line splitting. It should be noted that the FCC will phase out CLECs' ability to line share with SBC Illinois beginning this year, but SBC's ability to line share with its data affiliate (or "line share" with itself if it changes corporate structure to absorb the current data affiliate) will continue.

~~1657.~~1664. Further, Staff argues, under SBC's formulation of nondiscrimination, it would be acceptable if it took 3 months to provision line splitting functionalities to CLECs, while it provisioned combined voice/DSL services (in conjunction with its affiliate) to end users in three days. While the Staff acknowledges that this hypothetical may be extreme, it illustrates the fundamental fallacy of SBC's position. SBC Illinois' position is consistent with an ability to discriminate at will against CLEC's attempting to provide (via line splitting) services directly competitive with SBC's combined voice/xDSL services.

~~1658.~~1665. Staff notes that SBC Illinois raises two basic arguments to defend its position on this matter, both of which we should be rejected. First, SBC argues that the FCC has not imposed a nondiscrimination requirement on line splitting vis-à-vis line sharing in any previous Section 271 application, and thus we cannot or should not do so here.[142] This argument fails, the Staff argues, because the Commission has determined that it will assess SBC's Section 271 application in light of state specific requirements. The Staff recommends that we determine that sufficient comparability (and parity where achievable) between CLEC line splitting and SBC's own line sharing is essential to any determination we might make that SBC Illinois' local markets are irreversibly open to competition.

~~1659.~~1666. Second, the Staff notes that SBC Illinois argues that operational and network differences between line sharing and line splitting render any nondiscrimination requirement between these two arrangements impossible or inappropriate to implement (see Ms. Chapman's rebuttal affidavit, ¶¶9-15). The Staff also urges us to find that this argument fails. From a central office network perspective, these arrangements are directly comparable, if not identical. Ms. Chapman acknowledged this upon questioning at the Phase II transcribed meeting on February 10, 2003, as follows:

> Q. I think you also discuss -- maybe you don't discuss this. But in converting UNE-P to line splitting from, again, a network facility standpoint, what's happening in the central office, what works going on, you'd agree with me that putting aside what carriers doing what, the work that's done is identical to work SBC would do when provisioning SBC branded DSL to its own voice customers?
>
> That is you take the loop to your data affiliate's cage and then cross-connect the voice portion of the loop back to the SBC switch?
>
> A. That is correct.
>
> Tr. at 2642-43

~~1660.~~1667. The Staff contends this to mean that if the local loop provisioned in a line splitting arrangement is xDSL-capable, then from a network perspective CLEC line splitting and SBC Illinois' own line sharing arrangements are directly comparable.

~~1661.~~1668. Moreover, the Staff indicates the differences between line splitting and line sharing pointed to by SBC Illinois are overstated and arise largely from a faulty premise.

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[142] ICC Docket No. 01-0662, Phase II Compliance Rebuttal Affidavit of Carol Chapman, March 3, 2003 at par. 15.

Ms. Chapman's March 3, 2003 rebuttal affidavit contains the assertion that compliance with the appropriate nondiscrimination standard Staff advocates would:

> [M]ake SBC responsible for the way that two CLECs cooperate to engage in line splitting. In effect, SBC Illinois would be required to act as the middleman between the CLECs so that they would not have to cooperate with each other, and SBC Illinois would handle everything for them. Chapman Rebuttal Affidavit, ¶15

~~1662.~~1669. The Staff asserts that, for any CLEC that has agreed to (or acknowledged the need for) a so-called "single customer of record" arrangement to support line splitting, this is an egregious misstatement. For all such carriers, for purposes of ensuring nondiscrimination, the operational relationship between the line splitting CLECs and SBC Illinois will be comparable to the relationship between SBC Illinois and its own line sharing data affiliate.

~~1663.~~1670. To the degree that any differences exist between specific aspects or components of line splitting and line sharing that render a parity nondiscrimination standard infeasible, the Staff considers that it is SBC's burden to point these out and demonstrate, that sufficient comparability exists between provisioning of these two arrangements (for such specific aspects). If SBC Illinois fails to do so, the Staff recommends that we find that the crucial requirement set forth in paragraph 941 of our Phase I Interim Order has not been satisfied.

Compliance with the Order in Docket 01-0614

~~1664.~~1671. The Staff reminds us that we determined in Phase 1 of this docket that SBC should take certain remedial actions In Phase 2 concerning UNE loops:

> 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.[143]

~~1665.~~1672. The Staff notes SBC has not yet addressed, as we directed it to, the adequacy of its compliance tariff with respect to our Order in Docket 01-0614. The Staff directs the Commission's attention to the Order in Docket 01-0614, which, it claims, sets forth two major requirements concerning line splitting. First, Staff concludes that the only permissible

[143] Phase 1 Interim Order On Investigation in Docket 01-0662, at paragraph 968.

restrictions on the availability and use of cross-connects for line splitting by CLECs involve safety and network reliability:

> The Commission also accepts the Joint CLEC proposal relating to the requirement that Ameritech provide cross connects between the facilities of collocated and non-collocated carriers and rejects Ameritech proposed language that would provide cross connects only between the facilities of collocated carriers as without the requirements of section 13-801(c). Section 13-801(c) plainly requires Ameritech to allow, and provide for, cross connects between a noncollocated telecommunications carrier's network elements platform, or a noncollocated telecommunications carrier's transport facilities, and the facilities of any collocated carrier, consistent with safety and network reliability standards.

At Paragraph 81 of the same Order, it was determined that:

> [We] agrees with the Joint CLECs that Section 13 – 801(c) contemplates the exact type of cross-connects that are necessary to provision line splitting without disrupting the end-users service and to retain the feature [i.e., joint voice and data service] intact. There would seem to be little other utility to CLECs from ordering Ameritech to provide this service except to support line splitting, where one CLEC becomes the voice provider and one CLEC becomes the data provider to an end user that currently has voice and data service over a copper loop.

Finally, in paragraph 83 of this Order, there is language that:

> [T]he network platform, as defined by the Legislature in the new enactments, contemplates Ameritech's provision of splitters and the line splitting arrangement as contemplated by the Joint CLECs. Accordingly the Joint CLECs proposed tariff language on this issue is accepted.

~~1666.~~1673. The Joint CLEC proposed tariff language addressing cross-connects, adopted in the Order for Docket 01-0614, states:

> Ameritech Illinois will allow, and at the request of the carrier will provide, cross connects between and UNE-P combination and the facilities of any collocated carrier.

~~1667.~~1674. Staff argues that SBC Illinois must now demonstrate, in its March 3, 2003 responsive affidavits, that its current tariff contains specific provision(s) that comply with this requirement.

~~1668.~~1675. A second major determination identified by the Staff concerning line splitting was summed up in paragraph 80 of the Order in Docket 01-0614 as follows:

> [A] requesting telecommunications carrier that seeks to provide the customer the same feature as the customer was receiving must be entitled to the use of an existing splitter if the end-users features are to remain intact. This is especially so given the Legislature's requirement that the requesting carrier be provided the platform "without any disruption to the end user's services." The only way that this can be accomplished is if the splitter is part and parcel to the platform. Any other scheme would, of necessity, require some disruption of service.

~~1669.~~1676. The Staff argues that, to comply with this directive, SBC's tariff must provide for the use of existing splitters by CLECs seeking to engage in line splitting. Moreover, literal compliance requires that SBC's tariff provide for a seamless transition to line splitting, with no service disruption whatever. It is the Staff's understanding, however, that the involved parties acknowledge that some minimal service disruption is unavoidable for purely technical reasons. Given this, Staff contends that SBC's tariff must, at an absolute minimum:

(1) provide for use by CLECs (for line splitting purposes) of existing SBC splitters; and

(2) provide for the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions in CLEC line splitting arrangements.

~~1670.~~1677. The Staff's position is that SBC must demonstrate that its tariff contains provisions that adequately address these two issues immediately. In its reply, Staff further notes that compliance with our Orders in Docket 01-0614 requires that SBC Illinois' tariffs:

(a) permit appropriate cross connects between any UNE-P combination and the facilities of any collocated carrier;

(b) provide for the use by CLECs (for line splitting purposes) of existing SBC splitters; and

(c) provide for the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions in CLEC line splitting arrangements.

~~1671.~~1678. It is the Staff's opinion that SBC Illinois witness Carol Chapman, (in her March 3, 2003 rebuttal affidavit at paragraphs 16 through 18), adequately addresses the obligations set forth in items (a) and (b) above. Ms. Chapman's affidavit, avers the Staff, makes clear that the required and appropriate provisions indeed are present in SBC Illinois' tariff. In the Staff's opinion, these issues are resolved for purposes of this docket. Accordingly, the Staff recommends that the Commission find that SBC complies with these two particular Docket 01-0614 requirements.

~~1672.~~1679. With respect to item (c) of paragraph 18 (above), SBC Illinois has not, in the Staff's estimation, demonstrated that its tariff provides for:

> the most efficient processes and mechanisms feasible (consistent with safety and reliability considerations) in order to minimize any technically unavoidable service disruptions in CLEC line splitting arrangements.

~~1673.~~1680. Staff draws our attention to how Ms. Chapman addressed this issue in response to questions posed during the Phase II transcribed meeting on February 10, 2003, and specifically to the following exchange:

> Q. I think you also discuss -- maybe you don't discuss this. But in converting UNE-P to line splitting from, again, a network facility standpoint, what's happening in the central office, what works going on, you'd agree with me that putting aside what carriers doing what, the work that's done is identical to work SBC would do when provisioning SBC branded DSL to its own voice customers?
>
> That is you take the loop to your data affiliate's cage and then cross-connect the voice portion of the loop back to the SBC switch?
>
> A. That is correct.

> Q. And you would think that the downtime, the average downtime in provisioning line – UNE-P line splitting or line sharing to your own voice customers using your -- the SBC data affiliate, that the customer downtime on voice should be identical?
>
> A. Yes, it should be equivalent. That's been our practice is to make sure that we handle it the same way.
>
> Tr. at 2642-43

~~1674.~~1681. It is the Staff's opinion that Ms. Chapman thus makes clear that SBC recognizes that any technically unavoidable downtime should be equivalent (on average) between line splitting arrangements and SBC's own line sharing arrangements with its data affiliate (i.e., nondiscrimination). She further recognizes that from an operational and performance perspective this equivalency can and should, on average, be achieved. According to Staff, SBC Illinois now simply should demonstrate in its surrebuttal filings that its tariff contains language directly addressing this comparability (in a manner consistent with Ms. Chapman's above response), or add such language to its tariff. If SBC fails to take either action to the our satisfaction, the Staff recommends that we should not find SBC Illinois in compliance with our Docket 01-0614 Orders. In that event also, Staff recommends that we decline to endorse SBC Illinois' Section 271 application.

~~C~~c. AT&T's Position.

Line Splitting.

~~1675.~~1682. AT&T submitted the joint direct and rebuttal affidavits of Sarah DeYoung and Walt Willard on the issues concerning line splitting (AT&T Ex. 3.0 and 3.1). In their affidavits, Ms. DeYoung and Mr. Willard detail the significant operational deficiencies of SBC Illinois' line splitting processes. Based on those deficiencies, AT&T's affiants demonstrate that: (1) there is no evidence (through commercial experience or Bearing Point testing) that SBC Illinois' line splitting processes work in practice, and (2) SBC Illinois' line splitting processes, even as described, are unworkable in practice. In addition, AT&T contends that SBC Illinois' line splitting practices are plainly discriminatory, as SBC's versioning policy and other practices severely undercut the ability of voice and data CLECs to use line splitting *with the same ease and in the same manner* as SBC "shares" its voice lines with itself, i.e. via its DSL affiliates.

~~1676.~~1683. AT&T explains that it has a keen business interest in line splitting. AT&T, a national voice carrier, and Covad, a national DSL carrier, have entered into a partnership to do just what the FCC contemplated. AT&T Ex. 3.0, ¶ 183. AT&T provides voice service and Covad provides DSL service to AT&T UNE-P customers. AT&T and Covad have sought to "work around" SBC Illinois' requirement that there must be one customer of record (e.g., the voice carrier) in a line splitting situation. AT&T has therefore authorized Covad to use

AT&T's Operating Company Number ("OCN") to submit line splitting orders to SBC Illinois on behalf of existing AT&T voice customers, thereby migrating AT&T UNE-P customers to UNE-P/line splitting arrangements. AT&T will provide the voice service to such customers and will have the primary relationship with the customer, and Covad will offer the data services through the available line splitting capabilities. AT&T retains the billing responsibilities for the customer, and Covad performs the necessary work in its collocation space to provision the customer's DSL service. With this division of responsibilities, AT&T and Covad are preparing to offer this packaged service in Illinois. AT&T Ex. 3.0, ¶ 183.

SBC's Line Splitting Processes Have Not Been Tested.

~~1677.~~1684. Like Staff, AT&T concluded that SBC Illinois has provided no reliable commercial experience to demonstrate that its line splitting processes are working in practice. In addition, the third-party testing of SBC Illinois' OSS by Bearing Point also provides no reliable indication of the capability and capacity of those OSS to process, and provision, line splitting orders. In fact, Bearing Point has not tested the "one-order" process to migrate UNE-P to line splitting with UNE-P (Commission Scenario A), which just recently became available. AT&T Ex. 3.0, ¶ 189-90. Thus, AT&T concludes that SBC Illinois cannot credibly claim that it has the capability to provide line splitting until it can demonstrate that it can provision line splitting orders on a commercial basis.

SBC's Line Splitting Process

~~1678.~~1685. AT&T's affiants further testified that even based on what we do know about SBC Illinois' line splitting process – and how it will allow the proposed AT&T/Covad line splitting orders – there are serious operational concerns about SBC Illinois' ability to provision such orders on a nondiscriminatory basis.

~~1679.~~1686. Chief among AT&T's concerns is SBC' so-called "versioning" policy. AT&T Ex. 3.0, ¶¶ 115-139, 192-196. This "versioning" policy provides that each carrier shall have a unique company name (the "Access Carrier Name Abbreviation" or "ACNA") and OCN for a state. Once a carrier submits an order with its specified ACNA and OCN, all subsequent orders submitted by that OCN must be sent in the same version of EDI used to place the first order. Any order submitted using a different version of EDI is rejected. AT&T Ex. 3.0, ¶¶ 116-117, 119, 192. No other RBOC places a comparable restriction on CLECs. In fact, in the Bell South and Verizon regions, CLECs that submit orders with a single OCN but that have different trading partner IDs can each use a different version of EDI. AT&T Ex. 3.0, ¶ 118.

~~1680.~~1687. Operationally, SBC's versioning restriction means that in order for a voice and a data carrier to partner in providing their services, the data carrier must use the voice carrier's OCN to submit line splitting orders. And under SBC's versioning policy, any orders the data carrier places over the EDI gateway will be rejected if it does not use the same version of EDI as the voice carrier. AT&T Ex. 3.0, ¶ 119-120.

~~1681.~~1688. Based on the above, AT&T's affiants conclude that SBC's versioning policy is a complete barrier to any voice carrier offering line splitting at competitive volumes in conjunction with any data CLEC. AT&T Ex. 3.0, ¶¶ 120-129, 194-196. According to AT&T, this problem affects all three of the line splitting scenarios identified by the Commission. As simply put by AT&T, it is totally unrealistic for a voice carrier and their data partner to be on the same version of EDI to be able to enter line splitting orders. *Id.* AT&T's Ms. DeYoung and Mr. Willard conclude that SBC's position is commercially unreasonable, makes partnering between CLECs impossible, and violates the FCC's requirement that ILECs make network modifications and provide access to network elements to accommodate line splitting which, by its very nature, involves multiple carriers. *Line Sharing Reconsideration Order,* ¶ 20 & n. 36.

~~1682.~~1689. AT&T further explains that SBC Illinois' versioning policy is discriminatory. AT&T Ex. 3.0, ¶ 196. SBC's versioning policy is not a barrier to line sharing by SBC Illinois with its DSL affiliates. And because SBC Illinois retail does not utilize CLEC OSS interfaces, SBC's DSL affiliate does not have to use the same EDI version as SBC to share SBC's voice loops. To comply with its obligations under Section 271, two years after the *Line Sharing Reconsideration Order*, SBC must demonstrate that it can provide line splitting on a commercially reasonable basis without any versioning requirement".

~~1683.~~1690. In its rebuttal testimony, AT&T points out that SBC Illinois does not dispute the effect of its versioning policy, but only seeks to make excuses for it. While SBC Illinois is right that this policy has been in existence for some time, it has become particularly acute – and taken on broader 271 implications – in light of the obstacles that it presents to implementation of voice/data CLEC partnering to provide line splitting. AT&T Ex. 3.1, ¶ 43.

SBC's Process for Disconnecting Data Over Line-Split Lines

~~1684.~~1691. In its direct testimony, AT&T explains its understanding of SBC Illinois' process for migrating from UNE-P/line splitting to UNE-P (i.e., where the customer cancels CLEC data service but retains CLEC voice service). During the collaborative sessions, SBC Illinois' Ms. Chapman was asked numerous questions concerning how a CLEC could convert existing UNE-P/line splitting to a traditional voice arrangement, with line splitting cross connection being eliminated and the loop and port directly connected. Clearly, the import of those questions was to figure out how AT&T could request that SBC convert a line splitting arrangement back to UNE-P. In those collaboratives, Ms. Chapman gave every indication that such reconfiguration was not possible. Tr. 2654-2658. Indeed, as AT&T noted, despite detailed questioning regarding the same, Ms. Chapman offered no detailed information concerning how a CLEC could request a reconfiguration of the voice-only UNE-P arrangement, except to say that SBC Illinois would not help. In its direct case, AT&T attacked this policy as discriminatory, as SBC retail faces no such obstacles.

~~1685.~~1692. In her surrebuttal, AT&T notes, Ms. Chapman supplemented her answer and explained that CLECs could use an existing one-order-process to request a migration from UNE-P with line splitting back to voice-only UNE-P, albeit with a change in the loop. AT&T provided additional comment on this process in its rebuttal testimony. AT&T Ex. 3.1, ¶¶ 36-37. First of all, Ms. Chapman's lack of full disclosure, lack of knowledge, and/or equivocation on this scenario demonstrates that, at best, SBC Illinois is still struggling to define its processes on key line splitting scenarios. AT&T Ex. 3.1, ¶ 35.[144]

~~1686.~~1693. In addition, even the process Ms. Chapman now defines – for converting from line splitting to a voice-only UNE-P configuration – is deficient. This is because SBC Illinois refuses to "re-use" the existing and working loop and requires that CLECs order – and pay for – a new loop. AT&T Ex. 3.1, ¶ 36. SBC follows a different scenario when making an identical conversion from line sharing (with its affiliate) to retail POTS service, however. In that case, SBC admits that in all cases it takes down all cross connects and re-uses the existing loop. Tr. 2660-2665. *See also* SBC's Joint Reply Affidavit of Carol Chapman and Mark J. Cottrell filed in FCC/WC Docket No. 03-16 ¶ 10 n.18.[145] This policy starkly disadvantages CLECs by: (1) imposing a loop connection charge -- a charge that is unnecessary seeing that the CLEC has already purchased and paid SBC all associated nonrecurring charges for the existing loop, and (2) imposing a complicated provisioning process that will lead to needless service disruption for CLEC customers – issues that SBC voice/DSL customers will never face. AT&T Ex. 3.1, ¶¶ 36-37. AT&T concludes that SBC is denying CLECs access to unbundled network elements in a manner equal to what it provides to itself, and therefore is violating its nondiscrimination obligations under Section 251.

SBC's Three-Order Process For Converting Line Sharing to Line Splitting (Commission Scenario B).

~~1687.~~1694. AT&T's Ms. DeYoung and Mr. Willard also took issue with SBC Illinois' cumbersome three-order-process of converting line sharing to line splitting. AT&T Ex. 3.0, ¶¶ 202-205. As noted by AT&T, the conversion of line sharing to line splitting (Commission Scenario B) should be accomplished via a simple record change. As this Commission found in its Phase 1A Order: "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

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[144] Ms. Chapman's lack of full disclosure during the collaboratives should call into question her reliability. Ms. Chapman was one of three SBC witnesses that were found to have provided false testimony to the FCC concerning SBC's OSS capabilities. *See In the Matter of SBC Communications, Inc., Apparent Liability for Forfeiture*, FCC No. 01-308 (rel. Oct. 16, 2001).

[145] *In the Matter of Application of SBC Communication Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan,* WC Docket No. 03-16.

disruption and make use of existing DSL capable loop."[146] AT&T details why SBC flunks each of these requirements.

~~1688.~~1695. As explained by Ms. Chapman, SBC's process for migrating line sharing to line splitting requires CLECs to navigate through a three-order process including: (1) a disconnect order of the data service, when in fact no such disconnection takes place, (2) an order to connect the xDSL capable loop to the data CLECs cage, when in fact that connection is already in place, and (3) an order to connect the port to the data CLEC's cage, although the port is already so connected. Quite obviously, according to AT&T, each of these three orders is unneeded, and SBC's ordering requirements make ordering the migration cumbersome and unwieldy from a CLEC perspective. AT&T Ex. 3.0, ¶ 202.

~~1689.~~1696. In addition, this ordering process raises the probability of disconnection of the customer's voice and/or data while the migration is taking place. This is because the first order in the SBC-three-order-process is a disconnect order. Because these three orders will eventually find their way to an SBC Central Office technician, there is a great risk that the technician will do exactly what the orders tell him/her to do, i.e., disconnect the existing arrangement, thereby resulting in customer loss of voice and data services. AT&T Ex. 3.0, ¶ 203.

~~1690.~~1697. AT&T further points out that SBC Illinois' three-order process has another result, which makes the pricing of this migration non-TELRIC based. SBC is proposing to charge CLECs the nonrecurring charges (NRCs) (totaling $4.93) associated with the port and loop service order charges, which are usually charged when SBC is provisioning a stand alone loop or port. That is not the case here. During the Michigan 271 review, the Michigan Commission directed SBC to charge the UNE-P migration charge (of $0.35 in Michigan, $1.02 in Illinois) for line sharing to line splitting migrations, reflecting the fact that both such migrations are pure record changes.[147] AT&T believes that the Illinois Commission should do the same. AT&T Ex. 3.0, ¶ 204.

Other Line Splitting Scenarios.

~~1691.~~1698. Although SBC provided information concerning the three line splitting scenario identified by the Commission, AT&T argues that its filings did not define SBC's processes for handling other important line splitting scenarios. Specifically, in its direct case, AT&T had asked that SBC Illinois provide information concerning one other likely line splitting scenario: the conversion of a combined SBC voice/DSL line-shared customer to CLEC combined voice/DSL (via UNE-P/line splitting) – where the customer's data is switching from SBC to the CLEC. Ensuring that this scenario works seamlessly in practice is essential, as it

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[146] Phase I Order, ¶ 925.

[147] October 3, 2002 Opinion and Order, MSPC Case No. U012320, p. 16.

would allow CLECs to compete directly for SBC's bundled voice/DSL customers, as AT&T points out.

~~1692.~~1699. Instead of providing this information, SBC refused, claims it was beyond the scope of the Commission's Phase I Order. In its rebuttal, AT&T took issue with SBC Illinois' refusal to provide this information, noting that it is vitally important. This scenario allows a CLEC to convert an existing SBC Illinois voice/DSL customer to a bundled CLEC voice/DSL offering. Thus, if CLECs are to compete with SBC, this migration must work with ease. AT&T Ex. 3.1, ¶ 39.

~~1693.~~1700. AT&T also notes that in Michigan, SBC Illinois stated its intent to provision this migration using the same three-order process described for Commission Scenario B. As noted above, AT&T believes that process is cumbersome and unnecessary.

b. Docket 00-0393 Compliance

~~1694.~~1701. AT&T contends that SBC Illinois has failed to comply with the Commission's Orders in Docket 00-0393 in numerous respects. Notwithstanding the evidence it presented in this docket to support these contentions, AT&T agrees with SBC Illinois that the issue of whether SBC Illinois's end-to-end Broadband UNE tariff complies with the Commission's Orders in ICC Docket 00-0393 should be addressed in ICC Docket 03-0107. The Commission initiated Docket 03-0107 after Phase II of this proceeding was initiated by suspending the end-to-end Broadband UNE tariff revisions filed by SBC Illinois in January of this year and initiating ICC Docket 03-0107 to investigate that tariff. AT&T agrees with SBC Illinois that SBC's compliance with the Commission's Orders in Docket 00-0393 is best addressed in that proceeding.

d. Commission Review and Conclusion.

~~1695.~~1702. In our Phase I Interim Order, we directed the Company to make certain specific showings. Here follows our review and assessment of the evidence presented.

The Hot Cuts Process.

~~1696.~~1703. Based on SBC Illinois' evidentiary showing, and the lack of any dispute as to that showing, we find that the Company has addressed the IDLC hot cut issue to our satisfaction such that this matter is no longer a concern in this proceeding.

Line-Splitting.

~~1697.~~1704. Based on the record, we find that SBC Illinois has not made all of the requisite showings as directed by the Phase I Order. ~~We are particularly persuaded by the fact that SBC Illinois uses the same line sharing/line splitting processes used in California which were reviewed by the FCC in the California 271 Application and found to comply with Section 271 requirements.~~

~~1698.~~1705. While SBC Illinois has a procedure for Scenario C which was not reviewed by the FCC, that is an additional procedure available to CLECs and in no way detracts from the FCC's endorsement of the procedures for Scenarios A and B. We put great weight on the fact that these procedures, to this extent, have already received FCC 271 approval. Against this backdrop, we now turn to a consideration of each scenario.

~~1699.~~1706. With respect to Scenario A, we find that SBC Illinois has demonstrated that it has in place an operational process for the conversion of UNE-P to line splitting and that it administers that process in a nondiscriminatory manner. More important, we find that SBC Illinois has in place a workable single order process for this scenario.

~~1700.~~1707. With respect to Scenario B, we find that SBC Illinois has in place a streamlined process for migrations between line sharing and line splitting that avoids voice and data service disruptions and satisfies of the FCC's requirement. In particular, we are persuaded by Ms. Chapman's testimony that SBC Illinois has in place an operational process, and that such process is fully explained in an Accessible Letter and in the CLEC Online Handbook.

~~1701.~~1708. Finally, with respect to Scenario C, we find that SBC Illinois complies with the requirements of Docket 01-01614 in that it offers ILEC-provided splitters as part of a platform of network elements, and that such offering is part of its compliance tariff. As a final matter, we note that the Company reports that there are no line splitting-specific charges that are not captured in rates for the individual elements that CLEC use in a line splitting arrangement. For this reason, it is not necessary for this Order to address any unique charges for line splitting.

~~1702.~~1709. The Commission rejects the AT&T/WorldCom attempt to input consideration of new line sharing/line splitting scenarios beyond those outlined in the Phase I Order. We were quite clear in the Phase I Order in our identification of those specific scenarios that we directed SBC Illinois to address. These scenarios were based on an extensive Phase I record, on the law, and on a full and fair opportunity for CLECs to raise all line splitting/line sharing issues of concern and to do so in a clear and coherent fashion. Notably, Staff posits no objection to the Company's showing.

~~1703.~~1710. In any event, SBC Illinois provides avenues for CLECs to pursue refinement of procedures for new line sharing/line splitting scenarios that they believe need to be addressed. We encourage AT&T to avail itself of this opportunity at the outset. This proceeding, however broad it may be, is not the appropriate place to pursue such issues in the first instance, without exhausting other, and even more effective options. For all of these reasons, we are fully satisfied that SBC Illinois has made the required showings on line splitting/line sharing issues and we require nothing further.

The 0614 Order – Cross Connects, Line Splitting, Minimal Disruption.

~~1704.As an initial matter, we agree with SBC Illinois that the three issues at hand, as set out by Staff, are not properly Phase I compliance issues at all. We note that Staff did not raise any of these issues in its Phase I briefs and, accordingly, none of these issues were flowed into the Phase I Order as compliance issues for SBC Illinois to address. Nonetheless, we are made to understand that SBC Illinois has demonstrated compliance with the first two Staff proposals, such that those issues are satisfactory closed.~~

~~1705.~~1711. With respect to ~~the third issue~~ line splitting, ~~not only do~~ we find that Staff's proposal is ~~not properly~~ a Phase I compliance issue, ~~but~~ and also conclude that it is ~~not~~ assuredly a requirement of our Order in Docket 01-0614. While SBCI refers us to the last three sentences of paragraph 556 of the Order in Docket 01-0614, which state that the requirement to provision a network element platform without any disruption to an end user's service applies in the case of the UNE-P and EEL sections of SBC Illinois' tariff, SBCI's argument is wholly disingenuous. ~~It does not, as Staff would contend, have anything to do with SBC Illinois' provision of the UNEs necessary to support line splitting. For these reasons, we agree with SBC Illinois that there is no requirement for it to make the demonstration proposed by Staff and we further find that there are no unresolved Phase I compliance issues in this area.~~ We note that it is clear from both Section 13-801 of the Public Utilities Act, and our Order in Docket No. 01-0614, that "the network platform, as defined by the legislature in the new enactments, contemplates Ameritech's provision of splitters and the line splitting arrangement[.]" Order, Docket No. 01-0614, 83. It is further evident that "the network elements platform must be transferred, if so requested, with all current end user features in place, and without any disruption to the end user's service[.]" Id., 80. Accordingly, we find that SBC Illinois has failed to comply with our Phase I Interim Order in this respect.

Staff's Parity Arguments.

~~1706.~~1712. We agree with SBC Illinois that there is no present legal obligation for it to provide two distinct arrangements – line sharing and line splitting – in parity with one another. ~~Staff points to no authority for its position. That was not ever an issue in the 01-0614 Docket, such that our Order in that docket provides no support for Staff's argument. To the extent Staff hinges its argument on a general nondiscrimination theory, this is neither the right place nor the right time to impose what would, by all accounts, be a new obligation on the Company. As we established, early on and many times over, in the Phase I proceeding, t~~This is not an occasion to have the Commission ~~entertain novel issues or to~~ impose new obligations. Rather, it is a proceeding to assess ~~access~~ the Company's compliance with existing FCC obligations. ~~Further, the Company has persuaded us that there are significant operational differences between line sharing and line splitting which would prevent us from imposing the type of parity obligations Staff desires.~~

~~1707.~~1713. For this ~~these~~ reason~~s~~, we decline to require anything further of the Company on this issue. Nonetheless, we note in the section above that the Company has proposed tariff language that would establish some degree of comparability between the Company's provisioning of the UNEs necessary to support a line splitting arrangement on the

one hand, and the Company's provisioning of HPFL necessary to share a line sharing arrangement, on the other hand. Whereas this proposal is not mandated in order to establish the Company's compliance with Checklist Item 4, we see the benefit in the Company's proposal and we hereby direct the Company to file this tariff modification within 30 days of the date of this Order, to be effective on one day's notice.

The Docket 0393 Order.

~~1708.~~1714. We agree with Staff, AT&T, and the Company that Docket 03-0107 is the appropriate place to resolve any potential issues surrounding SBC Illinois' compliance with our orders concerning the Broadband UNE. We therefore find that this issue is no longer a matter of concern for this Section 271 proceeding.

9. New Phase II Evidence and Positions - Checklist Item 4

a. SBC Illinois Position and Evidentiary Case.

Stand-Alone Analog and Digital Loops

~~1709.~~1715. SBC Illinois states that its commercial performance results demonstrate that it provides CLECs nondiscriminatory access to stand-alone analog and digital loops. For 2-wire analog (8.0 dB) voice-grade loops, SBC Illinois states that it missed fewer due dates for CLEC orders than for its own retail orders, and, when due dates were missed, the resulting installation delays were also shorter on CLEC orders. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 157.) SBC Illinois adds that it met the parity standard in two of the three months for average installation intervals. (Id. ¶¶ 157-160.)

~~1710.~~1716. According to SBC Illinois, installation quality for analog loops (as defined by several trouble report measurements) was superior to that provided to retail customers. (Id. ¶ 161.) And when trouble was reported, SBC Illinois states, it achieved parity in the mean time to restore service and for the rate of missed repair commitments. (Id. ¶¶ 163-165.)

~~1711.~~1717. SBC Illinois advises that its results for digital loops were similar. SBC Illinois' commercial performance results show that it easily met the parity standards for the timely provision of BRI loops (id. ¶¶ 133-136) and, in at least two of the three months, for DS1 loops (id. ¶¶ 143-146). SBC Illinois further notes that, for DS1 loops, it met the installation trouble report parity measure in every month, and repaired CLECs' DS1 loops faster than its own retail DS1 loops. (Id. ¶¶ 147, 150.)

Standalone xDSL-capable Loops and Line Sharing

~~1712.~~1718. SBC Illinois states that its performance results demonstrate that it provides CLECs nondiscriminatory access to standalone xDSL-capable loops. SBC Illinois' rate for missed due dates for standalone xDSL-capable loop orders never exceeded 1.93%, and was consistently better than the 5% benchmark. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 103.) For DSL loops both with and without conditioning, SBC Illinois consistently surpassed the 95% benchmark for installation intervals. As for the quality of installation, SBC Illinois reports that it met the 6% benchmark for installation trouble reports in each month in the study period.

~~1713.~~1719. SBC Illinois states that its overall rate of trouble reports on DSL loop orders was substantially better than the benchmark in each month. While the rate was short of

parity, SBC Illinois explains that the differences in each month were slight. (SBC Ex. 2.1 (3/3/03 Ehr Rebuttal) ¶ 49.) Further, for those lines that reported trouble, SBC Illinois states that it met the 9 hour benchmark for the mean time to restore service in every month. (Id. ¶¶ 50-52.)

~~1714.~~1720. With respect to line sharing, SBC Illinois states that it met the parity standard for line sharing installations completed within the customer-requested due date, and for the average installation interval for line sharing orders without conditioning, in each of the study period months. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 105, 112-13.) SBC Illinois further explains that, while it did not meet statistical parity for line sharing trouble report rates, the trouble report rates were low and the shortfalls insignificant. (Id. ¶¶ 120-21.)

b~~(2)~~. Staff Position

Introduction - Performance Measurement Data Analysis Per Staff

~~1715.~~1721. Checklist item 4, Staff informs, as regarding unbundled local loops, encompasses PMs 27 through 69, 114, 114.1, 115, MI 3, CLEC WI 5, and CLEC WI 11. All worksheets are included in Schedule 29.02).

~~1716.~~1722. A review of the remedied Checklist Item 4 sub-measures provides the following information:

Checklist Item 4 Summary of Performance Unbundled Local Loops				
	Sept. '02	Oct. '02	Nov. '02	Total
Number of Sub-measures Missed	11	9	7	7
Number of Sub-Measures Passed	116	120	127	122
Total Number of Sub-Measures	127	129	134	129
Percentage of Sub-Measures Passed	91.3%	93.0%	94.8%	94.6%

1. Unbundled Stand-Alone DSL Loops

~~Noted:~~ Problems with Key PM C WI-6 — Percent Form A Received with the Interval Ordered by the Commission

~~1717.~~1723. The PM data submitted by the Company indicates that the Company meets benchmarks for installation timeliness, installation quality, and post installation maintenance and repair when installing stand-alone DSL loops. The Company is not, however, meeting FMOD process benchmarks including those measured by submeasure C WI 6 – 02.

Staff's Initial Position

Installation Timeliness (stand-alone DSL loops).

~~1718.~~1724. Dr. Zolnierek explained that stand-alone DSL loops are divided into two general types: those that require conditioning and those that do not. ICC Staff Ex. 32.0 at ¶ 46. SBC Illinois does not provide conditioned loops to its affiliate while it does provide loops without conditioning to its affiliate. Thus, performance in provisioning stand-alone DSL loops with non conditioning can be compared not only to the established benchmarks, but to service being provided to the Company's affiliate. Dr. Zolnierek testified that PMs 55.1-04 (Average Installation Interval – DSL – No Linesharing – Without Conditioning) and 56-12.2 (Percent Installations Completed Within the Customer Requested Due Date – DSL – No Linesharing – Without Conditioning) each indicate that the Company is providing service to CLECs that is not at parity with the service it provides to its affiliate. *Id*.

~~1719.~~1725. Staff pointed out that the differences between the service provided to the Company's affiliate and to CLECs are not trivial. ICC Staff Ex. 32.0 at ¶ 47. Staff observed, for example, that in September, October and November of 2002 the average installation intervals for stand-alone DSL loops without conditioning provided to CLECs were 4.90, 5.03, and 4.87 days respectively, while the average installation intervals for stand-alone DSL loops without conditioning provided to the Company's affiliate were 0.67, 3.00, and 1.00 days respectively. *Id*. Similarly, although the Company completed 100% of installations by the customer requested due date for stand-alone DSL loops without conditioning for its affiliate in both September and November of 2002, it provided installations by the customer requested due date for CLECs 98.98%, 98.98%, and 98.27% of the time in September, October, and November of 2002. *Id*. at ¶ 48. Staff points out that while the Company provisioned CLEC orders by the requested due dates a high percentage of the time, the high percentage lags behind the Company's performance in meeting its affiliates requested due dates.

~~1720.~~1726. Staff notes that the disparity between the Company's installation provisioning to CLECs and to its own affiliate, as measured by average installation intervals and installations completed by the customer requested due dates, does not occur with respect to stand-alone DSL loops with conditioning. ICC Staff Ex. 32.0 at ¶ 49. Staff explained that no disparity occurs because the Company data indicates that it does not provision stand-alone DSL loops with conditioning for its affiliate. *Id*.

~~1721.~~1727. Dr. Zolnierek explained that PMs 58-04 (Percent Ameritech-Caused Missed Due Dates – DSL – No Linesharing) and 60-02.1 (Percent Missed Due Dates Due to Lack of Facilities – DSL – No Linesharing) do not distinguish between stand-alone DSL loops with conditioning and stand-alone DSL loops without conditioning, presumably including both. ICC Staff Ex. 32.0 at ¶ 50. This aggregation impairs the ability of the data to identify disparities in installation provisioning to CLECs and to the Company's affiliate. However, Dr. Zolnierek observed that with respect to PMs 58-04 and 60-02.1, the disparity between the Company's installation provisioning to CLECs and to its own affiliate continues to appear. *Id*. Whereas the Company did not cause any due dates in September, October, or November of 2002 to be missed when installing stand-alone DSL for its affiliate, it caused missed due dates 0.81%, 1.00%, and 1.93% of the time when installing stand-alone DSL loops for CLECs. *Id*. at ¶ 51. In response to Mr. Ehr's testimony that "performance results for PM 63-02 (Percent Ameritech-Caused Missed Due Dates Greater Than 30 Days – DSL – No Linesharing) indicate that none of these missed due dates resulted in a delay of installation beyond 30 days . . .", Staff pointed out that the Company nevertheless caused missed due dates and delays in installation when provisioning for CLECs that did not occur with when provisioning for its affiliate. *Id*.

~~1722.~~1728. Staff also observed that the Company missed no due dates due to a lack of facilities in September, November, or December when providing stand-alone DSL loops to its affiliate, but missed 0.80%, 0.89%, and 0.76% of due dates in September, November, and December, respectively, when providing stand-alone DSL loops to CLECs. ICC Staff Ex. 32.0 at ¶ 52. Again, while the Company provisioned CLEC orders on time a high percentage of the time (in fact missing no CLEC due dates by more than 30 days due to a lack of facilities), the high percentage lags behind the Company's performance in meeting its affiliates requested due dates. *Id*.

~~1723.~~1729. Dr. Zolnierek pointed out that the data presented by the Company in Ehr Attachment B indicates a clear disparity between the Company's installation provisioning to CLECs and to its own affiliate. ICC Staff Ex. 32.0 at ¶ 53. Nevertheless the business rules that establish installation performance standards for each of these stand-alone DSL PMs require the company to meet benchmarked performance when provisioning to CLECs rather than to provide service at parity with service provided to it's affiliate. The Company has, with respect to its installation provisioning of stand-alone DSL to CLECs, met these benchmarks. *Id*.

Installation Quality (stand-alone DSL loops)

~~1724.~~1730. Staff concurs with Mr. Ehr's observation that " SBC Illinois has met the 6% benchmark for PM 59-04 (Percent Trouble Reports Within 30 Days of Installation – DSL – No Linesharing) in each of the three months ending with November 2002", but points out that there is nonetheless a disparity between service provided to CLECs and that provided to the Company's affiliate. ICC Staff Ex. 32.0 at ¶ 54. For example, in December 2001, January 2002

and February 2002 the CLEC percent trouble reports equaled 4.71%, 3.16% and 3.37%, respectively while the Company's affiliate percent trouble reports equaled 2.89%, 1.62%, and 0.63%, respectively. *Id*. Dr. Zolnierek did observe, however, that in recent months the Company appears to have corrected this problem and the disparity has reversed. *Id*.

Maintenance and Repair Service (stand-alone DSL loops)

~~1725.~~1731. Dr. Zolnierek testified that the PMs measuring maintenance and repair performance for stand-alone DSL loops are PM 65-04 (Trouble Report Rate – DSL – No Linesharing), PM 65.1-04 (Trouble Report Rate Net of Installation and Repeat Reports – DSL – No Linesharing), PM 67-04 (Mean Time to Restore – Dispatch – DSL – No Linesharing), PM 67-19 (Mean Time to Restore – No Dispatch – DSL – No Linesharing), and PM 69-04 (Percent Repeat Reports – DSL – No Linesharing). ICC Staff Ex. 32.0 at ¶ 55. For all of these measures, the Company meets the benchmarks included in its business rules for September through November of 2002. *Id*.

~~1726.~~1732. With respect to PMs 65-04 (Trouble Report Rate – DSL – No Linesharing), 65.1-04 (Trouble Report Rate Net of Installation and Repeat Reports – DSL – No Linesharing). PM 67-19 (Mean Time to Restore – No Dispatch – DSL – No Linesharing) and PM 69-04 (Percent Repeat Reports – DSL – No Linesharing) the data indicates that the Company is providing maintenance and repair to its affiliate as good or better than it does to CLECs. *Id*. at ¶ 56. However, PM 67-04 (Mean Time to Restore – Dispatch – DSL – No Linesharing) indicates that when dispatch is required CLECs stand-alone lines are out of service on average longer than the Company affiliate is out of service. *Id*. Staff observed that in such cases CLECs were out of service on average for 7.24, 5.69, and 5.72 hours in September, October and November of 2002, while the Company's affiliate was out of service on average for 4.16, 4.24, and 4.00 hours, respectively. *Id*.

FMOD Service (stand-alone DSL loops)

~~1727.~~1733. Dr. Zolnierek testified that with respect to stand-alone DSL loops, the PM data indicates that the Company's affiliate has not received any notifications indicating that a no facilities available situation exists (FMOD Form A) whereas CLECs have. ICC Staff Ex. 32.0 at ¶ 57. Dr. Zolnierek explained that this distinction is important because the Company is not sending Form A notifications to CLECs in a timely manner. *Id*. PM C WI 6 – 02 (Percent Form A Within Interval – DSL Loops without Linesharing) indicates that the Company failed to send 95% of Form A notifications within the 24 business hour benchmark. The Company sent only 93.48% and 92.77% of Form As on time in October and November of 2002. Furthermore the Company's performance in returning Form As steadily declined in the second half of 2002. *Id*. Dr. Zolnierek explained that when the Company fails to provide timely Form A notifications CLECs may not be able to notify their customers of related delays in a timely manner. *Id*. at ¶

58. Thus, the Company's failure to send timely notifications may negatively affect CLEC customer satisfaction and impair CLECs' ability to compete in Illinois.

~~1728.~~1734. Staff observed that when following up with information on the type of modification necessary the Company was much better in providing notification when "simple" modifications were required (FMOD Form D). ICC Staff Ex. 32.0 at ¶ 59. PM – C WI 7-03.2 (Percent Form D Within 72 Hours – DSL Loops without Linesharing) indicates the Company has provided Form D notifications with 72 hours for the period beginning in December of 2001 and ending in November of 2002.

~~1729.~~1735. Dr. Zolnierek testified that the Company has been slightly less successful in sending notifications indicating that "complex", "IDLC/RSU" based, or "New Build" modifications are required (FMOD Forms B, C and E, respectively). ICC Staff Ex. 32.0 at ¶ 60. PM – C WI 7-01.2 (Percent Form B Within 72 Hours – DSL Loops without Linesharing) indicates that the Company returned Form B notifications within 72 hours at least 95% of the time in September and November of 2002, but only returned Form B notifications within 72 hours 86.67% of the time in October of 2002. *Id*. However, PM – C WI 8-02 (Percent Form B Return FOC with New Due Date Within 24 Hours – DSL Loops without Linesharing) indicates that when a CLEC determines to continue with a complex modification the Company returns Firm Order Confirmations (FOCs) with new due dates on time 100% of the time. PM C WI 7-02.2 (Percent Form C Within 72 Hours – DSL Loops without Linesharing) indicates the Company sent no FMOD Form Cs in the period beginning in December 2001 and ending in November 2002. The few Form Es sent by the Company were as indicated by PM C WI 7-04.2 (Percent Form C Within 72 Hours – DSL Loops without Linesharing) sent on time. *Id*.

~~1730.~~1736. Dr. Zolnierek explained that the PMs discussed above indicate that after initial notification that a no facilities available situation exists the Company generally follows up with detail in a timely manner. *Id*. at ¶ 61. However, Staff points out that there is generally insufficient data to indicate whether the Company is meeting due dates when the FMOD process is invoked. PM C WI 11-01.2 (Percent FMOD Due Dates Met Following Form B – DSL Loops without Linesharing) indicates the Company had problems provisioning only one order in the period beginning in September 2002 and ending in November 2002. *Id*. While this one observation caused the Company to miss its benchmark in October 2002, Dr. Zolnierek testified that a single miss is insufficient evidence to conclude that the FMOD provisioning process for stand-alone DSL loops flawed. *Id*.

Staff Initial Recommendation (stand-alone DSL loops).

~~1731.~~1737. Dr. Zolnierek testified that the data presented in Ehr Attachment B indicates a clear disparity between the Company's stand-alone DSL installation provisioning to CLECs and to its own affiliate. ICC Staff Ex. 32.0 at ¶ 62. Staff points out that such disparity in provisioning may impair CLECs ability to compete with the Company affiliate in the provision

of service requiring the use of the Company's stand-alone DSL UNEs. *Id*. However, Staff also acknowledges that the Company is meeting the benchmarks established in its business rules for provisioning of stand-alone DSL to CLECs and is, in many cases, surpassing the established benchmarks. *Id*.

~~1732.~~1738. Staff explained that it has identified a potential deficiency in the Company's provisioning of stand-alone DSL service so that the Company can address this problem if it desires and so that the Commission has the opportunity to require the Company to take corrective action should the Commission desire to do so. *Id*. at ¶ 63.

~~1733.~~1739. Given that the Company is meeting its benchmarks for provision of stand-alone service and the Company's performance with respect to such provisioning is generally very good (relative to the established benchmarks), Staff recommends that, based on the PM data submitted by the Company, the Commission should find that the Company is providing its stand-alone DSL service, with one exception, in accordance with the requirements of Section 271(c)(2)(B)(iv) of the 1996 Act. *Id*. The exception to Staff's general recommendation concerns the FMOD process and the Company's failure to send FMOD Form A notifications on time.

~~1734.~~1740. As a prerequisite to a positive consultation with the FCC regarding whether the Company is providing its stand-alone DSL loops in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff recommends that the Commission require the Company to send FMOD Form A notifications on time. *Id*.

~~1735.~~1741. Staff further recommended that the Company, in its rebuttal affidavits, explain why this problem is occurring and demonstrate that proper steps have been taken to ensure that the problem is corrected on a going forward basis. *Id*.

Staff's Reply Position

Review of Company Response FMOD Form A

~~1736.~~1742. In his rebuttal affidavit, Staff notes, SBC Illinois witness Mr. Ehr does not dispute that the Performance Measurement data that he included in Attachments A and B to his opening affidavit indicates that the Company is failing to provide FMOD Form A notifications in accordance with the standards established in the Company's business rules. *See* ICC Staff Ex. 44.0 at ¶ 5. Rather he states that "[u]pon investigation, it was determined that the below-benchmark performance in these two months was due to inadvertent inclusion of certain loops that should have been excluded." *Id*.

~~1737.~~1743. Dr. Zolnierek testified that Mr. Ehr's explanation indicates that the performance measurement data submitted by the Company is unreliable with respect to this measure and is deficient for the following reasons. *Id*. at ¶ 5. First, Staff pointed out that Mr. Ehr fails to identify what loops were incorrectly included in PM CLEC WI 6 – 02 (Percent Form A Within Interval – DSL Loops without Linesharing) and why these loops should, according to the Company's business rules, be properly excluded. *Id*. Second, Mr. Ehr fails to provide restated data that would indicate that the Company's adjustments cause PM CLEC WI 6-02 to meet rather than miss the 24-business hour benchmark for this measure. *Id*. Finally, while Mr. Ehr indicates that this correction was instituted effective with the December 2002 results, he fails to provide December 2002 and January 2003 data to support his assertion that the recalculated PM CLEC WI 6 – 02 now indicates the Company is meeting the 24-hour benchmark for this measure. *Id*.

~~1738.~~1744. Staff noted that while Mr. Ehr did not provided December 2002 and January 2003 results in his rebuttal affidavit, those results were available from CLEC Online. ICC Staff Ex. 44.0 at ¶ 6. Schedule B to Mr. Ehr's initial affidavit indicated that from December 2001 through November 2002 the PM C WI 6 – 02 included on average over 167 orders per month. The information on CLEC Online indicates that there was only 1 stand-alone DSL order included in PM C WI 6-02 in December 2002 and 2 stand-alone DSL orders included in PM C WI 6-02 in January 2003. Thus, Staff observed that the Company's revised methodology excludes virtually all stand-alone DSL orders that would have been included under the previous methodology. *Id*. In fact, the Company had insufficient data in December 2002 and January 2003 to compute z-scores. Nevertheless, despite the fact that only three orders were included in the December 2002 and January 2003 figures the Company missed the benchmark for 1 of the 3 orders. Therefore, Staff explained that the Company has submitted no evidence that it is sending FMOD Form A letters on time and in fact the little evidence it has provided suggests it is not. *Id*.

Staff Final Recommendation (FMOD Form A)

~~1739.~~1745. Staff continues to recommend that, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning it's stand-alone DSL loops in accordance with the requirements of Section 271(c)(2)(B)(iv), that the Company take corrective action to ensure that FMOD Form A notifications related to stand-alone DSL orders are sent in a timely manner. ICC Staff Ex. 44.0 at ¶ 7.

2. Unbundled DSL Loops With Linesharing (DSL loops with linesharing)

~~1740.~~1746. The PM data submitted by the Company indicates that the Company meets parity criteria for installation timeliness when installing DSL loops with line sharing. Installation quality and repair and maintenance of installed DSL loops with linesharing, however, is not

provided at parity as indicated by the fact that the Company is not meeting parity criteria with respect to sub-measures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03.

Staff's Initial Position

Installation Timeliness (DSL loops with linesharing)

~~1741.~~1747. Dr. Zolnierek explained that like stand-alone DSL loops, DSL loops with linesharing are divided into two general types: those that require conditioning and those that do not. ICC Staff Ex. 32.0 at ¶ 64. Again, like stand-alone DSL loops, SBC Illinois does not provide conditioned loops to its affiliate while it does provide loops without conditioning to its affiliate. *Id*. Unlike stand-alone DSL loops, however, the Company does not for the most part provide disparate DSL loop with linesharing service to CLECs and its affiliate. *Id*. In fact, Staff observed that PMs 55.1-02 (Average Installation Interval – DSL –Linesharing – Without Conditioning) and 56-13 (Percent Installations Completed Within the Customer Requested Due Date – DSL –Linesharing – Without Conditioning) indicate that the Company is providing DSL loops with linesharing service on time to CLECs as often or more often than it provides them on time to its affiliate. *Id*.

~~1742.~~1748. Staff noted that the business rules for DSL loops with linesharing require the Company to provide DSL loops to CLECs at parity with provisioning to the Company's affiliate. *Id*. at ¶ 65. Therefore, the fact that the Company's affiliate does not purchase DSL loops with linesharing with conditioning means that there is no standard the company must meet with respect to PMs 55.1-01 (Average Installation Interval – DSL –Linesharing – With Conditioning). *Id*. Staff observed that for the period beginning in December 2001 and ending in November of 2002 it took the company on average 10.30 days to install DSL with linesharing with conditioning for CLECs, and on average less than 10 days in the period beginning September 2002 and ending November 2002. *Id*. Dr. Zolnierek explained that in the absence of a company equivalent, a reasonable benchmark would be the benchmark established for installation of DSL without linesharing with conditioning, which is 10 days. *Id*. Dr. Zolnierek testified that the Company's performance with respect to PM 55.1-01, which measures performance with respect to DSL with linesharing with conditioning, does not require corrective action when measured against the benchmarks established for DSL without linesharing with conditioning. *Id*.

~~1743.~~1749. Staff noted that PMs 58-03 (Percent Ameritech-Caused Missed Due Dates – DSL –Linesharing) and 60-01.1 (Percent Missed Due Dates Due to Lack of Facilities – DSL – Linesharing) indicate that the company is not missing due dates because of Company causes or lack of facilities more frequently for CLECs than it does for itself or its affiliate. ICC Staff Ex. 32.0 at ¶ 66. PM 63-01 (Percent Ameritech-Caused Missed Due Dates Greater Than 30 Days – DSL –Linesharing) and PM 60-01.2 (Percent AIT Missed Due Dates Due to Lack of Facilities – DSL – Linesharing) similarly show that the company has not caused a missed due date or missed a due date for lack of facilities by more than 30 days for CLECs or for its affiliate. *Id*. Staff also noted that PM 62-02 (Average Delay Days for AIT Caused Missed Due Dates – DSL – Linesharing) indicates that delay days caused by Company caused missed due dates for CLECs

are approximately equal to delay days caused by Company caused missed due date for the Company's affiliate. *Id*.

~~1744.~~1750. Staff concluded that the PMs measuring installation timing for DSL with linesharing indicate that the Company is providing installation of DSL service to CLECs at parity with the installation of DSL service the Company provides to itself and its affiliate. Id. at ¶ 67.

Installation Quality(DSL loops with linesharing)

~~1745.~~1751. Staff stated that while the Company is providing installation of DSL with linesharing on time, the quality of provisioning is very poor. ICC Staff Ex. 32.0 at ¶ 68. Staff observed that PM 59-03 (Percent Trouble Reports Within 30 Days of Installation – DSL – Linesharing) reveals that CLECs have had troubles shortly after installation of their DSL lines with linesharing much more frequently than has the Company affiliate. *Id*. For example, in September, October, and November of 2002 the CLEC percent trouble reports equaled 2.97%, 5.41%, and 3.51%, respectively, while the Company's affiliate percent trouble reports equaled 1.55%, 1.49%, and 1.29%, respectively. Staff further observed that, according that Ehr Attachment B, PM 59-03, the Company's service in this respect has declined in recent months indicating a problem that is increasing rather than diminishing. *Id*.

Maintenance and Repair (DSL loops with linesharing).

~~1746.~~1752. Dr. Zolnierek explained that the PMs measuring maintenance and repair performance for DSL loops with linesharing are PM 65-03 (Trouble Report Rate – DSL – Linesharing), PM 65.1-03 (Trouble Report Rate Net of Installation and Repeat Reports – DSL – Linesharing), PM 67-03 (Mean Time to Restore – Dispatch – DSL –Linesharing), PM 67-18 (Mean Time to Restore – No Dispatch – DSL –Linesharing), PM 69-03 (Percent Repeat Reports – DSL –Linesharing), and PM 66-03 (Percent Missed Repair Commitments – DSL – Linesharing). ICC Staff Ex. 32.0 at ¶ 69. Staff points out that, with the exception of PM 69-03, all of the maintenance and repair performance measures indicate that the Company is not providing maintenance and repair service at parity. *Id*.

~~1747.~~1753. Although SBC Illinois witness Mr. Ehr testified that the CLEC trouble report rate exceeds the SBC Illinois' affiliate trouble report rate by 0.05, 0.37, and 0.21 reports per 100 loops in September, October and November of 2002, respectively, Staff explained that these differences are not insignificant. ICC Staff Ex. 32.0 at ¶ 70. Staff pointed out that according to the PM data, the trouble reports per hundred loops for CLECs were approximately

double the trouble reports for the Company's affiliate in October and November of 2002, and the Company's service as measured by PM 65-03 has markedly deteriorated in the second half of 2002. *Id*. Staff also found Mr. Ehr's attempt to characterize the differences for PM 65.1-03 (Trouble Report Rate Net of Installation and Repeat Reports – DSL –Linesharing) as "minor" to lack merit. Id. at ¶ 71. Staff observed that Mr. Ehr failed to note that the trouble report rates for CLECs were approximately double the trouble report rates for the Company's affiliate in September, October and November of 2002, and that the Company's service as measured by PM 65.1-03 has markedly deteriorated in the second half of 2002. *Id*.

~~1748.~~1754. Staff pointed out that PM 67-18 (Mean Time to Restore – No Dispatch – DSL –Linesharing) further indicates a disparity between service provided to the Company's affiliate and service provided to CLECs. ICC Staff Ex. 32.0 at ¶ 72. Mean restorations times in September, October, and November of 2002 were 7.76, 5.27, and 3.88 hours for service provided to CLECs, while they were 3.65, 2.61, and 3.12 hours for service provided to the Company's affiliate. *Id*. Dr. Zolnierek stated that although Mr. Ehr notes this problem, he indicates only that "SBC Illinois' Network organization is actively engaged in efforts to provide additional monitoring of linesharing trouble reports so that the durations are reduced; improvement in results is expected in the very near future." *Id*.

~~1749.~~1755. Dr. Zolnierek observed that the data for PM 69-03 (Percent Repeat Reports – DSL – Linesharing) indicates that the Company is providing maintenance and repair to address repeat reports that is at near parity with that provided to affiliates. ICC Staff Ex. 32.0 at ¶ 73. However, he pointed out that for September 2002 the company reports a repeat trouble report rate for CLECs of 5.33% compared to a repeat trouble report rate for its affiliate of only 3.18%, and for October 2002 the Company reports a repeat trouble report rate for CLECs of 7.09% compared to a repeat trouble report rate for its affiliate of only 5.11%. *Id*. Dr. Zolnierek testified that the size of the disparity in trouble report rates indicates that the Company is not providing service at parity. *Id*.

~~1750.~~1756. With respect to PM 67-03 (Mean Time to Restore – Dispatch – DSL – Linesharing), Staff stated that the data indicates that the Company took longer to restore service to CLECs than it did to restore service to its affiliate. ICC Staff Ex. 32.0 at ¶ 74. In September, October, and November of 2002, the mean times to restore CLEC service were 12.48, 8.38, and 10.87 hours while the mean times to restore the Company affiliate's service were 7.69, 6.62, and 9.07 hours. *Id*.

~~1751.~~1757. With respect to PM 66-03 (Percent Missed Repair Commitments – DSL – Linesharing), Staff notes the data again indicates that the company is not providing maintenance and repairs to CLECs of the same quality that it provides to its affiliate. ICC Staff Ex. 32.0 at ¶ 75. Staff observes that Mr. Ehr dismisses these results arguing that "…just 9 repair

commitments were missed in September and 10 in October for trouble reports generated by CLECs' line shared DSL loops." *Id*. In response, Staff pointed out that Mr. Ehr failed to recognize that there were only 75 and 127 trouble reports generating these repair commitments in September and October of 2002. *Id*. Thus, the company missed 12.00% and 7.87% of its repair commitments in these months. In comparison the company only missed 4.62% and 2.19% of repair commitments for its affiliate in these months. *Id*.

~~1752.~~1758. Staff concluded that the PMs measuring maintenance and repair service for DSL with linesharing indicate that the Company is not providing service to CLECs at parity with the service provided to its affiliate. ICC Staff Ex. 32.0 at ¶ 76.

FMOD Service (DSL loops with linesharing).

~~1753.~~1759. Staff points out that no CLECs requesting DSL loops with linesharing were sent any notifications indicating that a no facilities available situation exists (FMOD Form A). ICC Staff Ex. 32.0 at ¶ 77. Thus, Staff states that there is no evidence to indicate whether the FMOD process is or is not working with respect to DSL loops with linesharing.

Staff's Initial Recommendation (DSL loops with line sharing).

~~1754.~~1760. Staff submits that the PMs that measure provisioning of DSL with linesharing indicate that the Company generally installs DSL with linesharing for CLECs in a timeframe similar to the time frame in which the Company install DSL with linesharing for its affiliate. ICC Staff Ex. 32.0 at ¶ 78. However, Staff also maintains that installation quality and repair and maintenance of installed DSL loops with linesharing is not provided at parity as indicated by the fact that the Company is not meeting parity criteria with respect to submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03. *Id*. Thus, Staff finds that the Company appears to provide better maintenance and repair service to its affiliate than it does to CLECs. *Id*.

~~1755.~~1761. Although Mr. Ehr indicates that the Company is working to correct this situation, Staff points out that the data presented by the Company indicates there is a significant disparity in the quality of, and repair and maintenance of, DSL loops with linesharing provided to CLECs relative the quality and repair and maintenance of DSL loops with linesharing provided to the Company's affiliate. ICC Staff Ex. 32.0 at ¶ 79. Thus, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its DSL loops with linesharing in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff recommended that the Commission require the Company to provide DSL with linesharing loop quality and maintenance and repair service to CLECs that is at least as good as the loop quality

and maintenance and repair service the Company provides to it's affiliate. *Id*. Staff further recommended that the Company explain in it's rebuttal affidavits why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected on a going forward basis. *Id*.

Staff's Reply Position

Review of Company Response Regarding Installation Quality and Repair and Maintenance (DSL with line-sharing)

~~1756.~~1762. SBC Illinois witness Mr. Ehr does not dispute that submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03 did not meet parity standards. *See* ICC Staff Ex. 44.0 at ¶ 9. But, in Staff's view, he provides incomplete explanations for why the Company is experiencing performance problems with respect to these measures and does not explain how the steps the Company has taken to correct the problems will result in improved performance. *Id*.

~~1757.~~1763. Staff pointed out that Exception 39 in Section II of E & Y's Exceptions to Compliance indicates that:

> The Company improperly calculated the wholesale numerator during March, April, and May 2002 for the Lineshare submeasure. The Company only included trouble reports for the voice portion of the line and improperly excluded trouble reports related to the data portion of the line. ICC Staff Ex. 44.0 at ¶ 10.

~~1758.~~1764. The Company indicates that it made appropriate restatements shortly before submitting initial affidavits. *Id*. Staff notes that this amounts to a contention that the Company only recently became aware of its DSL with linesharing provisioning problems because it was improperly computing these PMs. *Id*. Nevertheless, Staff notes that Mr. Ehr explains that the Company has taken a number of internal steps "to address maintenance and repair performance on CLEC DSL Lineshare loops" and outlines these steps. *Id*. Although it is laudable that the Company is taking steps to address its maintenance and repair problems, Staff finds Mr. Ehr's response to the concerns raised by Staff to be, in many respects, deficient. *Id*.

~~1759.~~1765. Staff observes, for example, that Mr. Ehr does not address the root cause of the Company's failure to meet parity standards with respect to sub-measures 65-03 and 65.1-03. ICC Staff Ex. 44.0 at ¶ 11. Staff explained that absent any identifiable cause for these

failures, it is unclear how the steps the Company has taken will remedy the problems indicated by these measures. *Id*. Similarly, the Company provided no explanation for the root cause of the failures for PMs 67-03 and 67-18. *Id*. at ¶ 12. Staff noted that with respect to these PMs Mr. Ehr simply asserted that "SBC Illinois' Network organization is taking steps to address the performance issues, and the reported results are expected to be in parity or meet the applicable benchmark standard shortly." *Id*.

~~1760.~~1766. Staff notes that with respect to sub-measure 59-03 (Percent Trouble Reports Within 30 Days of Installation – DSL – Linesharing) Mr. Ehr explained that "…one reason for performance shortfalls for [sic] PM 59-03 has been traced to the inability to identify minor facilities failures (such as shorts and grounds) at time of provisioning without dispatch of a technician." ICC Staff Ex. 44.0 at ¶ 13. Staff finds Mr. Ehr's explanation to be deficient given his failure to indicate whether this is the only or even the primary reason for the Company's failure. *Id*. Staff pointed out that Mr. Ehr also failed to provide restated data that would indicate that if the "shorts and grounds" problems were corrected that PM 59-03 would have met parity standards for this measure. *Id*. Finally, Staff explained that Mr. Ehr provided no explanation of how the steps the Company has taken to address maintenance and repair performance will ensure that this problem is corrected and will not recur on a going forward basis. *Id*.

~~1761.~~1767. Staff notes that Mr. Ehr also acknowledges that the Company failed to meet parity standards in September and October for PM 66-03. ICC Staff Ex. 44.0 at ¶ 14. Staff further notes that Mr. Ehr failed to identify any discernable cause, arguing instead that the absolute number of failures with respect to CLECs was not significantly greater than the absolute number of failures with respect to the Company's affiliate. *Id*. Staff asserts that Mr. Ehr's argument contradicts his approach to analyzing other performance measurement data and does not counter the fact that the Company did not meet the Commission-approved standards established for this measure.

~~1762.~~1768. Staff explained that in Dr. Zolnierek's initial affidavit he identified a large disparity between the Company's provision of service to CLECs and to its affiliate as measured by PM 67-04 (Mean Time to Restore – Dispatch – DSL – No Linesharing). ICC Staff Ex. 44. at ¶ 15. Because PM 67-04 is a benchmark measure and not a parity measure, Staff did not recommend any remedial action with respect to this measure. Nevertheless, Mr. Ehr chooses to address the Company's disparate service provision by stating "…the Commission-approved standard is a benchmark, not parity." *Id*. Thus, Staff observes that with respect to PM 66-03 Mr. Ehr argues that the Commission-approved standard is irrelevant because the Company was in absolute terms providing very little disparate service while arguing that with respect to PM 67-04 the Company's high level of disparate service provision is irrelevant because the Company was meeting the Commission-approved standard. *Id*.

~~1763.~~1769. Thus, Staff finds Mr. Ehr's explanation for the Company's failure of PM 66-03 is deficient. ICC Staff Ex. 44.0 at ¶ 16. First, Mr. Ehr. does not identify any cause for the failure. Second, Mr. Ehr provides no explanation of how the steps the Company has taken to address maintenance and repair performance will ensure that this problem is corrected on a going forward basis.

Staff's Final Recommendation (DSL loops with line-sharing).

~~1764.~~1770. Staff continued to recommend that the Company take corrective action to ensure that it is providing loop quality and maintenance and repair of DSL loops with linesharing, as measured by performance submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03, at parity as a prerequisite to a finding that the Company is provisioning it's DSL loops with linesharing in accordance with the requirements of Section 271(c)(2)(B)(iv). ICC Staff Ex. 44.0 at ¶ 17.

3. Unbundled Voice Grade Loops

Problems with Key PM 55 — Average Installation Interval for N, T and C Orders

~~1765.~~1771. The PM data submitted by the Company indicates, in Staff's view, that it is not always meeting parity criteria for installation timeliness when installing voice grade loops. For the three months ending in November of 2002, the Company failed to meet parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3 three out of the eight times parity criteria were evaluated. As reflected in PMs 56-01.1 and 56-01.2 the Company missed parity criteria for meeting non-standard customer requested due dates one out of the six times parity criteria were evaluated. In September of 2002, missed due dates caused a delay in provisioning of CLEC service, measured by sub-measure 62-03 that was much longer than missed due date caused delays for the Company's retail customers.

~~1766.~~1772. Sub-measures 58-05 and 60-03.1, however, indicate that the Company is meeting parity standards with respect to Company caused missed due dates and due dates missed due to lack of facilities. With respect to loops with LNP the Company generally met benchmark installation intervals. Installation quality and repair and maintenance of installed voice grade loops is generally provided at parity. The Company is, however, as sub-measure C WI 11 – 01.4 indicates, failing parity criteria for meeting due dates for FMOD installations.

Staff's Initial Position

Installation Timeliness (unbundled voice-grade loops)

~~1767.~~1773. Staff observed that PMs 55-01.1 (Average Installation Interval – 2-Wire Analog Loops – 1-10), 55-01.2 (Average Installation Interval – 2-Wire Analog Loops – 11-20) and 55-01.3 (Average Installation Interval – 2-Wire Analog Loops – 20+) indicate that the Company's provisioning process for 2-Wire Analog Loops is deficient. ICC Staff Ex. 32.0 at ¶ 80. These problems were not addressed in the initial affidavit of SBC Illinois witness Mr. Ehr. Staff noted, for example, that Mr. Ehr does not address PM 55-01.3, a measure where the Company failed parity standards in one of two months for which the Company provided performance measurement data. *Id.*

~~1768.~~1774. Although Mr. Ehr provides three-month average installation intervals for PM 55-01.1 which indicates that the installation intervals for CLEC orders of 1-10 loops were shorter than for SBC retail customers, he fails to provide a three-month average installation interval for PM 55-01.2. *Id.* Ehr Attachment A also reveals that the three-month average installation interval for CLEC orders were longer than for SBC retail customers with orders of 11-20 loops. *Id.*

~~1769.~~1775. Staff noted that there were a cumulative total of 8 monthly parity comparisons for the PMs measuring average installation intervals: PMs 55-01.1, 55-01.2, and 55-01.3. ICC Staff Ex. 32.0 at ¶ 81. The Company failed to provide installation at parity for three of the eight monthly comparisons, and in two cases these failures were very large. *Id.* In September 2002 the average installation interval for CLECs with orders of 11-20 loops was 18.77 days compared to just 7.49 days for the Company's retail customers. Similarly, in November 2002 the average installation interval for CLECs with orders of 20+ loops was 10 days compared to just 5.79 days for the Company's retail customers. Staff explained that in two cases, for PM 55-01.1 and PM 55-01.3, the failures were in November, indicating that the problem is more severe in recent months. *Id.*

~~1770.~~1776. Dr. Zolnierek testified that because the parity standard reflected in the data is very lax, the Company's failure to provide 2-wire analog loop installations at parity potentially signals very poor provisioning of 2-wire loops. ICC Staff Ex. 32.0 at ¶ 82. Whereas the FCC recently reported that "average residential installation intervals for individual companies ranged from a low of 0.6 business days to a high of 3.2 business days in 2001", the Company's average installation interval for 2-wire analog loops provided to CLECs in the period between September 2002 and November 2002 ranges from a low of 4.68 days to a high of 18.77 days -- a range far outside the company averages reported by the FCC. *Id.* Staff also notes that the benchmark measures referenced in the Company's business rules are 3 days for orders of 1-10 loops, 7 days for orders of 11-20 loops, and 10 days for orders of 20+ loops. *Id.* These are the benchmarks by which service is measured in Michigan, Indiana, Wisconsin, and Ohio. *Id.* For orders of 1-10 loops and orders of 11-20 loops, the Company misses these benchmarks in all months between September 2002 and November 2002. *Id.* For orders of 20+ loops the Company matches the benchmark measure exactly in October and November of 2002. Staff explained that the importance of these comparisons is that they suggest that the Company's parity provisioning standard is lax and that, consequently, the Company must perform very badly in order to fail to

meet the lax standard. *Id*. Accordingly, Staff points out that the PM data indicates that the Company's level of performance fell below the lenient floor in September and November of 2002. *Id*.

~~1771.~~1777. Staff observed that PMs 56-01.1 (Percent Installations Completed Within the Customer Requested Due Date – 2-Wire Analog – 1-10), 56-01.2 (Percent Installations Completed Within the Customer Requested Due Date – 2-Wire Analog – 11-20) indicate that the Company performed much closer to parity when responding to customer requested due dates beyond the standard intervals. ICC Staff Ex. 32.0 at ¶ 83. Although the data indicates that the Company generally met customers requested due dates beyond the standard intervals, the Company failed to meet a significant percentage, 38.27%, for orders of 11-20 lines in September of 2002. *Id*. Staff also observed that the Company missed 13.51% of customer requested due dates in November of 2002, but benefited in terms of meeting the parity standard for PM 56-01.2 due to its poor retail performance. *Id*. As Ehr Attachment B reveals, the problems the Company is experiencing with respect to meeting customer requested due dates for orders of 11-20 loops appear to be of recent vintage, indicating that this is an emerging rather than a waning problem. *Id*.

~~1772.~~1778. Staff observed that the company's performance with respect to loops with LNP was much better when measured relative to the benchmarks for these measures contained in the Company's business rules. ICC Staff Ex. 32.0 at ¶ 84. As indicated in the Company's business rules the Company includes in average installation intervals all orders for service where the service request specifies a standard installation interval or an interval not more than one day longer than the standard installation interval. *Id*. Staff indicated that the information contained in Ehr Attachment B shows that the Company met the standard interval plus one-day benchmark in all months for all measures in 19 of 21 monthly comparisons. *Id*. In October 2002 the company narrowly missed the benchmark for average installation of Non-CHC – Loops – 11-20 with LNP of 8 days, providing service on average in 8.19 days. *Id*. In November 2002 the Company missed the benchmark for average installation of CHC - Loops with LNP - 21+ of 11 days, providing service on average in 14 days. *Id*.

~~1773.~~1779. Staff explained that PMs 58-05 (Percent Ameritech-Caused Missed Due Dates – 8.0 dB Loops without Test Access), 63-03 (Percent Ameritech-Caused Missed Due Dates > 30 days – 8.0 dB Loops without Test Access), 60-03.1 (Percent Missed Due Dates Due to Lack of Facilities – 8.0 dB Loops without Test Access), and 60-03.2 (Percent Missed Due Dates Due to Lack of Facilities > 30 days – 8.0 dB Loops without Test Access) all indicate that the company is not missing due dates more frequently for CLECs than it does for its retail customers. ICC Staff Ex. 32.0 at ¶ 85. In fact, the data indicates that the Company misses many more retail customer due dates than CLEC customer due dates. PM 62-03 (Average Delay Days for AIT Caused Missed Due Dates – 8.0 dB Loops without Test Access) indicates that delay days caused by Company caused missed due dates equaled 11.94 days in September 2002 for

CLECs and equaled only 6.01 days in September 2002 for the Company's retail customers. *Id*. Staff notes that relative performance improved, however, in October and November 2002 with the Company's retail customers receiving longer delays than CLEC customers. *Id*.

~~1774.~~1780. Staff concluded that the PMs measuring installation timing for voice grade loops provide mixed evidence on the whether the Company is providing voice grade loops in a nondiscriminatory manner that allows competitors to compete in Illinois. ICC Staff Ex. 32.0 at ¶ 86. While there is some evidence that the Company is meeting its due dates, other evidence suggests significant delays in CLEC installation provisioning. *Id*.

Installation Quality (unbundled voice grade loops).

~~1775.~~1781. Dr. Zolnierek testified that PM 59-05 (Percent Trouble Reports Within 30 Days of Installation – 8.0 dB Loops without Test Access) reveals that CLECs have had troubles with 5.43%, 4.29%, and 4.26% of recently installed voice grades loops in September, October, and November, respectively. ICC Staff Ex. 32.0 at ¶ 87. Dr. Zolnierek observed, however, that the Company does meet parity criteria for PM 59-05 because it had many more troubles with recently installed voice grade loops supplied to its retail customers in these months. *Id*.

Maintenance and Repair (unbundled voice grade loops).

~~1776.~~1782. Staff explained that the PMs measuring maintenance and repair performance for voice grade loops are PM 65-05 (Trouble Report Rate – 8.0 dB Loops without Test Access), PM 65.1-05 (Trouble Report Rate Net of Installation and Repeat Reports – 8.0 dB Loops without Test Access), PM 67-05 (Mean Time to Restore – Dispatch – 8.0 dB Loops without Test Access), PM 67-20 (Mean Time to Restore – No Dispatch – 8.0 dB Loops without Test Access), PM 69-05 (Percent Repeat Reports – 8.0 dB Loops without Test Access), and PM 66-05 (Percent Missed Repair Commitments – 8.0 dB Loops without Test Access). ICC Staff Ex. 32.0 at ¶ 88. Staff pointed out that, with the exception of a narrow miss in September 2002 for PM 65-05, all of these maintenance and repair performance measures indicate that the Company is providing maintenance and repair service at parity. *Id*. However, in some instances the Company meets parity standards simply because of its poor retail performance. *Id*. For example, the data for PM 69-05 indicates that the Company had over 6% repeat trouble reports for CLEC loops in each of September, October, and November of 2002. However, the Company had over 10% repeat trouble reports for retail loops in each of these months. *Id*.

FMOD Service (unbundled voice-grade loops).

~~1777.~~1783. Dr. Zolnierek testified that PMs C WI 6 – 04 (Percent Form A Within Interval – 8.0 dB Loops without Test Access), C WI 7-01.4 (Percent Form B Within 72 Hours –

8.0 dB Loops without Test Access), C WI 7-02.4 (Percent Form B Within 72 Hours – 8.0 dB Loops without Test Access), C WI 7-03.4 (Percent Form D Within 72 Hours – 8.0 dB Loops without Test Access), C WI 8-04 (Percent Form B Return FOC with New Due Date Within 24 Hours – 8.0 dB Loops without Test Access), and C WI 9-04 (Percent Form C Return FOC with New Due Date Within 24 Hours – 8.0 dB Loops without Test Access) all indicate that the Company returns FMOD notifications related to voice grade loops in a timely manner. ICC Staff Ex. 32.0 at ¶ 89.

~~1778.~~1784. PM C WI 11-03.4 (Percent FMOD Due Dates Met Following Form D – 8.0 dB Loops without Test Access) indicates the Company has met due dates on the few voice grade orders requiring simple modifications. ICC Staff Ex. 32.0 at ¶ 90. However, PM C WI 11-01.4 (Percent FMOD Due Dates Met Following Form B – 8.0 dB Loops without Test Access) indicates the Company is having significant problems meeting due dates for voice grade orders requiring complex modifications. *Id*. Staff explained that throughout the period beginning in December of 2001 and ending in November of 2002 the company has missed due dates a high percentage of the time, including missing as many as 25% of due dates in April and September of 2002. *Id*.

~~1779.~~1785. Dr. Zolnierek testified that when the Company misses an installation due date for a CLEC customer CLEC customer satisfaction may be affected. ICC Staff Ex. 32.0 at ¶ 91. Therefore, in Dr. Zolnierek's opinion, the Company's failure to meet FMOD due dates for complex orders may impair CLECs' ability to compete in Illinois. *Id*.

Staff's Initial Recommendation (unbundled voice grade loops).

~~1780.~~1786. Staff concluded that the PM data submitted by the Company indicates that the Company is not always meeting parity criteria for installation timeliness when installing voice grade loops. ICC Staff Ex. 32.0 at ¶ 92. For the three months ending in November of 2002, the Company failed to meet parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3 three out of the eight times parity criteria were evaluated. *Id*. As reflected in PMs 56-01.1 and 56-01.2 the Company missed parity criteria for meeting non-standard customer requested due dates one out of the six times parity criteria were evaluated. *Id*. In September of 2002, missed due dates caused a delay in provisioning of CLEC service measured by submeasure 62-03 that was much longer than missed due date caused delays for the Company's retail customers. *Id*. Staff points out that sub-measures 58-05 and 60-03.1, however, indicate that the Company is meeting parity standards with respect to Company caused missed due dates and due dates missed due to lack of facilities. *Id*. With respect to loops with LNP the Company generally met benchmark installation intervals. *Id*. Staff also found that installation quality and repair and maintenance of installed voice grade loops is generally provided at parity. *Id*. The Company is, however, as

submeasure C WI 11 – 01.4 indicates, failing parity criteria for meeting due dates for FMOD installations. *Id*.

~~1781.~~1787. Staff observed that, as a general rule, UNE loops are the network element that is most difficult for competitors to self-supply on a mass-market scale. ICC Staff Ex. 32.0 at ¶ 93. Staff also observed that the FCC began a process to remove UNE switching from the list of UNEs with the UNE Remand Order, and that this action has increased the importance of stand-alone UNE loops (loops that are not sold in combination with switching and/or transport) to the success of UNE based local telephone competition. *Id*. Staff points out that for these reasons it is essential, if competitors are to have the opportunity to compete for local telephone customers in Illinois using stand alone voice grade loops, that SBC Illinois' performance in installing and servicing voice grade loops not impair or impede the ability of competitors to compete. *Id*.

~~1782.~~1788. Thus, Staff recommends that the Commission require the Company to correct the voice grade loop provisioning problems identified above, in particular the disparity in average installation intervals and missed customer requested due dates and the problems with provisioning voice grade loops requiring complex facilities modification, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its voice grade loop service in accordance with the requirements of Section 271(c)(2)(B)(iv). *Id*. Staff further recommended that the Company, in its rebuttal affidavits, explain why these problem are occurring and demonstrate that proper steps have been taken to ensure that these problem are corrected and will not recur on a going forward basis. *Id*.

Staff's Reply Position

Review of Company Response Regarding Installation Timing (voice grade loops).

~~1783.~~1789. Rather than address the Company's problem meeting parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3, Staff observes Mr. Ehr to note only that the Company met parity criteria for the September 2002 to November 2002 period in two of three months for submeasures 55-01.1 and 55-01.2. See ICC Staff Ex. 44.0 at ¶ 19. Mr. Ehr does not address the Company's failure to meet parity criteria in one of two months for which data was available for submeasure 55-01.3. *Id*. Nor does he address the fact that the Company failed parity criteria for installation intervals for voice-grade loops more than 37% of the time in the period beginning in September 2002 and ending in November 2002. *Id*. Staff observed that recent performance measurement data indicate that the Company's performance problems with respect to measures 55-01.1, 55-01.2, and 55-01.3 have continued. *Id*. at ¶ 20. For example the Company failed parity tests with respect to measure 55-01.2 in December 2002 and failed parity tests with respect to measure 55-01.1 in January 2003. *Id*. Similarly, Mr. Ehr does not address the Company's failure to meet parity standards with respect to PMs 56-01.1 and 56-01.2. Id. at ¶ 21. Nor does he explain why the Company has missed these measures. *Id*. Staff observed that with respect to

measures 56-01.1 and 56-01.2 the Company's performance has improved in recent months, passing all parity tests for these measures in both December 2002 and January 2003. *Id*.

Staff's analysis of the Company's response to FMOD service issues is addressed below.

Staff's Final Recommendation (voice grade loops).

~~1784.~~1790. In Staff's direct case Dr. Zolnierek expressed the opinion that "… it is essential if competitors are to have the opportunity to compete for local telephone customers in Illinois using stand alone voice grade loops that SBC Illinois' performance in installing and servicing voice grade loops not impair or impede competitors ability to compete." ICC Staff Ex. 44.0 at ¶ 22. According to Staff, the Company's rebuttal case failed to address its performance problems with respect to voice grade loops. *Id*.

~~1785.~~1791. Therefore, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning it's voice grade loops in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff continues to recommend that the Company take corrective action to ensure that it is providing, as measured by performance submeasures 55-01, 55-01.2, and 55-01.3, voice grade loops at parity. *Id*.

4. Unbundled BRI (digital) Loops

~~1786.~~1792. The PM data submitted by the Company indicates that, regarding the Company's performance in installing and servicing BRI loops, the Company is providing service at parity with respect to installation timeliness and provisioning quality. While CLEC customers experience more troubles after installation, the Company generally responds to these troubles faster and more effectively than it does to it's retail customer's post-installation troubles. Submeasure C WI 11-01.5 indicates the Company is missing FMOD installation due dates more often for CLECs than for its own retail customers.

Staff's Initial Position

Installation Timeliness (BRI loops).

~~1787.~~1793. Staff explained that PM 55-02.1 (Average Installation Interval – Digital Loops – 1-10) indicates that the Company provides digital loops to CLECs and its retail

customers at parity. ICC Staff Ex. 32.0 at ¶ 94. Staff observed that while the average installation intervals for digital loops are significantly longer than the benchmarks listed in the Company's business rules, the Company provides service to its own retail customers that does not meet these benchmarks. *Id*. Therefore, while the service provided CLECs may not be particularly timely, it is at parity with the service provided the Company's retail customers, and thus meets the performance criteria established in the Company's business rules. *Id*.

~~1788.~~1794. Similarly, PM 56-02.1 (Percent Installations Completed Within the Customer Requested Due Date –Digital Loops – 1-10) also meets parity standards despite missing the 95% benchmark referenced in the Company's business rules in September 2002. ICC Staff Ex. 32.0 at ¶ 95. Notably the Company did meet the 95% benchmarks in the more recent months of October and November of 2002. *Id*.

~~1789.~~1795. Staff observed that PMs 58-06 (Percent Ameritech-Caused Missed Due Dates – BRI Loop with Test Access), 63-04 (Percent Ameritech-Caused Missed Due Dates > 30 days – BRI Loops with Test Access), 60-04.1 (Percent Missed Due Dates Due to Lack of Facilities – BRI Loops with Test Access), and 63-04.2 (Percent Missed Due Dates Due to Lack of Facilities > 30 days – BRI Loops with Test Access) all indicate that the company is not missing due dates more frequently for CLECs than it does for its retail customers and in fact misses many more retail customer due dates. ICC Staff Ex. 32.0 at ¶ 96. PM 62-04 (Average Delay Days for AIT Caused Missed Due Dates – BRI Loops with Test Access) indicates that delay days caused by the Company missed due dates were much higher on average for BRI Loops provided to the Company's retail customers than they were for BRI Loops provided to CLECs. *Id*.

~~1790.~~1796. Staff concluded that the PMs measuring installation timing for digital loops provide evidence that the Company is meeting its due dates generally more often for CLECs than the Company does for its retail customers. ICC Staff Ex. 32.0 at ¶ 97.

Installation Quality (BRI loops).

~~1791.~~1797. Staff noted that although the quality of the digital loops being provided by the Company to CLECs appears to be poor, it is better than the quality of digital loops being provided to the Company's retail customers. ICC Staff Ex. 32.0 at ¶ 98. PM 59-06 (Percent Trouble Reports Within 30 Days of Installation – BRI Loops with Test Access) reveals that CLECs have had troubles with 6.97%, 8.59%, and 7.90% of recently installed digital loops in September, October, and November. *Id*. However, the Company meets the parity performance

criteria established in the Company's business rules for PM 59-06 because it had many more troubles with recently installed BRI loops supplied to its retail customers in these months. *Id*.

Maintenance and Repair (BRI loops).

~~1792.~~1798. Dr. Zolnierek explained that the PMs measuring maintenance and repair performance for digital loops are PM 65-06 (Trouble Report Rate – BRI Loops with Test Access), PM 65.1-06 (Trouble Report Rate Net of Installation and Repeat Reports – BRI Loops with Test Access), PM 67-06 (Mean Time to Restore – Dispatch – BRI Loops with Test Access), PM 67-21 (Mean Time to Restore – No Dispatch – BRI Loops with Test Access), PM 69-06 (Percent Repeat Reports – BRI Loops with Test Access). ICC Staff Ex. 32.0 at ¶ 99. These PMs indicate that the CLEC customers experience more troubles after installation than do the Company's retail customers, but that the Company generally responds to these troubles faster and more effectively than it does to it's retail customers' troubles. *Id*.

~~1793.~~1799. PM 65-06 (Trouble Report Rate – BRI Loops with Test Access) indicates that CLECs experienced 0.98, 1.17, and1.10 troubles per 100 lines while the Company's retail customers experienced only 0.67, 0.70, and 0.52 troubles in September, October and November of 2002, respectively. ICC Staff Ex. 32.0 at ¶ 100. Staff notes that this causes the Company to fail the parity test for PM 65-06, a fact that Mr. Ehr does not address in his analysis. *Id*. Staff also notes that the Company also fails to meet parity criteria for PM 65.1-06 (Trouble Report Rate Net of Installation and Repeat Reports – BRI Loops with Test Access) in November 2002 with the data suggesting that the Company's performance is getting worse over time. *Id*. at ¶ 101.

~~1794.~~1800. Staff observes that PM 67-06 (Mean Time to Restore – Dispatch – BRI Loops with Test Access), PM 67-21 (Mean Time to Restore – No Dispatch – BRI Loops with Test Access), and PM 69-06 (Percent Repeat Reports – BRI Loops with Test Access) all indicate that the company responds to troubles following installation better for CLECs than the Company does for its retail customers. ICC Staff Ex. 32.0 at ¶ 102.

FMOD Service (BRI loops).

~~1795.~~1801. Staff explains that with one exception PMs C WI 6 – 05 (Percent Form A Within Interval – BRI Loops with Test Access), C WI 7-01.5 (Percent Form B Within 72 Hours – BRI Loops with Test Access), C WI 7-02.5 (Percent Form B Within 72 Hours – BRI Loops with Test Access), C WI 7-03.5 (Percent Form D Within 72 Hours – BRI Loops with Test Access), C WI 8-05 (Percent Form B Return FOC with New Due Date Within 24 Hours – BRI Loops with Test Access), and C WI 9-05 (Percent Form C Return FOC with New Due Date Within 24 Hours – BRI Loops with Test Access) all indicate that the Company returns FMOD notifications related to BRI loops in a timely manner. ICC Staff Ex. 32.0 at ¶ 103.

~~1796.~~1802. PM C WI 7-01.5 (Percent Form B Within 72 Hours – BRI Loops with Test Access) indicates the Company failed to return notification of complex modifications within 72 hours 95% of the time in September and October of 2002. However, the Company performance has steadily improved since August 2002, and Form Bs were returned on a timely basis in November of 2002. ICC Staff Ex. 32.0 at ¶ 104.

~~1797.~~1803. Staff notes that PM C WI 11-03.5 (Percent FMOD Due Dates Met Following Form D – BRI Loops with Test Access) indicates the Company has not had any BRI loops requests requiring simple modification proceed to provisioning. ICC Staff Ex. 32.0 at ¶ 105. However, PM C WI 11-01.5 (Percent FMOD Due Dates Met Following Form B – BRI Loops with Test Access) indicates the Company is having significant problems meeting due dates for BRI loop orders requiring complex modifications. *Id*. Throughout the period beginning in December of 2001 and ending in November of 2002 the company has missed due dates a high percentage of the time, including missing as many as 30% of due dates in September of 2002. *Id*. Staff points out that, as explained above, missed installation dates may impair CLECs ability to compete in Illinois. *Id*.

Staff's Initial Recommendation (BRI loops).

~~1798.~~1804. Staff concludes that the evidence regarding the Company's performance in installing and servicing BRI loops indicates that the Company is providing service at parity with respect to installation timeliness and provisioning quality. ICC Staff Ex. 32.0 at ¶ 106.

~~1799.~~1805. While the evidence suggests that CLEC customers experience more troubles after installation than do the Company's retail customers, the Company generally responds to these troubles faster and more effectively than it does to it's retail customers' post-installation troubles. *Id*. Thus, Staff finds, based on the performance data submitted by the Company, that the Company is provisioning it's standard BRI Loop service in accordance with the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996 ("1996 Act"). *Id*. With respect to the FMOD exception noted above, however, Staff finds that the data does indicates the Company is not meeting parity standards with respect to meeting due dates associated with BRI loop orders requiring complex modification. *Id*.

~~1800.~~1806. Thus, as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its standard BRI Loop service in accordance with the requirements of Section 271(c)(2)(B)(iv), Staff recommends that the Commission require the

Company to correct the problems it has with provisioning BRI loops requiring complex facilities modification. ICC Staff Ex. 32.0 at ¶ 107. Staff further recommended that the Company explain in its rebuttal affidavits why these problem are occurring and demonstrate that proper steps have been taken to ensure that these problem are corrected and will not recur on a going forward basis. *Id*.

1807. Staff's analysis of the Company's response to FMOD service issues is addressed below.

5. Unbundled DS1 Loops

~~1801.~~1808. The PM data submitted by the Company indicates that the Company is providing unbundled DS1 loop service at parity with respect to installation timeliness, installation quality, and repair and maintenance service. The submeasure C WI 11 – 01.6 indicates, however, that the Company is not meeting due dates associated with DS1 loop orders requiring complex modification.

Staff's Initial Position

Installation Timeliness (unbundled DS1 loops).

~~1802.~~1809. Dr. Zolnierek testified that PM 55-03 (Average Installation Interval – DS1 Loops) indicates that the Company provides DS1 loops to CLECs and its retail customers at parity. ICC Staff Ex. 32.0 at ¶ 108. While the average installation intervals for DS1 loops are significantly longer than the benchmarks listed in the Company's business rules, the Company provides service to its own retail customers that does not meet these benchmarks. *Id*. Therefore, while the service provided CLECs may not be particularly timely, Staff concludes that it is at parity with the service provided the Company's retail customers and meeting the performance standards established in it's business rules. *Id*. Similarly, the results for PM 56-03 (Percent Installations Completed Within the Customer Requested Due Date – DS1 Loops) indicate that the Company meets parity criteria. *Id*. at ¶ 109.

~~1803.~~1810. Staff explained that PM 58-08 (Percent Ameritech-Caused Missed Due Dates – DS1 Loops) indicates the Company did not provide service at parity in September 2002, but did so in October and November of 2002. ICC Staff Ex. 32.0 at ¶ 110. Notably, service provided to CLECs with respect to this measure has not only improved relative to that given to the Company's retail customers, but also in absolute terms in recent months. *Id*. PM 63-06 (Percent Ameritech-Caused Missed Due Dates > 30 days – DS1 Loops) further indicates that the Company does not cause due date misses for CLEC installations significantly more often than it causes due date misses for it's retail customer installations. *Id*.

~~1804.~~1811. Similarly, Staff notes that PM 60-06.1 (Percent Missed Due Dates Due to Lack of Facilities – DS1 Loops) indicates the Company did not provide service at parity in September 2002, but did so in October and November of 2002. ICC Staff Ex. 32.0 at ¶ 111. Staff finds it notable that service provided to CLECs with respect to this measure has not only improved relative to that given to the Company's retail customers, but also in absolute terms in recent months. *Id*. Again, PM 63-06 (Percent Missed Due Dates Due to Lack of Facilities > 30 days – DS1 Loops) further indicates that the Company did not miss due dates for CLEC installations due to lack of facilities significantly more often than it missed installations for it's retail customers for this reason. *Id*.

~~1805.~~1812. The data for PM 62-06 (Average Delay Days for AIT Caused Missed Due Dates – DS1 Loops) indicates that there was a significant meltdown in the Company's provisioning in November 2002. ICC Staff Ex. 32.0 at ¶ 112. Delay days caused by the Company missed due dates averaged 53.29 days for DS1 Loops provided to CLECs and only 5.04 days for DS1 Loops provided to the Company's retail customers in November of 2002. *Id*.

~~1806.~~1813. Thus, Staff concluded that while the PMs measuring installation timing for digital loops provide evidence that the Company is meeting its due dates, in general, equally well for CLECs and for its retail customers, the disparity in average delays between service provided to CLECs and to the Company's retail customers resulting from Company caused due date misses in November 2002 is extremely large. ICC Staff Ex. 32.0 at ¶ 113.

Installation Quality (DS1 loops).

~~1807.~~1814. Staff observed that PM 59-08 (Percent Trouble Reports Within 30 Days of Installation – DS1 Loops) reveals that CLECs have fewer troubles on average with new DS1 loops than do Ameritech retail customers. ICC Staff Ex. 32.0 at ¶ 114.

Maintenance and Repair (DS1 loops).

~~1808.~~1815. The PMs measuring maintenance and repair performance for DS1 Loops are PM 65-08 (Trouble Report Rate – DS1 Loops), PM 65.1-08 (Trouble Report Rate Net of Installation and Repeat Reports – DS1 Loops), PM 67-08 (Mean Time to Restore – Dispatch – DS1 Loops), PM 67-23 (Mean Time to Restore – No Dispatch – DS1 Loops), and PM 69-08 (Percent Repeat Reports – DS1 Loops). ICC Staff Ex. 32.0 at ¶ 115. Staff found that these PMs

indicate that the CLECs receive maintenance and repair service from the Company at parity with the Company's retail customers. *Id*.

~~1809.~~1816. Staff noted that PM 65-08 (Trouble Report Rate – DS1 Loops) indicates that CLECs experienced 4.50, 5.24, and 3.63 troubles per 100 lines while the Company's retail customers experienced only 3.76, 4.39, and 3.43 troubles per 100 lines in September, October and November of 2002, respectively. ICC Staff Ex. 32.0 at ¶ 116. From Ehr Attachment B it appears that CLECs experienced a significant increase in troubles beginning in mid-2002, both relative to troubles experienced by the Company's retail customers and absolutely. *Id*. Staff explained that the information indicates that as of November 2002 the relative disparity had been largely removed. However, with the exception of November 2002, CLECs experienced significantly more troubles in the second of half of 2002 relative to troubles experienced by the Company's retail customers. *Id*.

~~1810.~~1817. The Company met the parity criteria for PM 65.1-08 (Trouble Report Rate Net of Installation and Repeat Reports – DS1 Loops) in September, October and November 2002. ICC Staff Ex. 32.0 at ¶ 117. Staff noted, however, that in absolute terms CLEC post installation trouble reports increased substantially throughout 2002 increasing to levels experienced generally throughout 2002 by the Company's retail customers. *Id*.

~~1811.~~1818. Finally, Staff observed that PM 67-08 (Mean Time to Restore – Dispatch – DS1 Loops), PM 67-23 (Mean Time to Restore – No Dispatch – DS1 Loops), and PM 69-08 (Percent Repeat Reports – DS1 Loops) all indicate that the company responds to troubles following installation at parity. ICC Staff Ex. 32.0 at ¶ 118.

FMOD Service (DS1 loops).

~~1812.~~1819. Staff explained that, with one exception, PMs C WI 6 – 06 (Percent Form A Within Interval – DS1 Loops), C WI 7-01.6 (Percent Form B Within 72 Hours – DS1 Loops), C WI 7-02.6 (Percent Form B Within 72 Hours – DS1 Loops), C WI 7-03.6 (Percent Form D Within 72 Hours – DS1 Loops), C WI 8-06 (Percent Form B Return FOC with New Due Date Within 24 Hours – DS1 Loops), and C WI 9-06 (Percent Form C Return FOC with New Due Date Within 24 Hours – DS1 Loops) all indicate that the Company returns FMOD notifications related to DS1 loops in a timely manner. ICC Staff Ex. 32.0 at ¶ 119.

~~1813.~~1820. The data for PM C WI 7-01.6 (Percent Form B Within 72 Hours – DS1 Loops) indicates the Company failed to return notification of complex modifications within 72 hours 95% of the time in September and October of 2002. ICC Staff Ex. 32.0 at ¶ 120.

However, the Company performance has steadily improved since September 2002 and Form Bs were returned on a timely basis in November of 2002. *Id*.

~~1814.~~1821. Staff notes that PM C WI 11-03.6 (Percent FMOD Due Dates Met Following Form D – BRI Loops with Test Access) indicates the Company has not had any DS1 loop requests requiring simple modification proceed to provisioning. ICC Staff Ex. 32.0 at ¶ 121. However, PM C WI 11-01.6 (Percent FMOD Due Dates Met Following Form B – BRI Loops with Test Access) indicates the Company is having significant problems meeting due dates for BRI loop orders requiring complex modifications. *Id*. Throughout the period beginning in December of 2001 and ending in November of 2002, the Company has missed due dates a high percentage of the time, including missing as many as 11.54% of due dates in October of 2002. As explained above, Staff maintains that the Company's failure to install loops on time may impair a CLECs ability to compete in Illinois. *Id*.

Staff's Initial Recommendation (DS1 loops).

~~1815.~~1822. The evidence regarding the Company's performance in installing and servicing DS1 loops indicates that the Company is providing service at parity with respect to installation timeliness, installation quality, and repair and maintenance service. ICC Staff Ex. 32.0 at ¶ 122. Staff observes that the only anomaly in the information is the extremely large delays to CLEC customers resulting from Company caused missed due dates in November 2002. *Id*. Mr. Ehr explained that this problem resulted from problems with a single order which was delayed for about 230 days and agreed to research the problem with this order and explain the cause. *Id*. Submeasure C WI 11-01.5 indicates the Company is missing FMOD installation due dates more often for CLECs than for its own retail customers. *Id*.

~~1816.~~1823. Staff recommends that the Commission require the Company to correct the problems it has with provisioning DS1 loops requiring complex facilities modification as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its DS1 loops in accordance with the requirements of Section 271(c)(2)(B)(iv). ICC Staff Ex. 32.0 at ¶ 123. Staff further recommends that the Company explain in its rebuttal affidavits why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected and will not recur on a going forward basis. *Id*.

Staff's Reply Position

Review of Company's Response Regarding Unbundled Voice Grade Loops/Unbundled BRI (digital) Loops/ Unbundled DS1 Loops – FMOD Due Dates

~~1817.~~1824. Staff notes that with respect to the Company's failure to meet FMOD due dates Mr. Ehr argues that the Company met parity criteria for PM C WI 11 in October and November of 2002. ICC Staff Ex. 44.0 at ¶ 24. With respect to PM C WI 11-01.4, the Company missed 10% of FMOD due dates for voice-grade loops in December 2002 and over 44% of FMOD due dates for voice-grade loops in January 2003. *Id*. In both cases, however, there were too few observations for the Company to compute z-scores. *Id*. With respect to PM C WI 11-01.5, the Company did meet the parity standard in its business rules in December. *Id*.

~~1818.~~1825. With respect to PM C WI 11-01.6, Staff observed that the Company's performance in January 2003 improved significantly with the Company meeting all DS1 FMOD due dates. *Id*. Examining the Company's performance in the period beginning in November 2002 and ending in January 2003, the Company has not failed a single parity test as measured by z-score calculations. Id.

Staff's Recommendation (DS1 loops).

~~1819.~~1826. Staff observes that the Company has missed a high percentage of FMOD due dates in the past year and has of late continued with respect to some sub-measures to miss a high percentage of due dates. ICC Staff Ex. 44.0 at ¶ 25. However, because the Company has not failed any parity tests for the most recent three months of performance measurement data, Staff modified its recommendation with respect to the Company's performance as measured by PM C WI 11. *Id*.

~~1820.~~1827. Specifically, Staff now recommends that the Commission find that the Company is meeting FMOD due dates for voice-grade loops, BRI loops, and DS1 loops in accordance with the requirements of Section 271(c)(2)(B)(iv). *Id*.

c. SBC Illinois' Rebuttal and Surrebuttal Position.

Standalone Analog and Digital Loops.

~~1821.~~1828. SBC Illinois notes that Staff raises concerns with respect to several PMs, and addressed each in the rebuttal and surrebuttal testimony of Mr. Ehr. The Company focuses on those measures designated as "Key PMs requiring improvement" by Staff.

~~5.~~

~~6.~~PM 55 – Average Installation Intervals for Voice-Grade Analog Loops.

~~1822.~~1829. In response to Staff's assertions regarding PM 55 (Staff Ex. 32.0 (Zolnierek) ¶¶ 80-81; Staff Ex. 44.0 (Zolnierek Rebuttal) ¶¶ 18-22), SBC Illinois states that its commercial performance results do not evidence any problem. SBC Illinois explains that PM 55 contains three sub-measures applicable to 2-wire analog loops. (SBC Ex. 2.3 (3/17/03 Ehr Surrebuttal) ¶¶ 50-53.) For two of those sub-measures, SBC Illinois satisfied the applicable benchmark in two of the three months. The third sub-measure, SBC Illinois explains, had no volume in one month, and small volume in the other two. For the two months that did have volume, SBC Illinois states that it satisfied the benchmark for one month, but not for the second. (Id.) SBC Illinois states that, given the small volume in the third sub-measure, that shortfall in one month does not affect checklist compliance.

~~7.~~PM 56 – Percent Installations by Customer-Requested Due Date (Analog Loops).

~~1823.~~1830. In response to Staff's claim that SBC Illinois failed "to meet parity standards with respect to PMs 56-01.1 and 56-01.2," (Staff Ex. 44.0 (Zolnierek Rebuttal) ¶ 21; see also Staff Ex. 32.0 (Zolnierek) ¶ 83), SBC Illinois notes that its commercial performance results show that it met the standard for 56-01.1 in all five months from September 2002 to January 2003. (SBC Ex. 2.3 (3/17/03 Ehr Surrebuttal) ¶ 54.) With respect to 56-01.2, SBC Illinois notes that, in the five months from September 2002 to January 2003, it missed the parity standard in only a single month – September 2002. (Id.) Thus PM 56 evidences nondiscriminatory performance.

~~8.~~PM 62 – Average Delay Days (DS1 Loops).

~~1824.~~1831. SBC Illinois notes that Staff included PM 62 (average delay days) on the list of "Key PMs" it submitted with its rebuttal testimony, but states that Staff did not address that PM in any of its rebuttal testimony. (SBC Ex. 2.3 (3/17/03 Ehr Surrebuttal) ¶ 58. SBC Illinois notes that in Staff's first round of testimony, Staff expressed concern with PM 62-06 (average delay days for DS1 loops), claiming that it appeared there was a "meltdown" in the provisioning of DS1 loops. (See Staff Ex. 32.0 (Zolnierek) ¶ 112.) However, SBC Illinois explains, the poor results reported for PM 62-06 in November 2002 were due to a simple record-keeping entry, not any service problem. In November, SBC Illinois "closed out" the record for a single DS1 order that had actually been provisioned several months earlier, thus skewing the reported results. (SBC Ex. 2.3 (3/3/03 Ehr Surrebuttal) ¶ 57.)

~~9.~~Standalone xDSL Loops and Line Sharing.

~~10.~~PM 59, 65, 66, and 67 (Line Sharing).

~~1825.~~1832. In response to Staff's concern that in certain months SBC Illinois did not satisfy certain submeasures under PMs 59, 65, 66, and 67 related to line sharing (e.g., Staff Ex. 44.0 (Zolnierek Rebuttal) ¶¶ 8-17), SBC Illinois detailed nine specific actions it has taken to address the performance measured by these PMs. SBC Illinois further proposes that these PMs be subject to additional monitoring. (SBC Ex. 2.3 (3/3/03 Ehr Surrebuttal) ¶ 55.)

~~1826.~~1833. SBC Illinois contends, however, that the current shortfalls are not material. For PM 59, SBC Illinois states that, while it did not reach statistical parity, only 4% of CLEC line sharing orders generated trouble reports within 30 days of installation. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 117.) Moreover, SBC Illinois states that it has identified the cause of the performance shortfall, id., and has already implemented changes to improve its performance (SBC Ex. 2.2 (3/3/03 Ehr Rebuttal) ¶ 48.

~~1827.~~1834. For PM 65, SBC Illinois explains that while the trouble report rate for CLEC line sharing did not meet the parity standard, the overall rate was low (averaging just 0.53 trouble reports per 100 loops), and the differences from parity were insignificant (averaging just 0.21 reports). (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 120.)

~~1828.~~1835. For PM 66, SBC Illinois explains that, while it did not meet statistical parity in two months for missed line sharing repair commitments, the overall number of missed commitments was low (9 in September and 10 in October), and did not differ significantly from the parity results (a difference of 5 missed repair commitments in September and 8 in October). (Id. ¶ 126.)

~~1829.~~1836. For PM 67, SBC Illinois explains that the mean time to restore CLEC line sharing trouble averaged about 2.5 hours longer than the parity measure, id. ¶ 123, and explains that it has taken measures to improve performance and that reported results are expected to be in parity shortly, (SBC Ex. 2.2 (3/31/03 Ehr Rebuttal) ¶ 52.)

~~11.~~Facilities Modification (CLEC WI-6 – xDSL Loops).

~~1830.~~1837. SBC Illinois notes that in its first round of testimony, Staff expressed concern with SBC Illinois' performance in meeting due dates on orders with complex modifications for voice-grade loops, BRI, and DS1. (Staff Ex. 32.0 (Zolnierek) ¶¶ 90, 105, 121.) SBC Illinois explains that its performance results were in statistical parity for October 2002 and November 2002, and notes that Staff subsequently concluded that SBC Illinois "is meeting FMOD due dates for voice-grade loops, BRI loops, and DS1 loops in accordance with the requirements of [checklist item 4]." (Staff Ex. 44.0 (Zolnierek Rebuttal) ¶ 25.)

~~1831.~~1838. SBC Illinois states that the only remaining FMOD-related issue concerns CLEC WI-6, which measures SBC Illinois' provision of "Form A" where facilities modification is required. SBC Illinois explains that its performance results show that, overall, SBC Illinois issued more than 97% of Form As within the specified interval, well over the 95% benchmark. (SBC Ex. 2.3 (3/17/03 Ehr Surrebuttal) ¶ 63.) With respect to Staff's concern about SBC Illinois' failure to meet the benchmark for issuing Form As on standalone xDSL loop orders, SBC Illinois notes that very few orders are affected, because less than 4% of all DSL loop orders enter the FMOD process. (Id. ¶ 64.) SBC Illinois further states that its performance results showed below-benchmark performance because of the inadvertent inclusion of certain loops that should have been excluded. (SBC Ex. 2.2 (3/3/03 Ehr Rebuttal) ¶ 65. SBC Illinois explains that it has made changes to more accurately report the results for CLEC WI-6. (Id.; SBC Ex. 2.3 (3/17/03 Ehr Surrebuttal) ¶ 64.)

d. Commission Review and Conclusion - Checklist Item 4.

Overall Analysis of Checklist Item 4 Compliance

1838.1839. 1832 Although the The FCC has recognized that a shortfall in any particular measure will not, in and of itself, dictate a finding of non-compliance, the FCC's prior rulings do not suggest that individual performance deficiencies are to be disregarded. In this spirit, we take account of any disparity in performance in light of all of the surrounding facts and circumstances. This includes, but is not limited to, the length, breadth and depth of the disparity and the associated volume; factors outside the Company's control that caused or contributed to the shortcomings; as well as noting any signs as would indicate that the performance discrepancy is symptomatic of a greater problem or will lead to a graver situation. In other words, the Commission's assessment in these premises is based on all relevant factors that a prudent trier of fact would consider reasonable in the matter. We find, as explained in more detail below, that the record in this case establishes the existence of significant and material performance deficiencies that must be remedied before we would be prepared to give a positive consultation to the FCC on SBC Illinois' compliance with Checklist Item 4.

1833.On this basis, the Commission concludes that SBC Illinois' performance results demonstrate that it provides nondiscriminatory access to unbundled loops in accordance with the requirements of checklist item 4. Overall, the Commission notes, SBC Illinois passed 140 of the 151 unbundled local loop sub-measures in at least two of the three months (and, in most cases all three months) of the study period. See (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 100.) The few disparities were generally minor and, we would observe, in many instances the volume of affected transactions was low. Further, we are told that SBC Illinois has already taken many steps to improve its performance, and those improvements will be verified through our adoption of SBC Illinois' proposal for the further monitoring of certain PMs.

1834.With respect to PMs 55, 56, and 62, the Commission disagrees with Staff that SBC Illinois' performance results evidence a shortfall in performance. For those categories that had sufficient volume in the three months, however, SBC Illinois met the applicable standard in at least two of the three months. Thus, it would appear that SBC Illinois' performance satisfied Staff's general guidelines, and neither Staff nor the CLECs presented any evidence showing the one-month disparities in performance to be significant. With respect to PM 62, the Commission accepts SBC Illinois' unrebutted explanation that the results for November 2002 did not reflect poor performance, but were caused by a single bookkeeping entry. This is a circumstance that needs be considered.

1835.Although SBC Illinois did not meet certain sub-measures in PMs 59, 65, 66, and 67 related to line sharing, the Commission notes that, when viewed in the overall context of successful performance, the differences were not material. It is important too, that SBC Illinois has taken several steps to address the pertinent performance issues. We expect that the Company

~~will commit to correcting its performance and within a reasonable time. On the basis of such commitment and subject to the additional monitoring of these PMs as proposed by SBC Illinois, the performance issues noted by Staff do not affect SBC Illinois' overall showing of checklist compliance.~~

~~1836.Finally, the Commission notes Staff's concerns with respect to CLEC WI-6, which addresses SBC Illinois' provision of "Form As" where facilities modifications are required. As we see it, SBC Illinois demonstrated that it provides more than 97% of Form As to CLECs within the due date. Although Staff singles out SBC Illinois' performance with respect to standalone xDSL loop orders, when viewed in context and as a whole, the Commission notes that only a small percentage of such orders require facilities modification such that the shortfall in performance is not material to checklist compliance.~~

~~We will have our Staff continue monitoring and checking for improvements with respect to all matters indicated above in the coming months, unless and until, otherwise directed. On the whole and including this direction, the Commission believes it reasonable to find and, here does find, that SBC Illinois satisfies the requirements of checklist item 4.~~

Unbundled Stand-Alone DSL Loops

1840. With respect to unbundled local loops – stand-alone DSL loops, the PM data submitted by the company indicates that it meets benchmarks for installation timeliness, installation quality, and post installation maintenance and repair when installing stand-alone DSL loops.

1841. SBC Illinois is not, however, meeting FMOD process benchmarks including those measured by submeasure C WI 6 – 02, which addresses SBC Illinois' provision of "Form As" where facilities modifications are required. As we see it, SBC Illinois has failed to thoroughly and completely explain why the PM C WI 6-02 measurements submitted in Attachments A and B to Mr. Ehr's initial affidavit were improperly calculated, has failed to thoroughly and completely explain how the Company's revised calculation methodology corrects the problem and more accurately comports with the Company's business rules, and has failed to provide recalculated September, October, and November 2002 performance data to show that recalculated C WI 6-02 PMs demonstrate that the Company is meeting the benchmark for this measure.

1842. The Staff has recommended that we direct SBC Illinois to remedy this defect by requiring the Company to send FMOD Form A notifications on time. Moreover, avers the Staff, the Company should explain why this problem is occurring and demonstrate that proper steps have been taken to ensure that the problem is corrected on a going forward basis. The Staff recommends that these measures be implemented as a prerequisite to a positive consultation with the FCC regarding whether the Company is provisioning its stand-alone DSL loops in accordance with the requirements of Section 271(c)(2)(B)(iv).

ALTERNATIVE LANGUAGE: If the Commission elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key PMs, in support of

our alternative position, Staff recommends that the Commission find the failure to be material, and to add the following language to the end of paragraph 1842, as it is set forth above:

> **The Commission's positive recommendation to the FCC will be conditioned on SBCI agreeing to (1) identify the steps it will take to remedy its current unsatisfactory performance on PM WI-6; (2) and demonstrate substantially improved performance on WI-6 by November 2003, or face additional penalties.**

1843. We concur with Staff's analysis as supported by the record, and direct the Company to undertake these measures.

Unbundled DSL Loops With Linesharing

1844. With respect to unbundled local loops – DSL loops with linesharing, the PM data submitted by the company indicates that the Company meets parity criteria for installation timeliness when installing DSL loops with linesharing.

1845. Installation quality and repair and maintenance of installed DSL loops with linesharing, however, is not provided at parity as indicated by the fact that the company is not meeting parity criteria with respect to submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03.

1846. The Staff recommends that, as a prerequisite to a positive consultation with the FCC regarding whether the company is provisioning its DSL loops with linesharing in accordance with the requirements of Section 271(c)(2)(B)(iv), we should require the company to provide DSL with linesharing loop quality and maintenance and repair service to CLECs that is at least as good as the loop quality and maintenance and repair service the Company provides to it's affiliate. Further Staff recommends that the company explain why these problems are occurring and demonstrate that proper steps have been taken to ensure that these problems are corrected on a going forward basis.

ALTERNATIVE LANGUAGE: If the Commission elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key PMs, in support of our alternative position, Staff recommends that the Commission find the failure to be material, and to add the following language to the end of paragraph 1846, as it is set forth above:

> The Commission's positive recommendation to the FCC will be conditioned on SBCI agreeing to (1) identify the steps it will take to remedy its current unsatisfactory performance on submeasures 59-03, 65-03, 65.1-03, 67-03, 67-18, and 66-03; (2) and demonstrate substantially improved performance on those submeasures by November 2003, or face additional penalties.

1847. We concur, and direct the company to undertake these measures.

Unbundled Voice Grade Loops

1848. With respect to unbundled local loops – unbundled voice grade loops, the PM data submitted by the company indicates that the company is not always meeting parity criteria for installation timeliness when installing voice grade loops. For the three months ending in November of 2002, the company failed to meet parity criteria for PMs 55-01.1, 55-01.2, and 55-01.3 three out of the eight times parity criteria were evaluated. Furthermore, recent performance data indicate that the Company's performance problems with respect to measures 55-01.1, 55-01.2, and 55-01.3 have continued, with the Company failing parity tests with respect to measure 55-01.2 in December 2002 and failing parity tests with respect to measure 55-01.1 in January 2003.

1849. We address the Company's provisioning of unbundled voice grade loops, unbundled BRI loops, and unbundled DS1 loops requiring complex facilities modifications below under unbundled DS1 loops.

1850. The Staff recommends that, as a prerequisite to a positive consultation with the FCC regarding whether the company is provisioning its voice grade loop service in accordance with the requirements of Section 271(c)(2)(B)(iv), we should require the company to correct the voice grade loop provisioning problems identified above, in particular the disparity in average installation intervals and missed customer requested due dates. Moreover, the Staff recommends that the company should explain why these problem are occurring and demonstrate that proper steps have been taken to ensure that these problem are corrected and will not recur on a going forward basis.

ALTERNATIVE LANGUAGE: If the Commission elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key PMs, in support of our alternative position, Staff recommends that the Commission find the failure to be material, and to add the following language to the end of paragraph 1842, as it is set forth above:

The Commission's positive recommendation to the FCC will be conditioned on SBCI agreeing to (1) identify the steps it will take to remedy its current unsatisfactory performance on PM 55; (2) and demonstrate substantially improved performance on 55 by November 2003, or face additional penalties.

1851. Again, we adopt the Staff's recommendation and direct the company to implement the measures described above.

Unbundled BRI (digital) Loops (Excluding BRI Loop Orders Requiring Complex Facilities Modifications)

1852. The evidence submitted in this proceeding shows that the Company is provisioning it's standard BRI Loop service in accordance with the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996 ("1996 Act"). We address the Company's provisioning of BRI loop orders requiring complex modification below.

Unbundled DS1 Loops

1853. With respect to unbundled DS1 loops, the PM data submitted by the company indicates that the Company is providing service at parity with respect to installation timeliness, installation quality, and repair and maintenance service.

1854. As noted above, Staff observed that the only anomaly in the information is the extremely large delays to CLEC customers resulting from Company caused missed due dates in November 2002. SBC Illinois witness Mr. Ehr explained that this problem resulted from problems with a single order which was delayed for about 230 days and agreed to research the problem with this order and explain the cause. As noted above, the Company has also experienced problems in connection with its provisioning of voice grade loops and BRI loops requiring complex facilities modifications.

1855. Staff observed in its final analysis that although the Company has missed a high percentage of FMOD due dates in the past year and has of late continued with respect to some sub-measures to miss a high percentage of due dates, the Company has not failed any parity tests for the most recent three months of performance measurement data. Thus, Staff modified its recommendation with respect to the Company's performance as measured by PM C WI 11. Specifically, Staff now recommends that the Commission find that the Company is meeting FMOD due dates for voice-grade loops, BRI loops, and DS1 loops in accordance with the requirements of Section 271(c)(2)(B)(iv). Although we are concerned with the Company's past provisioning difficulties, we concur with Staff that the Company's current provisioning of voice-grade loops, BRI loops, and DS1 loops requiring complex facilities modifications is in accordance with the requirements of Section 271(c)(2)(B)(iv).

CHECKLIST ITEM 5 - Unbundled Local Transport

~~E~~A. Checklist Item 5 Phase I Analysis~~CHECKLIST ITEM 5 - Unbundled Local Transport~~

1. Description of Checklist Item (v)

~~1838.~~1856. 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

~~1839.~~1857. 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).

~~1840.~~1858. 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.

~~1841.~~1859. 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.

~~1842.~~1860. (Adapted from the New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

3. The State Perspective

~~1843.~~1861. 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.

~~1844.~~1862. 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

~~1845.~~1863. 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).

~~1846.~~1864. 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).

~~1847.~~1865. 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).

~~1848.~~1866. 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.

~~1849.~~1867. 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

~~1850.~~1868. 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)

~~1851.~~1869. 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).

~~1852.~~1870. 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.

~~1853.~~1871. 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

~~1854.~~1872. 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

~~1855.~~1873. 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.

~~1856.~~1874. 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.

~~1857.~~1875. 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).

~~1858.~~1876. 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

~~1859.~~1877. 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

~~1860.~~1878. 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.

~~1861.~~1879. 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

~~1862.~~1880. 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.

~~1863.~~1881. 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.

~~1864.~~1882. 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.

~~1865.~~1883. 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.

B. Phase II Showings.

8. Phase I Compliance Matters

~~1866.~~1884. In the Phase I Order, the Commission preserved the parties' ability to raise further issues regarding SBC Illinois' compliance with the Commission's Order in Docket 00-0700. The Commission notes that SBC Illinois and Staff subsequently stipulated that SBC Illinois' Docket 00-0700 compliance tariff indeed complies with the Commission's Order in that docket with respect to AIN-based custom routing and ULS-ST pricing. (SBC Ex. 8.1 (Wardin Rebuttal) ¶ 11.) As no party raises any other issue with respect to SBC Illinois' compliance with our Order in Docket 00-0700, the Commission concludes that SBC Illinois satisfies the requirements of checklist item 5.

9. New Phase II Evidence. (Checklist Item 5)

a. SBC Illinois Position

~~1867.~~1885. During the September - November 2002 study period, SBC Illinois states that it processed every CLEC request for unbundled transport well within the standard interval, and did not miss a single installation due date. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 187 & Att. H.) The quality of SBC Illinois' provisioning of unbundled transport also surpassed the benchmark, as there were *no* trouble reports within 30 days of installation. (Id).

~~1868.~~1886. SBC Illinois states that it also provides high quality service with respect to dedicated transport circuits already in service. Not a single one of the over 490 DS1 circuits experienced any trouble in the three month study period. (Id.) For DS3 circuits, of the 315 circuits in place, trouble was reported on only one circuit in October, one circuit in November, and *none* in December – a trouble report rate far below the rate for SBC Illinois' own DS3 facilities. (Id. ¶ 188).

Results of BearingPoint Test.

~~1869.~~1887. BearingPoint tested SBC Illinois' provisioning of DS1 and DS3 interoffice facilities and found all tests satisfied. BearingPoint found that SBC Illinois provisioned DS1 and DS3 facilities in accordance with documented Methods and Procedures. BearingPoint then selected 143 orders, observed SBC Illinois' provisioning, and found that SBC Illinois missed the installation due date on only 5 orders, or 3.5%, well below BearingPoint's benchmark of 8%. Next, BearingPoint analyzed 154 DS1 and DS3 circuits to determine the accuracy of provisioning, and found that trouble was reported within 30 days of installation on only 8 circuits, or 5.2%, again well below the test benchmark of 8%.

b. CLECs' Positions.

~~1870.~~1888. No CLEC raised any issues in Phase II specific to checklist item 5.

c. Staff's Position.

~~1871.~~1889. Staff concludes that "CLECs receive high quality post provision . . . service and maintenance and repair service from the Company that is nearly perfect" for both DS1 and DS3 transport circuits. (Staff Ex. 32.0 (Zolnierek Aff.) ¶¶ 124 & 126).

Performance Measurement Data Analysis

~~1872.~~1890. Checklist item 5, regarding unbundled local loops, includes PMs 55 through 69, and CLEC WI 11. All worksheets are included in Schedule 29.02.

~~1873.~~1891. Staff's review of the remedied Checklist Item 5 sub-measures provides the following information:

Checklist Item 5 Summary of Performance Unbundled Local Transport				
	Sept. '02	Oct. '02	Nov. '02	Total
Number of Sub-measures Missed	0	0	0	0
Number of Sub-Measures Passed	2	2	2	2
Total Number of Sub-Measures	2	2	2	2
Percentage of Sub-Measures Passed	100%	100%	100%	100%

Unbundled DS1 Dedicated Transport

~~1874.~~1892. Based on the evidence, Staff maintains that SBCI does not need to take any corrective actions with respect to its DS1 transport maintenance and repair service.

Maintenance and Repair

~~1875.~~1893. Staff explains that the PMs measuring maintenance and repair performance for DS1 Dedicated Transport are PM 65-09 (Trouble Report Rate – DS1 Transport), PM 65.1-09 (Trouble Report Rate Net of Installation and Repeat Reports – DS1 Transport), PM 67-09 (Mean Time to Restore – Dispatch – DS1 Transport), PM 67-24 (Mean Time to Restore – No Dispatch – DS1 Transport), and PM 69-09 (Percent Repeat Reports – DS1 Transport). ICC Staff Ex. 32.0 at ¶ 124. These PMs indicate that the CLECs receive high quality post provision DS1 service and DS1 maintenance and repair service from the Company that is nearly perfect. Id.

Staff's Recommendation:

~~1876.~~1894. Based on the performance data submitted by the Company, Staff recommended that the Commission find that the Company is providing DS1 dedicated transport maintenance and repair service in accordance with the requirements of Section 271(c)(2)(B)(v) of the Telecommunications Act of 1996 ("1996 Act"). ICC Staff Ex. 32.0 at ¶ 125.

Unbundled DS3 Dedicated Transport

~~1877.~~1895. Based on the evidence, the Company does not need to take any corrective actions with respect to its DS3 transport maintenance and repair service.

~~1878.~~1896. It is Staff's determination that SBC Illinois' reported performance relative to checklist item 5 is satisfactory.

Staff's Recommendation:

~~1879.~~1897. Based on the performance data submitted by the Company, Staff recommended that the Commission find that the Company is providing DS3 dedicated transport maintenance and repair service in accordance with the requirements of Section 271(c)(2)(B)(v) of the Telecommunications Act of 1996 ("1996 Act"). ICC Staff Ex. 32.0 at ¶ 127.

d. Commission Review and Conclusion.

~~1880.~~1898. No party disputes SBC Illinois' nondiscriminatory provisioning and maintenance of unbundled local transport, and Staff agrees that SBC Illinois provides CLECs with high-quality post-provision service, repair and maintenance with respect to DS1 and DS3 transport. Based on SBC Illinois' commercial performance results, and on BearingPoint's test of DS1 and DS3 interoffice facilities, the results of which were consistent with the commercial performance results, the Commission concludes that SBC Illinois meets the requirements of checklist item 5.

CHECKLIST ITEM 6 – Unbundled Local Switching

~~F~~A. Checklist Item 6 Phase I Analysis~~CHECKLIST ITEM 6 – Unbundled Local Switching~~

1. Description

~~1881.~~1899. 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

~~1882.~~1900. 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.

~~1883.~~1901. 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.

~~1884.~~1902. 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.

~~1885.~~1903. 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.

~~1886.~~1904. (Adapted from the New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

3. The State Perspective

~~1887.~~1905. 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.[148]

~~1888.~~1906. 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.

~~1889.~~1907. 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

~~1890.~~1908. "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.

~~1891.~~1909. 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.

The Unbundled Local Switching "Carve Out"

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[148] 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.

~~1892.~~1910. 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.

~~1893.~~1911. 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.[149] 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.

~~1894.~~1912. 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

~~1895.~~1913. 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.

~~1896.~~1914. 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 time-tested, Commission-approved way for Ameritech Illinois to respond to specialized requests from CLECs.

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[149] 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.

~~1897.~~1915. 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."

~~1898.~~1916. 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.

~~1899.~~1917. 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).

~~1900.~~1918. 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

~~1901.~~1919. 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).

~~1902.~~1920. 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).

~~1903.~~1921. 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

~~1904.~~1922. 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

~~1905.~~1923. "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).

~~1906.~~1924. 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).

~~1907.~~1925. 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.

~~1908.~~1926. 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

~~1909.~~1927. 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.

~~1910.~~1928. 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).

~~1911.~~1929. 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.

~~1912.~~1930. 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

~~1913.~~1931. 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.

~~1914.~~1932. 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.

~~1915.~~1933. 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.

~~1916.~~1934. 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

~~1917.~~1935. 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?

~~1918.~~1936. 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.

~~1919.~~1937. 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

~~1920.~~1938. 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

~~1921.~~1939. 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.

~~1922.~~1940. 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

~~1923.~~1941. 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

~~1924.~~1942. 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

~~1925.~~1943. 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)

~~1926.~~1944. 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.

~~1927.~~1945. 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

~~1928.~~1946. 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.

~~1929.~~1947. 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.

~~1930.~~1948. 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

~~1931.~~1949. 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.

~~1932.~~1950. 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.

~~1933.~~1951. 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).

~~1934.~~1952. 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

~~1935.~~1953. 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

~~1936.~~1954. 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.

~~1937.~~1955. 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.

~~1938.~~1956. 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.

~~1939.~~1957. 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

~~1940.~~1958. 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

~~1941.~~1959. 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.

~~1942.~~1960. 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.

~~1943.~~1961. 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

~~1944.~~1962. 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.

~~1945.~~1963. 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

~~1946.~~1964. 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

~~1947.~~1965. 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

~~1948.~~1966. 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.

~~1949.~~1967. 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.

~~1950.~~1968. The Commission accepts this proposal and will consider the issue on the record to be developed for the Phase II proceeding.

Customized Routing

~~1951.~~1969. 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.

~~1952.~~1970. 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

~~1953.~~1971. 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.

B. Phase II Showings.

8. Phase I Compliance Matters.

Access to RACF/RCF

a. SBC Illinois' Position.

~~1954.~~1972. The Commission's Phase I Interim Order required SBC Illinois to make a showing of the steps and timeframes by which it is implementing its commitment to make RACF available to CLECs. SBC Illinois stated that on June 28, 2002, almost immediately following the conclusion of the Phase I hearings, it published an Accessible Letter that included a list of SBC Illinois central offices where the RACF feature was resident (loaded) in the switch and where the required switch software license had been obtained, as well as other information for CLECs. SBC Illinois stated that it had issued a second Accessible Letter on November 11, 2002 to provide updated ordering information for CLECs to use in requesting access to RACF as a ULS switch port feature. SBC Illinois further explained that the RACF feature is available for CLECs to request, where available, using a standard local service request (LSR). SBC Illinois stated that

it had already provisioned a number of CLEC requests for this feature, and that, in its opinion, this issue is resolved. (SBC Ex. 3.0 (Alexander Aff.) ¶¶ 13-14).

~~1955.~~1973. In response to a question from Z-Tel as to whether this offering is, in fact, available (Z-Tel Comments at 6), SBC Illinois states Z-Tel is among the CLECs in Illinois which has actually purchased RACF. (SBC Ex. 3.1 (Alexander Rebuttal Aff.) ¶ 20). In response to Z-Tel's concern about the fact that the RACF feature will be provided "where available" (id), SBC Illinois explains that this is a standard caveat applied to all central office features, because they are not all available on every type of switch port or in every central office. However, SBC Illinois states, the BFR process is available if a CLEC wants to request RACF in an office where it is not currently available. (Id). Finally, SBC Illinois states that Z-Tel's contention that it had no binding contractual obligation to offer RACF was incorrect. (Id., ¶ 21).

~~1956.~~1974. The Commission's Phase I Interim Order accepted SBC Illinois' proposal to address access to RCF in Phase II. At the outset, SBC Illinois explains that CLECs have been able to purchase RCF under SBC Illinois' resale offerings for some time, so that CLEC customers are not required to forego RCF capacities as Z-Tel contended. (SBC Ex. 3.0 (Alexander Aff.) ¶ 16). In addition, SBC Illinois explains that it has been working informally with Z-Tel to make it possible for Z-Tel to migrate an end user's existing RCF service functionality when Z-Tel converts the customer to UNE-P service. SBC Illinois indicates that there are significant technical issues involved with developing a ULS-ST unbundled switch port-based RCF product in SBC Illinois' UNE environment. As part of the conditions required by the FCC and ICC in their respective orders approving the merger of Ameritech with SBC, SBC Illinois stated that it has implemented its ULS-ST offering using Advanced Intelligent Network (AIN)-based triggers, which are part of the systems that record transport usage for ULS-ST. However, according to SBC Illinois, the AIN triggers that initiate ULS-ST usage recording are not activated by RCF as it is configured today; as a result, SBC Illinois' network would not know to record any of the usage minutes associated with a UNE-P customer's use of RCF and SBC Illinois would have no way to appropriately bill the CLEC and to recover its costs. Therefore, explained SBC Illinois, development work is required to make the RCF functionality available as CLECs via a ULS-ST switch port. To that end, SBC Illinois stated that it is investigating the feasibility of developing RCF as a UNE switch port-based wholesale product, using switch-based line class codes and translations. (SBC Ex. 3.0 (Alexander Aff.) ¶¶ 17, 20).

~~1957.~~1975. SBC Illinois further states that it has developed a work around solution that a CLEC can use to convert an end user's dial tone service to UNE-P, while at the same time converting the customer's existing RCF arrangement to the resale-based version of RCF. SBC Illinois explained that it had already completed internal testing of this near-term solution and has recommended to Z-Tel that joint "friendly" testing of the solution be conducted. Contrary to Z-Tel's allegations, SBC Illinois explained that there is no functional difference between a UNE switch port-based offering and the resale version of RCF. (Id., ¶¶ 17, 21; SBC Ex. 3.1 (Alexander Rebuttal Aff.) ¶ 23).

~~1958.~~1976. Finally, SBC Illinois disputes Z-Tel's contention that CLECs are entitled to RCF as a switch-based ULS-ST feature resident in the switch. SBC Illinois explained that ULS-ST switch port vertical features (e.g., custom calling services such as call waiting) are associated with the switch and the switch port that are used to provide the end user's dial tone

service. In the case of RCF, however, SBC Illinois stated that RCF is not a feature of the switch that provides the UNE-P to the end user. Instead, RCF is provided by a separate, "foreign" central office switch, which uses switch translations to automatically forward all incoming calls from the RCF telephone number in the foreign switch to the switch serving the end user that has subscribed to the RCF service. Thus, according to SBC Illinois, RCF is not like other vertical features and thus cannot be expected to simply migrate as if it were a vertical feature of an end user's switch port. SBC Illinois further stated that none of the SBC ILECs that have received section 271 approval were required to demonstrate a UNE-based offering of RCF. (SBC Ex. 3.0 (Alexander Aff.) ¶ 19). Z-Tel disputed SBC Illinois' position that RCF is not a required part of ULS-ST. (Z-Tel Comments at 9-11).

Rates

~~1959.~~1977. In the Phase I Order, the Commission concluded that SBC Illinois satisfied the requirements of checklist item 6 on condition that it complied with the Commission's Order in Docket 00-0700. SBC Illinois and Staff subsequently entered into a stipulation indicating that SBC Illinois had complied with ULS-ST pricing requirements of that order.

b. Z-Tel's Position

~~1960.~~1978. Z-Tel points out, in comments, that on February 14, 2003, SBC Illinois filed tariff revisions to include an RACF offering.[150] If this product actually exists and can be ordered and provisioned, Z-Tel believes that Company witness Alexander may be correct in noting that this issue "appears to be resolved."[151] The problem in Z-Tel's view, however, is that the mere existence of an offering in an SBC Illinois tariff does not mean the product either is available or actually exists. According to Z-Tel, this is nothing more than a "trust me" approach to compliance with regard to RACF because SBC Illinois' witness has no first hand knowledge of whether SBC Illinois ever has provisioned RACF as an actual product.

c. Commission Review and Conclusion

~~1961.~~1979. SBC Illinois has fully addressed the Commission's concern regarding the availability of RACF. On the showing before us, the Commission concludes that SBC Illinois has satisfied any compliance issue relative to access to RCF. The Company has demonstrated that RCF is available to CLECs that desire to offer this feature to their end users through its resale offerings and that it is working with Z-Tel to facilitate its availability as part of a UNE-P offering. Based on the information provided by the parties, the Commission will not attempt to resolve the issue whether RCF should be considered a feature required as part of ULS-ST. Notably, we would observe, Z-Tel has pointed to no FCC order which addresses RCF specifically. SBC Illinois has raised relevant distinctions between RCF and conventional port-based switch features. Consistent with the FCC's policy that new issues should not be raised in the section 271 process, we conclude that there is no compliance issue relative to access to RCF.

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1. [150] SBC Ameritech Advice No.: IL-02-1836 (attached hereto as Exhibit D).

[151] Alexander 1A Compliance Affidavit, ¶ 14.

9. New Phase II Evidence (Checklist Item 6)

a. SBC Illinois' Position.

~~1962.~~1980. SBC Illinois states that its commercial performance results confirm that if provides CLECs nondiscriminatory access to unbundled local switching ("ULS") in accordance with the requirements of checklist item 6. SBC Illinois states that for the unbundled analog trunk ports that were installed before September 2002, not a single one experienced trouble during the study period. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 189 & Att. I (reporting a 0% trouble report rate for analog trunk ports, PM 65). While CLECs did not order new stand-alone unbundled switch products during the September-November period, SBC Illinois states that it has the same processes in place for standalone local switching as for other wholesale products, including UNE-P. (Id. ¶ 189.)

b. CLECs' Position.

~~1963.~~1981. No CLEC raised any Phase II issues with respect to checklist item 6.

c. Staff's Position.

~~1964.~~1982. According to Staff, the performance results included in Ehr Attachments A and B indicate that "Illinois CLECs are not currently purchasing stand-alone unbundled local switching products from SBC Illinois." Ehr Phase II Affidavit at ¶188. Therefore, there is insufficient data to determine whether SBC Illinois provisioning process for stand-alone unbundled local switching is satisfactory. At the same time, there is no evidence to suggest that SBC Illinois provisioning process impairs or impedes CLECs' ability to compete using this product.

~~1965.~~1983. It is Staff's determination that SBC Illinois' reported performance relative to checklist item 6 is satisfactory.

d. Commission Review and Conclusion.

~~1966.~~1984. SBC Illinois' commercial performance results with respect to unbundled local switching demonstrate that it is providing CLECs nondiscriminatory access to ULS, and no party has contested SBC Illinois' performance. On this record, the Commission concludes that SBC Illinois satisfies the requirements of checklist item 6.

~~G.~~ CHECKLIST ITEM 7 – 911/E911 Access and Directory Assistance – Operator Services

A. Phase I Analysis

1. Description of Checklist Item

~~1967.~~1985. 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

~~1968.~~1986. 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.

~~1969.~~1987. 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.

~~1970.~~1988. 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.

~~1971.~~1989. 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).

~~1972.~~1990. 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."

~~1973.~~1991. 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.

~~1974.~~1992. 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."

~~1975.~~1993. 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.

~~1976.~~1994. 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.

~~1977.~~1995. 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.

~~1978.~~1996. 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.

~~1979.~~1997. (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)

~~1980.~~1998. 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

~~1981.~~1999. 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

~~1982.~~2000. 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.

~~1983.~~2001. 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).

~~1984.~~2002. 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).

~~1985.~~2003. 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).

~~1986.~~2004. 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).

~~1987.~~2005. 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).

~~1988.~~2006. 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).

~~1989.~~2007. 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).

~~1990.~~2008. 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).

~~1991.~~2009. 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)

~~1992.~~2010. 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.

~~1993.~~2011. 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).

~~1994.~~2012. 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).

~~1995.~~2013. 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

~~1996.~~2014. 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).

~~1997.~~2015. 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

~~1998.~~2016. 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

~~1999.~~2017. 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).

~~2000.~~2018. 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).

~~2001.~~2019. 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.[152]

Quality of DA Listings

~~2002.~~2020. 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).

~~2003.~~2021. 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

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[152] 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).

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 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).

~~2004.~~2022. 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

~~2005.~~2023. 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).

~~2006.~~2024. 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).

~~2007.~~2025. 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).

~~2008.~~2026. 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

~~2009.~~2027. 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).

~~2010.~~2028. 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.

~~2011.~~2029. 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

~~2012.~~2030. 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

~~2013.~~2031. 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

~~2014.~~2032. 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

~~2015.~~2033. 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.

~~2016.~~2034. 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."

~~2017.~~2035. 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.

~~2018.~~2036. 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.

~~2019.~~2037. 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

~~2020.~~2038. 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.

~~2021.~~2039. 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

~~2022.~~2040. 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.

~~2023.~~2041. 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.

~~2024.~~2042. 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.").

~~2025.~~2043. 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.

~~2026.~~2044. 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

~~2027.~~2045. 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

~~2028.~~2046. 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.

~~2029.~~2047. 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.

~~2030.~~2048. 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.

~~2031.~~2049. 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.

~~2032.~~2050. 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.

~~**Item 7 – Phase II**~~

B. Phase II Showings.

8. Phase I Compliance Matters.

(none indicated).

9. New Phase II Evidence.

a. SBC Illinois' Position.

911 and E911

~~2033.~~2051. SBC Illinois states that the September – November 2002 performance results show that it provides CLECs nondiscriminatory access to its 911 database. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 192-193). For every month in the study period, SBC Illinois cleared errors

in the 911 database for CLECs faster than it did for its own 911 entries. (Id. ¶ 192 & Att. J (PM 102); Staff Ex. 36.0 (Schroll) ¶ 12). According to SBC Illinois, the average time to process corrections was 8.56 hours for CLEC records, compared to 16.56 hours for retail.

~~2034.~~2052. With respect to the average time to process 911 updates for CLECs, SBC Illinois notes that although it missed the parity standard (PM 104) by 10-24 minutes, it still processed every CLEC update within the 24-hour standard established by the National Emergency Number Association. On average, SBC Illinois updated the 911 database for CLECs in just under 1.5 hours in September and November, and in just under 2 hours in October. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) Att. J (PM 104)).

~~2035.~~2053. SBC Illinois states that any shortfall in PM 104 is not due to a problem with SBC Illinois' processing of 911 update files, because that process is designed to achieve parity – SBC Illinois accepts and processes update files on a first-in, first-out basis, regardless of their source. (Id. ¶ 193). SBC Illinois explains that the difference in results stems from two factors beyond its control. First, CLECs submit almost four times the number of 911 update files as SBC Illinois and its affiliates; thus CLEC files are more likely to experience a wait situation in the processing queue. (SBC Ex. 2.2 (Ehr Rebuttal Aff.) ¶ 80; Ehr Response to 2/11/03 Workshop Questions). Second, CLEC update files contain more errors than SBC Illinois' update files, and thus require a longer processing time on average. (Id). Most importantly, SBC Illinois states, the difference in processing times were short and did not affect public safety, as SBC Illinois processed CLEC updates well within the 24-hour safety standard set by the industry.

Directory Assistance/Operator Services

~~2036.~~2054. SBC Illinois states that it surpassed the benchmark for average speed of answer for OS and DA calls, in every month. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 191 & Att. J (PM 80 & 82)). SBC Illinois' commercial performance results show that over 98 percent of electronic DA database updates flowed through without manual intervention, on average, over the study period. (Id. ¶ 197 & Att. J (PM 113)). While SBC Illinois' electronic updates flowed through at a slightly higher rate, the differences were not competitively significant, given the high level of service provided to CLECs (98% flow-through). For orders that did not flow through, and for manually submitted updates, SBC Illinois achieved a high rate of accuracy – over 99% in every month, well over the benchmark of 97%. (Id. ¶ 196 & Att. J (PM 112)). BearingPoint also tested the accuracy of SBC Illinois' DA database updates, and found that SBC Illinois satisfied the 95% test benchmark (TVV4-1).

~~2037.~~2055. SBC Illinois states that it completed between 98.9% and 100% of all CLEC DA update orders within 72 hours. SBC Ex. 2.0 (1/17/03 Ehr Aff.) Att. J (PM 110)). The average time to update the DA database for CLEC manual update orders was less than 30 hours – well within the benchmark of 48 hours. (Id. Att. J (PM 111)). And CLEC electronic update orders were processed in about 16.5 to 17.6 hours on average. (Id. ¶ 195 & Att. J (PM 111)). SBC Illinois states that, while that interval did not match the average retail interval for two months (September and November), the differences were not competitively significant – less than an hour in September, and less than one-half hour in November. (Id. ¶ 195). Further, SBC Illinois achieved parity on this measure in all other months of the year, including December 2002.

b. CLEC Positions.

911 and E911

~~2038.~~2056. No CLEC raised any issues in Phase II with respect to 911 and E911.

Directory Assistance/Operator Services

~~2039.~~2057. No CLEC raised any issues in Phase II specific to directory assistance or operator services.

c. Staff's Position.

Performance Measurement Data Analysis

~~2040.~~2058. Checklist item 7, Staff notes, concerns 911, E-911, Directory Assistance, and Operator Services, and encompasses the following performance measures: 80, 82,102, 103, 104, 110, 111, 112, and 113. Staff worksheets are included in Schedule 29.02.

Directory Assistance and Operator Services

~~2041.~~2059. The PMs relative to directory assistance and operator services ("OS/DA") encompass six PMs, i.e., 80, 82, 110, 111, 112, and 113. This PM data indicates that SBCI Illinois provided service related to PMs 80, 82, 110, and 112 in excess of the standard, while service related to PMs 111 and 113 failed. Within the 6 performance measures for OS/DA, there are a total of 8 sub-measures. SBCI data reflects that the company passed 6 and failed 2 of the sub-measures.

~~2042.~~2060. Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with Checklist item 7, operator services and directory assistance ("OS/DA"). ICC Staff Ex. 33.0 at ¶¶ 1, 6. Mr. Light testified that the performance measures associated with checklist item 7 are PM 80 – Directory Assistance average speed of answer, PM 82 – Operator Services speed of answer, PM 110 – Percent of updates completed in DA database within 72 hours, PM 111 – Average update interval for DA database, PM 112 – Percent of DA database accuracy for manual updates and PM 113 – Percent of electronic updates that flow through the update process without manual intervention. ICC Staff Ex. 33.0 at ¶ 7. Within the 6 performance measures for OS/DA, there are a total of 8 sub-measures. Mr. Light observed that SBC's performance measure data reflects that the Company passed 6 and failed 2 of these sub-measures. ICC Staff Ex. 33.0 at ¶ 11.

~~2043.~~2061. Mr. Light explains that the PM failures within the OS/DA area were 111-01.2 and 113, both of which are parity measures and involve the electronic transmission of data.. ICC Staff Ex. 33.0 at ¶ 12. PM 111-01.2 measures the average number of hours required to update changes submitted to the DA database. Parity failures occurred in the months of

September and November 2002. Mr. Light explained that review of the data supplied in Attachment "B" to SBC witness Ehr's affidavit reflects that in the ten months preceding the September failure, data transmissions were at parity with SBC retail operations. Further, data available from SBC's "CLEC Online" website shows that this measure was at parity for December 2002. *Id*. PM 113 measures the percentage of electronic updates received that flow through the update process without the necessity of manual intervention. This measure failed to be at parity with SBC for all 3 of the months observed.

~~2044.~~2062. As with PM 111-01.2, Mr. Light stated that his review of data from the months preceding the 3-month review period show that PM 113 was consistently met through much of 2002. However, December 2002 data from "CLEC Online" indicates that the measure failed for a fourth consecutive month. While PM 113 failed to meet SBC retail parity, Mr. Light maintains that it is important to note that the 3-month average percentage for CLEC electronic updates was 98.2%, compared to the SBC parity level of 99.5%. *Id*.

~~2045.~~2063. Mr. Light concludes that SBC met retail parity for all but two of the sub-measures. *See* ICC Staff Ex. 33.0 at ¶ 17. Looking beyond the 3-month review period, Mr. Light's analysis of the 12-month data shows that SBC consistently met or exceeded retail parity throughout most of 2002. *Id.* Mr. Light also observed that the instances of failure typically placed CLEC processing within 1% of SBC operations. Accordingly, based on all the data reviewed and assuming such data is accurate, it is Mr. Light's opinion that SBC Illinois provides adequate and nondiscriminatory services to CLECs in the area of OS/DA. ICC Staff Ex. 33.0 at ¶ 18.

911 and E-911

~~2046.~~2064. Data on PMs 102, 103, and 104, relative to 911 and e-911, indicates that SBC Illinois passed PM 102 and failed PM 104. For PM 103, there was insufficient data for all sub-measures to make a determination.

PM 102 -- Average time to clear errors during the processing of the 911 database (UNE loop and port combination orders).

~~2047.~~2065. With respect to PM 102, the Staff's analysis leads it to the conclusion that the company was able to successfully clear errors in the 9-1-1 database at the parity standard in each month of the study period. Therefore, the company has satisfied PM 102.

PM 103 - Percent accuracy for 911 database (facilities based carriers).

~~2048.~~2066. With respect to PM 103, Staff contends, no data was available to support any conclusion regarding whether SBC Illinois can maintain the same percentage of accuracy in the 9-1-1 database for its competitors as it has for itself. Staff sought further information regarding this lack of data from SBC witness James Ehr. He explained that the business rule for PM 103 provides that the activity that's measured is initiated by the facilities-based CLEC

requesting a reconciliation file, so that the CLEC can reconcile the accuracy of the updates to the 9-1-1 database. Tr. at 3054. However, no CLEC has engaged in this process during the study period, so there is no activity to report. Accordingly, the Company has, due to insufficient data, neither passed nor failed PM 103.

~~2049.~~2067. The Staff has reviewed the business rule and understands that the process would require the CLEC to request a compare file so as to compare its own customer record information in order to determine the validity of the Company's 9-1-1 database record. Since no CLEC has requested this information, there is no data available to determine a percentage of database accuracy.

Problems with Key PM 104 — Average Time Required to Update 911 Database (facilities based carrier)

~~2050.~~2068. Staff notes SBC Illinois' reported failure on PM 104 to indicate that the Company was unable to provide updates to the 9-1-1 database in the same timely fashion as was provided to itself. Updates to the 9-1-1 database, Staff contends, must be made in a timely fashion. The longer the delay, the greater the chance that an incorrect phone number and address could be forwarded during a 9-1-1 call, thus creating a greater possibility of loss of life or property.

~~2051.~~2069. With respect to PM 104, it appears to the Staff that SBC Illinois was unable to meet the parity standard for average time to update the 9-1-1 database and to unlock the 9-1-1 database records. Based on information available to Staff on the company's web site, SBC's inability to achieve parity for this performance measure on a consistent basis has persisted since at least January of 2002.

~~2052.~~2070. In his January 17, 2003, Affidavit, Mr. Ehr stated that the difference in SBC Illinois' retail and CLEC performance was not material, amounting to a difference in average time to update the 9-1-1 data base of 14 minutes in September and 24 minutes in November. Ehr Initial Affidavit, ¶ 192. Mr. Ehr also testified in his affidavit the "[t]he reason for any difference between the results for SBC Illinois' retail updates and the CLEC updates can be attributed to two factors outside the control of SBC Illinois: the size of the CLEC update files and the quality of the CLEC update file records." Ehr Initial Affidavit, ¶ 193.

~~2053.~~2071. Mr. Ehr also testified that the industry standard for timeliness of 9-1-1 database updates established by the National Emergency Number Association (NENA) is within 24 hours of receipt, and that SBC is processing update files for both its own updates and CLEC updates within this standard. Staff sought further clarification at the hearings of SBC's "reasons" for not achieving parity, and Mr. Ehr indicated that he would need to respond in writing to provide any information beyond what was in his affidavit. Tr. at 3056-3059. In Mr. Ehr's Response to the 2/11/2003 Hearing Questions Directed to James Ehr, he indicated that two factors "could cause CLEC files to take longer to process on average." Mr. Ehr's written response indicates that these factors are: (1) that CLEC files generally contain more errors than SBC files (and errors require additional processing time) and (2) that CLECs submit nearly four

times as many 911 update files as submitted by SBC (which results in a greater probability for CLECs to experience a wait situation while in the processing queue).

~~2054.~~2072. Staff is familiar with the NENA standard, and agrees that updates completed within the 24 hour time frame meet the national standard and adequately address public health and safety concerns. Although the average update time for SBC Illinois' retail updates and the CLEC updates is less than the 24 hour NENA standard, it is not clear from information provided to date whether all individual updates meet this standard. It is also not clear to Staff, why the larger number of CLEC updates would cause CLECs to experience greater average update times. Staff contends that we need to ensure that the company's updates to the 9-1-1 database are being made in a timely fashion for its competitors as well as for itself.

d. SBC Illinois' Rebuttal Position.

~~2055.~~2073. In response to Staff's inquiry regarding the steps SBC Illinois has taken to address the causes of the higher CLEC error rate, see Staff Ex. 36.0 (Schroll) at 4, SBC Illinois states that it has four processes in place to assist CLECs in identifying and correcting errors in their 911 update submissions. (SBC Ex. 12.0 (Valentine Rebuttal Aff.) ¶¶ 6-11). Within 24 hours of the receipt of a CLEC 911 update file, SBC Illinois returns a "confirmation file" that includes information regarding the number of errors and an English-language explanation of the errors. (Id. ¶ 7). Various experts are also available to assist CLECs with the resolution of errors, including SBC employees who proactively review the accuracy of CLEC 911 updates and contact CLECs to discuss the resolution of errors. (Id. ¶¶ 8-9). CLECs also have online access to the Master Street Address Guide, which allows them to reduce the potential for errors by submitting 911 updates using the most current street address information available. (Id. ¶ 10).

~~2056.~~2074. In response to Staff's assertion that SBC Illinois "failed" PM 104.1, which measures the average time required to "unlock" or release 911 records to a facilities-based CLEC when that CLEC obtains the related customer, SBC Illinois states that the measure is used for diagnostic purposes, and does not have a benchmark. (See SBC Ex. 2.0 (1/17/03 Ehr. Aff.) Att. Q at 32). SBC Illinois states that Staff has thus, mistakenly labeled PM 104.1 a "miss."

e. Staff's Rebuttal Position.

~~2057.~~2075. Staff further analyzed SBC Illinois' performance on PM 104 and reviewed Mr. Ehr's explanation regarding the factors that he claims are not within SBC Illinois' control. The first point Mr. Ehr makes is that CLEC files have a higher percentage of errors in their files, which adds time to the processing of the CLECs file. SBC Illinois implies that, for all practical purposes, the updating times are the same, even though it took SBC Illinois 14 minutes longer in September and 24 minutes longer in November to update CLEC 911 data. Mr. Ehr also believed the 14 and 24-minute delay is minimal enough that it should not have an effect on public safety.

~~2058.~~2076. On its face, this might appear to be a logical assumption. In Staff's view, however, the z value indicates that these differences are statistically significant. In this proceeding, it was determined that SBC Illinois would need to stay below a z-value of +1.645 in

order to satisfy the PM. The following represents the z-values obtained in the 3-month test period and the two most current months for which data is available (received this month). The only month in the test period that SBC Illinois hit the PM by being below the +1.645 z-value was October 2002.

September 02	1.86
October 02	0.68
November 02	2.43
December 02	2.816
January 03	1.686

~~2059.~~2077. Staff is uncertain why SBC believes this performance to be satisfactory, and is uncertain whether SBC Illinois has taken any steps to improve the situation. Mr. Ehr's rebuttal affidavit revealed that on average CLEC files had an 18.7% error rate in September and November 2002 versus a 7.3% error rate for SBC for the same time period. It appears that SBC Illinois can, and perhaps should, work with the CLECs to identify ways the CLECs might reduce the number of errors in their files. SBC Illinois did not provide any information as to any steps they had taken to help rectify the problem.

~~2060.~~2078. The second factor that supposedly contributed to SBC not being able to achieve parity for PM 104 was that CLECs provided four times more files to update than SBC, which resulted in longer average processing times. Mr. Ehr's explanation in this regard is not sufficient. The Staff believes the average delays for SBC and the CLECs should be the same, even if there are more CLEC files to update. For example, if there were 25 SBC employees and 100 CLEC employees waiting for an elevator that could take 10 people at a time, Staff ~~I~~ can understand how there would be delays but the average delay should be the same for both SBC and CLEC employees. The delays could only be different if (1) there were separate elevators for SBC and CLEC employees or (2) there is only one elevator but SBC is given priority on that elevator. The same holds true with respect to updating 9-1-1 files. A greater number of files may well increase processing or waiting time, but it would increase the waiting time for all participants. This should not increase the average processing time for CLECs versus SBC unless SBC is somehow given priority treatment or has a separate processing queue.

~~2061.~~2079. In addition, Mr. Ehr believes that the time differences in processing were not significant time differences, and would not affect public safety. The assertion made by Mr. Ehr was that SBC Illinois updates every 9-1-1 file within the 24-hour standard established by the National Emergency Number Association (NENA) which should satisfy this performance measurement.

~~2062.~~2080. The Staff finds it reassuring that SBC Illinois is meeting the national industry standards. However, these standards are not the agreed upon measurement to be used in this proceeding. The parity standard was set to determine whether SBC Illinois is providing CLECs services in a non-discriminatory manner. The national industry standards will not

illustrate whether SBC is providing the same level of service in updating the 9-1-1 database for CLECs that it provides for itself.

~~2063.~~2081. Additionally, PM 104 has been in place for at least 2 years and SBC Illinois has had two opportunities to change this measure in the 6-month review collaboratives. Staff does not understand why this was never addressed by SBC given its current position.

~~2064.~~2082. Finally, Staff has reviewed the results for PM 104 for all 12 months (February 2002- January 2003) and SBC Illinois has demonstrated that it is capable of providing non-discriminatory service – having achieved a satisfactory z-value 4 months out of the last 12. Staff concludes that this measure is not inherently flawed and is obviously attainable, particularly if SBC were to work with the CLECs concerning ways to minimize the errors in their files. If SBC Illinois were to initiate a process to rectify such problems in the future it could be considered a " win win" situation and would ensure the integrity of the 9-1-1 database. Not only can SBC Illinois more successfully meet this PM, it will prompt CLECs to provide more accurate data, thus ensuring the continued integrity of the 9-1- 1 database.

Staff's Recommendations:

~~2065.~~2083. It is Staff's view that SBC Illinois' reported performance relative to checklist item 7 is unsatisfactory given that Staff considers any failure relative to 911 service as unacceptable. In short, Staff is concerned about SBC Illinois' inability to update its directory assistance database.

~~2066.~~2084. Staff believes that SBC Illinois has the ability to meet this PM and has demonstrated so in the past. In Staff's view, SBC Illinois has not adequately explained how it is meeting the parity standard for PM 104 and cannot verify that it is providing non-discriminatory access to CLECs. Although meeting the NENA standards (by processing updates to the 9-1-1 database with in 24 hours) addresses Staff's public safety concerns, it does not indicate whether SBC Illinois is providing non-discriminatory access to 9-1-1. Therefore, in Staff's opinion, SBC Illinois has failed to demonstrate that it is providing non-discriminatory access to 9-1-1 services.

~~2067.~~2085. Staff would recommend that the Commission elect and impose one of the following conditions as a prerequisite to any determination that SBC Illinois is providing non-discriminatory access to 9-1-1 services:

1. SBC Illinois should present a reasonable plan to address its failure to consistently update CLEC 9-1-1 database files at the parity standard currently established, and commit to implement that plan in a timely manner; or

2. If the Commission does not find that SBC Illinois should be required to achieve parity under the current performance measure standard for Section 271 purposes, then SBC Illinois should pursue an alternative standard for the updating of 9-1-1 database files and commit to adopt such measure and standard as an additional performance measure and standard pending the next six month collaborative.

3. If we accept SBC's position that it should not be held to the existing standard, then a reasonable and workable standard is required so that timely updating of 9-1-1 database files on a non-discriminatory basis that we can be monitor.

f. Commission Review and Conclusion - Checklist No. 7.

~~2069.~~2086. Our determination on checklist item 7, at this stage, requires an analysis of two different matters. We proceed to that end.

911 and E911

~~2068.~~2087. Under checklist item 7, SBC Illinois must provide competitors "access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity,'" and 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." California 271 Order, ¶ 57 (quoting Michigan 271 Order, ¶ 256). SBC Illinois' commercial performance results show that SBC Illinois clears 911 database errors faster for CLECs than for its own retail operations. ~~While~~ SBC Illinois does~~id~~ not update 911 entries for CLECs ~~quite~~ as quickly as it does~~id~~ its own entries.~~,~~ Further, the Commission does not accept~~s~~ SBC Illinois' explanation (two separate outside factors) for the minor shortfall, and further notes that no CLEC has shown that the shortfall had any competitive impact. **We find it particularly persuasive SBCI has not taken steps to reduce the number of errors in CLEC requests, in light of its duty to work with CLECs in providing interconnection to its system. We find that the number of errors is so large that the steps SBCI has taken to reduce errors is ineffective. We cannot allow SBCI to blame the CLECs for a problem, when SBCI bears a substantial burden in initiating a correction. Furthermore, SBCI has not proven that it would provide 911 updates for CLEC requests in the same time and manner in which it provides updates to it own requests, without the error.**~~Staff's colorful analogy is incomplete (considers only one of the factors) and is, therefore, unpersuasive. So too, SBC Illinois has shown the ways it works to minimize the factor of CLEC errors. For its part, Staff points out that the Company has the ability to meet 104 as it has demonstrated so in the past.~~ The totality of the evidence, thus, leads the Commission to conclude that SBC Illinois does not satisfy~~ies~~ the requirements of checklist item 7 with respect to 911 and E911.

~~2069.~~2088. Apart from being a matter of Section 271 compliance, we recognize that an efficient 9-1-1 emergency response system is vital to public safety. Indeed, the General Assembly has charged us with establishing technical standards for 9-1-1 systems. We thus review and consider SBC Illinois' compliance in light of these concerns**, since it provides this service in compliance with national standards. However, we note that national standards of safety are not at issue here, it is the level of service that allows for competition**.

~~2070.~~2089. The Commission would agree that SBC Illinois' processing of CLEC 911 updates meets public health and safety concerns, on the showing that SBC Illinois processes such updates well within the 24-hour standard established by the National Emergency Number Association. This, however, we are told, is not near to being reflected as the current standard for PM 104.

~~2071.~~2090. In this proceeding, the Commission has been afforded the unique opportunity of viewing, the performance measures that we approve, in a wholly different setting.

To this end, we see Staff to indirectly, if not directly, acknowledge that the current PM 104 may be neither reasonable nor workable. As such, we take account of Staff's recommendations and require that SBC Illinois commit to pursuing and exploring, together with Staff and the CLECs, a more reasonable and workable PM standard for the updating of 9-1-1 database files to propose in the next upcoming six month collaborative. ~~Upon on our approval and the implementation of such standard, Staff will monitor and report on the results.~~

[ALTERNATIVE LANGUAGE: If the Commission elects to provide a positive recommendation to the FCC, regardless of SBC Illinois' failure to meet key PMs, Staff recommends that the Commission find the failure to be material, and to add the following language to the end of paragraph 2071, as it is set forth above:]

> **The Commission's positive recommendation to the FCC will be conditioned on SBCI agreeing to (1) identify the steps it will take to remedy its current unsatisfactory performance on PM 104; (2) and demonstrate substantially improved performance on the said PM by November 2003, or face additional penalties.**

Directory Assistance/Operator Services

~~2072.~~2091. Checklist item 7 also requires SBC Illinois to demonstrate that it provides CLECs "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 Commission concludes that SBC Illinois' commercial performance results demonstrate that it satisfies the requirements of this checklist item. Staff agrees that while SBC Illinois narrowly missed the benchmark for electronic update flow-through, on balance, it has provided very high-quality service to CLECs, and the shortfall was not competitively significant. Further, the Commission accepts, as reasonable, Staff's determination that the shortfalls in September and November 2002 for the average time to process CLEC update orders were isolated occurrences without competitive significance, given that the differences were slight and that SBC Illinois met the benchmark for every other month in 2002.

~~2073.~~2092. All in all, with all parts considered and treated as a whole, the Commission finds SBC Illinois to meet the requirements and satisfy Checklist Item 7.

~~H.~~ CHECKLIST ITEM 8 – White Pages Directory Listings

A. Phase I Review

1. Description of Checklist Item

~~2074.~~2093. 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

~~2075.~~2094. 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.

~~2076.~~2095. 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.

~~2077.~~2096. (Adapted from New Jersey 271 Order, Appendix C, with most cites and footnotes omitted).

3. The State Perspective

~~2078.~~2097. 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

~~2079.~~2098. 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.

~~2080.~~2099. 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.

~~2081.~~2100. 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)..

~~2082.~~2101. 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.

~~2083.~~2102. 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).

~~2084.~~2103. 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).

~~2085.~~2104. 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.

~~2086.~~2105. 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).

~~2087.~~2106. 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

~~2088.~~2107. 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.

~~2089.~~2108. 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).

~~2090.~~2109. 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).

~~2091.~~2110. 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

~~2092.~~2111. 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).

~~2093.~~2112. 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.

~~2094.~~2113. 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

~~2095.~~2114. 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).

~~2096.~~2115. 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.

~~2097.~~2116. 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).

~~2098.~~2117. 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

~~2099.~~2118. 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).

~~2100.~~2119. 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.

~~2101.~~2120. 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).

~~2102.~~2121. 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

~~2103.~~2122. 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).

~~2104.~~2123. 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

~~2105.~~2124. 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.

~~2106.~~2125. 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).

~~2107.~~2126. 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.

~~2108.~~2127. 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

~~2109.~~2128. 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.

~~2110.~~2129. 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).

~~2111.~~2130. 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).

~~2112.~~2131. 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.

~~2113.~~2132. 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.

~~2114.~~2133. 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).

~~2115.~~2134. 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

~~2116.~~2135. 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).

~~2117.~~2136. 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).

~~2118.~~2137. 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.

~~2119.~~2138. 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.

~~2120.~~2139. 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

~~2121.~~2140. 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

~~2122.~~2141. 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

~~2123.~~2142. 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).

~~2124.~~2143. 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).

~~2125.~~2144. 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").

~~2126.~~2145. 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

~~2127.~~2146. 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.

B. Phase II Showing.

8. Phase I Compliance Matters

9. Phase II Evidence (Checklist Item 8)

a. SBC Illinois' Position.

~~2128.~~2147. In Phase I, the Company asserts, it had demonstrated, and the Commission concluded, that SBC Illinois satisfies the requirements of checklist item 8. There is no dispute as to that checklist item here, and accordingly SBC Illinois contends that the Commission should affirm its finding of checklist compliance.

b. CLEC Positions.

~~2129.~~2148. No CLEC addressed checklist item 8 in Phase II.

c. Staff's Position.

~~2130.~~2149. Staff noted that the single performance measure related to checklist item 8 yielded insufficient data to produce any measurable result. (Staff Ex. 33.0 (Light) ¶ 13).

~~2131.~~2150. Checklist item 8 concerns white pages directory, and encompasses the following performance measure: PM CLEC WI-4. This worksheet is provided in Schedule 29.02.

~~2132.~~2151. According to Staff, there was insufficient data available during the 3-month review period to provide any measurable result for this performance measure.

~~2133.~~2152. Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with checklist item 8, white pages listings. ICC Staff Ex. 33.0 at ¶¶ 1, 6. For checklist item 8 there is one performance measure, PM CLECWI4, that measures the accuracy of processing CLEC corrections based on the review of the directory. *Id.* at ¶ 8, 13. Specifically, this measure looks at the accuracy of SBC's correction of errors found by CLECs after a final review of the white pages directory, prior to publication. Mr. Light observed that, unfortunately,

there was insufficient data available during the 3-month review period to provide any measurable result for this performance measure. *Id.* at ¶ 13.

~~2134.~~2153. In his ~~p~~Phase I direct testimony, Mr. Light concluded that based on the data and testimony provided by the company, SBC appeared to be in compliance with the requirements of checklist item 8. Mr. Light's opinion is unchanged in phase II, given the absence of measurable performance data coupled with the lack of specific complaints regarding SBC Illinois' white page listings. Thus, Staff's opinion is that SBC Illinois provides adequate service to competing carriers in the area of white pages directory listings.

~~2135.~~2154. Staff's final determination is that SBC Illinois' reported performance relative to checklist item 8 is satisfactory.

d. Commission Review and Conclusion.

~~2136.~~2155. This Commission concluded in its Phase I order for this proceeding that SBC Illinois has satisfied the requirements of checklist item 8. As no dispute was raised with respect to this checklist item in Phase II, the Commission affirms its finding that SBC Illinois satisfies the requirements of checklist item 8.

~~I.~~ CHECKLIST ITEM 9 – Numbering Administration

A. Phase I Review

1. Description of Checklist Item

~~2137.~~2156. 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).

~~2138.~~2157. This checklist Item mandates compliance with "such guidelines, plan, or rules" after they have been established.

2. Standards for Review

~~2139.~~2158. 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).

~~2140.~~2159. (Adapted from the New Jersey 271 Order with cites and footnotes omitted.)

3. The State Perspective

~~2141.~~2160. Follows Federal Law No Commission Orders are referred to for this Section.

4. Evidence, Issues/Positions

a. Ameritech Showing of Compliance

~~2142.~~2161. 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.

~~2143.~~2162. 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).

~~2144.~~2163. 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.

~~2145.~~2164. 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

~~2146.~~2165. 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).

~~2147.~~2166. 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.

~~2148.~~2167. 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.

~~2149.~~2168. 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

~~2150.~~2169. 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

~~2151.~~2170. 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.

B. Phase II Showing

8. Review - Phase I Compliance Matters.

None indicated.

9. Phase II Evidence (Checklist Item 9).

a. SBC Illinois' Position.

~~2152.~~2171. SBC Illinois states that the three PMs relevant to checklist item 9 demonstrate that SBC Illinois provides nondiscriminatory access to telephone numbers. Sixty-eight NXXs were assigned to CLECs during the three month study period, and SBC Illinois loaded all of those NXXs into its switches, and tested each NXX, before the effective date. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 199 & Att. K (PM 117). Further, CLECs issued only a single trouble report in October 2002, and two trouble reports in November 2002. The October trouble report was cleared in 0.03 days – faster than SBC Illinois' own retail repair interval. And while the average repair interval in November was 0.08 days (slightly higher than the retail average of

0.05 days), SBC Illinois states that the difference was insignificant, especially given the low rate of troubles. See id.

b. CLECs' Positions.

No CLEC addressed checklist item 9 in Phase II.

c. Staff's Position.

Performance Measurement Data Analysis

~~2153.~~2172. Checklist item 9, concerns access to telephone numbers, encompasses the following performance measures: PMs 117, 118, and 119. These worksheets are included in Schedule 29.02.

~~2154.~~2173. PM 117 measures the percent of NXX codes loaded and tested prior to the Local Exchange Routing Guide ("LERG") effective date. PM 118 measures average delay days for loading and testing, and PM 119 measures the mean time to repair a problem associated with the loading of a new NXX code. For all 3 months the official PM result for all three measures is "n/a".

~~2155.~~2174. Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with checklist item 9, non discriminatory access to telephone numbers for assignment to other carriers. ICC Staff Ex. 33.0 at ¶¶ 1, 6. Mr. Light testified that Checklist item 9 has 3 corresponding performance measures, all measured based on parity. PM 117 measures the percent of NXXs loaded and tested prior to the LERG effective date, PM 118 measures the average number of delay days for NXX loading and testing, and PM 119 measures the mean time to repair a problem associated with the loading of a new NXX code. Id. at ¶ 9, 14.

~~2156.~~2175. Mr. Light observed that for all three (3) months, the official PM result for all three measures is "n/a", and a review of the 12 months of data also produces zero measurable result. However, Mr. Light also indicated that this is due to the nature of the performance measure. Id. at ¶ 14. When a CLEC (or any carrier) receives a new NXX code from the numbering administrator, all SBC switches must be loaded with the information, so that calls from the SBC switch to the new NXX can be properly routed. However, the "parity" measure addresses SBC loading new NXXs assigned to SBC. As an established incumbent LEC, the incidence of SBC receiving a new NXX assignment occurs very infrequently, and likely never in a given month would there be 10 new SBC-assigned NXXs to satisfy the minimum requirement to produce a usable measure. Id.

~~2157.~~2176. Mr. Light also observed that the PM data does reflect that there were numerous CLEC NXXs loaded by SBC. Id. at ¶ 15. During the measurement months of September through November 2002, there were a total of 68 NXXs loaded, and all were loaded and tested prior to the requisite LERG effective date. Because this date was met in 100% of the cases, there were no "average delay days" to measure (PM 118). During the same 3-month period, there were 3 CLEC trouble reports received related to NXX loading and testing. For October, the average CLEC repair time (PM 119) was .03 days, or roughly 45 minutes, and in

November, .08 days or 2 hours. Id. Based on his analysis described-above, Mr. Light concluded that SBC Illinois provides adequate and nondiscriminatory services to CLECs in the area of access to telephone numbers.

~~2158.~~2177. It is Staff's final determination that SBC Illinois' reported performance relative to checklist item 9, is satisfactory.

d. Commission Review and Conclusion.

Checklist item 9 requires a BOC to demonstrate:

> 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.

~~2159.~~2178. The Commission's Phase I order held that SBC Illinois had satisfied checklist item 9, and there is no matter in dispute with respect to that checklist item. On the basis of the overall record, thus, the Commission concludes that SBC Illinois' commercial performance results demonstrate that SBC Illinois satisfies the requirements of checklist item 9.

~~J.~~ CHECKLIST ITEM 10 - Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion

A. Phase I Review

1. Description of Checklist Item

~~2160.~~2179. 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

~~2161.~~2180. 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).

~~2162.~~2181. 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).

~~2163.~~2182. 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).

~~2164.~~2183. 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.

~~2165.~~2184. (Adapted from the New Jersey 271 Order, Appendix C, with most cites, footnotes omitted)

3. The State Perspective

~~2166.~~2185. 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).

~~2167.~~2186. 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

~~2168.~~2187. 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.

~~2169.~~2188. 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.

~~2170.~~2189. 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

~~2171.~~2190. 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).

~~2172.~~2191. 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).

~~2173.~~2192. 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

~~2174.~~2193. 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).

~~2175.~~2194. 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.

~~2176.~~2195. 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.

~~2177.~~2196. 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.

~~2178.~~2197. 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).

~~2179.~~2198. 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.

~~2180.~~2199. 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).

~~2181.~~2200. 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

~~2182.~~2201. 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).

~~2183.~~2202. 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.

~~2184.~~2203. 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.

~~2185.~~2204. 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

~~2186.~~2205. 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.[153] Ameritech Illinois investigated WorldCom's

[153] 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

claim and found WorldCom to have been at fault.[154] 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.

~~2187.~~2206. 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

~~2188.~~2207. 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).

~~2189.~~2208. Checklist Item 10 requires, and Ameritech Illinois maintains that it provides to RCN, nondiscriminatory access to its CNAM database. When RCN accesses the 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

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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.

[154] 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.

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)

~~2190.~~2209. 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

~~2191.~~2210. 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)).

~~2192.~~2211. 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.

~~2193.~~2212. 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).

~~2194.~~2213. 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.

~~2195.~~2214. 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.

~~2196.~~2215. 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

~~2197.~~2216. 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).

~~2198.~~2217. 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).

~~2199.~~2218. 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).

~~2200.~~2219. 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).

~~2201.~~2220. 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

~~2202.~~2221. 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.

~~2203.~~2222. 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").

~~2204.~~2223. 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).

~~2205.~~2224. 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

~~2206.~~2225. 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.

~~2207.~~2226. 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).

~~2208.~~2227. 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

~~2209.~~2228. 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").

~~2210.~~2229. 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

~~2211.~~2230. 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

~~2212.~~2231. 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.

~~2213.~~2232. 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

~~2214.~~2233. 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

~~2215.~~2234. 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.

~~2216.~~2235. 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.

~~2217.~~2236. 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.

~~2218.~~2237. 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).

~~2219.~~2238. 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

~~2220.~~2239. 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.

~~2221.~~2240. 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

~~2222.~~2241. 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.

~~2223.~~2242. 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).

~~2224.~~2243. 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.

~~2225.~~2244. 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.

~~2226.~~2245. 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.

~~2227.~~2246. 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.

~~2228.~~2247. 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.

~~2229.~~2248. 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.

~~2230.~~2249. 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.

~~2231.~~2250. 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.

~~2232.~~2251. 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.

~~2233.~~2252. 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.

~~2234.~~2253. 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

~~2235.~~2254. 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.

~~2236.~~2255. 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

~~2237.~~2256. 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

~~2238.~~2257. 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

~~2239.~~2258. 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).

~~2240.~~2259. 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).

~~2241.~~2260. 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

~~2242.~~2261. 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.

~~2243.~~2262. 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

~~2244.~~2263. 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).

~~2245.~~2264. 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

~~2246.~~2265. 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.

~~2247.~~2266. 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.

~~2248.~~2267. 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.

~~2249.~~2268. 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.

~~2250.~~2269. 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.

~~2251.~~2270. 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.

~~2252.~~2271. 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.

~~2253.~~2272. 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

~~2254.~~2273. 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.

~~2255.~~2274. 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

~~2256.~~2275. 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.

~~2257.~~2276. 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.

~~2258.~~2277. Another issue came forward in the testimony of RCN and concerns the routing of RCN's CNAM queries.

~~2259.~~2278. 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.

~~2260.~~2279. 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.

B. Phase II Showing.

8. Review – Phase I Compliance Matters

a. SBC Illinois' Position

~~2261.~~2280. The Commission concluded in Phase I that SBC Illinois satisfied checklist item 10 on the condition that it report in Phase II on the measures taken to assist RCN in the identification and resolution of RCN's CNAM-related difficulties. SBC Illinois Witness Muhs provided this information in his January 22, 2003 - Phase I Compliance Affidavit (SBC Ex. 6.0), and attached correspondence from RCN indicating that its CNAM problems have been resolved.

b. CLECs' Position.

No CLEC addresses checklist item 10 compliance in Phase II.

c. Staff's Position

~~2262.~~2281. During Phase I, RCN witness Rahul Dedhiya testified that SBC was not providing RCN with nondiscriminatory access to SBC's CNAM Database. In Phase I, the Staff recommended that the two parties work together to resolve this issue. SBC witness John Muhs's

January 22, 2003 affidavit includes correspondence from Mr. Rahul Dedhiya indicating resolution of the problem. Other than this issue, Staff expressed no concerns that SBCI had failed to meet its obligations regarding access to the CNAM database.

~~2263.~~2282. The Staff points out that in our Phase I Order, this Commission concluded that:

a. Another issue came forward in the testimony of RCN and concerns the routing of RCN's CNAM queries.

b. 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.

c. 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. Phase I interim Order, ¶¶ 1303-05

~~2264.~~2283. SBC witness John Muhs's January 22, 2003 affidavit includes a correspondence from Mr. Rahul Dedhiya [of RCN] indicating resolution of the problem. Staff had expected to see RCN confirm this compliance in any affidavits RCN submits in Phase II of this proceeding.

~~2265.~~2284. RCN, however, has submitted no Rebuttal Affidavits, to date, in this Phase II of this proceeding. Thus, Staff has no reason to conclude anything except that SBCI's representations that the matter has been resolved to RCN's satisfaction. SBCI appears to have satisfied the requirements of the Commission's Phase I Order.

d. Commission Review and Conclusion.

~~2266.~~2285. In its Phase I order, the Commission concluded that SBC Illinois satisfied checklist item 10 on the condition that it report in Phase II on the measures taken with respect to RCN's CNAM-related difficulties. SBC Illinois provided this information and attached correspondence from RCN indicating that its CNAM problems have been resolved. Staff agrees that the issue is resolved.

9. Phase II Evidence (Checklist Item 10)

a. SBC Illinois Position.

~~2267.~~2286. There are no Commission-approved performance measures specific to checklist item 10.

The BearingPoint Test Results.

~~2268.~~2287. BearingPoint conducted a processes and procedures review of SBC Illinois' Advanced Intelligent Network ("AIN") and SS7 surveillance. BearingPoint concluded that SBC Illinois satisfied the relevant criteria by adequately monitoring AIN and SS7 interconnection activity and logging, categorizing, and tracking network alarms. BearingPoint Operational Report at 538-547.

b. CLECs' Position.

No CLEC addresses checklist item 10 in Phase II.

c. Staff's Position.

~~2269.~~2288. No PMs were identified that address databases and signaling. According to Staff, there is no evidence to indicate that SBC Illinois' reported performance relative to checklist item 10 is unsatisfactory.

d. Commission Review and Conclusion.

~~2270.~~2289. There were no issues or material matters set out in Phase II with respect to checklist item 10. The Commission thus concludes, on the whole of the record, that SBC Illinois satisfies the requirements of checklist item 10.

~~K.~~ CHECKLIST ITEM 11 – Number Portability

A. Phase I Review

1. Description of Checklist Item

~~2271.~~2290. 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

~~2272.~~2291. 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).

~~2273.~~2292. 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).

~~2274.~~2293. 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.

~~2275.~~2294. (Adapted from New Jersey 271 Order with cites and footnotes omitted)

3. The State Perspective

~~2276.~~2295. 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).

~~2277.~~2296. 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.

~~2278.~~2297. 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).

~~2279.~~2298. 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).

~~2280.~~2299. 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.

~~2281.~~2300. 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

~~2282.~~2301. "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.

~~2283.~~2302. 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).

~~2284.~~2303. 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).

~~2285.~~2304. 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

~~2286.~~2305. 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.

~~2287.~~2306. 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.

~~2288.~~2307. 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

~~2289.~~2308. 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.

~~2290.~~2309. 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.

B. Phase II Showing.

8. Review – Phase I Compliance Matters.

None indicated.

9. Phase II Evidence (Checklist Item 11).

a. SBC Illinois' Position.

~~2291.~~2310. As demonstrated in Phase I, SBC Illinois has implemented long-term number portability ("LNP") throughout all of its switches in Illinois, and provides long-term number portability in accordance with the FCC's rules. SBC Illinois states that the results of commercial performance and the OSS test confirm the Commission's holding in Phase I that SBC Illinois satisfies the requirements of checklist item 11.

~~2292.~~2311. SBC Illinois met or exceeded the applicable performance standard in at least two of the three months for 96.3 percent of the measurements associated with this checklist item. During the three months as a whole, SBC Illinois ported over 67,000 numbers, and achieved the following results:

(i) SBC Illinois ported over 99 percent of numbers within intervals specified by industry guidelines, beating the 96.5 percent benchmark in each month (SBC Ex. 2.0 (1/17/03 Ehr Aff. ¶ 202 & Att. L, PMs 91-01 and 91-02);

(ii) SBC Illinois ported numbers, on average, with only 3.4 minutes out of service (id. ¶ 200 & Att. L, PM 100); and

(iii) SBC Illinois maintained high quality, with only 2 lines (0.003 percent of the total provisioned) reporting trouble within 30 days of porting (id. ¶ 202 & Att. L, PM 98).

The BearingPoint Test Results.

~~2293.~~2312. BearingPoint included LNP requests in the mix of test orders it submitted to SBC Illinois for processing, and it tested orders for LNP alone, for loops with and without LNP, and for EELs with and without LNP. BearingPoint found that SBC Illinois issued timely and accurate order confirmations for LNP and loop with LNP orders; "flowed through" 99.1 percent of LNP orders in accordance with published flow-through documentation; started work on all loop-with-LNP cutovers within 30 minutes of the scheduled cutover time, and completed provisioning of 99.3 percent of the cutovers within 60 minutes. BearingPoint also determined that only 3.3 percent of the 271 loop-with-LNP cutovers observed had trouble reported within 30 days of installation; that in porting numbers, SBC Illinois did not prematurely disconnect *any* switch translations prior to the scheduled conversion time; and that, consistent with industry guidelines, SBC Illinois applied the 10 digit trigger (a preliminary step to porting the number) on the day before the due date for 99.4 percent of the 360 LNP lines observed.

b. CLECs' Position.

No CLEC addressed checklist item 11 in Phase II.

c. Staff's Position.

~~2294.~~2313. Checklist item 11 concerns number portability, and encompasses the following performance measures: PMs 91, 92, 93, 95, 96, 97, 98, 99, 100, and 101. These worksheets are included in Schedule 29.02.

~~2295.~~2314. According to Staff, SBCI met or exceeded benchmarks and maintained parity-or-better levels for 9 of the 10 PMs associated with LNP. The lone measure failed was in the area of LNP.

Performance Measure Data Analysis

~~2296.~~2315. Staff witness George Light, an engineering analyst in the Telecommunications Division of the Commission, presented testimony regarding his review, analysis and assessment of SBC Illinois performance with respect to the performance measures associated with checklist item 11, local number portability ("LNP") compliance requirements. ICC Staff Ex. 33.0 at ¶¶ 1, 6. Mr. Light testified that ten performance measures are associated with LNP (checklist item 11). Id. at ¶ 10. These are PM 91 – percent of LNP only due dates within industry guidelines, PM 92 – percent of time the old service provider releases the subscription prior to the expiration of the second 9-hours timer, PM 93 – percent of customer accounts restructured by the LNP due date, PM 95 – average response time for non-mechanized rejects returned with complete and accurate codes, PM 96 – percent premature disconnects for LNP orders, PM 97 – percent of time the company applies the 10-digit trigger prior to LNP order

due date, PM 98 – percent trouble LNP in 30 days of installation, PM 99 – average delay days for the company missed due dates for stand alone LNP orders, PM 100 – average time out of service for LNP conversions, and PM 101 – percent out of service greater than 60 minutes. Id.

~~2297.~~2316. Mr. Light observes that SBC met or exceeded benchmarks and maintained parity-or-better levels for 12 of the 14 sub-measures associated with LNP. Id. at ¶ 16. For one measure, average response time for non-mechanized rejects – LNP with loop (PM 95-02) there was insufficient data to provide an accurate performance measure. The lone measure failed in the area of LNP was PM 92. This PM addresses when SBC provides a concurring "release" message to the Number Portability Administration Center ("NPAC") in response to a request from a new service provider to port a customer's telephone number. Mr. White explained that the receipt of the electronic message by the new service provider to port a number initiates the first of two 9-hour timers within the NPAC. The timers only run during an NPAC "business" day (7a.m. – 7p.m.). Id. During each of the two 9-hour intervals, the request to port the number remains in suspense, awaiting receipt by the NPAC of the "old" service providers' electronic concurrence to release the telephone number. If no concurring message is received at the expiration of the second 9-hour timer, the number is ported. Failure to transmit the concurrence message does not prevent the porting of the number. It does however, cause there to be a 2-business day waiting period in order for the porting to occur. The 3-month average of port requests receiving concurrence messages prior to the expiration of the second 9-hour timer was 88.6%, significantly below the benchmark of 96.5%. Id.

~~2298.~~2317. Mr. Light observed that of the 26 sub-measures reviewed in this testimony related to four checklist items, 21 had sufficient data to provide a measurable result. Id. at ¶ 17. Of those 21, SBC met retail parity or exceeded the prescribed benchmark for 18 measures. Id. SBC Illinois failure in this instance involved a benchmark failure of the PM associated with the transmission of the "concurrence" message to NPAC is not one that adversely affects CLECs with any degree of significance. Mr. Light explained that if a CLEC generates a porting request to NPAC with sufficient lead-time to meet its customer's due date, the absence of a concurrence message from the "old" carrier is moot. Id. The port occurs at the expiration of the second 9-hour timer, on the second business day after receipt. Id. at ¶ 17. Based on all the data reviewed, and assuming such data is accurate, it was Mr. Light's opinion that SBC Illinois provides adequate and nondiscriminatory services to CLECs in the area of LNP. Id. at ¶ 18.

~~2299.~~2318. As its final determination, Staff concludes that SBC Illinois' reported performance relative to checklist item 11 is satisfactory.

d. Commission Review and Conclusion.

~~2300.~~2319. During Phase I, there was no dispute that SBC Illinois implemented LNP in all of its switches in Illinois, that it provides long-term number portability in accordance with FCC rules, and that it satisfies the requirements of checklist item 11. The Commission accordingly concluded that SBC Illinois "satisfies the requirements of Checklist Item 11." Phase I Order, ¶ 1325.

~~2301.~~2320. There is similarly no dispute of any note in Phase II and thus, the Commission has no reason to alter its interim finding. The SBC Illinois commercial performance results and the results of OSS testing confirm, and the Commission finds, that SBC Illinois satisfies the requirements of checklist item 11.

CHECKLIST ITEM 12 – Local Dialing Parity

~~L~~A. Phase I Analysis~~CHECKLIST ITEM 12 – Local Dialing Parity~~

1. Description of Checklist Item

~~2302.~~2321. 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

~~2303.~~2322. 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).

~~2304.~~2323. 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.

~~2305.~~2324. (Adapted from New Jersey 271 Order, Appendix C, with cites and footnotes omitted).

3. The State Perspective

~~2306.~~2325. 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.

~~2307.~~2326. 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

~~2308.~~2327. 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.

~~2309.~~2328. 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

~~2310.~~2329. 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.

~~2311.~~2330. 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

~~2312.~~2331. 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

~~2313.~~2332. The record shows that AI is in full compliance with Checklist Item 12. The Commission is compelled to enter such a finding.

B. Phase II Showing

8. Review Phase I Compliance Matters.

None indicated.

9. Phase II Evidence (Checklist Item 12)

a. SBC Illinois' Position.

~~2314.~~2333. As demonstrated by SBC Illinois and confirmed by the Commission in Phase I, SBC Illinois is in full compliance with the requirements of checklist item 12. According to SBC Illinois, there are no Commission-approved performance measures related to checklist item 12, and BearingPoint was not directed to test performance with respect to local dialing parity. All in all, SBC Illinois observes, there was no dispute about SBC Illinois' compliance with checklist item 12 in Phase I, and there is none now.

b. CLECs' Positions.

No CLEC addresses checklist item 12 in Phase II.

c. Staff's Position.

~~2315.~~2334. No PMs were identified that addresses dialing parity. There is no evidence indicating that SBC Illinois' reported performance relative to checklist item 12 is unsatisfactory.

d. Commission Review and Conclusion.

~~2316.~~2335. In its Phase I order, the Commission concluded that SBC Illinois is in full compliance with checklist item 12, which requires it 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). Because no dispute or new relevant matters with respect to SBC Illinois' performance under this checklist item arise in Phase II, the Commission hereby affirms its conclusion that SBC Illinois satisfies the requirements of checklist item 12.

~~M.~~ CHECKLIST ITEM 13 - Reciprocal Compensation

A. Phase I Review

1. Description

~~2317.~~2336. 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

~~2318.~~2337. 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)

~~2319.~~2338. 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

~~2320.~~2339. 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

~~2321.~~2340. 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.

~~2322.~~2341. 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.

~~2323.~~2342. 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."

~~2324.~~2343. 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).

~~2325.~~2344. 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.

~~2326.~~2345. 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[155]. 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.

~~2327.~~2346. 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[156]. 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).

~~2328.~~2347. 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[157] 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).

~~2329.~~2348. 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

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[155] 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).

[156] 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).

[157] 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).

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.

~~2330.~~2349. 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);

~~2331.~~2350. 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").

~~2332.~~2351. 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).

~~2333.~~2352. 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

~~2334.~~2353. 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.

~~2335.~~2354. 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.

~~2336.~~2355. 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.

~~2337.~~2356. 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).

~~2338.~~2357. 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).

~~2339.~~2358. 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.

~~2340.~~2359. 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)

~~2341.~~2360. 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.

~~2342.~~2361. 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

~~2343.~~2362. 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.

~~2344.~~2363. 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).

~~2345.~~2364. 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.

~~2346.~~2365. 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).

~~2347.~~2366. 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

~~2348.~~2367. 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

~~2349.~~2368. 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.

~~2350.~~2369. 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

~~2351.~~2370. 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.

~~2352.~~2371. 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).

~~2353.~~2372. 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).

~~2354.~~2373. 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

~~2355.~~2374. 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

~~2356.~~2375. 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).

~~2357.~~2376. 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*.

~~2358.~~2377. 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).

~~2359.~~2378. 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).

~~2360.~~2379. 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

~~2361.~~2380. 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.

~~2362.~~2381. 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.

~~2363.~~2382. 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.

~~2364.~~2383. 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.

~~2365.~~2384. 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

~~2366.~~2385. 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.

~~2367.~~2386. 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.

~~2368.~~2387. 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.

~~2369.~~2388. 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.

~~2370.~~2389. 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).

~~2371.~~2390. 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

~~2372.~~2391. 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.

~~2373.~~2392. 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.

~~2374.~~2393. 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.

~~2375.~~2394. 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.

~~2376.~~2395. 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.

~~2377.~~2396. 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.

~~2378.~~2397. 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.

~~2379.~~2398. 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).

~~2380.~~2399. 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.

~~2381.~~2400. 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).

~~2382.~~2401. 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).

~~2383.~~2402. 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.

~~2384.~~2403. 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).

~~2385.~~2404. 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).

~~2386.~~2405. 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.

~~2387.~~2406. 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.

~~2388.~~2407. 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

~~2389.~~2408. 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.

~~2390.~~2409. 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.

~~2391.~~2410. 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.

~~2392.~~2411. 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.

~~2393.~~2412. 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.

~~2394.~~2413. 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.

~~2395.~~2414. 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.

~~2396.~~2415. 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).

~~2397.~~2416. 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

~~2398.~~2417. 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).

~~2399.~~2418. 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.

~~2400.~~2419. 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).

~~2401.~~2420. 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.

~~2402.~~2421. 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).

~~2403.~~2422. 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.

~~2404.~~2423. 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).

~~2405.~~2424. 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.

~~2406.~~2425. 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.

~~2407.~~2426. 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.

~~2408.~~2427. 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.

~~2409.~~2428. 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.

~~2410.~~2429. 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.

~~2411.~~2430. 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.

~~2412.~~2431. 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.

~~2413.~~2432. 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.

~~2414.~~2433. 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.

~~2415.~~2434. 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).

~~2416.~~2435. 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).

~~2417.~~2436. 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).

~~2418.~~2437. 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.

~~2419.~~2438. 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

~~2420.~~2439. 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.

~~2421.~~2440. 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

~~2422.~~2441. 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.")

~~2423.~~2442. 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.

~~2424.~~2443. 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.

~~2425.~~2444. 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

~~2426.~~2445. 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.

~~2427.~~2446. 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).

~~2428.~~2447. 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.

~~2429.~~2448. 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

~~2430.~~2449. 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).

~~2431.~~2450. 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.

~~2432.~~2451. 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)).

~~2433.~~2452. 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).

~~2434.~~2453. 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.

~~2435.~~2454. 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).

~~2436.~~2455. 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.

~~2437.~~2456. 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).

~~2438.~~2457. 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

~~2439.~~2458. 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).

~~2440.~~2459. 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.

~~2441.~~2460. 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.

~~2442.~~2461. 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.

~~2443.~~2462. 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.

~~2444.~~2463. 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.

~~2445.~~2464. 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

~~2446.~~2465. 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).

~~2447.~~2466. 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.

~~2448.~~2467. 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.

~~2449.~~2468. 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.

~~2450.~~2469. 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.

~~2451.~~2470. 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*.

~~2452.~~2471. 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.

~~2453.~~2472. 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.

~~2454.~~2473. 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).

~~2455.~~2474. 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

~~2456.~~2475. 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.

~~2457.~~2476. 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.

~~2458.~~2477. 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).

~~2459.~~2478. 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

~~2460.~~2479. 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.

~~2461.~~2480. 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

~~2462.~~2481. 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 Conclusions

~~2463.~~2482. 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.

~~2464.~~2483. 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

~~2465.~~2484. 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.

~~2466.~~2485. 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.

~~2467.~~2486. 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."

~~2468.~~2487. 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)

~~2469.~~2488. 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).

~~2470.~~2489. 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).

~~2471.~~2490. 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).

~~2472.~~2491. The FCC further addressed the relationship of its interim recovery scheme to Section 251 (b)(5).

~~2473.~~2492. 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),

~~2474.~~2493. 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)

~~2475.~~2494. 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.

~~2476.~~2495. 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

~~2477.~~2496. 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.

~~2478.~~2497. 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)

~~2479.~~2498. 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

~~2480.~~2499. 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).

~~2481.~~2500. 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)

~~2482.~~2501. 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.

~~2483.~~2502. 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

~~2484.~~2503. 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.

~~2485.~~2504. 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

~~2486.~~2505. 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.

~~2487.~~2506. 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.

~~2488.~~2507. 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.

~~2489.~~2508. 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.

~~2490.~~2509. 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.

~~2491.~~2510. 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.

B. Phase II Showings.

8. Phase I Compliance Matters.

9. Phase II Evidence (Checklist Item 13).

a. SBC Illinois' Position.

~~2492.~~2511. SBC Illinois states that, as demonstrated in Phase I, it has entered into numerous legally binding interconnection arrangements that satisfy the requirements of checklist item 13. SBC Illinois further notes that, while Staff and some CLECs disputed future reciprocal compensation arrangements in Phase I (and those disputes were resolved in favor of SBC Illinois), no party has disputed SBC Illinois' performance with respect to its existing reciprocal compensation obligations. There are no Commission-approved performance measures for this checklist item, and BearingPoint was not directed to test in this area. Thus, SBC Illinois contends that it has satisfied the requirements of checklist item 13.

b. CLECs' Position.

No CLEC addressed checklist item 13 in Phase II.

c. Staff's Position.

~~2493.~~2512. No PMs were identified that addressed reciprocal compensation. There is no evidence indicating that SBC Illinois' reported performance relative to checklist item 13 is unsatisfactory.

d. Commission Review and Conclusion.

~~2494.~~2513. As the Commission noted in its Phase I order (¶ 1484), "[n]o CLEC has come forward charging AI to be in breach of its contractual obligation under an agreement," and "[n]o party or Staff alleges nonpayment by Ameritech of its reciprocal compensations obligations arising out of interconnection agreements." No party has raised any such dispute in Phase II, and the Commission thus affirms its conclusion that SBC Illinois satisfies the requirements of checklist item 13.

CHECKLIST ITEM 14 – Resale

~~N~~A. Phase I Analysis~~CHECKLIST ITEM 14 – Resale~~

1. Description of Checklist Item

~~2495.~~2514. 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

~~2496.~~2515. 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)

~~2497.~~2516. 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.

~~2498.~~2517. 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

~~2499.~~2518. "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.

~~2500.~~2519. 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.

~~2501.~~2520. 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)

~~2502.~~2521. 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

~~2503.~~2522. 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).

~~2504.~~2523. 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

~~2505.~~2524. 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.

~~2506.~~2525. 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).

~~2507.~~2526. 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. [158]

~~2508.~~2527. 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.").

~~2509.~~2528. 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.

~~2510.~~2529. 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

~~2511.~~2530. 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

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[158] 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).

"volume discount and flat-rated" offerings. AI Ex. 1.1 (Alexander Rebuttal) at 48-49; First Report and Order, para. 964.

~~2512.~~2531. 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

~~2513.~~2532. 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).

~~2514.~~2533. 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.

~~2515.~~2534. 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.

~~2516.~~2535. 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.

~~2517.~~2536. 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.

~~2518.~~2537. 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

~~2519.~~2538. 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

~~2520.~~2539. 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.)

~~2521.~~2540. 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.)

~~2522.~~2541. 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.)

~~2523.~~2542. 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

~~2524.~~2543. 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

~~2525.~~2544. 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.)

~~2526.~~2545. 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.

~~2527.~~2546. 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 Conclusions

~~2528.~~2547. 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.

~~2529.~~2548. 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.

B. Phase II Showings.

8. All Phase II Issues (Checklist Item 14)

(None Indicated).

9. Phase II Evidence.

a) SBC Illinois' Position.

~~2530.~~2549. SBC Illinois states that its commercial performance results, as well as the results of BearingPoint's test, demonstrate that it provides CLECs resold services in accordance with the requirements of checklist item 14. SBC Illinois states that, for several key measures, its

performance for resold service was *better* than retail in every month. SBC Illinois installed resale service faster, and with fewer missed due dates, than retail in all four main service categories (residential and business, with and without field work). (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 204 & Att. M (PMs 27 & 28).) SBC Illinois also states that, even where due dates were missed, the delays for resale were shorter than for retail. (Id. Att. M (PMs 31 & 32).) Further, SBC Illinois notes that the rate of trouble reports on new resale installations was significantly lower across the board than for its own retail services. (Id. ¶ 208 & Att. M (PM 37).)

~~2531.~~2550. SBC Illinois states that it achieved similar success in maintenance. On average, SBC Illinois repaired resold lines more quickly than retail in every month, across every category of service. (Id. ¶ 210.) Further, the percentage of out-of-service resold lines restored within 24 hours was in parity with retail, and was consistently high (ranging from 97.7 percent to 99.5 percent). (Id. (PM 40).) The quality of work was also better than for retail, SBC Illinois states, as the rate of "repeat" trouble reports for resale was generally lower in each month than for retail. (Id. Att. M (PM 53).)

The BearingPoint Test Results

~~2532.~~2551. BearingPoint found that SBC Illinois provides high quality service with respect to the timely issuance of resale order confirmations, resale order flowthrough, and resale line repairs. BearingPoint's transaction testing included 16 different resale scenarios, and BearingPoint also included resale bills in its billing tests. BearingPoint's review of processes and procedures included those applicable to resale. BearingPoint's findings include:

- SBC Illinois issued 98.6 percent of order confirmations within 2 hours for electronically input orders (Table 1-14), and 100 percent of order confirmations within 5 hours for manually input orders (Tables 1-15 & 1-16);

- SBC Illinois repaired resold lines quickly, with an average interval of 14.8 hours (TVV 7-5) and an on-time rate of nearly 99 percent (TVV 7-2) for resale and UNE-P repairs; further, SBC Illinois repaired 96.9 of lines within 24 hours (TVV7-4); and

- BearingPoint evaluated 82 repairs, and found that SBC Illinois accurately identified and fixed the trouble 95.1 percent of the time (TVV 7-3).

c) CLEC Positions.

We find no CLEC to have addressed this item.

d) Staff's Position.

Performance Measurement Data Analysis

~~2533.~~2552. Checklist item 14, Staff informs, concerns resale and encompasses the following performance measures: PMs 27, 28, 29, 30, 31, 32, 33, 35, 37, 37.1, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, and 54.1. Since the checklist item focuses on resale activities, this review excludes UNE loop and port combinations where applicable. These worksheets are included in Schedule 29.02.

~~2534.~~2553. Out of 156 resale sub-measures, Staff notes, SBC Illinois passed 92 sub-measures and failed 7 sub-measures. There were 57 sub-measures with insufficient data. Accordingly, of resale sub-measures with sufficient data to make a determination, SBC Illinois passed 92 out of 99, for a 93% pass rate.

~~2535.~~2554. According to Staff, SBCI continues to provide sub-measure 37-1 at a rate of 50%, therefore SBC Illinois provide PM 37 in a discriminatory manner. Data reported by SBC Illinois indicates that there is a statistically higher number of trouble reports for SBC Illinois facilities provisioned to CLEC customers than there are numbers of trouble reports from SBC Illinois customers for POTS residential (PM 37-1).

~~2536.~~2555. SBC Illinois' performance relative to checklist item 14 is unsatisfactory, based primarily on the Company's performance on PM 37 - Trouble Report Rate.

~~2537.~~2556. Resolution of Problems with Key PM 29 – Percent of N, T, and C Orders Where Installation Was Not Completed as a Result of Company Caused Missed Due Date.

~~2538.~~2557. This PM failure Staff explains, focuses on the Company's efforts relative to the sub-measure 29-7 for UNE-P, business fieldwork. SBCI objects to the contextual totality of this failure on two ground, that Staff rigidly assigned this failure even though three other sub-measures were passed, and that the sub-measure has a relatively low volume of transactions.[159]

~~2539.~~2558. Staff responds that its analysis was not inappropriately rigid, since Staff was focused on SBCI's failure to meet its standard on a consistent basis over the past twelve months. However, a closer look at the most recent few months now reports that SBC Illinois passed PM 29-7 for both December 2002 (z-factor of 1.496) and January 2003 (z-factor of

[159] Ehr Rebuttal Affidavit, paragraph 67.

1.493). ICC Staff Ex. 41.0 ¶64. Given this recently improved service, the Commission should agree with Staff, and find that PM 29 is no longer a "Key PM's Requiring Improvement".

Resolution of Problems with Key PM 35 – Percent Trouble Reports within 30 Days of Installation

~~2540.~~2559. Staff maintains that the Company has provided sufficient evidence to demonstrate that it provides sub-measure 35-7 for UNE-P, business fieldwork, in a non-discriminatory manner. SBCI objects to the contextual totality of this failure on two grounds, that Staff rigidly assigned this failure even though three other sub-measures were passed, and that this sub-measure has relatively low transaction volumes.[160]

~~2541.~~2560. These explanations, by themselves, were not persuasive enough to warrant a pass on this PM. However, the most recent data posted by SBCI provides a pattern of SBCI providing this sub-PM in a non-discriminatory manner. The information posted by SBC Illinois to CLEC Online on March 4, 2003 indicates that SBC Illinois passed this sub-measure for both December 2002 (z-factor of 0.329) and January 2003 (z-factor of –1.033). Given the recent system improvements made by SBCI, as well as the recently improved service, the Commission should agree with Staff, that PM 35 is no longer a "Key PM's Requiring Improvement".

Problems with Key PM 37—Number of Trouble Reports per 100 Lines

~~2542.~~2561. SBC Illinois has exhibited significant problems with trouble reports, as indicated in PMs 37-1, 54-4, 54-6, and 54.1-4. SBCI affiant Ehr indicates that the problems associated with PMs 54-4 and 54.1-4 are related more to "disparate sample sizes" than to SBC Illinois performance problems. Ehr Affidavit, ¶212. Presumably, this same reasoning applies to sub-measure 54-6, although SBCI is silent on that sub-PM. However, this rationale does not explain the problems SBCI has been experiencing with respect to PM 37-1, since this PM reflects service quality to all residential plain old telephone service ("POTS") customers.

~~2543.~~2562. It is also a PM in which SBC Illinois has successfully met the standard in previous months – specifically, April 2002 through September 2002. Inexplicably, SBC Illinois failed this sub-measure in October and November 2002. Trouble reports can be very problematic to a CLEC, since it means that their customer is either out of service or is having some problem with the line such as noise. In either circumstance, it is possible that customers will begin to notice that they experience more problems when they are customers of a CLEC, even though SBC Illinois is the entity responsible for the problem. ICC Staff Ex. 39.0 ¶95. On cross, Mr. Ehr indicated that he had people working on this PM, and would get Staff a response in writing. Tr. at 3012.

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[160] *Ibid*, paragraph 69.

~~2544.~~2563. As of March 4, 2003, information posted by SBC Illinois to CLEC Online indicates that SBC Illinois' performance for sub-measures 37-1 -- trouble report rate for POTS Residential, and 37-4, regarding trouble report rate for UNE-P Business, failed in December 2002. Sub-measure 37-1 passed in December 2002 (z-factor of –0.071) but failed rather dramatically in January 2003 (z-factor of 12.747), and sub-measure failed in December 2002 (z-factor of 5.705) but passed in January 2003 (z-factor of 1.226). ICC Staff Ex. 41.0 ¶94-5. SBCI states that system improvements to address the issue are in the process of being made, however, significant failures persist. Since SBCI is unable to provide this PM in general conformance with its standard, SBC Illinois fails to provide PM 37 in a non-discriminatory manner. As such, it remains on Staff's "Key PM's Requiring Improvement" table.

~~d~~e. SBC Illinois' Rebuttal Position

~~2545.~~

~~2546.~~2564. With respect to Staff Witness McClerren's observation that SBC Illinois did not pass all the resale sub-measures relating to "Centrex with field work," SBC Illinois states that "Centrex with field work" represents a small volume of resale orders, and SBC Illinois exceeded parity in all three months in the categories that represent most of the resale order volume (residential and business POTs, with and without fieldwork, and Centrex without fieldwork). (SBC Ex. 2.1 (3/3/03 Ehr Rebuttal) ¶¶ 85-86.) SBC Illinois further explains that, with respect to the small volume of "Centrex with field work" orders, the shortfalls between wholesale and retail performance were small. (Id.)

~~2547.~~2565. Staff Witness McClerren also notes that, while SBC Illinois met the parity standard for missed repair commitments for business POTs (with and without dispatch) and residential POTs with dispatch, it missed the sub-measure for residential POTs without dispatch in two months. However, SBC Illinois states, residential POTs without dispatch represents only 10% of the volume for repair commitments, and the shortfall was insignificant – SBC Illinois fell short of parity by 2 missed appointments in September and 1 in November. (Id. ¶ 87.) SBC Illinois further states that its Network organization has established additional procedures to monitor appointments, and that its performance met the parity standard in December 2002 and January 2003. (Id.)

~~e~~f. SBC Illinois' Surrebuttal Position.

~~2548.~~2566. SBC Illinois notes that Staff, in its rebuttal testimony, identifies PM 37 – Trouble Report Rate as its main concern. (Staff Ex. 41.0 (McClerren Rebuttal) ¶¶ 50-51.) SBC Illinois explains that two submeasures address the trouble report rate for resold POTS, and that, while SBC Illinois passed the submeasure relating to resold business POTS, it did not meet the benchmark in two of the three months for resold residential POTS. (SBC Ex. 2.0 (1/17/03 Ehr

Aff.) Att. M (PM 37-01 and -02).) While retail residential POTS experienced a trouble report rate of 2.29 per hundred in October 2002 and 1.65 in November, the numbers for resold residential POTS were 2.57 and 1.80, respectively.

~~2549.~~2567. SBC Illinois states that this shortfall is not significant to overall compliance, but also explains that it has identified the installation troubles that caused the out-of-parity situation, and has implemented system enhancements to address the issue. (SBC Ex. 2.2 (3/3/03 Ehr Rebuttal) ¶ 88; (SBC Ex. 2.3 (3/17/03 Ehr Surrebuttal) ¶ 68.) SBC Illinois further proposes that PM 37 be subject to the additional monitoring procedures outlined in the Surrebuttal Affidavit of James Ehr, to confirm the results of its corrective actions.

~~f~~g. Commission Review and Conclusion.

~~2550.~~2568. The Commission notes that there is little dispute about the majority of SBC Illinois' commercial performance results under this checklist item. Many measures show that the resold services that SBC Illinois provides CLECs are at least equal in quality to its own retail services, if not higher in quality. With respect to "Centrex with field work" orders and missed repair commitments for residential POTS without dispatch, the Commission concludes that the shortfalls reflected in SBC Illinois' commercial performance results were immaterial and do not affect SBC Illinois' compliance with this checklist item.

~~2551.~~2569. The one and only "Key PM" identified by Staff here concerns PM 37-01, the trouble report rate for resold residential POTS. This measure however, we would note, is one for which SBC Illinois has successfully met the standard in previous months – specifically, in the period of April 2002 through September 2002. Inexplicably, SBC Illinois failed this sub-measure in October and November 2002 even as the shortfall in that measure was not significant (less than 0.30 reports per hundred). As of March 4, 2003, Staff generally informs, information posted by SBC Illinois to CLEC Online indicates that SBC Illinois' performance for sub-measures 37-1 -- trouble report rate for POTS Residential, and 37-4, regarding trouble report rate for UNE-P Business, failed in December 2002.

~~2552.~~2570. On the whole and taken in a proper context of all the surrounding circumstances, we do not believe this single infirmity is significant enough to preclude a finding of compliance with Checklist Item 14. So too, we balance this evidence against SBCI's record statements indicating that system improvements to address the issue are in the process of being made. The additional monitoring of PM 37 under these system changes, as suggested by SBC Illinois shall be required and, this too, is being factored into our assessment.

~~2553.~~2571. On the record as a whole, the Commission finds it reasonable to conclude that SBC Illinois does not satisfy~~ies~~ the requirements of checklist item 14.

~~O.~~ Reliability of SBC Illinois' Commercial Performance Data.

1. The Issue.

~~2554.~~2572. In support of its Section 271 application, SBC Illinois has submitted three consecutive months (September, October, November 2002) of commercial performance data results in this proceeding (Ehr Affidavit, Attachment A) to demonstrate that the level of service SBC Illinois provides to its wholesale customers or Illinois CLECs is nondiscriminatory. Ehr Affidavit, ¶6. Staff and certain of the CLECs contend that this evidence is unreliable. In addition the Company has represented that the commercial performance data it reports on a monthly basis will be used as the means by which CLECs and the Commission will be able to monitor and ensure that SBC Illinois' performance will not backslide and or diminish once the company is granted 271 approval. In response, Staff and certain CLECs contend that the performance data reported by the company is not reliable and cannot be used as an assurance the company will not backslide in its performance.

~~2555.~~2573. In contention and discussion, the parties focus is on three main items (i) the BearingPoint December 20, 2003 Performance Metric Report; (ii) the Ernst & Young Performance Measurement Examination (based on the March-May, 2002 period); and, (iii) the sources that offer additional assurances of reliability, i.e., the FCC-sponsored mechanisms.

2. Standards Of Review.

~~2556.~~2574. The FCC considers performance measurement data reported by BOCs to provide valuable evidence regarding a BOC's compliance or non-compliance with individual checklist items[161].

~~2557.~~2575. The FCC has said that the reliability of reported data is critical: the performance measures must generate results that are meaningful, accurate, and reproducible. In particular, the FCC states that the raw data underlying a performance measurement must be stored in a secure, stable, and auditable file if a remedy plan is to be accorded significant weight.[162]

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[161] *Application of Verizon New York Inc. et al. for Authorization To Provide In-Region, InterLATA Services In Connecticut*, CC Docket 01-100, FCC –01-208, ¶7 (rel. July 20, 2001)("Verizon Connecticut Order").

[162] TX 271 Order ¶428.

~~2558.~~2576. When addressing generalized complaints about the reliability of an applicant's performance reports, the FCC has considered the following mechanisms as providing reasonable assurance that the applicant's reports are reliable: (i) "extensive third-party auditing," (ii) the "open and collaborative nature of metric workshops," (iii) supervision by the applicable state commission, (iv) the "availability of the raw performance data" to CLECs and the applicant's "readiness to engage in data reconciliations" between its own records and those of the CLECs, and (v) the applicant's internal and external data controls. Georgia & Louisiana 271 Order, ¶ 19.

3. The State Perspective.

~~2559.~~2577. Staff informs that SBC Illinois reports 150 different performance measures on a monthly basis, that provide important statistics and results with respect to the company's performance in providing service its wholesale customers. Each performance measure reports on different aspects of SBC Illinois OSS. Each of the150 performance measures has a business rule document associated with it that defines specifically what aspect of SBC Illinois' OSS is being measured. In addition, this business rule document lists the specific data to be included as well as excluded, the levels of disaggregation (or various reporting levels for the performance measure), the calculation formula, the reporting structure (whether data for CLECs, SBC retail, or SBC affiliates is reported), whether the measure is applicable to Tier 1 or Tier 2 of the performance remedy plan and if so what level is assigned (low, medium, or high) for each remedy tier and finally indicates whether the performance measure has a parity or benchmark standard. If the measure has a benchmark standard then the specific benchmark the company is to meet is defined. All of this information is detailed in each business rule document and SBC Illinois is required to report its performance measures consistent with the business rule documents discussed with the CLEC community and approved by the Commission.

~~2560.~~2578. Version 1.8 of the performance measurement business rules, Staff explains, is currently in effect, and SBC Illinois is required to report performance measurement data in a manner consistent with these business rules. The performance measurement data filed in this proceeding by SBC Illinois for September, October and November 2002 must reflect the performance measurements documented in SBC Illinois' tariff (Ill. C.C. No. 20, Part 2, Section 11.E). Both the BearingPoint and Ernst & Young's evaluations used this same set of Business Rules (version 1.8 or IL tariff Ill. C.C. No. 20, Part 2, Section 11.E) for purposes of their respective evaluations.

~~2561.~~2579. As a result of continuing six-month review collaborative sessions held among SBC Illinois, the CLECs and Staff, the performances measures are subject to review and

update. The implementation of the latest agreed-upon six-month review changes is scheduled for the first and second quarter of 2003[163].

43. The Evidence, Argument, and Positions Of The Parties.

a. SBC Illinois Position and Evidentiary Case.

The Ernst & Young Audit.

2562. 2580. The public accounting firm of Ernst & Young audited SBC Illinois' commercial performance results for the months of March–May 2002, which were calculated according to the same business rules that were in effect during the September – November 2002 "study period" (analyzed in Section III). (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 218.) Using statistical sampling techniques, E&Y selected thousands of wholesale and retail transactions to determine whether SBC Illinois properly reflected, or excluded, them in its performance reports. E&Y also reviewed SBC Illinois' overall processes and procedures for performance measurement.

2563. 2581. E&Y's "Supplemental Report" (Attachment T to SBC Ex. 2.0) describes its overall methodology and audit procedures. E&Y's "Testing Universe of PMs" (Attachment U to SBC Ex. 2.0) documents the performance measures tested. E&Y's "Transaction Testing Results" (Attachment X to SBC Ex. 2.0) documents the number and kinds of transactions tested, the number of successful tests and the number of and reasons for exceptions. E&Y's report on the audit is attachment O to SBC Ex. 2.0, while its report on controls appears at Attachment S. Attachments Q and R to the 1/17/03 Affidavit of Mr. Ehr summarize SBC Illinois' responses.

Independence and Objectivity

2564. 2582. SBC Illinois states that it chose E&Y because of E&Y's extensive experience in auditing SBC's performance measurement systems and processes. For example, E&Y conducted a similar audit of Southwestern Bell Telephone Company's ("SWBT") performance measurement systems and processes for the Missouri Public Service Commission during its review of SWBT's Missouri Section 271 application, which was subsequently approved by the FCC. In addition, E&Y has been responsible for conducting the audit of SBC's compliance with the Carrier-to-Carrier Performance Plan contained in the SBC/Ameritech Merger Conditions, on behalf of the FCC, for the past three years in all thirteen SBC states: the

[163] February 11, 2003 Tr. at 3042.

five SWBT states, Pacific Bell (California), Nevada Bell, Southern New England Telephone (Connecticut), and the five SBC Midwest states. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 217.)

Ernst & Young's Methodology

~~2565.~~2583. E&Y's "Scope and Approach" document explains that E&Y would be performing two attestation examination engagements in accordance with the Attestation Standards established by the American Institute of Certified Public Accountants: (1) Attestation Examination of the Accuracy and Completeness of [SBC Illinois'] Performance Measurements for the Months of March, April and May 2002; and (2) Attestation Examination of the Effectiveness of Controls over [SBC Illinois'] Process to Calculate Performance Measurements for the Months of March, April and May 2002.

~~2566.~~2584. E&Y's evaluation covered all 150 Performance Measurements, as contained in Version 1.8 of the Business Rules. The testing approach included: (1) Documentation of the Process and Controls to Capture, Calculate and Report Each Performance Measurement, (2) Site Visits and Testing of Processes to Capture PM Data, (3) Program Code Review – Review of the "code" in SBC Illinois' computer programs to determine business rules are appropriately applied, and (4) Transaction Testing – Statistical sampling of transactions for each performance measurement category to verify that raw data from the source systems was appropriately processed (i.e. business rules coding was appropriately applied and data is accurate) and captured in the PM reporting files (i.e. appropriately included/excluded in the PM). (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 218 – 220.)

Ernst & Young's Exceptions

~~2567.~~2585. E&Y identified 128 exceptions in its testing. SBC Illinois presented its response to those exceptions in paragraphs 222 - 230 of the 1/17/03 Affidavit of Mr. Ehr (SBC Ex. 2.0) and in Attachment Q to that Affidavit. SBC Illinois classified the exceptions into 5 categories:

~~2568.~~2586. Category I: Corrected, With Restatement of March-May Results. Of the exceptions identified by E&Y, 53 were reported incorrectly in the March-May audit period, but were corrected afterwards, and the March-May results were restated. Thus, SBC Illinois states, those corrections are reflected in the September-November data presented to the Commission. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 226); Attachment Q at 1-10.

~~2569.~~2587. Category II: Corrected After May 2002, But March-May 2002 Results Not Restated. SBC Illinois states that the 51 Issues identified in Category II were also corrected, but that SBC Illinois did not restate reported results for March - May 2002. SBC Illinois addressed these issues in its opening comments (see SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 227-230 & Attachment Q) stating that these prospective corrections were implemented in time to be reflected in the September-November results presented to the Commission. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 227-228; Attachment Q at 11-23.

~~2570.~~2588. Category III: Corrected But Not Yet Reported. SBC Illinois states that the 2 Issues identified in Category III were corrected effective with December 2002 results

(reported in January 2003). SBC Illinois states that it was not able to restate results for prior months, including the months of September - November 2002. The first exception related to the fact that certain product codes were classified as "unknown" and thus not included in the results for PMs 54, 54.1, 65, and 65.1. The second exception related to retail billing errors that were corrected but not included in the retail analog results for billing accuracy; SBC Illinois states that inclusion of the errors in the retail results would only improve the "parity" between wholesale and retail. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 228; Attachment Q at 24.)

~~2571.~~2589. Category IV: No Corrective Action Planned. SBC Illinois investigated the 7 Issues identified in Section IV and determined that they did not require any corrective action, either because they were one-time occurrences or because there was no error in the performance measure. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 229; Attachment Q at 25-27.)

~~2572.~~2590. Category V: Corrective Action Planned, But Not Yet Implemented. SBC Illinois states that for 15 issues, corrective action to address the issue was scheduled, but was not implemented at the time of its January 17 filing. For 12 of the 15 Issues identified, SBC Illinois states that it does not expect the change to have a material negative impact on previously reported results. For the other 3 Issues, SBC Illinois states that June through December 2002 results would be restated as soon as possible if a determination is made that the change does have a material negative impact on previously reported results. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 230; Attachment Q at 28-32.)

Interpretations of Business Rules

~~2573.~~2591. E&Y identified several interpretations of the Business Rules made by SBC Illinois management during its day-to-day implementation. These interpretations appear and are analyzed in the Report Of Management Attachment B – Interpretations, which is Attachment R to the 1/17/03 Affidavit of Mr. Ehr (SBC Ex. 2.0). SBC Illinois states that some interpretation is inherent in the process of implementing a performance measurement that is as complex and comprehensive as that used by SBC Illinois. Further, SBC Illinois points out that the defined Business Rules are, by necessity, generic to allow changes in the actual business processes being measured while still achieving the same measurement goals. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 231.)

~~2574.~~2592. According to SBC Illinois, the collaborative participants in the six-month review process agreed to language changes to more clearly support 32 of the 48 interpretations made by SBC Illinois and identified by E&Y. SBC Illinois determined that an additional 15 interpretations did not require any changes to current procedures or a clarification of the business rule, because the current procedure was consistent with the letter of the current business rules. For the remaining interpretation, SBC Illinois determined that it should change the reporting procedures that were in place at time of E&Y's audit (March-May 2002). The corrective action determined appropriate was implemented with June 2002 results. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 232.)

Internal Controls Report

~~2575.~~2593. E&Y noted three issues related to controls. The first control issue identified by E&Y related to the initial implementation of the performance measures after the SBC/Ameritech merger conditions were approved. SBC Illinois states that since the initial implementation, SBC Illinois' controls have been greatly expanded and enhanced. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 235.)

~~2576.~~2594. E&Y's second issue related to the implementation of "LASR" in April 2002. SBC Illinois implemented the "LASR" system for up-front processing of wholesale service requests, pursuant to a condition of the FCC's approval of the SBC/Ameritech merger. According to SBC Illinois, tailoring the new systems to its performance reporting systems and processes required the involvement of new staff personnel who were not previously familiar with the SBC Illinois performance measurements, performance measure reporting process, and change management control process. Since the initial implementation, SBC Illinois states, the new staff has been educated on these matters. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 236-237.)

~~2577.~~2595. The third E&Y control issue related to controls on the manual collection and processing of data, which resulted in the need for some of the restatements E&Y noted in its audit report. SBC Illinois states that the nature of the processes being measured requires that certain activities will be performed manually. However, SBC Illinois states that it has increased its focus on manual activities in the performance measurement processes. Where efficient and economically feasible, those processes have been automated. Where they have not been automated, additional manual controls have been designed and implemented (e.g., process check sheets, multiple data input reviews, etc.). At a more global level, SBC Illinois states that it has also worked diligently to improve its controls, and to address the issues identified by E&Y. Examples of controls relating to the processing of data that have been enhanced are: (a) copying and storing input and output performance measure data files; (b) header and trailer records/Control files to ensure the correct number of records are transferred, and (c) processing performance measure data multiple times to ensure consistent results. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 238-242.)

Other Assurances of Reliability.

~~2578.~~2596. SBC Illinois notes that it has made underlying raw data available upon CLEC request and that several CLECs have requested and received such data. SBC Illinois further states that it is obligated to conduct a data reconciliation upon request by a CLEC to address the accuracy of any reported data in comparison to the CLEC's own records and, if the issue is not resolved, submit to a mini-audit of the specific performance measure in question. However, SBC Illinois observes, not one CLEC has requested a data reconciliation or mini-audit in SBC Illinois or other SBC Midwest state. Further, SBC Illinois states that it is aware of only one formal complaint regarding the accuracy of reported performance results that has occurred in the SBC Midwest region, in Michigan. In that case, the CLEC did not make any attempt to reconcile data with SBC Michigan prior to filing the complaint. As a result of subsequent discussions with SBC Michigan, the complaint was withdrawn, with no action required or problem found regarding data accuracy. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 294-301.)

~~2579.~~2597. With respect to internal controls, SBC Illinois states that as a result of feedback received during the BearingPoint test, it has implemented improvements to its internal controls and to its documentation of performance measurement procedures. According to SBC Illinois, some of the more significant control steps include (a) copying and storing both the input and output files for performance data; (b) using numerical control records in the header and trailer of the input and output files to ensure that all records are processed; and (c) processing data more than one time, and cross-checking the results for accuracy. (Id. ¶ 302)

BearingPoint's Performance Metric Review.

~~2580.~~2598. SBC Illinois states that BearingPoint is continuing its review of SBC's collection, calculation, and reporting of commercial performance results. BearingPoint's Performance Metric Review ("PMR") includes 271 applicable test points. BearingPoint's Report notes that 63 PMR test points have been "Satisfied," 117 are considered "Not Satisfied," and 91 are "Indeterminate." (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶ 244.)

~~2581.~~2599. SBC Illinois states that the bottom line is that there is no need for the Commission to attempt to reach a conclusion on all of the detailed PMR test criteria now, and that SBC Illinois is not asking the Commission to terminate the test. The test will still go on, and SBC Illinois will continue to work with BearingPoint to address findings as they are raised. The present inquiry concerns overall checklist compliance today. Thus, SBC Illinois states that the question now is whether BearingPoint's PMR findings thus far are sufficient to warrant a finding of *non*-compliance. SBC Illinois contends that a substantive analysis of BearingPoint's results in the context of the evidence as a whole, clearly demonstrates that the answer is no. (Id. ¶ 245)

~~2582.~~2600. According to SBC Illinois, two of the five test domains are substantially complete. PMR 2 addresses the definitions of metrics and standards. SBC Illinois advises that BearingPoint has substantially completed its review, and has verified that SBC Illinois has implemented the performance measurement "business rules" approved by the Commission; that the business rules are published and accessible to CLECs; and that SBC Illinois' monthly performance reports are published on time and are accessible to CLECs. SBC Illinois states that it satisfied all three test criteria in this area. (SBC Ex. 2.0 (1/17/03 Ehr Aff.) ¶¶ 246, 256.)

~~2583.~~2601. PMR 3 addresses "change management": the process of implementing periodic updates to performance measurement business rules. According to SBC Illinois, the test consists of two main parts: PMR "3A" addresses change management in general, while PMR "3B" tests procedures for recalculating performance remedies if the underlying results are restated. Of the 30 test criteria in this area, SBC Illinois informs, 26 have been satisfied. According to SBC Illinois, BearingPoint has determined that the metrics change management process – and the responsibilities of the parties involved – are documented, and that the process includes: (i) a well-defined procedure for managing change requests; (ii) a high-level assessment of each requested change; (iii) an analysis of the change at a business level by experts in the subject measured; (iv) formulation of a detailed technical design prior to the start of

implementation work; and (v) an independent review by the performance measurement group to ensure that the technical design is consistent with the expert business assessment. (Id. ¶¶ 247, 257-261.)

~~2584.~~2602. PMR 1 evaluates SBC's procedures for data collection and retention. Of the 126 test criteria in PMR 1, 12 are currently assessed "Satisfied", 60 are currently assessed "Not Satisfied," and 54 are considered "Indeterminate." Of the 60 "Not Satisfied" criteria, 30 relate to documentation of reporting procedures. These areas are referenced in PMR1-1 and 1-2 of the BearingPoint report. SBC Illinois states that it has enhanced the degree of documentation concerning its measurement procedures and has provided over 6,000 pages of supporting performance metrics documentation regarding those procedures to BearingPoint. Another 18 "Not Satisfied" criteria relate to performance metric controls. SBC Illinois asserts that over the past year, it has implemented numerous improvements to its internal controls, including several improvements in measurement processes that will reduce restatements. The remaining 12 "Not Satisfied" related to data retention. On October 30, 2002, SBC Illinois reported that 100 percent of the reported performance metrics, source system unique elements, and system of records are now retained in the manner specified by BearingPoint. (Id. ¶¶ 248-251, 262-271.)

~~2585.~~2603. The remaining 54 PMR 1 test criteria, which address data processing capacity and procedures for future reports, are currently "Indeterminate": According to SBC Illinois, BearingPoint has not identified a problem, it simply has not completed its analysis. SBC Illinois states that it and BearingPoint have developed a plan to complete the PMR 1 evaluation, along with specific tasks and target dates. The current projected completion date for the evaluation is within the second quarter of 2003. (Id. ¶ 251.)

~~2586.~~2604. PMR 4, which evaluates the accuracy and completeness of transferring data from the point of collection to the point of reporting, and then converting raw data to processed data, is not substantially complete. SBC Illinois states that over 65 percent of this test is still without comment by BearingPoint, and as a result 26 of the 40 applicable test criteria are "Indeterminate." SBC Illinois and BearingPoint have developed a detailed project plan that identifies each of the activities required to complete the PMR 4 evaluation, along with specific tasks and target dates. The projected completion date for PMR 4, SBC Illinois informs, is the second quarter of 2003. According to SBC Illinois, each of the 12 test criteria that have been classified as "Not Satisfied," is expected to be successfully resolved, and none of them reflect a material performance reporting issue. (Id. ¶¶ 252, 272-279.)

~~2587.~~2605. PMR 5 evaluates the processes used by SBC to calculate performance results, and assesses the consistency of SBC's metric calculations to the Commission's approved business rules for each performance measure reported by SBC. Similar to PMR 4, this test is still in progress. As a result, 11 of the 72 test criteria are "Indeterminate," while 20 of the test criteria are currently assessed as "Satisfied" and 41 of the test criteria are currently assessed "Not Satisfied," based on testing of July 2002 data. SBC Illinois states that most of the issues identified by BearingPoint have been addressed in current performance reports, and none of the remaining issues are material to the analysis – that is, the overall pass/fail results. (Id. ¶¶ 253, 280-291.)

b. AT&T Position.

BearingPoint PMR Test

~~2588.~~2606. AT&T's evidence on OSS and Performance Measurement issues is contained in the affidavit of Timothy M. Connolly.[164] As explained in AT&T's comments and the affidavits of its witnesses, the BearingPoint test results show that SBC Illinois has failed to complete a substantial portion of the PMR test. AT&T Comments, p. 2; AT&T Exh. 1.0(P), ¶ 49. Indeed, AT&T believes that SBC Illinois has conceded that the BearingPoint performance metrics review is incomplete and that it has not yet successfully satisfied the test criteria for this audit. SBC Illinois Exh. 2.0, ¶¶ 243-246. AT&T points out that BearingPoint's PMR Report notes that, during the PMR test, 116 test points were "Not Satisfied," and that 91 test points are "Indeterminate."[165] As of February 19, 2002, there are 17 open exceptions and 79 open observations in the PMR test. According to AT&T, SBC Illinois attempts to dismiss these failings and insists that "none of BearingPoint's findings thus far are sufficient to warrant a finding of *non*-compliance, or to preclude the Commission from evaluating compliance based on the totality of the information before it." [166] But, AT&T asserts that none of these contentions cannot withstand scrutiny.

~~2589.~~2607. First and foremost, AT&T reports that the BearingPoint test has shown SBC Illinois' PMR systems to have failed major elements of the test. AT&T focuses on the PMR 1, PMR 4 and PMR5 test results.

PMR 1

~~2590.~~2608. AT&T points to SBC Illinois' failure to satisfy the BearingPoint test elements for the PMR1 test. PMR1 is the Data Collection and Storage Verification and Validation Review[167] in which BearingPoint is:

> [T]o determine the adequacy and completeness of key policies and procedures for collecting and storing performance data. This test will also evaluate the extent to which Ameritech's operations are

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[164] *See* AT&T Exh. 1.0(P) (Affidavit of Timothy M. Connolly).

[165] SBC Illinois Exh. 2.0, ¶ 244.

[166] *Id*. ¶ 243.

[167] MTP Version 2.0, at 23. (May 2, 2002). This document may be found at the BearingPoint web site at the following URL: http://www.osstesting.com/Documents/IL%20Docs/ ICC%20MTP%20v%202.0.pdf.

consistent with the policies and procedures i.e., are the policies and procedures being followed consistently.

~~2591.~~2609. In the SBC Illinois test, the 150 performance measures are defined in 18 groups, or families that relate to functional groupings, product sets, and checklist items. AT&T Exh. 1.0(P), ¶ 51. BearingPoint organized its PMR work around the PM Group construction.

~~2592.~~2610. For the PMR1 test, BearingPoint inspects the SBC Illinois' documentation that lays out the procedures followed, within computer-based systems and in work center operations, to collect the data from databases, repositories, source systems, and source operations for each of the performance measures. AT&T Exh. 1.0(P), ¶ 52. The documentation reviewed by BearingPoint must refer to the information management policies that the RBOC has established for securing and safeguarding the performance measures data. These two initial steps are the basis for PMR1 evaluation criterion PMR1-1, which is "Metrics data collection and storage processes have complete and up-to-date documentation." In those cases where BearingPoint was unable to obtain sufficient information from SBC or where the information was incorrect or inconsistent with other information that BearingPoint obtained, BearingPoint issued Exceptions and Observations to record those deficiencies.

~~2593.~~2611. As AT&T points out, two of the earliest major problems reported by BearingPoint in the Illinois test were Exceptions 19 and 20,[168] which were issued because SBC Illinois was unable to provide the policy information or produce the necessary documentation of processes and procedures for PMR1. BearingPoint posted these Exceptions in late November, 2001. AT&T Exh. 1.0(P), ¶ 53. Exception 19 challenged the adequacy of SBC's data retention policies as the necessary data was not, as a practice, adequately archived and secured such that later audits of the transactions could be performed by SBC or by a CLEC seeking to compare its raw data with that of SBC. *Id.* Exception 20 advised that performance measurement results were being calculated without the controls and procedures expected from an audit perspective. *Id.* According to AT&T, together these interdependent data requirements would, if not corrected, undermine any assumption that the relevant data was being retained reliably, accurately, and with integrity of the results published by SBC, because the data used to render the calculations could not be confirmed to be subject to adequate controls. In other words, in the case where critical inputs to a calculation process lack integrity, the outputs of the process immediately become suspect. *Id.*

~~2594.~~2612. AT&T cautions that BearingPoint's Report on its findings of PMR1-1 results give warning to users of SBC's performance results that the results are produced haphazardly and not systematically. AT&T Exh. 1.0(P), ¶ 54. It states that the results produced for *only* 5 of the 18 PM groups *pass* the PMR1-1 test. *Id.* Moreover, while they are important to some modes of business entry, none of the groups that are currently shown as passing are

[168] As we discuss elsewhere in this order, Exceptions 19 and 20 were the initial Exception findings identifying the substantial issues relating to data retention and other data integrity issues.

directly related to competitive entry using UNE combinations like UNE-P.[169] The measure groups that reveal the extent of competition in mass markets remain unresolved for the PMR1 test, and in particular, the PMR1-1 test criteria. *Id.*

~~2595.~~2613. The criteria BearingPoint uses to evaluate whether the "data processing and technical requirements documentation is complete and up-to-date" for each group is PMR1-2. As AT&T explains, BearingPoint has found only the Bona Fide Request measurements to be adequately documented in the critical disciplines of computer-based processing within the SBC Ameritech performance measurements processing environment. This, according to AT&T, means the system design and programming of the measurements collection steps, calculations, and application of the business rules is inadequate, incomplete, or absent.

~~2596.~~2614. BearingPoint tests to verify that the SBC Illinois information technology and business "procedures are in place to ensure adequate capacity for processing and storing metrics data" in its test evaluation criterion PMR1-3. *Id.*, ¶ 56. According to AT&T, BearingPoint has thus far not been able to make a determination for *any* of the 18 measurement groups that the SBC Illinois procedures are adequate. AT&T Exh. 1.0(P), ¶ 56. Without a positive test finding in this area, AT&T asserts that there is no certainty that the forecast volumes of CLEC transactions can be accommodated within the performance measurements system. *Id.* AT&T explains that if transaction volumes exceed the capacity for metrics reporting, these transactions might be lost due to their exceeding capacity, which could cause a general system failure due to the excess volumes, or could create mis-reporting of results. *Id.*

~~2597.~~2615. AT&T also notes that an additional set of evaluation criteria for PMR1 that has shown significant weakness in the SBC Illinois test is PMR1-4 "Data processing procedures include adequate controls and edits to ensure accurate metrics calculation and reporting." AT&T Exh. 1.0(P), ¶ 57. This test poses the following question: Has SBC Illinois developed computer-based and manual processes that produce accurate and reliable results? According to AT&T, the answer requires SBC Illinois to show that the performance measurement reporting programming is done according to a design that incorporates the business rule formulae and equations necessary for each of the 150 measurements. *Id.* These test results demonstrate the extent to which the processes and procedures are sufficiently stable to produce accurate results month-after-month. The results provided in the December 20 BearingPoint report are overwhelmingly negative. All 18 PM groups have failed this test. (BearingPoint Exception 20) Of the 49 systems that BearingPoint has targeted for its review of the calculation controls and edits, a mere 5 have been shown to be competently controlled. *Id.*

[169] Mr. Connolly reports the *passing* PM groups are: Miscellaneous Administrative, Directory Assistance/Operator Services; Coordinated Conversions, NXX, and Bona Fide Request. AT&T Exh. 1.0(P), ¶ 54.

~~2598.~~2616. According to AT&T, BearingPoint's testing of its fifth PMR1 (PMR1-5) evaluation criterion has been frustrated by the absence of adequate procedures that would ensure regularly scheduled back-ups of critical data are made. AT&T Exh. 1.0(P), ¶ 58. This data security and integrity process is one that is key to the auditability of performance measures results by a Commission or by any CLEC. Only if the data is adequately protected from erasure, destruction, or corruption, can an audit or replication of previously reported results be made. All 18 PM groups have an "Indeterminate" scoring by BearingPoint for PMR1-5. *Id.*

~~2599.~~2617. AT&T explains that the sixth area of inquiry in the PMR1 test involves the retention of transaction data according to regulatory requirements, or in the case of Illinois testing a BearingPoint-developed benchmark of 18 months is the subject of PMR1-6 testing. AT&T Exh. 1.0(P), ¶ 59. The data retention policy is the subject of PMR1-1 testing; here, as AT&T explains, BearingPoint determines whether those policies are practiced. It determines the source systems[170] and systems of record[171] for each performance measurement and tests the documentation provided by SBC Illinois to determine the extent to which that documentation provides an unambiguous depiction of the data elements that are used in calculating each measure. *Id.* Each data element must be shown to meet the retention period requirements to be considered sufficient for this test. In its initial testing, BearingPoint found, throughout the SBC Illinois system, no usable or reliable data retention practices and procedures. It recorded this defect in Exception 19. AT&T notes that BearingPoint has opened Exception 186 (on February 10, 2003), which provides more detailed analysis establishing SBC Illinois' failures to retain data for the appropriate regulatory time period. AT&T Exh. 1.0(P), ¶ 61; *id*, Attachment 3 (Exception Report 186, version 1, Issued February 10, 2003); AT&T Exh. 1.1, ¶¶ 11-15.

~~2600.~~2618. In Exception 186, BearingPoint found that SBC "did not demonstrate that it retained data from certain systems consistent with regulatory requirements."[172] BearingPoint found that SBC failed to retain data from 13 source systems[173] consistent with regulatory requirements which require the retention of data "for a minimum of 24 months after the conclusion of the year in which the data was collected or 12 months after the issuance of the audit report, whichever is later."[174] The affected source systems include a number of critical

[170] "A source system refers to the initial electronic capture point of data used for performance reporting." Tr. at 2264.

[171] System of Record – "SBC Ameritech's official retention system for performance measurement-related data." Commission Phase II Exhibit 2, at p. 264.

[172] *See* AT&T Exh. 1.0(P), Attachment 3 (BearingPoint Exception 186, dated February 10, 2003) at 1.

[173] AT&T notes that the 13 source systems are: ACIS; ALPSS; ARIS/EXACT; CABS; CAMPS; CC MIS Wholesale; DUF Parity File; ICS/DSS; Manual-Directory Assistance Database Measures; Manual-EBTA; Clear Close; NSDB; and RBS. AT&T Exh. 1.0(P), ¶ 61; *id*, Attachment 3 (Exception Report 186, version 1, Issued February 10, 2003);

[174] BearingPoint Exception 186.

systems of record such as ARIS/EXACT and ICS/DSS, which are used for pre-ordering, ordering, and provisioning functions, as well as CAMPS, CABS, RBS, DUF files, and ACIS which are used for billing functions.[175] *See* AT&T Exh. 1.1, ¶ 12.

~~2601.~~2619. Since the issuance of the Exception, AT&T reports that during a status call, BearingPoint stated that it is continuing its evaluation and plans to release periodic updates regarding any other systems of record and reporting systems that have failed to retain data in accordance with regulatory requirements. AT&T Exh. 1.1, ¶ 13.

~~2602.~~2620. In Exception 186, BearingPoint pointed out that SBC should have retained from its source systems all data that have been generated since January 2001.[176] However, BearingPoint found that the oldest data that SBC retained from the DUF Parity files were generated in October 2002. Similarly, the oldest data that SBC retained from the ACIS, CAMPS, and Manual-Directory Assistance Database Measures source systems were generated in January 2002, August 2002, and September 2002 respectively.[177]

~~2603.~~2621. According to AT&T, the significance of Exception 186 relates to SBC Illinois' ability to provide CLECs and the Commission with the "raw" data necessary for data reconciliation or other auditing activities. AT&T Exh. 1.1, ¶ 15. According to AT&T, Exception 186 demonstrates the fragility of SBC Illinois' claims. If SBC fails to retain the raw data underlying its performance results in accordance with regulatory requirements, it is impossible for CLECs to engage in any meaningful data reconciliation. *Id.* As a result, AT&T states it is absurd for SBC Illinois to assert – as it does here – that it is fully committed to the data reconciliation process. Moreover, BearingPoint's analysis would seem to rebut SBC Illinois' claim. BearingPoint observed in assessing the impact of Exception 186, "[i]f source data is not retained, annual audits of historical data could be impeded," "[a]ttempts to trace errors in the reported results could be hindered," and SBC "may not be able to regenerate performance measurement reports as required."[178]

~~2604.~~2622. The last series of tests in the PMR1 function is to determine whether adequate procedures are in place to prevent unauthorized access to performance measurements data to "read" the data, "write" the data, or both. What is meant by this test is that there must be procedures and controls that are defined and practiced to ensure performance reporting data is safeguarded from abuse or loss of integrity from internal or external personnel or systems. AT&T points out that in a case where controls are absent, the test results would show that the

[175] *See* id; Commission Phase II Exhibit 2, at pp. 13-15.

[176] *See* BearingPoint Exception 186, at 1.

[177] BearingPoint Exception 186 at 1.

[178] BearingPoint Exception 186 at 1.

data – as reported – could be misrepresented, because it could have been changed by a system or person that is not authorized to have access to the data. AT&T Exh. 1.0(P), ¶ 62. AT&T argues that in the event access controls are insufficient to effect security of the data, BearingPoint would have a negative finding. This is exactly what has transpired: As of its December 20 report, BearingPoint has not determined that *any* of the PM groups are effectively and sufficiently safeguarded and reports all tests as Indeterminate. *Id.*

~~2605.~~2623. As AT&T explains, each of these seven PMR 1 test criteria are interrelated with each other and with other portions of the PMR test. AT&T Exh. 1.0(P), ¶ 64. If the data collection routines are well defined and documented, there is higher likelihood that PMR1-2 tests will be satisfied, given the obvious linkage between the business function of collecting and storing the data with the technical processes that actually process and record the data. *Id.* Conversely, states AT&T, technical requirements that are not based on sound business process design will not prove adequate for establishing procedures and processes that are clearly set forth and unambiguous. *Id.*[179]

~~2606.~~2624. AT&T provided a chart showing the interdependencies between the PMR tests. AT&T Exh. 1.0(P), ¶¶ 66-67, which we incorporate below. AT&T witness Connolly explains that, in examining the relationships between each of the PMR1 tests, he constructed the table below in a format similar to that used by BearingPoint to highlight other PMR test results in its report.[180] *Id.*, ¶ 66. As he explains, no PMR1-2 tests are successful when the PMR1-1 results are unsuccessful. According to AT&T, it is also telling that BearingPoint is continuing its evaluation of the adequacy of the capacity planning documentation and has yet to formulate its results, and the "Indeterminate" result is indicative of this ongoing analysis. *Id.* Similarly, in the PMR1-5 testing (at pages 60 through 66 of the Commission Phase II Exhibit 2, Commission Phase II Exhibit 2), BearingPoint states that it is "still assessing whether SBC Ameritech has adequate procedures for performing regularly scheduled back-ups of critical metrics data." AT&T further notes that for PMR1-7 testing (*id.,* at 85 through 90), once again, BearingPoint covers all PM Groups with the same comment: "… is still assessing whether SBC Ameritech has adequate procedures to limit read and write access to metrics data to authorized personnel."

[179] According to AT&T, this is not the only impact of improperly designed or missing technical requirements relating to data handling. For example, the issue of adequate capacity is not just a function of volume forecasts and capacity planning activities. AT&T Exh. 1.0(P), ¶ 65. A key factor in considering the amount of data that needs to be stored is a concrete definition of which data will be stored, in what format the data will be stored, by what system or systems are the data processed, and through what systems are the data transferred. *Id.* Absent such definition, which is only available from the documentation BearingPoint examines for PMR1-1 and PMR1-2 testing, the results of tests for PMR1-3 are likely to remain indeterminate (which, in fact, is their current status as reported by BearingPoint). *See* Commission Phase II Exhibit 2, pp. 48-54.

[180] This information includes the errata statement provided by BearingPoint that involves the results of PMR1-6L as posted on February 3, 2003.

~~2607.~~2625. AT&T notes that for PMR1-4 and PMR1-6 testing, the relationship between them and PMR1-1 results is closer. AT&T Exh. 1.0(P), ¶ 67. AT&T finds it highly significant (and troubling) that it is almost always the case that a finding of deficiency in the PMR1-1 test is matched by similar findings of deficiency in the PMR1-4 and PMR1-6 test. *Id.*[181] The chart below displays the relationship for all criteria and measure groupings:

	Measure Group																	
Criteria	Pre-ordering	Ordering	Provisioning	Maintenance & Repair	Billing	Miscellaneous Administrative	Interconnection Trunks	Directory Assistance / Operator Services	Local Number Portability	911	Poles, Conduits and Right-of-Way	Collocation	Directory Assistance Database	Coordinated Conversions	NXX	Bona Fide Requests	Facilities Modification	Other
Data collection and storage process documentation	N	N	N	N	N	S	N	S	N	N	N	N	N	S	S	S	N	N
Data processing and technical requirements documentation	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	N
Capacity procedures for processing and storing	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
Processing controls and edits	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Regularly scheduled back-ups of critical data	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
Data retained per regulatory requirements	N	N	N	N	N	S	N	S	N	S	S	S	N	S	N	S	N	N
Authorized access procedures	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
KEY: I = Indeterminate S = Satisfied N = Not Satisfied																		

[181] As explained by Mr. Connolly, in only 3 cases involving just 11 of the 150 measurements has BearingPoint found satisfactory results (PMR1-6 only) where the PMR1-1 and PMR1-2 results were not satisfactory. AT&T Exh. 1.0(P), ¶ 67 & n. 27. In all other cases, the pattern is clear – not satisfied process and technical documentation issues are harbingers of not satisfied scores for process controls and data retention. *Id.*

~~2608.~~2626. According to AT&T, the failures contained in the BearingPoint report on SBC Illinois process controls are further (and dramatically) evidenced in the frequency of restatements of performance results. AT&T Exh. 1.0, ¶ 68, 105-115. Of great concern to AT&T is the extent to which SBC Illinois has failed the PMR1-6 tests. According to AT&T, the recently-issued Exception 186 underscores this concern: "SBC Ameritech has been unable to demonstrate that certain systems of record and reporting system data have been retained consistent with regulatory requirements." The Exception details that 10 of the 18 PM Groups are imperiled by the inadequate periods for which data has been retained. AT&T Exh. 1.0(P), ¶ 68. A CLEC that requests its performance measurements data for reconciliation purposes for any of those measure groups and for any of those periods of time stands to receive an incomplete set of data. AT&T argues that the consequence will be an inability of the CLEC and SBC to arrive at a meaningful agreement on the reported results, and possibly a dispute before the Commission with inadequate data from SBC Illinois. *Id.*

PMR 4 – Data Integrity

~~2609.~~2627. The next area that AT&T discusses is the PMR 4 test, which examines the overall integrity of SBC Illinois' PMR data. BearingPoint's PMR4 testing consists of 4 evaluation criteria which are applied for each of the 150 performance measurements and are reported on the basis of the 18 performance measure groups:

PMR4-1. Required source records are included in data used to calculate measures.

PMR4-2. Inappropriate records are not present in process data used to calculate measures.

PMR4-3. Records in processed data used to calculate measures are consistent with unprocessed data from source systems.

PMR4-4. Data fields in processed data used to calculate measures are consistent with unprocessed data from source systems.

~~2610.~~2628. As AT&T explains, BearingPoint's four-part analysis is consistent with data integrity testing performed in other § 271 tests. AT&T Comments, p. 2; AT&T Exh. 1.0(P), ¶ 70. And as AT&T also highlights, positive test results are essential if the performance results published by SBC Illinois are to be given any credibility. *Id.* AT&T notes that the MTP guides this testing regimen by setting out three fundamental activities to be examined: (1) Transfer of data from point(s) of collection – is the process adequate to ensure that data gets transferred from its point of origin to the reporting system(s) accurately and completely; (2) Conversion of data from raw to processed form – are there adequate policies, procedures, and controls in place that ensure the data conversions result in accurate and complete data, in the required form and format; and (3) Internal controls – does SBC Illinois provide a well-defined, documented and managed system of controls for performance measurements data. MTP, at pp. 28-29.

~~2611.~~2629. According to AT&T, the PMR4 is the test of the integrity of the system, including the data within it, from beginning to end. These test steps confirm and ensure that raw transaction data – such as CLEC LSR entries, trouble ticket dates and times, collocation requests, and trunk blocking rates – are *actually* used in the calculation of the appropriate measures. AT&T Exh. 1.0(P), ¶ 71. Put another way, these tests attempt to remove any doubt that the "raw" data that reflects the actual experience being measured (e.g., a close out code in a M&R report) are not in some manner manipulated and/or changed prior to the calculation of a performance metric results. *Id.* Negative ("not satisfied") findings are problematic, because they mean there are no assurances that the reported results are accurately based on the actual CLEC transactions (and in the case of parity measures, on the retail analog data). *Id.*

~~2612.~~2630. Unfortunately, as AT&T notes, SBC Illinois has a poor showing for PMR4 testing. BearingPoint has issued 12 Exceptions and 18 Observations to date. AT&T Exh. 1.0(P), ¶ 72. Only a handful of these Exceptions and Observations have been resolved (*i.e.*, 5 exceptions and 12 observations). *Id.* The open Exceptions and Observations involve discrepancies that BearingPoint has found which involve 77 of the 150 SBC Illinois performance measurements. *Id.* There are 56 performance measurements involved in the unresolved PMR4 Exceptions and Observations. *Id.*

~~2613.~~2631. According to AT&T, PMR4 is one of the (if not *the* most) disappointing aspects of SBC Illinois' performance as reported in the BearingPoint test. AT&T Exh. 1.0(P), ¶ 74. A mere two of the 72 test points have tested successful by BearingPoint to date. *Id.* Whether the result is expressed as a factor of total PMR4 test points (2.8%) or of applicable test points (5%), the result remains a dismal showing. And this poor state persists despite the fact that BearingPoint first issued notice of deficient data integrity documentation (Exception 20) in November 2001. *Id.*

~~2614.~~2632. AT&T also explains that BearingPoint continues to evaluate all four of the PMR4 criteria for the Pre-Ordering and Maintenance & Repair groups; three of the four criteria for Ordering and Provisioning; and half of the criteria for Billing, Interconnection Trunks, Local Number Portability, Coordinated Conversions, Facilities Modification, and the Other category of measure groups. AT&T Exh. 1.0(P), ¶ 75. Only 6 of the 18 groups have been finalized for evaluation of data integrity, and the ones with the most significant impact on AT&T's UNE-P end users are found by BearingPoint to have failed 5% of the test points and remain indeterminate as to the remaining 95%. *Id.*

~~2615.~~2633. Moreover, AT&T explains that the "not satisfied" findings by BearingPoint are not isolated to just a few measure groups; the findings impact most of the critical performance measure groups involved in local competition. The Not Satisfied criteria for PMR4 impact Ordering, Provisioning, Billing, Local Number Portability, 911, Coordinated Conversions, Bona Fide Requests, and Other measure groups. AT&T Exh. 1.0(P), ¶ 76. In 8 of the 12 Not Satisfied results, BearingPoint finds that SBC Illinois fails PMR4 Criteria 4; in three

of the groups, PMR4-3 criteria are not met; and in PMR4-1, the Billing PM group fails BearingPoint's tests. *Id.* AT&T provided another chart (incorporated below), which highlights the Not Satisfied results. Importantly, as AT&T notes, none of the three tests for any of these nine measure groups have a Satisfactory test result. *Id.*

PMR4 Criteria	Measure Group								
	Pre-ordering	Ordering	Provisioning	Billing	LNP	911	Coordinated Conversions	Bona Fide Requests	Other
4-1 Required source records are included in data used to calculate measures.	I	I	I	**NS**	I	na	I	na	I
4-3 Records in processed data used to calculate measures are consistent with unprocessed data from source systems.	I	I	I	I	I	**NS**	I	**NS**	**NS**
4-4 Data fields in processed data used to calculate measures are consistent with unprocessed data from source systems.	I	**NS**	**NS**	**NS**	**NS**	**NS**	**NS**	**NS**	**NS**
KEY: I = Indeterminate NS = Not Satisfied na = Not Applicable									

~~2616.~~2634. AT&T also notes that BearingPoint provides highly relevant additional information in its Report regarding the status of the testing for each of the PMR4 criteria. *See* Commission Phase II Exhibit 2, Table 4-23 (at pp. 182 through 186).[182] This information provides, in detail, the performance measures that are yielding "Not Satisfied" evaluation criteria for test PMR4-4 for each of the PM groups. AT&T notes that if one examines the Ordering Group, which is comprised of 18 PMs, *in every case* the CLEC Aggregate analysis of the consistency between raw data and the data used to calculate and report the results is marked "tbd". *Id.*; AT&T Exh. 1.0(P), ¶ 77. AT&T explains that this means that BearingPoint has not successfully completed its validation of the information that is defined as the means by which calculations are rendered against the source(s) of the information. *Id.* The same can be said for the 29 Provisioning and 17 Maintenance and Repair measurements. AT&T Exh. 1.0 (P), ¶ 77.

[182] BearingPoint sent notice of its errata sheet for page 183 of this report on February 3, 2003.

BearingPoint has not been able to analyze the source data sufficiently to verify its relationship to the data used to generate the SBC IL reports for any of the 64 measures in these 3 critical PM groups. *Id.*

~~2617.~~2635. According to AT&T, like the failures by SBC Illinois to satisfy the PMR 1 tests, the failures in PMR4 testing hold serious consequences for other aspects of the PMR test, and bode poorly for users of performance results information provided from the SBC Illinois PM system. AT&T Exh. 1.0(P), ¶ 78. BearingPoint has found widespread and pervasive failures in the SBC Illinois system for establishing and maintaining processes and procedures that ensure data integrity. *Id.* AT&T explains that until SBC Illinois can be shown to satisfy the PMR 4 test, the data that enters the system may be subjected to corruption as it is transformed from one system or database to another. *Id.* Moreover, according to AT&T's witnesses, the eventual residing place – the specific reporting system for each metric – may not hold a reliable and accurate depiction of the data. *Id.*

~~2618.~~2636. For example, in the case of a trouble ticket duration, where BearingPoint has found the duration (the hours and minutes the ticket was open) in the reporting system to be different from the duration in the source system, the calculations of Mean Time To Repair are unreliable. AT&T Exh. 1.0(P), ¶ 79. Not only did BearingPoint find discrepancies in durations, it also found four other types of data in the reporting system for Performance Measure 119 "Mean Time to Repair – NXX" that were inconsistent with those in the source system.

~~2619.~~2637. Similarly, AT&T notes, in Observation 809, which involves Performance Measure 10 "Percent Mechanized Rejects Returned within 1 hour of receipt of reject in MOR" and Performance Measure 11 "Mean Time to Return Mechanized Rejects," BearingPoint found "that 43,103 out of 107,435 mechanized reject transactions (40 percent of the total) appear to have negative durations for the July 2002 data month. AT&T Exh. 1.0(P), ¶ 80. In other words, each reject appears to have been sent to the CLEC by SBC Ameritech before it was "available" to be sent." BearingPoint succinctly noted the significance of these discrepancies:

> The data used to calculate reject timeliness measures must reflect the actual transaction time durations in order for regulators and CLECs to rely upon the published results. Inaccurate underlying data necessarily creates inaccurate and confusing results, which cannot be relied upon by regulators and CLECs. (*See* AT&T Exh. 1.0(P), Attachment 4 (Observation Report 809, at 2.))

~~2620.~~2638. According to AT&T's analyses, nearly 20 percent of the performance measures are in question as recorded in the open PMR4 observations, and nearly 25 percent are

implicated by the unresolved PMR4 Exceptions. AT&T Exh. 1.0(P), ¶ 80.[183] AT&T contends that the Commission cannot reasonably accept the assertion of SBC Illinois, as to the Not Satisfied results in PMR4 testing occasioned by unresolved Exceptions, that " … none of them reflect a material performance reporting issue." SBC Illinois Exh. 2.0, at ¶ 252. According to AT&T, the pervasiveness of the data integrity problems that plague SBC Illinois' metrics system inescapably undermines the quality of the reported data and the reliability of the reports in a fundamental way. AT&T Exh. 1.0(P), ¶ 80.

PMR 5 – Metric Recalculation

~~2621.~~2639. As explained in AT&T's testimony and comments, the Master Test Plan establishes that the objective for the PMR5 test is, "to determine the accuracy of recent metrics calculations and to verify that the metrics as produced by Ameritech are consistent with its documentation and stated objectives." [184] AT&T Comments, pp. 2-3; AT&T Exh. 1.0(P), ¶ 81. According to AT&T, BearingPoint is currently using the published results of July and August 2002 activity, as reported by SBC Illinois on December 20 as the "recent" calculations of metrics. AT&T Exh. 1.0(P), ¶ 81.[185]

~~2622.~~2640. As with the other PMR tests, BearingPoint's examination is based upon the MTP. AT&T Exh. 1.0 (P), ¶ 82. The PMR5 test "evaluates the processes used to calculate performance metrics and retail analogs. The test will rely on re-calculating metrics and retail analogs and reconciling any discrepancies to verify and validate the reporting of the metrics."[186] The methods employed by BearingPoint in this test rely on replicating the published results. BearingPoint uses the *actual* data, in this case, from the SBC Illinois systems, and then uses computer programs that incorporate the negotiated and agreed SBC Illinois Business Rules that apply to the performance metrics. AT&T Exh. 1.0(P), ¶ 82. In fact, as AT&T witness Connolly notes, the replication method used by BearingPoint is the same method that was accepted by the New York Commission Staff to attest to the adequacy of the Bell Atlantic (now Verizon) PMR system. *Id.* Mr. Connolly knows this because he represented AT&T as one of its analysts that worked closely with the test managers and Staff. *Id.*

~~2623.~~2641. Mr. Connolly notes that a successful result is achieved when SBC Illinois' published results for the same period are the same as those calculated by BearingPoint. But as he

[183] According to Mr. Connolly's testimony, there were 28 PMs that are the subject of the 13 currently unresolved PMR4 Observations. The 10 unresolved PMR4 Exceptions impact 35 PMs. There are 7 PMs that are impacted by both open Exceptions and Observations.

[184] MTP, at 29

[185] *See* Commission Phase II Exhibit 2, at p. 189.

[186] Id.

points out, SBC Illinois has not yet completed successfully even one time period for examination. AT&T Exh. 1.0(P), ¶ 83. "The timetable for this test has slipped time and again due the inadequacies in SBC Illinois data, business rules, or other processes which have precluded BearingPoint from comparing and validating the SBC Illinois performance results." *Id*

Mr. Connolly further explains:

> It is my understanding from my direct participation in the conduct of this third party test that Staff, SBC Illinois, and BearingPoint determine which target month(s) to use for replication analysis. In the early stages of the test (early in 2001), the decision was made to focus on April 2001 as the replication month. This meant that BearingPoint would go through the PMR5 steps and attempt to achieve the same results using its replication methodology as were achieved by SBC Illinois when it published April 2001 results. Based on available documentation, namely status reports published by Staff and BearingPoint, along with Observations and Exceptions, I do not believe a deferral period was added to the April data month. The efforts to replicate to April 2001 were unsuccessful. Similarly, BearingPoint's later efforts to replicate October 2001 data (begun in December 2001) were also unsuccessful. AT&T Exh. 1.0(P), ¶ 84.

~~2624.~~2642. AT&T also points out that in its March 2002 Status Report the Commission's Staff again announced it had shifted the target month for replication activities:

> After consulting with ICC Staff, KPMG Consulting has adjusted the Metric's testing plan so that it reflects that KPMG Consulting will be attempting to replicate Ameritech's performance metrics for the months of January, February and March 2002. KPMG Consulting recommended shifting the PMR 5 – Data Replication months so that it could focus on more recent sets of metrics in its analysis. KPMG Consulting will retest issues raised through the observation and exception process for previous months. Additionally, there may be some performance metrics that KPMG Consulting will attempt to replicate April 2002 results. For example, at least one of the Billing metrics will be replicated for the month of April 2002.

~~2625.~~2643. And In its October 2002 Report, Staff once again announced an adjustment of the date targeted for replication:

> ICC Staff, SBC Ameritech, and BearingPoint completed their work on developing a PMR 5 methodology document. During these discussions, SBC Ameritech proposed shifting the metrics replication effort for certain PM groups from January and February 2002 to July and August 2002. BearingPoint is now attempting to replicate the following ten PM groups for July and August 2002: 911, Billing, Coordinated Conversions, Local Number Portability, Maintenance and Repair, Miscellaneous Administrative, Ordering, Other, Pre-order, and Provisioning.

~~2626.~~2644. According to AT&T, the shifting of the target month for replication has a significant impact on BearingPoint's work in progress, causing schedules to be redrafted to add significant blocks of time to the project plans. AT&T Exh. 1.0(P), ¶ 86. Upon the decision to refocus the data month(s), BearingPoint has explained that a number of tasks are brought into play to effect the change, both at the technical level and at the level where its analysts conduct the replication tests. *Id.* BearingPoint is required to secure all of its work on the existing replication months, being sure to track the individual PM analyses that are in process separately from those that have been concluded, with either positive or negative test status. *Id.* It must make changes to its business rule software system to accommodate all changes to business rules that have been made by SBC Illinois in its production system(s). *Id.* It must acquire the new target month source and reporting system data from SBC Illinois. *Id.* It must conduct samples of the data to ensure it is complete and conforms to its testing specifications for comprehensiveness and population. *Id.* It must segregate the prior test systems and databases from the environment that it establishes for the new target month. *Id.* For those PMs where BearingPoint issued an Exception or Observation regarding its inability to replicate results, it must determine whether corrective action, if any proposed at that time, should be implemented into its own version of the business rules, or whether it is more appropriate to consider the correction in the new study period. *Id.* For measures failing replication, where corrective action has not been proposed by SBC Illinois, BearingPoint can close the earlier-period Observation and turn to the new period to attempt replication. *Id.*

~~2627.~~2645. According to AT&T, these tasks take several weeks to accomplish, if all goes according to plan, and have taken additional time when errors are detected and rework is necessary. Thus, notes AT&T, the shifting of replication target months is not a simple program, and it is one that has been required twice in 2002, alone. From AT&T's perspective, interested parties can only hope BearingPoint succeeds with the July/August replications so that another retargeting is not required before the testing is complete. AT&T Exh. 1.0(P), ¶ 87.

~~2628.~~2646. Like the PMR 1 and 4 test, the PMR5 test is comprised of 4 separate but highly interdependent tests that are conducted for each of the 150 measurements and are reported by BearingPoint at the PM Group level:

PMR5-1. Required metrics are included in the each of the PM Groups

PMR5-2. Metrics values agree for each of the PM Groups
PMR5-3. Calculations are consistent with the documented rules for each of the PM Groups
PMR5-4. Exclusions are consistent with the documented rules for each of the PM Groups

~~2629.~~2647. The detailed, test-by-test and measurement group-specific test results are provided in the BearingPoint Report in Tables 5-2 through 5-5. Commission Phase II Exhibit 2, at pp. 190 through 229. According to AT&T, the summary chart reveals that SBC Illinois has succeeded only on PMR5-1, and has thus far not been able to satisfy the test criteria PMR5-2 though PMR5-4. The 54 test criteria are Not Satisfied for 40 (74%) tests, Indeterminate for 11 (20%) and Satisfied for 3 (6%), based on BearingPoint's efforts to replicate July and August, 2002 results. AT&T Exh. 1.0(P), ¶ 89.

~~2630.~~2648. BearingPoint reports on both the January data month replication work that it has done and the July/August replications in its PMR5 summary tables. These include separate charts for each of the 4 PMR5 tests. Tables 5-6 and 5-7 are the companion results for PMR5-1 testing, and these show general success (16 out of 18) in satisfying the test criteria "Required Metrics are included in the PM Group."

~~2631.~~2649. However, AT&T notes that Tables 5-8 and 5-9 of the same report display the results that can be compared to show July/August versus January replication results for PMR5-2 testing. As AT&T explains, because the Pre-Ordering and Other groups failed in January PMR5-1, by design, they fail the PMR5-2 standards for the same period. AT&T Exh. 1.0(P), ¶ 91. Moreover, as AT&T notes, SBC Illinois failed four more group tests in the January-based testing. *Id.* The results from July/August testing are even less promising. *Id.*

~~2632.~~2650. The results of PMR5-3 testing are summarized in Tables 5-10 and 5-11 of the same report. As AT&T explains, the compound effect of the negative results is evident: the July/August test results show PMR5-3 failures that are directly attributed to the failures to achieve satisfactory results in the PMR5-2 tests. AT&T Exh. 1.0(P), ¶ 93.

~~2633.~~2651. In AT&T's view, PMR 5 is infected with the same cross-functional failures exhibited in the PMR 1 and PMR 4 tests. The compounded effect of unresolved PMR1 and PMR4 test failures are part of the reason for the abject failure of SBC Illinois to satisfy PMR5 test criteria. AT&T Exh. 1.0(P), ¶ 95. According to Mr. Connolly:

> The testing science employed by BearingPoint weaves the business processes and technical implementations of performance measurements collection and reporting throughout the test family. The added dimension of PMR5 tests -- the replication of results that square with those reported by SBC Illinois -- only adds grounds for doubt about the core competence of the measurements

> system. *Clearly, if the reporting system content is not traceable to source data (PMR4), and where the documentation that would help to solve that puzzle is incomplete or inaccurate (PMR1), it would not be a surprise to find that the results of tandem calculations by SBC Illinois and BearingPoint through separately developed business rules programs produce different results.* AT&T Exh. 1.0(P), ¶ 95 (emphasis added).

~~2634.~~2652. According to AT&T, the BearingPoint PMR test report is replete with demonstrations of PMs and PM Groups where the systematic breakdowns occur across all three of these PMR tests. AT&T Exh. 1.0(P), ¶ 96. There are 15 evaluation criteria for the PMR1, 4 and 5 tests, and for 9 of the PM Groups, 7 or more of them are not satisfied; only one (Bona Fide Requests) has 7 satisfied criteria. As AT&T graphically displays in one of its exhibits: *Ten of the PM Groups have but 1 Satisfied criteria.* AT&T witness Connolly provides a chart (AT&T Exh. 1.0 (P), Attachment 5), which portrays the number of criteria for each of the 18 PM Groups to indicate how many are in each of the Satisfied, Not Satisfied, Indeterminate, and Not Applicable categories.

~~2635.~~2653. Therefore, as AT&T explains, as BearingPoint continues its testing, the extent to which SBC Illinois cooperates in proposing and implementing timely and effective solutions to PMR5 (and all other incomplete tests) issues, through process, system, and other modifications that are necessary, will determine the pace and extent of BearingPoint's progress. Without SBC Illinois' direct and committed involvement, the slow pace in resolving PMR5 issues will no doubt continue to drag out the BearingPoint testing. Of the 69 unresolved PMR5 Observations, 48 were issued prior to the BearingPoint December 20 Report, and 10 are more than 6 months old. AT&T urges the Commission to demand more dedication from SBC Illinois than it is currently exhibiting in the processing of unresolved PMR Exceptions and Observations. AT&T Exh. 1.0(P), ¶ 97.

Failure To Replicate SBC Illinois' Retail Performance Metric Data.

~~2636.~~2654. AT&T raises an additional concern with regard to SBC Illinois' failure to satisfy the PMR 5 test (and the Master Test Plan generally). As its witness, Mr. Connolly notes in his affidavit: "Measuring the success of an ILEC's OSS against identified requirements typically begs the question of the source of the standards used to determine pass or fail." AT&T Exh. 1.0(P), ¶ 98. Thus, according to AT&T, BearingPoint recorded its test evaluation criteria pursuant to the collaboratively-developed Master Test Plan and the system of performance measurements that are the Illinois standards.[187] In contrast, and relevant to the following

[187] MPT, at 16.

discussion, the criteria in the Performance Measurements system are specifically defined as parity with retail, benchmarks, or diagnostic measurements. [188]

~~2637.~~2655. But as AT&T points out, BearingPoint was hamstrung significantly in establishing the retail standards for transactions that are parity-based for its quantitative analyses because, for many measures, SBC Illinois' retail results could not be validated. AT&T Exh. 1.0(P), ¶ 100. The failures of SBC Illinois to demonstrate that it has accurately calculated the retail results is tied to the same SBC Illinois failures to satisfy the same PMR test criteria (discussed above in the sections on PMR 1, 4 and 5). According to AT&T, not only did SBC Illinois fail to accurately collect, store, calculate, and report results for wholesale processes, it also did not meet the tests for retail results. *Id.*

~~2638.~~2656. According to AT&T, the failure of SBC Illinois to provide BearingPoint sufficient information to allow it to validate the retail data necessary for parity measurements comparisons is another critical downfall by SBC Illinois in the test. In the circumstances where retail data could not be used (because it could not be validated), BearingPoint had to design an alternative measurement to the retail standard (a retail "analog" or "surrogate"), and it did so using its professional judgment based on its experience in testing for other RBOC regions. AT&T Exh. 1.0(P), ¶ 101. It adopted retail result surrogates to determine whether the Test CLEC was receiving "adequate" service where it would otherwise have used the retail results to determine whether the Test CLEC results were consistent, i.e., at parity. *Id.*

~~2639.~~2657. Moreover, due to SBC Illinois's insistence that test reports be produced from incomplete results, the quantitative analyses of transaction testing are based on the retail result *surrogates* and not the actual retail results for each of the months of transaction testing. AT&T Exh. 1.0(P), ¶ 102. This, AT&T argues, is a critical shortcoming. BearingPoint is required to evaluate Test CLEC results against the retail parity standard in far more cases than it indicates that it has in its report. AT&T Exh. 1.0(P), ¶ 103. The Performance Measurements system, Version 1.8 as approved by the Commission, prescribes retail parity as the standard for numerous pre-ordering, ordering, provisioning, repair, and billing measurements. (*See, e.g.,* Performance Measures 1.1, 1.2, 12, 13, 14, 17, 22, 25, 27, 28, 30, 31, 35, 37, 37.1, 38, 40-50, 59-69, etc.) In the cases where BearingPoint used a retail result surrogate, AT&T believes it should subject the Test CLEC results to the retail actual results *for the same period*, once it has verified that the retail result calculated by SBC Illinois is accurate. AT&T Exh. 1.0(P), ¶ 103. Inexplicably, according to AT&T, BearingPoint did not validate these results, so SBC Illinois's self-reported results were not verified for accuracy. *Id.* According to AT&T, there should be no reason to believe BearingPoint is unable to do this second stage testing of the qualitative aspects

[188] Therefore, as AT&T notes, for transaction testing to be deemed successful, BearingPoint is required to evaluate the functionality, i.e., whether the SBC Illinois OSS receives, processes, and provisions CLEC transactions according to the design of its systems. This evaluation, consistent with the MTP, includes the various methods of transaction types and the interfaces used to communicate between CLECs and SBC Illinois. The additional testing is to determine whether SBC Illinois provides the Test CLEC with service that is consistent with the standards it has agreed to meet. These tests answer the qualitative issues surrounding the functionality testing. AT&T Exh. 1.0(P), ¶ 101.

of transaction testing. AT&T Exh. 1.0(P), ¶ 104.[189] According to AT&T, it simply has not undertaken to do so, for unexplained reasons. Thus, AT&T request that the Commission direct SBC Illinois and BearingPoint to perform properly the retail parity analyses that have been omitted due to SBC Illinois' inability to provide valid retail data.

Restatements

~~2640.~~2658. AT&T also points to the number of performance measurement report *restatements* as a gauge for the reliability of SBC Illinois' performance measurement reporting systems. As AT&T notes, restatements reflects the extent to which an ILEC's noncompliance with a Business Rule has been detected by any source –including the IELC – and the ILEC has attempted to correct that error;[190] the number of *exceptions and observations* issued in testing indicates the number of times that the audit detected non-compliance with business rules through its transaction testing, process and procedure testing, and most often, performance measures auditing test processes. AT&T Exh. 1.0(P), ¶ 105.

~~2641.~~2659. Therefore, according to AT&T, these restatements, exceptions and observations all signal instances of non-compliance. Taken together, AT&T concludes that the vast number of problems in each of these categories uncovered by the BearingPoint's testing indicate that the systems and processes used by SBC Illinois to collect, store, calculate and publish performance data are unstable, unreliable, have inadequate controls, and simply are not sufficient to produce accurate and complete reports on SBC Illinois' wholesale and retail operations. AT&T Exh. 1.0(P), ¶ 106.

~~2642.~~2660. AT&T rejects SBC Illinois' claims and explanations for the numerous restatements that have been published. According to AT&T's witness Connolly: "[I]f the systems were programmed correctly – a task BearingPoint has been trying to address through its testing – it would be very unlikely for errors to creep into the process. " AT&T Exh. 1.0(P), ¶ 107.

~~2643.~~2661. Indeed, AT&T, through Mr. Connolly, presented its own analysis showing the enormous numbers of restatements. AT&T Exh. 1.0(P), ¶ 108. As he explained, many times a single error will permeate the performance measure system and cause several different performance measures to be restated. AT&T Exh. 1.0(P), ¶ 110. Accordingly, to fully

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[189] As Mr. Connolly explains: "In response to questions that were posed to BearingPoint in regard to actions that it was taking with Exception 132 ('SBC Ameritech in Illinois has failed to process Special Circuit trouble reports with a Mean Time To Restore (MTTR) interval at least equal to that of retail'), BearingPoint advised: 'BearingPoint does not intend to revisit its analysis unless it is directed to do so by one or more commissions and the relevant published retail results are restated for all relevant months.'" AT&T Exh. 1.0(P), ¶ 104.

[190] *See* Georgia § 271 Order, p. 13 & n. 62.

understand the impact of a given Restatement, AT&T states that the Commission must view the number of performance measures that had to be corrected as a result of the error that prompted the Restatement. Id.

~~2644.~~2662. According to Mr. Connolly's analyses, restatements are occurring at an alarming rate and on a routine, monthly basis in the SBC Midwest region. He states: "It is the enormous number of these errors committed by SBC that should be of concern to the Commission. In my experience and to my knowledge, no other ILEC's performance results require the number of restatements as do SBC's. Worse, as indicated by the following chart, the restatements have become more and more pervasive during the past 11 months:" [191]

	Restatements Made In								
Results Month	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
March	4	7	7	7	22	62	1	21	**131**
April			49	24	37	63	1	23	**197**
May				26	40	59	9	22	**156**
June				23	40	64	2	22	**151**
July					22	70	2	36	**130**
August					1	15	2	56	**74**
September						1	0	58	**59**
October								9	**9**
Total	**4**	**7**	**56**	**80**	**162**	**334**	**16**	**247**	**907**

~~2645.~~2663. According to AT&T, the above chart strikingly illustrates that the Commission simply cannot rely only on the three months of performance data submitted by SBC Illinois remaining stable. Indeed, it is almost certain that the September, October and November data presented by SBC Illinois will be restated in the future, and if the recent past provides any indication, will be restated multiple times with dramatic results. AT&T Exh. 1.0(P), ¶ 112.

~~2646.~~2664. Moreover, in AT&T's view, these restatements must all must be considered "material" changes in SBC Illinois' results. Throughout the system of SBC Illinois performance measures, tolerances are provided to account for errors in data, processes, and operations. AT&T Exh. 1.0, ¶ 113. AT&T rejects SBC Illinois' suggestion that some new "materiality" standard should be used to minimize the number of restatements. According to AT&T, what should be relevant to the Commission's analysis is the sheer volume of the performance measures that have needed to be restated thus far as a result of SBC Illinois's failures to comply with the Business Rules – which numbered 907 restatements through December 2002. *Id.*

~~2647.~~2665. Furthermore, AT&T states that "material" or not – that number of mistakes reflected in the restatements demonstrates that SBC Illinois's performance systems and processes are not performing as they should and are not subject to adequate controls. AT&T Exh. 1.0(P), ¶ 114. AT&T urges the Commission to reject SBC Illinois' contention that

[191] AT&T Exh. 1.0(P), ¶ 111.

restatements confirm that SBC Illinois has sufficient controls in place to identify and correct errors. *Id.*. In particular, AT&T notes that several measures have been restated month-after-month. For example, the performance measures for flow through (PMs 13 and 13.1) and provisioning measures (such as PMs 27 to 33, and 37 to 50) are consistently restated. AT&T Exh. 1.0(P), ¶ 115. According to AT&T, this further evidences that SBC Illinois's performance reporting system is not under control, and is unstable.

The Ernst and Young Audit

~~2648.~~2666. AT&T submits that there are multiple reasons that should cause the Commission to conclude that the E&Y audit does not demonstrate that SBC's performance data are complete, accurate and reliable. According to AT&T, any notion that the E&Y audit validates the accuracy of SBC Illinois' performance data is belied by: (1) the fundamental procedural and substantive defects in the auditing process, including the lack of any military-style testing to verify that errors in SBC's performance monitoring and reporting system were corrected; (2) E&Y's own reports which are riddled with examples of deficiencies in the data monitoring and reporting processes that have spawned inaccuracies in performance results which remain unremedied; and (3) the deficiencies in SBC's performance monitoring and reporting system that E&Y failed to detect and that BearingPoint uncovered.

The E&Y Audit Procedures Are Flawed.

~~2649.~~2667. As explained by AT&T, during the course of its engagements, E&Y issued a series of reports and associated documents. Despite the numerous documents issued, however, AT&T submits that the E&Y audit cannot substitute the detailed, military-style process that BearingPoint is conducting. AT&T Exh. 1.0(P), ¶ 118. In fact, in nearly every material respect according to AT&T, the E&Y audit's scope and methodology[192] is not consistent with the objectives of the Commission's Merger Order or the Master Test Plan, which guide BearingPoint's activities. According to AT&T, these inconsistencies include:

~~2650.~~2668. **Raw Data**. The E&Y audit (as well as subsequent work to verify the corrective measures SBC has taken) cannot legitimately be relied upon as proof of the accuracy of SBC's data because E&Y's audit is both procedurally and substantively flawed. AT&T Exh. 1.0(P), ¶ 119. Verification of the accuracy of reported results requires a comprehensive evaluation of all elements in the data collection, monitoring and reporting processing streams. That examination necessarily involves an assessment of the accuracy of the raw input data, as well as an assessment of a BOC's obligation to apply correctly the calculations, formulas, and exclusions in business rules governing the measures when calculating performance results. However, during its audit, E&Y *assumed* that SBC's input raw data were accurate. Starting from

[192] SBC Illinois Exh. 2.0, Attachment N.

that basic assumption, E&Y then assessed whether, *inter alia*, SBC converted its input data into performance results that complied with the metrics business rules.

~~2651.~~2669. **Limited Test Criteria/Temporal Scope**. The E&Y audit was otherwise limited in scope. AT&T Exh. 1.0(P), ¶ 120. It was, first of all, limited to a portion of PMR1, and PMR4 and PMR5. More importantly, E&Y tested SBC's March, April and May 2002 data, while BearingPoint is currently testing July, August and September 2002 data. To complicate and confuse matters further, SBC Illinois has submitted performance data to this Commission for September, October and November, 2002. AT&T submits that it simply cannot be accepted that E&Y has conducted its audit, made its findings, ensured some corrective actions have been taken – all regarding three particular months of data – and, turning a blind eye to those months of results, implicitly endorsing a different set of data, produced by systems that have been newly implemented, using processes and procedures that have been modified. This data is un-audited by E &Y, and E&Y has in fact been careful to disclaim the ability to apply its results to months other than those it reviewed.

~~2652.~~2670. **Materiality**. In addition, according to AT&T, the significant methodological deficiencies in E&Y's auditing activities show that SBC Illinois cannot legitimately contend that the E&Y audit confirms the validity and accuracy of its reported data. AT&T Exh. 1.0(P), ¶ 121. For example, the E&Y audit was not designed to identify and has not identified all instances in which SBC Illinois improperly implemented the business rules governing the metrics. During its testing, E&Y identified "[e]xceptions to compliance with the Business Rules" only if they were deemed "material" because they met one or both of the following two criteria:

> (a) the error, if corrected, would change the original reported performance measurement ("PM") result by five percent or more, and/or
>
> (b) the error, if corrected, would cause the PM's original reported parity attainment/failure or benchmark attainment/failure to reverse.193

~~2653.~~2671. Because of E&Y's flawed and misguided definition of "materiality," AT&T argues, significant defects in SBC Illinois' reported data that do not meet E&Y's "materiality" test are not reported by E&Y. Under E&Y's approach, a substantial defect in SBC's data would go undetected if the volumes for the measure during the time period covered by the audit were sufficiently low that performance results would not be adversely impacted. In the case where the results for a given measure for each of the three months were equivalently

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[193] SBC Illinois Exh. 2.0, , Attachment. O, p. 1 & n. 3.

affected by non-compliance of a business rule, E&Y would not consider that a material non-compliance and would not report that failure.

~~2654.~~2672. Geographical/**Pseudo-CLEC Testing.** Furthermore, unlike the BearingPoint audit, which is Illinois-specific and uses pseudo-CLEC transactions, AT&T notes that E&Y performed its transaction testing using data culled from the five SBC Ameritech states rather than an Illinois specific test[194] and has not utilized Test CLEC activity to test the compliance with business rules or to develop its conclusions." AT&T Exh. 1.0(P), ¶ 122. The failure of E&Y to perform independent calculations of measures based upon Test-CLEC data is a fundamental defect in audit design because the data captured from submitting known test transactions is extremely valuable in determining data integrity – the auditor can compare its source records with those asserted by the subject to be true and accurate source records. In conducting an audit with SBC Illinois, that is exactly the first fact that a CLEC must be able to establish to go through a systematic analysis of performance measurement results.

~~2655.~~2673. **Analytical Review.** During its audit, E&Y claims that it undertook an analysis of "volumes, fluctuations in results and reasons for parity or out-of-parity results for the period under examination."[195] However, AT&T argues that E&Y's "analytical review" was woefully inadequate. AT&T Exh. 1.0(P), ¶ 123. Essentially, E&Y discussed those issues with SBC, read the SBC response or listened to SBC's explanations and excuses for various results, and then determined if the explanation was "reasonable." No additional testing or corrective measures were required, and E&Y did not consult with any third parties for input on the "reasonableness" of SBC's explanations. In conducting its analytical review, it also did not transfer the fruits of its analysis to the transaction testing discipline. E&Y did not correlate the realities of CLEC transactions through the SBC Illinois system with the samples it used to conduct its tests. In this particular case, the sample was obviously skewed and it should have been rejected or at least supplemented with judgmental sample data.

~~2656.~~2674. AT&T notes that Mr. Connolly has reviewed certain E&Y's "workpapers" developed in its review of SBC's compliance with the business rules that were made available to AT&T. AT&T Exh. 1.0(P), ¶ 124. As he explains, those workpapers contained records of the "analytical reviews" that E&Y describes in its Supplemental Report:[196]

> For each PM reviewed, as identified in Appendix A, E&Y conducted an analytical review to evaluate the reasonableness of reported results. This review analyzed transaction volumes,

[194] Tr. at 3320.

[195] SBC Illinois Exh. 2.0, Attachment T, at 9

[196] *Id.*

> fluctuations in results, and reasons for parity or out-of-parity results for the period under examination. The procedures performed for PM recalculation testing covered Master Test Plan Sections: PMR 4 and 5.

~~2657.~~2675. E&Y's analysis, as documented, consisted of questions raised by E&Y that were the subject of answers supplied by SBC or discussions with SBC alone. The responses were not verified by E&Y. Indeed, SBC's responses were accepted at face value. At no time, did E&Y reject an SBC response or ask further questions of SBC or of any other party.

~~2658.~~2676. **Performance Measurement Code.** AT&T also contends that E&Y's purported performance measurement code reviews are equally infirm. AT&T Exh. 1.0(P), ¶ 125. During its audit, BearingPoint programs the business rules into its computer programs that are integral to its PMR 5 (replication) testing.[197] In stark contrast, according to AT&T, during its audit, E&Y staff read the programmed instructions within SBC's software systems to determine whether they complied with the business rules. As Mr. Connolly explains:

> E&Y should have written complementary programming logic that comports with the business rules, as interpreted by E&Y, and processed the same transaction files used by SBC for calculating and posting the measures. Any differences between the two sets of results would have been revealed through this procedure. Code review -- the approach taken by E&Y -- is wholly ineffective in testing the implementation of complex programming requirements. Further, for each correction implemented, E&Y performed its code review of the particular, and limited, section of the program code provided by SBC. It did not examine the effect of new corrections on previously implemented corrections. I discuss this issue more fully below. (AT&T Exh. 1.0(P), ¶ 126.)

~~2659.~~2677. Outdated **Source Systems.** Significantly, AT&T notes that E&Y's opinions appear to be based upon source systems that have since undergone significant changes. AT&T Exh. 1.0(P), ¶ 127. In its Supplemental Report (attached as Exhibit T to SBC Exh. 2.0), E&Y stated that it followed the following procedure for its data integrity test:

> For the PMs identified in Appendix A to the E&Y Report, E&Y validated the integrity of data used throughout the PM generation process by reviewing each of the significant applications where data originates, was stored, or was reported on PMs. For each

[197] *See* SBC Illinois Exh. 2.0, ¶ 281 (noting that BearingPoint independently replicates SBC's reported data by "using calculation programs that BearingPoint developed to recalculate SBC's unfiltered, unprocessed data, a process referred to as 'blind replication.'")

> application, E&Y identified the various transaction types and systems utilized that directly impact the reported PMs. Upon identification of transaction types, E&Y then determined how each transaction type was initiated, captured by the Company's Operations Support Systems (OSS), and processed through the Company's OSS and PM reporting systems. This process also identified where and how the Company applied the Business Rules to each transaction and which intermediate applications house specific PM information.
>
> Once the above information was obtained for each PM under review, E&Y created process flowcharts and activity dictionaries. The purpose of the process flows was to document E&Y's understanding of the data flow for each PM and each transaction type. The purpose of the activity dictionaries was to provide supplemental information regarding the process flows identifying critical controls and data inputs and outputs to each system utilized throughout the PM process. The procedures performed in developing the Process Flows and Activity Dictionaries are covered Master Test Plan Sections: PMR1 (data collection only), PMR4, and PMR5.[198]

~~2660.~~2678. However, as AT&T points out, SBC Illinois has admitted that it has modified many portions of its performance reporting systems. AT&T Exh. 1.0(P), ¶ 128. E&Y's witnesses acknowledged the conversion of reporting functions to the DSS system. *See* Tr., at 3213. In particular, SBC has broadened the scope of its ICS/DSS data collection system functionality for pre-ordering, ordering, provisioning, and maintenance measures, which, in the past, has been primarily a system of record for data retention of GUI/Web based pre-order/order transaction data. According to AT&T, it is clear from the BearingPoint Illinois performance measurement audit that SBC is now expanding the scope and use of ICS/DSS to act as a system of record for EDI/LSOG 5 based transaction data.[199]

~~2661.~~2679. Interpretations of Business Rules. Finally, AT&T contends that the E&Y audit is also deficient because E&Y accepted without challenge SBC's erroneous applications of the business rules. AT&T Exh. 1.0(P), ¶ 131. In this regard, in its Compliance Report, E&Y rendered the following qualified opinion regarding SBC's compliance with the business rules governing the metrics:

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[198] SBC Illinois Exh. 2.0, Attachment T, pp. 4-5.

[199] *See, e.g.,* Commission Phase II Exhibit 2, at 18, 38.

> In our opinion, considering the Company's interpretations of the Business Rules discussed in Attachment B of the Report of Management, and except for the material noncompliance described in Column 3 of Attachment A of the Report of Management, the Company complied, in all material respects, with the Business Rules during the Evaluation Period. Additionally, in our opinion, management's assertions, regarding the status of the Company's corrective action, except with respect to those assertions in Column 4 of Section III in Attachment A of the Report of Management, are fairly stated, in all material respects.[200]

~~2662.~~2680. Attachment B to the E&Y Compliance Report identifies 50 "interpretations made by management" in implementing the business rules governing the measures. *See* SBC Illinois Exh. 2.0, Attachment R. The problem with this, according to AT&T, is that E&Y blindly accepted without critique or analysis SBC's "interpretations" even though SBC's interpretations were inconsistent with the business rules governing the metrics. AT&T Exh. 1.0(P), ¶ 132.[201] Indeed, E&Y's findings relied on prospective changes to the business rules that the CLECs had not agreed to and which the Commission has not yet approved. The mere fact that E&Y accepted SBC Illinois' misguided "interpretations" of the business rules governing the measures, according to AT&T, provides further confirmation regarding the unreliability of E&Y's audit findings.

~~2663.~~2681. In stark contrast, points out AT&T, BearingPoint has opened 14 observations covering 20 different performance measures because of SBC Illinois's failure to comply with the business rules governing the metrics. AT&T Exh. 1.0(P), ¶ 135. Remarkably, E&Y reached a contrary finding and concluded that SBC's data were fully compliant. (AT&T witness Connolly provide an exhibit identifying the 14 observations at issue. *See* AT&T Exh. 1.0(P), ¶ Attachment 6.) According to AT&T, the failure of E&Y to detect these discrepancies underscores the unreliability of the E&Y audit. Each of these observations remains unresolved because SBC has not yet implemented a corrective action plan for these measurement defects.

E&Y's Corrective Action Testing

~~2664.~~2682. AT&T also finds fault in E&Y's activities subsequent to its audit to test SBC Illinois' corrective actions. SBC Illinois subsequently engaged E&Y to evaluate – and report on – actions that it was taking to correct the compliance defects that were found in the course of its audit. According to AT&T, however, E&Y's reviews are constrained by its methods and by SBC Illinois, as was explained in the February 2003 workshops. AT&T Exh.

[200] SBC Illinois Exh. 2.0, Attachment O, p. 1.

[201] *See, e.g.* SBC Illinois Exh. 2.0, ¶ 2231 (noting that E&Y "did not classify these interpretations as exceptions, as the reasonableness of SBC Illinois' interpretations is something for the Commission to decide.").

1.0(P), ¶ 136. In the case of corrections that SBC Illinois was making to processes and procedures used to collect, calculate, and report results on a manual basis, E&Y was provided access to the experts who designed the corrections and who administer the SBC Illinois 271 endeavor, but were not marshaled to the field to determine the practice of those procedures.

> AT&T/E&Y Question 31 "Please explain the work function of the Company subject matter experts that E&Y interviewed in its activities involved in the corrective action reviews for revised processes.
>
> E&Y Response: E&Y met with a variety of company subject matter experts primarily in the following three areas:
>
> The PM process owners. These are company personnel who are responsible for the business processes to generate specific performance measures.
> The technical owners. Company representatives who are responsible for maintaining and updating computer program logic associated with the processing and reporting performance measurement data.
> And the long distance compliance group, which is company personnel with overall responsibility for the performance measures. (Tr. 3167)

~~2665.~~2683. According to AT&T witness Connolly's review of the corrective action reports, for the corrections that were made to systems, E&Y was provided with copies of the program code that served to implement the correction. This means the E&Y technical staff of analysts and programmers obtained the revised computer code for the affected system component to review to determine whether the design and development of the computer instructions would resolve the business rule compliance problem. E&Y also obtained data files with which to determine whether the records that were previously processed incorrectly had the more appropriate outcome in the next reporting period. AT&T Exh. 1.0(P), ¶ 137.

~~2666.~~2684. As Mr. Connolly explains, however, this approach is highly problematic. E&Y was not given access to the overall program code for the system being modified, and therefore could not determine whether the change under its review would be effective in light of other changes that had already been implemented or other changes that were being implemented simultaneously. AT&T Exh. 1.0(P), ¶ 138. Clearly, the Administrative Law Judge has detected the invalidity of this approach:

> JUDGE MORAN: If I can ask a question here. When you're testing the fix, if the fix is under a new system, you're testing in effect the new system; am I right?

MR. DAN DOLAN: Related to the fix only.

MR. BRIAN HORST: Related to the fix, absolutely, yes.

* * *

MR. BRIAN HORST: Sherry, I believe your understanding is correct. What we're doing is testing the corrective action on the fix. We did not go out and do a completely new sample of the entire process testing all the business rules.

(Tr. at 3411.)

~~2667.~~2685. Thus, as AT&T explains, because the "fix" as presented to E&Y was limited to the coded program change, its ability to determine the effect on all other processing was severely limited – by SBC Illinois design of the E&Y engagement. AT&T Exh. 1.0(P), ¶ 139. E&Y was blinded from the modules being changed and SBC Illinois gave it only limited visibility into the system corrections. *Id.* But these are not the only deficiencies noted by AT&T:

~~2668.~~2686. **Deficiencies in Corrective Action Reports.** E&Y purportedly tested the accuracy of SBC's reported performance results for the months of March, April and May, 2002. However, in its Compliance Report, E&Y gave a highly qualified opinion.

~~2669.~~2687. **Site Visits**. In its Supplemental Report,[202] E&Y describes its work in the field to observe SBC Illinois operations where technicians, service representatives, and other employees perform the work functions that are measured by the SBC Illinois PM system. It explains the purpose was "to document E&Y's understanding of the manual processes and procedures and to identify and document controls over these manual processes of data input. Additionally, the transaction observation data collected by E&Y during the site visit was used to validate the transaction information in the Company's front-end systems. E&Y omitted an extremely important fact that diminishes the validity of its findings of any consistency with which SBC staff actually perform these procedures according to design. E&Y was escorted to the SBC work centers and was met in each of these venues by SBC staff. The visits were not unannounced, which dramatically lessens the candor with which the work site employees would use to interact with the E&Y staff. (See responses to AT&T/E&Y Questions 106 and 107). In addition, E&Y made a single visit to the work sites and did not follow up to determine whether the processes and procedures it observed were normally practiced or whether they were polished up for the SBC auditors. (See responses to AT&T/E&Y Questions 104 and 105). It appears, that

[202] SBC Illinois Exh. 2.0, Att. T at 5

the audit team was given little free-rein to conduct its site visits, and was limited in access to those sites.

~~2670.~~2688. Furthermore, in its Supplemental Report, E&Y advised on the even more limited access it was provided to inspect corrections to SBC Illinois processes. "E&Y validated the newly implemented processes used in the PM generation process by reviewing the revised methods and procedures for each issue and interviewing key Company subject matter experts. For each process, E&Y verified that the new procedures addressed the identified issue." (SBC Illinois Exh. 2.0, Attachment T, at 5) However, E&Y's Compliance Report identified performance data deficiencies that should have triggered visits to work sites to verify that the field procedures had been implemented, the technicians trained, and that the processes were actually used. For example, in its Compliance Report E&Y found that SBC "did not have a process in place to capture actual start times of coordinated cutovers during the Evaluation Period for the frame due time ("FDT") level of disaggregation."[203] However, E&Y did not conduct site visits at the dispatch centers or technical sites in central offices where loops are provisioned to evaluate SBC's performance in this area. E&Y should have visited the work centers that record the "actual start times" to review the methods and procedures used by technical personnel to determine the "actual start time." E&Y was not allowed to visit SBC work sites to verify that newly minted procedures to correct audit findings were appropriately implemented and institutionalized in the field.

~~2671.~~2689. **Performance Measurement Code Reviews.** E&Y contends that it conducted code reviews to assess whether SBC resolved those audit findings which were identified in the Compliance Report that required the implementation of programming changes. E&Y states that it "reviewed the respective programming code that contained the Business Rules (exclusions, inclusions, calculation of the numerator and denominator, and disaggregation rules) within the front-end, intermediate, or reporting systems.."[204] However, E&Y's Compliance Report identified other issues that implicated programming other than the limited set examined by E&Y (*i.e.* "programming code that contained the Business Rules").[205] The programming that should have been tested to determine whether it functions properly is in the transaction processing systems, which do not contain the business rules.

~~2672.~~2690. In that connection, SBC places its business rules programming in select systems and not throughout its OSS and legacy systems. Because these are discrete systems, the information provided from interfaces, OSS, legacy systems, and other systems must be coded properly to enable the business rule system to operate effectively. In its Compliance Report, E&Y detected deficiencies in SBC's reported results that required coding changes in business rule applications, as well as other systems embedded within the SBC system architecture.

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[203] SBC Illinois Exh. 2.0, Att Q; Item II. 47 at 22

[204] SBC Illinois Exh. 2.0, Att. T at 6

[205] *See, e.g.*, SBC Illinois Exh. 2.0, Att Q Item II. 1 at 11

~~2673.~~2691. For example, in its Compliance Report E&Y reported that "[c]ertain data from one of the Company's source systems (EXACT) was improperly overlaying certain FOC data within a PM reporting system resulting in some orders being reported with longer FOC durations than actually occurred."[206] In order to resolve this problem, SBC had to take appropriate remedial action with respect to the source system (EXACT) and the Business Rule system. Because E&Y only "reviewed" the code in the Business Rule system, there is no assurance that the change was made to EXACT to prevent the data from overlaying FOC data. As a consequence, SBC's data for PM 5 ("Percent Firm Order Confirmations (FOCs) Returned Within "X" Hours") will continue to be incorrect until the EXACT changes are implemented and verified.

~~2674.~~2692. **Transaction Testing.** E&Y states that it applied "computer auditing techniques" when a mechanized system was found to be part of the correction to a business rule defect.[207] However, E&Y's report is devoid of any explanation of the techniques that E&Y purportedly used to test "the entire population of transactions to verify the code changes."[208] E&Y's claim that it tested the "entire population of transactions" -- and did not use samples of transactions for verification of code changes involving electronically calculated and reported measurements -- is not credible. It is highly questionable that E&Y would test these electronic measures using the hundreds of millions of transactions that comprise the "entire population of transactions" to verify code changes when it used a mere 8,500 transactions to conduct its entire audit -- which included all of the 149 manual and electronic measures.

~~2675.~~2693. In discussing its mechanized measurement transaction testing, E&Y, in its Supplemental Report, simply states that it conducted queries to source data files and then compared test results to SBC reports or detail files.[209] However, E&Y's report does not reveal the number of queries or whether E&Y queried any number of transaction types, performance measurements, or types of data. E&Y merely claims that it "executed queries to the source data files."[210] Mr. Connolly concluded that E&Y's failure to explain the details of the measures it tested, the types of data it used as the basis for its testing, the test months or periods it used, the system databases it queried, and analytical methods renders it impossible to discern the bases for its conclusion that it performed transaction testing.

~~2676.~~2694. Moreover, as AT&T points out, even the E&Y audit – with its many limitations and shortcomings -- revealed significant deficiencies in SBC's performance

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[206] *Id.*

[207] SBC Illinois Exh. 2.0, Att. T at 8

[208] *Id.*

[209] *Id.*

[210] *Id.*