

SBC Ameritech first asserts that the HEPO mistakenly assumes that it would only take 10 minutes to provision a line shared loop if no conditioning is required because it erroneously assumes that the HFPL UNE already has been provisioned to the end user's customers premises. (Br. at 11). Having set up this strawman, SBC Ameritech proceeds to knock it down, claiming that "to the contrary, most end users ordering xDSL services are ordering it for the first time and not merely seeking to change services from one data services provider to another." SBC Ameritech's statements at best misunderstand—or at worst misrepresent—the evidence in the record.

As an initial matter, there is no evidence in the record to support SBC Ameritech's claim that it requires more physical work to provision an HFPL UNE loop than a stand alone xDSL capable loop. Tellingly, other than this bald assertion, SBC Ameritech provides no record support for its position. As SBC Ameritech must acknowledge, there is evidence in the record that establishes that because line sharing uses a loop that previously has been provisioned to the customer premises, provisioning a line shared loop (where no conditioning is necessary) requires only ten minutes of central office work.<sup>33</sup> The loop already provisioned to the customer premises is not a second line to the customer's premises solely for DSL services, as SBC Ameritech contends. Rather, the loop already provisioned to the customer premises is the loop used to provide voice service—which Covad or Rhythms data services will share. Thus, it is entirely irrelevant to this proceeding that a customer may not be seeking to change service from one data services provider to another and thus not have a standalone DSL loop to his residence. The unrefuted evidence demonstrates that SBC Ameritech must complete only 10 minutes of work to provision the HFPL UNE because the loop (currently used solely for voice service) has already

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<sup>33</sup> Covad Ex. 2.0 (Zulevic) at 20.

been previously provisioned to the customer's premises. The fact that a customer is not transferring data service between two data providers, therefore, has no bearing on the reasonableness of the HEPO's recommended provisioning intervals.

SBC Ameritech, however, still refuses to acknowledge the reduced work and time associated with provisioning line sharing. As a result, SBC Ameritech continues to assert error and claims that HEPO fails to consider the process involved and the volume of orders expected for line sharing. SBC Ameritech then provides a litany of activities that it claims it must accomplish to provision a line shared loop with and without conditioning. After its list of activities, it concludes that "clearly, it takes more than 10 minutes to complete these tasks in order to provide line sharing..." SBC Ameritech's list of activities, however, does not prove that the HEPO's proposed intervals are unreasonable. It is telling that SBC Ameritech does not claim that it cannot in fact provision a line shared loop requiring no conditioning within 3 business days. Indeed, other than unsupported assertions and a list of activities (without any time estimates), SBC Ameritech presented no evidence that it could not provision line shared loops within the intervals recommended by the HEPO.

Moreover, the HEPO's intervals are consistent with the line sharing provisioning intervals adopted by other state commissions. As discussed above, the Texas and Kansas Commissions recognized the reduced amount of work required to provision line sharing. Based upon evidence virtually identical to that presented in this arbitration, those commissions ordered SWBT to provide line sharing over non-conditioned loops within three business days.<sup>34</sup> Similarly, the Pennsylvania Arbitrator ordered Bell Atlantic to provide line sharing over non-

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<sup>34</sup> Texas Line Sharing Interim Award at 24; Kansas Line Sharing Decision at 16.

conditioned loops initially within three business days, with the interval eventually decreasing to one business day.<sup>35</sup>

In sum, the HEPO properly adopted a phased-in 3 to 1 business day interval for non-conditioned loops and 5 business days for conditioned loops based on the evidence in the record, and thus the HEPO's analysis and conclusion should be adopted in its entirety.

**Issue No. 7: In addition to providing line sharing over home run copper loops, must SBC Ameritech also allow CLECs to provide xDSL services utilizing line sharing on loops that traverse fiber-fed digital loop carrier ("DLC") systems between the remote terminal and the central office?**

The Commission Staff indicated in their Exceptions that the final line sharing decision in this arbitration could be affected by the FCC's interpretation of SBC Ameritech's obligations under the Merger Conditions. Specifically, the Staff referenced a waiver request filed by SBC Ameritech with the FCC requesting a ruling on ownership of two narrow questions regarding ownership of DLC line cards and the ATM router located in central offices (the so-called Optical Concentration Device). The staff is correct that the FCC's ruling on line card ownership will affect the technical characteristics of DSL services that CLECs could offer. If SBC Ameritech is allowed to own the line cards, then all carriers will be restricted to offering only ADSL to customers whose loops are configured through the Project Pronto architecture because SBC Ameritech's line card vendor only supports ADSL currently and SBC Ameritech has no announced plans to support any other type of DSL line cards.<sup>36</sup> Rhythms and Covad offer other types of DSL service that can be line shared (*e.g.*, RADSL), but they will be precluded from doing so on the Project Pronto architecture unless they are allowed to own the DLC line cards.

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<sup>35</sup> Pennsylvania Line Sharing Decision at 15-16.

However, the FCC decision *will not* determine whether SBC must allow CLECs to line share over loops configured through the Project Pronto architecture. Such determination should be made by this Commission, as the Staff urges,<sup>37</sup> for several reasons.

First, the deployment of Project Pronto is well underway in Illinois. SBC's website<sup>38</sup> indicates that by the end of the year, SBC will have in service 1,081 Remote Terminals ("RTs") configured with the fiber-fed DLC architecture. SBC will place in service 168 such RTs in September; 420 RTs in October; 205 RTs in November; and 288 in December.<sup>39</sup>

Second, SBC Ameritech has acknowledged that it will use not only all copper loops ("home-run copper"), but also the new Project Pronto configuration, for its data affiliates.<sup>40</sup> Under the parity and non-discrimination obligations of the Telecommunications Act, SBC Ameritech is required to provide CLECs with the same opportunities to utilize line sharing that it offers itself. Thus, because SBC Ameritech will enable its own affiliate to carry line shared DSL traffic from the customer premises to the central office utilizing mixed media loops configured through Project Pronto fiber-fed DLCs, SBC Ameritech is required to do the same for Rhythms and Covad. If the Commission does not require SBC Ameritech to allow CLECs to line share over both the copper and fiber portions of Project Pronto loops, then, as the unrebutted and clear evidence in this case shows, CLEC will only be able to carry DSL traffic part way to the central

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<sup>36</sup> Schlackman Cross Exh. 1.0, at 22 ("At this time, SBC is limited to offering only an ADSL form of service because the vendor of a majority of its NDGLC deployment has only developed an ADSL line card at this time.")

<sup>37</sup> HEPO, at 31.

<sup>38</sup> [http://www.sbc.com/PublicAffairs/PublicPolicy/pronto\\_gateways/Home.html](http://www.sbc.com/PublicAffairs/PublicPolicy/pronto_gateways/Home.html)

<sup>39</sup> SBC Ameritech's deployment schedule for Project Pronto RTs in Illinois was provided as Attachment A to Rhythms and Covad's Brief on Exceptions, July 31, 2000. Rhythms and Covad asked the Commission to take administrative notice of the information on SBC's website.

<sup>40</sup> Project Pronto consists of voice and data carried simultaneously on copper facilities from the customer location to a Remote Terminal and then carried on fiber from the Remote Terminal to CLEC's designated point of interconnection. Covad/Rhythms Exh. 2.0, Riolo, at 12:8-12. At the Remote Terminal, the voice and data

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office. SBC Ameritech contends that the fiber sub loop from the remote terminal to the serving wire center is part of a service that cannot be unbundled, and which must be negotiated by CLECs and added to their interconnection agreements.<sup>41</sup> Once the data traffic reaches the RT and is split from the voice traffic onto separate fiber cables, SBC Ameritech claims line sharing no longer exists.<sup>42</sup> Thus, the CLECs' traffic would be stranded at the RT. The Commission staff agree that stranding CLEC traffic from the line-shared copper loops at the RT would be "fairly useless".<sup>43</sup>

Third, the un rebutted evidence in this proceeding demonstrates that it is technically feasible to line share (*i.e.*, carry simultaneous DSL and voice traffic) over mixed composition loops.<sup>44</sup> On the copper portion of the loop, the two types of traffic are separated according to frequency. On the fiber portion, voice signals and xDSL signals of all types, including ADSL ATM bitstreams, can now be multiplexed and carried on a common fiber.<sup>45</sup> Specifically, both the voice and data traffic can be placed on the same fiber through time division multiplexing.<sup>46</sup> SBC itself acknowledges that can provide line sharing over the fiber portion of the loop. In its May 24, 2000 Accessible Letter, SBC describes a "service" it is considering offering through the Project Pronto architecture.<sup>47</sup> In a section entitled "Line Shared Arrangements," SBC states:

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traffic are split apart and carried on fiber optic facilities between the Remote Terminal and the serving wire center. *Id.* at 33:15-34:6.

<sup>41</sup> Schlackman Cross Exh. 1.0 at 41-42. Previously SBC claimed that line sharing over the fiber portion of the loop was a UNE.

<sup>42</sup> Hearing Tr. (Schlackman) at 807: 3-4 (email version of transcript).

<sup>43</sup> Hearing Tr. (Graves), at 89:2-6. This is precisely the type of concern raised by Commissioner Mary Frances Squires in a memorandum to Hearing Examiner Donald Woods, dated June 28, 2000.

<sup>44</sup> The only "evidence" SBC Ameritech has presented regarding line sharing over fiber-fed DLC relates to its technical legal argument that line sharing applies only to copper loops under the FCC's order. Ameritech Illinois Exh. 1.0, Schlackman, at 3:13

<sup>45</sup> Covad/Rhythms Exh. 2.0, Riolo, at 4.

<sup>46</sup> Covad/Rhythms Exh. 2.5, Riolo, at 4.

<sup>47</sup> Schlackman Cross Exh. 1.0, (May 24, 2000 Accessible Letter).

The following network service arrangements will be necessary in order for CLEC to provision a DSL service in the DLE [Digital Loop Electronics] environment under line sharing: a high frequency portion of the sub-loop (“HFPSL”) from the SAI to the customer premises; a DLE-ADSL feeder extending from the OCD in the central office to the SAI, including the NGDLC equipment in the RT site and the feeder copper from the RT site to the SAI; and a port on the OCD.<sup>48</sup>

The second component mentioned (DLE-ADSL feeder) encompasses the fiber portion of the loop from the central office to the RT.<sup>49</sup> Nevertheless, the HEPO declines to require SBC Ameritech to provide CLECs with access to line shared loops provisioned over fiber-fed DLC architecture. Such conclusion is in error because the HEPO fails to require SBC Ameritech to comply with its legal requirement to demonstrate it is technically infeasible to support line sharing over fiber-fed DLC (a demonstration SBC Ameritech cannot make, as discussed above), and the HEPO errs by ignoring affirmative evidence in this proceeding that such line sharing configurations are indeed technically feasible.

Finally, the Commission has authority to order line sharing over the Project Pronto architecture. The new fiber-fed DLC technology clearly fits within the FCC’s effort to promote competition by allowing CLECs to share loops providing POTS. Both the copper and the fiber portions of the loop in the new fiber-fed DLC configuration should be defined as a line sharing network element that is required to be unbundled under the Act. The FCC explicitly stated that “states are free to impose additional, pro-competitive requirements consistent with the national framework established in this [line sharing] order.”<sup>50</sup> The Pennsylvania Commission utilized this authority and issued a recommended decision that Bell Atlantic must “allow CLECs to

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<sup>48</sup> Schlackman Cross Exh. 1.0, (May 24, 2000 Accessible Letter), at Section 4.1.

<sup>49</sup> Schlackman Cross Exh. 1.0, (May 24, 2000 Accessible Letter), at 1 (cover letter), Section 2.5.

<sup>50</sup> Line Sharing Order, ¶ 159.

provide xDSL services using line sharing on loops traversing fiber-fed DLC systems between the RT and the CO.”<sup>51</sup>

**Issue No. 9: In order to consider the installation of the HFPL UNE complete, must Ameritech Illinois test and the CLEC affirmatively accept the UNE?**

As Covad and Rhythms stated in our Post Hearing Brief, loop acceptance testing provided CLECs an opportunity to test and verify that a loop is actually working prior to loop turnover, and to confirm that the loop has been properly provisioned to the correct location. This testing is critically important, because it allows problems to be resolved quickly, and provides CLECs the opportunity to notify customers of any delay in provisioning xDSL services.<sup>52</sup> However, SBC Ameritech refuses to recognize that problems and delays in providing xDSL services on line-shared loops are a customer-affecting issue. SBC Ameritech considers to be of no consequence the fact that “the CLEC’s xDSL services do not work.”<sup>53</sup> Instead, SBC Ameritech appears to be more interested in starting the timelines for billing, provisioning intervals, performance measures, etc.<sup>54</sup> Yet, starting the clock for these timelines will only create a false read on the status of the FCC’s goal of rapid deployment of advanced services over line - shared loops.

Further, SBC Ameritech’s argument that there is no evidence in the record indicating a problem with its trouble ticket process misses the point. As the HEPO noted, the “goal of the FCC’s Line Sharing Order is to promote the rapid, widespread deployment of advanced services such as xDSL.”<sup>55</sup> Resolving loop problems prior to closing an order, rather than placing an

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<sup>51</sup> Recommended Decision, Pennsylvania Public Utilities Commission, Docket No. A-310696F0002/A-310698F0002, June 30, 2000, at 43.

<sup>52</sup> Covad Exh. 1.0, Carter, at 20.

<sup>53</sup> SBC Ameritech Brief on Exceptions, at 15.

<sup>54</sup> SBC Ameritech Brief on Exceptions, at 16.

<sup>55</sup> HEPO, at 35.

installation trouble ticket within the general population of trouble tickets, is more likely to achieve the FCC's stated goal.<sup>56</sup> SBC Ameritech has failed to present any evidence to refute the fact that acceptance testing prior to turnover can significantly reduce the number of trouble tickets that are opened due to loop provisioning problems within the first few days after a loop is delivered.<sup>57</sup> Instead, SBC Ameritech misleadingly cites to Mr. Graves' testimony as establishing for the record that SBC Ameritech places a high priority on trouble tickets.<sup>58</sup> However, not only did the Staff agree with Covad and Rhythms on this issue, Mr. Graves states in his testimony that SBC Ameritech *should* place a high priority on curing problems,<sup>59</sup> not that SBC Ameritech *does* place a high priority on trouble tickets.<sup>60</sup>

In addition, SBC Ameritech's suggestion that the Line Sharing Order in paragraph 174 has set the completion date for HFPL order requests is blatantly false and misleading.<sup>61</sup> Paragraph 174 does not establish HFPL completion dates; rather it urges "states to adopt provisioning intervals for [the line-shared] unbundled network element as part of any arbitration award."<sup>62</sup> The Order goes on to state that provisioning intervals for entire xDSL capable loops is an appropriate guide for the states.<sup>63</sup> The FCC then provides as an example the Texas Commission's intervals for full UNE loops. The paragraph then ends with the quote, cited by SBC Ameritech: "The completion date is the day that the incumbent completes the service order activity."<sup>64</sup> However, SBC Ameritech fails to note that not only is this sentence within the discussion of the Texas Commission requirements for entire loops, but the footnote at the end of

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<sup>56</sup> *Id.*

<sup>57</sup> Covad Exh. 1.0, Carter, at 19:11-14.

<sup>58</sup> SBC Ameritech Brief on Exceptions, at 17.

<sup>59</sup> Staff Exh. 1.0, Graves, at 9-10.

<sup>60</sup> SBC Ameritech Brief on Exceptions, at 16-17.

<sup>61</sup> *Id.*

<sup>62</sup> Line Sharing Order, ¶ 174.

<sup>63</sup> *Id.*

the sentence leaves no doubt, citing directly to SWBT's Performance Measurements and Business Rules.<sup>65</sup> Contrary to what SBC Ameritech would have us believe, the FCC's discussion of the Texas Commission's rules does not create a "pronouncement" from the FCC on an incumbent's responsibility for service order requests.

Thus, for the reasons set forth in the Covad/Rhythms Post Hearing Brief and in order to ensure rapid and successful deployment of advanced services over the line-shared loop, the Commission should adopt the Arbitrator's conclusion on this issue.

## **II. OSS ISSUES**

### **Issue No. 8: Should CLECs have direct electronic access to SBC Ameritech's operational support systems ("OSS")?**

#### **A. Rhythms and Covad Are Legally Entitled To Direct Access To SBC Ameritech OSS**

The HEPO requires that SBC Ameritech provide Rhythms and Covad with both direct and gateway access to SBC Ameritech's backend systems and databases. The Commission Staff and SBC Ameritech take exception to this requirement, but both parties' arguments appear to be based on a misunderstanding of the record.

#### **1. Commission Staff Witness McClerren's Testimony Supports Read-Only Access**

The Commission Staff indicates that the HEPO erred in stating that the Staff could support giving CLECs direct access so long as that access was read-only. Read-only access would allow the CLECs to look at data in SBC Ameritech's backend systems and databases but would not allow them to manipulate or change the data in any way. Although Mr. McClerren initially indicated in his written testimony that he could not support allowing CLECs to have

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<sup>64</sup> SBC Ameritech Brief on Exceptions, at 17 (quoting Line Sharing Order, ¶ 174) (footnote omitted).

<sup>65</sup> Line Sharing Order, ¶ 174 (citing SWBT Performance Measurements and Business Rules, Version 1.6.).

direct access to SBC's OSS, he modified that position during cross examination.<sup>66</sup> Mr. McClerren stated that he would support CLEC access on a read-only basis. There is some lack of clarity in the record as to how Mr. McClerren defines direct access, but so long as CLECs have read-only capabilities, any concern Mr. McClerren might have regarding security is fully addressed. Thus, Staff's position on exceptions is inconsistent with its own witness' testimony.

CLECs are entitled to direct access because SBC Ameritech employees have direct access, as well as gateway access, to all loop provisioning information in SBC Ameritech's records, backend systems and databases.<sup>67</sup> The UNE Remand Order requires SBC Ameritech to provide CLECs with access to loop provisioning information *in the same manner* and in the same timeframe as such information is available to its internal operations or affiliates. The Commission Staff argues that the FCC's order only requires substantial similarity. However, the UNE Remand Order includes no such modifier. The Order states that it would be contrary to the Telecommunications Act to allow ILECs to preclude CLECs from "obtaining information about the underlying capabilities of the loop plant in the same manner as the incumbent LEC's personnel."<sup>68</sup> The Staff position seems to rely on a reference to substantial similarity in the HEPO discussion of OSS. There is no indication in the HEPO that such term was meant to preclude direct access, or that it was directly interpreting the requirements of the UNE Remand Order. However, even if it could be argued that the HEPO intended to limit SBC Ameritech's obligations, such limitation is not reasonable application of the FCC's rule in the UNE Remand Order. Substantially similar access is tested within a given category of access. For example, such standard would require that if both SBC Ameritech and a CLEC are accessing information

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<sup>66</sup> Hearing Tr. (McClerren), at 120.

<sup>67</sup> Hearing Tr. (Jacobson), at 687-690; 690:13-18.

<sup>68</sup> UNE Remand Order, at ¶ 430.

via gateways, both gateways must be capable of handling the same type of transactions in the same timeframe and with the same error rate. However, if SBC Ameritech is able to directly access a database through a terminal in its offices, but CLECs must use a cumbersome system of gateways to access the same information, it cannot be reasonably argued that the FCC's substantial similarity standard has been met.

Rhythms and Covad have requested in this arbitration, and through the POR process, that they be given direct and gateway access to SBC's loop provisioning information. Rhythms and Covad have explicitly stated that direct access should be supported on a read-only, or mediated basis.<sup>69</sup> Such compromises fully address any security concerns that the Commission staff may have.

## 2. SBC Ameritech Position

SBC Ameritech argument that CLECs should not be allowed direct access to its backend systems and databases relies on mischaracterizations of the record and misleading assertions. First, SBC Ameritech argues that "Ameritech Illinois personnel do not directly access Ameritech Illinois' back office systems for order and pre-ordering."<sup>70</sup> This assertion is incorrect factually, and logically. As one example, Ms. Jacobson testified that she believes SBC Ameritech employees have access to their own databases containing loop provisioning information:<sup>71</sup>

Q: The company. Ameritech Illinois has access to those databases, correct?

A: That would be my assumption.<sup>72</sup>

Indccd, Ms. Jacobson testified that SBC Ameritech employees can access LFACs to get cable and pair assignments and she believes the employees can update cable and pair information

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<sup>69</sup> Jacobson Cross Exh. 1.0, at 16.

<sup>70</sup> Ameritech Illinois' Exceptions, at 27.

<sup>71</sup> Hearing Tr. (Jacobson), at 774:14-775:5.

<sup>72</sup> Hearing Tr. (Jacobson), at 774:14-16.

in LFACS.<sup>73</sup> Even if there weren't clear record evidence that SBC Ameritech employees can access their own company's databases and backend systems, it strains credibility to assert otherwise. It is not believable that, throughout the entire company of SBC, SBC Ameritech, and SBC affiliates, not a single employee can access its own databases and backend systems.

Second, SBC Ameritech argues that there is no FCC order that imposes any obligation on SBC Ameritech to provide both direct and gateway access to loop provisioning information. However, as the record makes clear, SBC Ameritech does provide direct access to OSS to its own employees. Therefore, under the requirements of the UNE Remand Order, and the parity requirements of the Telecommunications Act, SBC Ameritech is legally required to give CLECs access to information "in the same manner,"<sup>74</sup> "within the same timeframe"<sup>75</sup> and in the "same format."<sup>76</sup>

**B. SBC Ameritech Should Provide GUIs To Access Its OSS On Schedule That Closes The Gap With GUI Availability In Other States**

The Commission Staff supports the HEPO's requirement that SBC Ameritech make available graphical user interfaces ("GUIs") for pre-ordering and ordering by December 2, 2000. SBC Ameritech takes exception to this requirement.

SBC Ameritech incorrectly states that Verigate and LEX are "two new GUIs."<sup>77</sup> SBC implicitly relies on this assertion to justify delaying the availability of these two GUIs. SBC Ameritech's assertion is incorrect. Verigate and LEX are systems that have been in use in other SBC states for months and even years. Indeed, in the POR collaboratives, SBC has repeatedly committed to deploy a 13-state wide OSS and providing these GUIs in a timely manner is merely

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<sup>73</sup> Hearing Tr. (Jacobson), at 752:2-12.

<sup>74</sup> UNE Remand Order, ¶ 430.

<sup>75</sup> UNE Remand Order, ¶ 431.

<sup>76</sup> UNE Remand Order, ¶ 429.

<sup>77</sup> Ameritech Illinois Exceptions, at 28.

a step toward accomplishing SBC's own stated goals. SBC Ameritech does not assert that it is technically infeasible to provide the GUIs on the timeframe specified in the HEPO, but rather that they are not legally required to do so.

**C. SBC Ameritech Must Provide The Same Project Pronto Loop Provisioning Data In Illinois That It Has Agreed To Provide In Other States**

SBC Ameritech takes exception to the HEPO's requirement that it provide the same limited set of Project Pronto Loop data elements that SBC has already agreed to provide to CLECs in other states. SBC's argument is without merit and should be rejected.

SBC Ameritech witness Ms. Jacobson provided in her testimony a list of data elements that SBC Ameritech is offering to CLECs in Illinois. However, that list omits the following eight data elements that SBC has already agreed to provide in the POR collaborative:

- whether the loop originates at an ADSL Capable RT;
- whether the loop originates at a Non-ADSL Capable RT;
- indicator of whether ADSL capable RT is available;
- target date of when ADSL capable RT will be deployed;
- location of ADSL capable RT by address;
- location of ADSL capable RT by CLLI;
- location of non-ADSL capable RT by address; and
- location of non-ADSL capable RT by CLLI.<sup>78</sup>

SBC's agreement in the POR collaborative to provide these eight data elements to CLECs demonstrates the insincerity of SBC Ameritech's argument that the HEPO errs by

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<sup>78</sup> *Id.*

ordering it to provide “proprietary information”<sup>79</sup> regarding Project Pronto as part of its line sharing obligations. Rhythms and Covad note that the limited list of Project Pronto data elements does not represent all of the information it will need to provision loops configured through the fiber-fed DLC architecture, and requests that the Commission make clear that SBC Ameritech has a continuing obligation to provide additional information as it becomes available to SBC Ameritech’s internal personnel, or as SBC Ameritech’s parent agrees or is ordered to provide such information in other states.

SBC Ameritech’s only argument to support its effort to prevent CLECs in Illinois from receiving information SBC will provide to CLECs in other states is an assertion that Project Pronto is not fully implemented in Illinois. As discussed in Issue No. 7 above, Project Pronto is well underway in Illinois. As the almost 1,100 Project Pronto RTs are put into service in Illinois this year, CLECs will require information that allows them to order and provision loops configured through those RTs. There is thus no merit in SBC Ameritech’s argument that such information should be withheld from CLECs until Project Pronto is completely implemented.

SBC Ameritech’s effort to revoke its parent’s commitment to provide information regarding Project Pronto should be rejected.

**D. SBC Ameritech Should Allow Rhythms And Covad To Audit Databases, Backend Systems And Records To Verify What Loop Provisioning Data Are Available**

The Commission Staff supports the HEPO’s requirement that SBC Ameritech provide Rhythms and Covad with an audit of SBC Ameritech’s databases and backend systems.<sup>80</sup> However, SBC Ameritech takes exception to the HEPO’s audit requirement. None of SBC Ameritech’s objections have merit, and they should be rejected.

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<sup>79</sup> Ameritech Illinois’ Exceptions, at 30.

First, SBC Ameritech mischaracterizes the HEPO by claiming that the required audit is “free-form” and of an undefined scope. However, the HEPO, sets forth a specific set of databases and backend systems that Rhythms and Covad must be allowed to audit. The HEPO sets forth a specific timeframe within which the audits must occur. Thus, SBC Ameritech can tell precisely what its obligations are with regard to an audit.

Second, SBC Ameritech mischaracterizes the record and puts forth a misleading argument in an effort to have the Commission reverse the HEPO’s audit requirement. SBC Ameritech states that the Plan of Record collaboratives, conducted as part of the SBC Ameritech Merger Conditions, have resulted in “specific and well defined audit rights” for CLECs. Such statement incorrectly implies that SBC has agreed to actual audits. The undisputed evidence in this case demonstrates that SBC has not yet agreed in the POR collaboratives to allow CLECs to audit its databases, backend systems or records. SBC Ameritech has implied through its cross examination of non-OSS witnesses that SBC has allowed such audits,<sup>81</sup> but SBC’s implication is absolutely false. SBC has failed to produce a single piece of evidence showing that SBC has reached an agreement to allow such audits. At the same time, Rhythms and Covad have presented unrebutted evidence that such agreement has not been reached. During the POR process SBC agreed in principal to negotiate an audit, but all details regarding the scope and timing of an audit were left to be resolved in the future.<sup>82</sup> To date, the CLECs have been unable to obtain such an audit from SBC.<sup>83</sup>

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<sup>80</sup> Staff Brief On Exceptions, at 14.

<sup>81</sup> Hearing Tr. (Carter), at 212-213.

<sup>82</sup> Jacobson Cross Exh. 1.0, Adv. Serv. POR, at 15.

<sup>83</sup> Hearing Tr. (Jacobson), 713:5-9.

Further, SBC Ameritech states incorrectly that the POR collaboratives “have resulted in a commitment by Ameritech Illinois to allow CLECs to audit Ameritech Illinois’ back office systems.”<sup>84</sup> SBC Ameritech provides no citation to support such assertion because none exist. SBC Ameritech’s parent has agreed to negotiate an as yet undefined audit of its databases and backend systems in some of the states in the SBC Ameritech 13-state region. The current proposal is to allow only one audit per region (*i.e.*, Pacific/Nevada Bell, SWBT, Ameritech, SNET). There is no evidence in this record, and no reason to believe that the audit in Ameritech’s serving area would examine databases and backend systems in Illinois. Thus, SBC Ameritech’s claim that requiring an audit in Illinois would result in “substituting a contrary arrangement” is false.

Finally, SBC Ameritech claims there is no legal basis upon which the HEPO may order an audit of its OSS. Again, SBC Ameritech’s claim is incorrect. Rhythms and Covad are entitled under the UNE Remand Order to all “underlying loop qualification information...[if] such information exists anywhere within the incumbents’ back office and can be accessed by any of the incumbent LEC’s personnel.”<sup>85</sup> Ordering an audit to enable Rhythms and Covad to determine precisely what data exist in SBC Ameritech’s OSS is completely consistent with that mandate, and is a reasonable means of implementing that mandate. Further, this Commission is not precluded by any outcome of the POR collaboratives, or by the Merger Conditions from ordering an audit. The Merger Conditions expressly state that the conditions do not preempt state authority to set different requirements.<sup>86</sup> Finally, the HEPO requirement for an audit is not duplicative of any audit requirement that may eventually be negotiated under the POR process.

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<sup>84</sup> SBC Ameritech Brief on Exceptions, at 30-31.

<sup>85</sup> *Id.* ¶ 430.

The POR was not designed to examine OSS necessary for line sharing. Indeed, OSS for line sharing remains a disputed area in the POR process that may be arbitrated before the FCC.<sup>87</sup> Further, the POR process was only intended to establish a minimum level of OSS support to mitigate competitive harms arising from the merger. Additionally, the POR process was not intended as a substitute for a state's own judgment as to what OSS are necessary to allow CLECs full and fair access to line shared loops for the provision of xDSL services.

The HEPO's requirement for an audit is supported by the record and is a reasonable means of implementing the mandate of the FCC's UNE Remand Order. Thus, SBC Ameritech's arguments that the audit should be disallowed is without merit and should be rejected.

### III. COSTING ISSUES

#### **Issue No. 6: What are the appropriate recurring and non-recurring charges for all elements of the line sharing UNE?**

##### **A. Monthly Recurring Costs**

The HEPO correctly sets the interim monthly recurring price for the high frequency portion of the loop ("HFPL") at zero. As the HEPO states, a zero charge "complies with the FCC's mandate regarding costs that CLECs may be charged for line sharing and with TELRIC costing principles."<sup>88</sup> SBC Ameritech continues to argue that the HFPL cost should be equal to 50% of the cost of the entire loop,<sup>89</sup> despite its failure to provide any cost study to support its proposed price.<sup>90</sup> In response to the HEPO's citation to record evidence that SBC Ameritech

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<sup>86</sup> Merger Conditions, Appendix C, n.2.

<sup>87</sup> Jacobson Cross Exh. 1.0, Adv. Servs. POR Notification, at 19.

<sup>88</sup> HEPO, at 52.

<sup>89</sup> SBC Ameritech Brief on Exceptions, at 27.

<sup>90</sup> See HEPO, at 52 (noting that SBC Ameritech has assigned \$0 costs for its affiliate, Pacific Bell, and "has presented no evidence that line sharing in Illinois presents any different cost allocation issues."). Staff noted that SBC Ameritech provided no cost study in support of its proposed monthly charge. *Id.* at 51.

recovers the full cost of the loop from its voice services,<sup>91</sup> the company weakly protests that, because of price cap regulation, “it cannot be said with any amount of certainty that Ameritech Illinois is recovering the entire cost of the loop—including all shared and common costs—in retail rates.”<sup>92</sup> Not content with making assertions unsupported by the record, SBC Ameritech goes so far as to claim that the entire issue of the percentage of loop costs that the company recovers from voice services, as well as any resulting double recovery, is “irrelevant” to the pricing of the HPFL.<sup>93</sup> The contention that double recovery is irrelevant makes clear that SBC Ameritech’s concern is not a reasonable allocation of shared loop costs, but the creation of a new profit center.<sup>94</sup>

The potential for double recovery is not irrelevant to SBC Ameritech’s retail customers. Those customers will receive no benefit from SBC Ameritech’s proposal to charge competitors 50% of the loop cost for line-shared loops because the company does not propose to reduce any of its retail voice prices to offset the increased revenues. Yet potential consumers of competitors’ line-shared DSL services will be harmed because, as SBC Ameritech witness Dr. Carnall conceded, competitors must price their DSL services to recover their payments to SBC

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<sup>91</sup> HEPO, at 51 (Staff states that “the cost of the loop is currently *fully* recovered by Ameritech-Illinois’ retail rates for voice services.”) Exh. 1.0, Murray, at 20; Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (rel. Dec. 9, 1999), ¶ 41 (stating that the “record indicates that incumbent LECs generally allocate virtually all loop costs to their voice services, then deploy a voice-compatible xDSL service such as ADSL on the same loop, allocating little or no incremental loop costs to the new resulting service.”).

<sup>92</sup> SBC Ameritech Brief on Exceptions at 31.

<sup>93</sup> *Id.* at 30.

<sup>94</sup> SBC Ameritech again distorts the record claiming that its “proposed monthly recurring price for the HFPL is consistent with the price agreed to by Covad with other ILECs.” The record belies SBC Ameritech’s claims. As Covad witness Melia Carter testified, Covad has not agreed to pay any ILEC more than zero for the high frequency portion of the loop. Hearing Tr. (Carter) at 197:7-198:13. Indeed, BellSouth has publicly stated in a filing before the North Carolina Utilities Commission that its proposed permanent pricing for line shared loops is \$0 for the high frequency portion of the loop as it agrees with CLECs that no cost should be attributed to the loop facilities over which line sharing will be provided. Rhythms/Covad Ex. 1.1 (Murray) at 12-13.

Ameritech for the HFPL.<sup>95</sup> Similarly, the potential for double recovery is not irrelevant to unaffiliated competitors. They face a price squeeze because they must recover the price of the HFPL through their retail DSL prices, whereas AADS has no comparable economic imperative to recover the transfer price that it pays to its sister company, SBC Ameritech.<sup>96</sup> For all of these reasons, this Commission should also determine, as the Hearing Examiner correctly concluded, that the threat of double recovery is highly relevant to the pricing of the HFPL.

Moreover, SBC Ameritech's citation to the Merger Conditions Order as "proof" that the FCC considers double recovery to be irrelevant is entirely inapposite. The "surrogate line sharing" discussed in the Merger Conditions Order relates to the pricing of stand-alone DSL loops, not to line-shared loops. Significantly, the FCC required SBC Ameritech to offer stand-alone DSL loops to competitors at "a 50-percent discount from the monthly recurring charge and the nonrecurring line or service connection charge"<sup>97</sup> for unbundled loops—even though SBC Ameritech receives *no* revenues from retail voice services where a competitor purchases the sole use of a stand-alone loop. Double recovery is "irrelevant" in this context because it is impossible. Instead, the FCC knowingly required SBC Ameritech to accept less than full recovery (specifically, only 50% recovery) for its loop costs until SBC Ameritech made real line sharing available to its unaffiliated competitors.

SBC Ameritech's argument that the cost of the local loop "is now caused by two uses, the voice service and the HFPL data service,"<sup>98</sup> is also without merit. Given the definition of the line sharing element, the end-user customer must first purchase the underlying POTS service

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<sup>95</sup> Hearing Tr. (Carnall), at 982: 4-8.

<sup>96</sup> Covad/Rhythms Ex. 1.0, Murray, at 24.

<sup>97</sup> Memorandum Opinion and Order, CC Docket No. 98-141 (rel. Oct. 8, 1999) ("Merger Conditions Order"), ¶ 370.

<sup>98</sup> *Id.* at 19; Ameritech Illinois Ex. 1.0, Meyer, at 5.

from SBC Ameritech.<sup>99</sup> This definitional requirement means that, 100 percent of the time, SBC Ameritech would incur the cost of the loop even if it did not provide the HFPL. The provision of the HFPL over this same loop, which will occur less than 100 percent of the time, does not cause SBC Ameritech to incur any incremental costs, as SBC Ameritech witness Dr. Carnall admitted.<sup>100</sup> Thus, cost causation principles do not require a positive price for the HFPL.

Finally, SBC Ameritech is incorrect that a zero price for the high frequency portion of the loop constitutes a taking. Charges determined in this proceeding are interim and subject to true-up; thus, a takings argument is not ripe for consideration. Moreover, there cannot be a taking because SBC Ameritech will recover 100% of the loop costs from the voice customer.

Thus, for all of the reasons discussed in the Covad/Rhythms Post Hearing Brief and in the HEPO, the Commission should adopt the Arbitrator's determination that the interim monthly recurring charge for the loop is zero.

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

SBC Ameritech incorrectly takes exception to the Hearing Examiner's recommendation that the charges for de-conditioning line-shared loops be set at the same prices adopted in Docket No. 99-0593.<sup>101</sup> Not only do SBC Ameritech's exceptions lack foundation in either law or fact, SBC Ameritech's own pricing witness, Ms. Meyer, agreed during the hearing in this proceeding that the de-conditioning charges from Docket No. 99-0593 should apply as interim prices in this arbitration as well. During cross-examination from Covad, Ms. Meyer testified as follows:

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<sup>99</sup> The line sharing element is a distinct element from a stand-alone DSL loop. Competitors such as Covad and Rhythms must pay the full cost of a stand-alone DSL loop because their use of that loop causes SBC Ameritech to incur the loop cost.

<sup>100</sup> Hearing Tr. (Carnall), at 984: 12-22.

<sup>101</sup> SBC Ameritech Brief on Exceptions, at 35.

Q. So Ameritech will use the interim line sharing rates from Docket Number 99-0593 as the interim rates for line shared loops? Is that correct?

A. For interim rates, that's my understanding.<sup>102</sup>

The Hearing Examiner's recommendation is consistent with the FCC's finding that "[t]he conditioning charges for shared lines, however, should never exceed the charges incumbent LECs are permitted to recover for similar conditioning on stand-alone loops for xDSL services."<sup>103</sup> As Ms. Meyer conceded, the Commission's decision in Docket No. 99-0593 will establish the de-conditioning charges that apply in Illinois pending review of the prices that SBC Ameritech has proposed in its DSL Tariff.<sup>104</sup> Thus, any de-conditioning charge for line-shared loops that exceeds the Commission-adopted charge in Docket No. 99-0593 will exceed the permissible charge for stand-alone loops, in direct violation of the FCC's Line Sharing Order.

SBC Ameritech wrongly contends that the Commission cannot apply the Texas de-conditioning charges, which the Hearing Examiner in Docket No. 99-0593 has proposed as the interim prices for de-conditioning in Illinois, because those charges are not Illinois-specific.<sup>105</sup> In making this assertion, SBC Ameritech conveniently forgets its own voluntary acquiescence, to gain approval of the merger of SBC Communications, Inc., and the former Ameritech Corporation, to the following condition:

Pending approval of state-specific rates, SBC/Ameritech will immediately make available to carriers loop conditioning rates (provided that they are greater than zero) contained in any effective interconnection agreement to which an SBC/Ameritech incumbent LEC is a party, subject to true-up.<sup>106</sup>

Even if the Commission's final decision in Docket No. 99-0593 does not adopt the Texas de-conditioning charges, Covad and Rhythms would be entitled under the Merger Conditions

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<sup>102</sup> Hearing Tr. (Meyer), at 953: 1-6.

<sup>103</sup> Line Sharing Order, ¶ 87.

<sup>104</sup> Hearing Tr. (Meyer), at 952: 1-8.

<sup>105</sup> SBC Ameritech Brief on Exceptions at 35.

Order to obtain those charges as interim prices for de-conditioning in this arbitration. The Merger Conditions Order does *not* give SBC Ameritech the right to impose its proposed permanent de-conditioning charges as interim prices. Indeed, giving SBC Ameritech the unilateral ability to impose its proposed de-conditioning charges would violate the stated purpose of the merger condition, which is “to ensure that SBC/Ameritech will not erect a barrier to the competitive deployment of advanced services by charging excessive rates for loop conditioning.”<sup>107</sup>

Finally, SBC Ameritech’s reliance on the Eighth Circuit opinion to support its exception to the HEPO’s proposed de-conditioning charges is misplaced. Our initial Brief on Exceptions explained in some detail the reasons that the Eighth Circuit opinion is not controlling in this proceeding.<sup>108</sup> SBC Ameritech has far overstated the effect of the Eighth Circuit opinion on this arbitration in general, and on de-conditioning costs and prices in particular. Even if the Eighth Circuit opinion were already in effect, which it is not, the sole effect of that decision on this proceeding would be to vacate a single subsection of the FCC’s TELRIC pricing rules, 47 C.F.R. § 51.505(b)(1). The remainder of the FCC’s pricing rules would be intact, including the pricing rules that the FCC adopted in its Line Sharing Order and the merger conditions to which SBC Ameritech voluntarily agreed. The Eighth Circuit’s opinion also leaves untouched this Commission’s independent state authority to establish prices for unbundled network elements, as well as the costing and pricing rules and precedents that this Commission has adopted in that context. All of these rules and precedents provide sufficient authority for the

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<sup>106</sup> Merger Conditions Order, at ¶ 375.

<sup>107</sup> *Id.*

<sup>108</sup> Covad/Rhythms Brief on Exceptions, at 3-6.

Commission to adopt the Texas de-conditioning charges (or the final outcome of Docket No. 99-0593, if that is different) as interim prices for de-conditioning of line-shared loops.

In any event, SBC Ameritech is incorrect in implying that the Eighth Circuit opinion would dictate any specific rules for pricing de-conditioning or any other rate element for unbundled network elements in Illinois. The Eighth Circuit's conclusions regarding the FCC's pricing rules do not in any way limit this Commission's authority pursuant to Section 252(d) of the Telecommunications Act. Section 252(d) remains in full force and effect.

Moreover, an Eighth Circuit construction of section 252(d) is not binding on courts and agencies in Illinois, which is in the *Seventh* Judicial Circuit. Thus, even were the Eighth Circuit to issue its mandate, this Commission would not be bound to follow the interpretation of Section 252(d) adopted by that court.<sup>109</sup> For example, the Ninth Circuit upheld an interconnection agreement requiring U S WEST to provide combinations despite the fact that the Eighth Circuit had struck down the FCC's rules upon which the state commission had relied in imposing the requirement. *MCI Telecommunications Corp. v. U S WEST Communications*, 204 F.3d 1262, 1268 (9<sup>th</sup> Cir. 2000). Finding the Eighth Circuit's interpretation of the Act unpersuasive, the Ninth Circuit ruled that the state commission could mandate combinations under the Act, and stated:

The Eighth Circuit's decision to vacate the FCC regulation certainly still stands, and is immune under the Hobbs Act from collateral attack. *See* 28 U.S.C. § 2342; *U S WEST Communications v. MFS Intelenet*, 193 F.3d 1112, 1120 (9<sup>th</sup> Cir. 1999). All this means for the purposes of the present appeal is that the Act does not currently mandate a provision requiring combination. Our task is to determine whether such a provision "meets the requirements" of the Act, *i.e.*, to decide whether a provision requiring combination violates the Act.

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<sup>109</sup> NARUC, the state regulatory commission advocacy group, also appears to have recognized this point. *See NARUC Notebook*, Comm. Daily (July 25, 2000) (reporting NARUC staff subcommittee as stating that they "didn't expect [*Iowa Utils. Bd. II*] to have major effect on pending state arbitrations . . . because, [the] order didn't have any legal effect on states outside 8th Circuit's jurisdiction").

*Id.*

Similarly, the district court in Colorado held that the fact that the Eighth Circuit had vacated certain FCC rules “does not compel the conclusion that “interconnection agreements incorporating those rules “are prohibited by the Act.” *U S WEST Communications, Inc. v. Hix*, Civ. Action No. 97-D-152, slip op. at 14 (D. Co. June 26, 2000). “Instead, the Court must question whether the interconnection agreements . . . are consistent with the Act, independent of [the FCC’s rules].” *Id.*

In other words, if *Iowa Utilities II* becomes effective, state commissions will no longer be required to apply the subsection of the FCC pricing rule that was vacated, Rule 505(b)(1). But other courts or agencies must still apply the underlying statutory provisions that remain in effect and determine what those provisions require or permit. Thus, this Commission should reach a conclusion in this case it believes is correct, the lawfulness of which will not be determined by the Eighth Circuit, but by a different court of appeals, which will ultimately decide for itself what the Federal Act requires. This establishes that *Iowa Utilities II* is a legal non-event in Illinois.<sup>110</sup>

Significantly, the posture of this case is no different than the posture of the Illinois TELRIC proceeding at the time of issuance of the order, since portions of the FCC’s pricing regulations were also then stayed.<sup>111</sup> The Commission nevertheless set UNE rates for Ameritech based upon this Commission’s forward looking TELRIC pricing principles and its independent

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<sup>110</sup> The Kansas Corporation Commission applied a similar analysis in its July 21, 2000 order in Docket No. 01-GIMT-032-GIT, in which it determined to continue to apply TELRIC in its new DSL docket notwithstanding the Eighth Circuit’s decision. Paragraph 5 of the July 21 Order states:

The Commission is aware of the recent decision of the United States Court of Appeals for the Eighth Circuit that vacated FCC Rule 51.505(b)(1) . . . . This recently filed decision is not final. Also, this Commission has adopted, and continues to apply, TELRIC methodology based on independent state grounds, regardless of the challenge to the FCC pricing rules. The Commission will apply TELRIC methodology in this generic proceeding concerning xDSL technology.

authority under Section 252(d). The Commission obviously believed that its pricing methodology was consistent with the language of the Act and best furthered its pro-competitive purposes. Since Section 252(d) remains in full force and effect, the Commission continues to have the authority to determine pricing issues notwithstanding the vacatur of a single subsection of the FCC's pricing rule. Just as the Commission did not delay resolution of the TELRIC case as a result of *Iowa Utilities I*, neither should it delay resolution of this proceeding as a result of *Iowa Utilities II*.

For all of these reasons, the Commission should uphold the Hearing Examiner's proposed decision on de-conditioning charges and reject SBC Ameritech's proposed alternative language.

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<sup>111</sup> *Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic*, Second Interim Order, Dockets 96-0486 and 96-0569 (cons.) (Feb. 17, 1998) ("TELRIC Order").

**CONCLUSION**

SBC Ameritech's and Staff's exceptions should be rejected since they are contrary to the evidence, contrary to State and Federal law, would establish bad policy, and would be contrary to the goal of the rapid deployment of advanced services in Illinois. The Commission should adopt the Proposed Arbitration Decision with the exceptions proposed by Rhythms and Covad.

Dated: August 4, 2000

Respectfully submitted,



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

Counsel for  
RHYTHMS LINKS, INC.  
and  
COVAD COMMUNICATIONS  
COMPANY

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

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

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

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

**CERTIFICATE OF SERVICE**

The undersigned attorney for Covad Communications Company and Rhythms Links, Inc., hereby certifies that she caused copies of the attached Reply To Briefs On Exceptions To The Hearing Examiner's Proposed Arbitration Decision On Behalf Of Covad Communications Company And Rhythms Links, Inc. to be served on each of the persons listed below electronically on August 4, 2000, and on August 7, 2000 in the manner indicated:

Donald L. Woods  
Hearing Examiner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62706  
[VIA FEDERAL EXPRESS]

Jennifer Moore  
Illinois Commerce Commission  
160 N. LaSalle Street  
Suite C-800  
Chicago, IL 60601  
[VIA MESSENGER]

G. Darryl Reed  
Matthew Harvey  
Illinois Commerce Commission  
160 N. LaSalle Street  
Suite C-800  
Chicago, IL 60601  
[VIA MESSENGER]

Christian F. Binnig  
Mayer Brown & Platt  
190 So. LaSalle Street  
Chicago, IL 60603  
[VIA MESSENGER]

Nancy H. Wittebort  
Ameritech Illinois  
225 West Randolph Street  
Suite 29B  
Chicago, IL 60601  
[VIA MESSENGER]



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Carrie J. Hightman

Attorney for  
COVAD COMMUNICATIONS COMPANY  
and  
RHYTHMS LINKS, INC.