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February 13, 2001

Mrs. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 000731-TP

Dear Mrs. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen (15) copies of late-filed Exhibits SET-8 and SET-9 from the rebuttal testimony of Steven Turner on behalf of AT&T Communications of the Southern States, Inc. and TCG South Florida, Inc. Please note that Mr. Turner was unable to locate a copy of the February 15, 2000 letter referenced in his rebuttal testimony as Exhibit SET-9. However, the attached March 3, 2000 contains the same content and in fact summarizes the February 15, 2000 letter. Mr. Turner will adopt the attached March 3, 2000 letter as SET-9 in replacement of the February 15, 2000 letter.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Thank you for your assistance with this matter.

Sincerely,

Marsha Rule

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CERTIFICATE OF SERVICE
DOCKET NO. 000731-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via hand delivery to the following parties of record on this 13th day of February, 2001:

Nancy B. White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Lee Fordham
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Marsha Rule
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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Covad Communications Company	:	
	:	
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues.	:	00-0312
	:	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	:	00-0313

ARBITRATION DECISION

August 17, 2000

TABLE OF CONTENTS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Covad Communications Company	:	
	:	
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech, and for an Expedited Arbitration Award on Certain Core Issues.	:	00-0312
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ARBITRATION DECISION

I. JURISDICTION

Section 252(b) of the Telecommunications Act of 1996 ("1996 Act") addresses the procedures for arbitration between incumbent local exchange carriers and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides an opportunity to respond to the non-petitioning party, and sets out time limits. Section 252(b)(4) provides that the State Commission shall limit its consideration to the issues set forth in the petition and in the response; and shall resolve each such issues by imposing appropriate conditions on the parties as required to implement Subsection (c) (Standards for Arbitration). Subsection (d)

sets out pricing standards for interconnection and network element charges, transport and termination of traffic, and wholesale prices.

Under §252(c), a State Commission shall apply the following standards for arbitration:

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

II. BACKGROUND AND PROCEDURAL HISTORY

Covad Communications Company ("Covad") and Illinois Bell Telephone Company d/b/a Ameritech ("Ameritech") entered into an interconnection agreement effective on June 26, 1998. Similarly, Ameritech entered into an interconnection agreement with Rhythms Links, Inc. (f/k/a with Accelerated Connections, Inc.) ("Rhythms") on August 18, 1998. On November 18, 1999, both Covad and Rhythms sent letters to Ameritech requesting access to a new unbundled network element, the high frequency portion of the loop, pursuant to the FCC's *Line Sharing Order* (Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking in FCC Docket Number 98-147, released March 31, 1999). Both companies then embarked upon independent negotiations with Ameritech for amendments to their respective interconnection agreements. Those negotiations were ultimately unsuccessful.

On April 26, 2000, Covad filed a petition for arbitration. On the same day, Rhythms filed a similar petition for arbitration. Both petitions requested bifurcation of the arbitration into two phases. Covad and Rhythms requested that certain core issues be addressed on an expedited basis in a Phase I in order to ensure that line sharing would be available on June 6, 2000 – a date established in the FCC's Line Sharing Order as the date upon which ILECs should be able to provision line sharing. Phase II would proceed pursuant the normal arbitration time frame and provide permanent relief. On April 27, 2000, Covad and Rhythms filed a motion to consolidate the two pending arbitrations.

Pursuant to proper notice, a prehearing conference was held on May 4, 2000 before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois. At that hearing, the motion to consolidate was granted. In addition

the Hearing Examiner heard arguments regarding Covad's and Rhythms' request for expedited Phase I relief and took the matter under advisement.

A second prehearing conference was held on May 9, 2000. At that hearing, the Hearing Examiner denied Covad and Rhythms request for a two phase arbitration. The petitioners then filed an interlocutory appeal on May 11, 2000 on this issue. The Commission denied the petitioners' request at an open meeting on June 1, 2000.

On May 15, 2000, Covad submitted the Verified Statements of Terry Moya and Michael Zulevic and Rhythms submitted the Verified Statements of Scott Bonney and Fred Baros. Covad and Rhythms jointly submitted the Verified Statements of Terry L Murray and Joseph P. Riolo. On May 25, 2000, Ameritech filed the Verified Statements of Betty Schlackman, Rhonda Meyer, James Smallwood, and Robin Jacobson. On June 16, 2000, Staff submitted the Verified Statements of Christopher L. Graves, Robert F. Koch, and Samuel McClerren.

On June 22, 2000, Covad presented the Supplemental Verified Statement of Michael Zulevic; Rhythms presented the Supplemental Verified Statement of Kerrin Beland; and Covad and Rhythms jointly submitted the Supplemental Verified Statement of Terry L. Murray. On the same date, Ameritech filed supplemental verified statements from Rhonda Meyer, Betty Schlackman, Robin Jacobson, and Dr. Michael A. Carnall.

Evidentiary hearings were held at the Commission's office in Springfield, Illinois on June 28 - 30, 2000 and July 6-7, 2000. Post Hearing briefs were filed by Covad and Rhythms, Ameritech, and Staff on July 13, 2000.

III. LEGAL AND REGULATORY BACKGROUND OF THE PROCEEDING

The purpose of this proceeding is to establish terms and conditions under which ILECs must offer line sharing arrangements to Rhythms and Covad for the provision of xDSL-based service. In arriving at the decisions herein, four primary sources are discussed. The FCC Linesharing Order, the UNE Remand Order (FCC 99-238, In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order released November 5, 1999), the decision of the Circuit Court of the District of Columbia in GTE Services v. FCC Docket No. 99-1176, March 17, 2000: ASCII Document 99-1176a.txt) ("GTE") and the Eighth Circuit Court of Appeals Decision on remand in Iowa Utilities Board v. FCC (Docket No. 96-3321) ("IUB").

A. FCC Line Sharing Order

The FCC's Line Sharing Order sets forth the obligations of ILECs such as Ameritech to provide line sharing to competitive carriers. Under the terms of the Line Sharing Order, an ILEC must provide (1) unbundled access to the high frequency portion of the loop so that carriers may use those frequencies to provide xDSL-based

services; and (2) access to OSS necessary to support non-discriminatory pre-ordering, ordering, provisioning, maintenance and testing, and billing for CLECs. The FCC stated in the Line Sharing Order that its "fundamental goal is to promote 'innovation, investment and competition' in the advanced services marketplace." To this end the FCC stated: "We note that states are free to impose *additional, pro-competitive requirements* consistent with the national framework established in this order."

B. UNE Remand Order

The unbundling requirements set forth in the FCC's UNE Remand Order, pursuant to § 251 of the Act, were "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."

Under the FCC's UNE Remand Order, ILECs are obligated to provide non-discriminatory access to UNEs and OSS. Access to OSS is critical to a CLEC's ability to compete with the ILECs.

The UNE Remand Order requires that the "incumbent LEC must provide the requesting carrier with non-discriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install." To that end, the FCC held: " . . . the incumbent must provide access to the underlying loop qualification information contained in its engineering record, plant records and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer.

Specifically, "under our existing rules, the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbents' back office and can be accessed by any of the incumbent LEC's personnel." In addition, the FCC's UNE Remand Order requires that CLECs be permitted the same level of access to data as ILECs enjoy themselves. The UNE Remand Order states that "to the extent that [ILEC] employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface."

C. GTE

In GTE, the Court reviewed the FCC's Collocation Order and concluded that certain portions requiring an ILEC to collocate equipment in areas designated by a requesting carrier, as opposed to areas selected by the ILEC were overly broad. The

court also concluded that portions of the rule requiring the collocation of equipment with functionalities beyond those of establishing interconnection were overly broad.

D. IUB

In IUB, the Court was required to again review various rules promulgated by the FCC in the First Report and Order following the passage of the Telecom Act of 1996. Pertinent to this matter are the following holdings: the pricing of network elements (which include line-shared loops) is to be done based upon an ILEC's existing infrastructure plus any technological improvements it may make in the future, rather than upon the most efficient and lowest cost technology available and; an ILEC is not required to combine unbundled elements in any technically feasible manner, rather, it is the duty of the requesting carrier to combine the unbundled elements purchased from the ILEC.

IV. ISSUES IDENTIFIED FOR ARBITRATION

The issues to be arbitrated may be separated into two broad categories. The first category includes technical issues while the second issue includes some, but not all of the pricing issues related to line-sharing. Not all pricing issues are addressed in this docket because Ameritech has recently filed, and the Commission suspended, a line-sharing tariff. The parties agreed that it was administratively more efficient to address the bulk of the pricing issues in the docket addressing the tariff rather than in this arbitration. In addition, the issues were originally identified in matrices presented by the parties. The matrices identified the issues in cardinal ordination but mixed technical and pricing issues. The matrics numbers are retained in the discussions that follow, which results in some of the issues appearing out of order.

TECHNICAL ISSUES

Issue No. 1: Whether Ameritech should be required to provide a menu of three splitter network configurations to address CLECs' differing business needs in all requesting central offices.

Issue 1 raises two distinct questions: first, whether Ameritech is required to provide splitters to CLECS; and, second, where splitters should be located in the Ameritech central office.

A. Ameritech Position

1. Splitter Ownership

Ameritech claims that, pursuant to the FCC's *Line Sharing Order*, it is not required to own splitters or provide splitter functionality to CLECs. Rather, Ameritech maintains that the FCC gave ILECs the option either to provide splitters or allow CLECs

to purchase and install splitters themselves. In support of its interpretation, Ameritech cites Paragraph 76 and 146 of the FCC's *Line Sharing Order* and the FCC's recent order granting Southwestern Bell Telephone Company (SWBT) Section 271 approval. In addition, Ameritech claims that its interpretation is consistent with line sharing the arbitration awards in Texas, California, and Pennsylvania. Ameritech has, however, proposed two splitter scenarios, one in which it purchases and installs the splitter and one in which the requesting carrier purchases and installs the splitter.

Ameritech further claims that it cannot be obligated to provide splitter functionality to CLECs because it can only be required to unbundle components of its existing network. In particular, Ameritech argues that, as splitters are not elements of its current existing network and have not been specifically identified by the FCC as a UNE, it should not be obligated to unbundle them. Moreover, Ameritech claims that splitters would not meet the "necessary" and "impair" standard of Section 251(d) of the Act because Covad and Rhythms can purchase and install splitters themselves. Accordingly, Ameritech maintains that it has no obligation to provide CLECs with splitter functionality and thus its current offering is entirely voluntary.

2. Splitter Location

Ameritech claims that this Commission cannot dictate the particular areas within its central offices where CLECs can collocate their equipment. Ameritech asserts that its position has been reaffirmed by the D.C. Circuit's opinion in GTE, which Ameritech claims bars a CLEC from mandating that its equipment be collocated in any unused space in Ameritech's central offices. Accordingly, Ameritech argues that is must be permitted to control where it places Ameritech owned splitters, as well as where CLECs collocate their equipment, because it must be allowed to manage the use of its own central office floor and frame space to ensure that it is used in an efficient and safe manner.

Consistent with its interpretation of current law, Ameritech proposes that when the CLEC owns the splitter, the CLEC may install its splitter in its physical collocation area (whether caged or cageless) consistent with its physical collocation tariff. If the CLEC is virtually collocated in a central office, Ameritech states that it will install, provision, and maintain the CLEC's splitters under the terms of its virtual collocation tariff. If Ameritech owns the splitter, it will determine whether it will locate the splitters within the central office.

Ameritech maintains that its proposal of placing ILEC owned splitters in a common area, as opposed to mounting them on the Main Distribution Frame ("MDF") should be adopted as reasonable. First, Ameritech states that it must place splitters in a common area "because [] test access would not be available if splitters are placed on the MDF." (Ameritech Ex. 1.0 (Schlackman) at 30.) Second, Ameritech claims that placing the splitter on the MDF reduces the amount of available space on the MDF. (Ameritech Ex. 1.0 (Schlackman) at 28-29.) Third, Ameritech argues that placing the

splitter on the MDF would require Ameritech to engineer its central offices to satisfy the needs of DSL services without taking into consideration the needs of the ILEC or the other carriers.

Ameritech also argues that the record shows that, as a matter of sound central office engineering practice, equipment such as a splitter is not installed on the MDF. (Tr. 72). Rather, the MDF is designed for wiring. Moreover, Ameritech argues, the record shows that placing splitters on the main distribution frame could lead to faster exhaust of the frame. Ameritech points out that the frame-mounted splitters that Rhythms and Covad claim are "more efficient" can only provision a maximum of 16 lines. More importantly, these splitters are larger than a 100 pair connecting block that Ameritech mounts on frames. Ameritech states that, if Ameritech were to mount splitters on the MDF so that CLECs could avoid paying for tie cabling, Ameritech would consume twice the frame space. Ameritech Ex. 1.0 at 28-29 (Schlackman). Ameritech further argues that Rhythms and Covad's efficiency argument is flawed because it looks at efficiency solely from the narrow economic prospective of Rhythms and Covad. Ameritech asserts it should not be required to engineer its central offices to optimize the economics for just one particular service or one particular CLEC; rather, it must take into account all of the different services and the needs of all carriers provided or served out of that central office, including itself.

B. Rhythms/Covad Position

Covad and Rhythms assert that Ameritech must be required to provide a menu of three splitter configurations: (1) an ILEC owned splitter located on the MDF; (2) an ILEC or CLEC owned splitter located as close to the DS0 terminations or the MDF as possible; and (3) a CLEC owned splitter in the CLEC's physical collocation arrangement. Covad and Rhythms note that Ameritech allows for Option #3 and provides for CLEC owned splitters in a "common area," which, they note, is frequently not near either the DS0 terminations or the frame.

1. Splitter Ownership

Covad and Rhythms state that FCC's *Line Sharing Order* expressly requires Ameritech to provide splitter functionality to requesting CLECs:

> In situations where a requesting carrier is obtaining access to the high frequency portion of the loop the incumbent LEC...*shall provide to requesting carriers loop and splitter functionality* that is compatible with any transmission technology that the requesting carrier seeks to deploy using the high frequency portion of the loop.

47 CFR Sec. 51.319(h)(4)

In particular, Covad and Rhythms observe that the FCC recognized the distinction between an ILEC's right to maintain control over the splitter after its

installation, and an ILEC's obligation to provide the splitter functionality required to access the line sharing UNE. Thus, although Ameritech may decline to "maintain control" over the splitter, it still must provide splitter functionality to CLECs.

Moreover, Covad and Rhythms assert that Ameritech must own the splitter and provide splitter functionality to CLECs because the Act and the FCC's rules require ILECs to provide not only UNEs, but also *access* to UNEs. They note that under §251(c)(3) of the Act, incumbent local exchange carriers have the duty to provide "unbundled access" to UNEs—*i.e.*, "[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point."

The FCC defined the meaning of "access" in the First Local Competition Report and Order, stating:

> We conclude that the obligation to provide "nondiscriminatory access to network elements on an unbundled basis" refers to *both the physical or logical connection to the element and the element itself.*
>
> We further conclude that "access" to an unbundled element refers to *the means by which requesting carriers obtain an element's functionality* in order to provide a telecommunications service. . . . We conclude . . . that an incumbent LEC's duty to provide 'access' constitutes a duty to provide a connection to a network element independent of any duty imposed by subsection 251(c)(2). Thus, such "access" must be provided under the rates, terms and conditions that apply to unbundled elements. *First Local Competition Report and Order*, ¶ 312 (quoting 47 U.S.C. § 251(c)(3)) & 269).

Covad and Rhythms further assert that Ameritech must also provide an ILEC owned splitter because it is technically feasible to do so. In support of their position, Covad and Rhythms cite FCC regulations that state that, "an incumbent LEC shall provide...*any technically feasible method* of obtaining interconnection or *access* to unbundled network elements at a particular point upon a request by a telecommunications carrier." 47 C.F.R. § 51.321(a).

Under the FCC's "best practices" rules regarding access to UNEs, [a] previously successful method of obtaining interconnection or *access* to unbundled network elements at a particular premises or point on an incumbents LEC's network *is substantial evidence that such method is technically feasible* in the case of substantially similar network premises or points.

If an incumbent LEC denies a requested method of obtaining access to a UNE, that incumbent LEC "must prove to the state commission that the requested method of

obtaining interconnection or access to unbundled network elements at that point is not technically feasible." *Id.* § 51.321(d). Covad and Rhythms assert that Ameritech has failed to meet its burden of proving that the ILEC-owned splitter method is not technically feasible and, in fact, has *admitted* generally and in this proceeding that the ILEC-owned splitter method is technically feasible.

Covad and Rhythms also maintain that, by allowing a CLEC to collocate its own splitter, the FCC intended only to provide CLECs with an additional splitter configuration. The FCC's mere suggestion of another option to CLECs cannot reasonably be construed as an abrogation of the express language of the FCC's rules—*i.e.*, that ILECs "*shall* provide loop and splitter functionality." 47 C.F.R. §51.319(h)(4).

Covad and Rhythms also disagree with Ameritech's claim that the FCC, in its recent order granting SWBT Section 271 authority, confirmed that an ILEC has no obligation to provide CLECs with splitter functionality. Covad and Rhythms contend that Ameritech improperly relies on language in the 271 Order relating to *line splitting*, not *line sharing*. As the FCC carefully noted, line sharing is limited to "those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access." SWBT Order ¶ 324. In contrast, "line splitting" occurs when "the voice and data service will be provided by competing carrier(s) over a single loop," rather than the ILEC. *Id.*

Covad and Rhythms assert that the FCC addressed only line splitting in the Texas 271 Order and thus rejected "AT&T's argument that SWBT has a present obligation [under the UNE Remand Order] to furnish the splitter when AT&T engages in line splitting over the UNE-[Platform]." SWBT 271 Order ¶¶ 327, 328. The FCC did not address any ILEC obligations arising from the Line Sharing Order and in fact did not even examine SWBT's compliance with the Line Sharing Order in addressing SWBT's 271 application. SWBT 271 Order ¶ 321. Covad and Rhythms conclude, therefore, that the FCC's Texas 271 Order has no bearing on the line sharing terms and conditions at issue in this arbitration.

2. Splitter Location

Covad and Rhythms maintain that Ameritech must provide efficient network configurations and therefore must offer CLECs two additional splitter configurations: (1) an ILEC owned splitter located at the MDF; and (2) an ILEC or CLEC owned splitter located as near the DS0 terminations as possible or on the distribution frame if possible.

Covad and Rhythms contend that SBC-Ameritech's proposed configuration when it owns the splitter is inferior to the ILEC-owned configuration proposed by Covad because it (1) increases cost by requiring more cross-connects and tie-cables than necessary, (2) increases risk of service failure by requiring more cross-connects and

tie-cables than necessary, and (3) limits the availability of DSL services to CLEC customers in violation of the nondiscrimination provisions of the Act.

Covad and Rhythms assert that the most efficient network configuration for line sharing in which an ILEC owns the splitter involves the placement of the splitter directly on the horizontal side of the Main Distribution Frame ("MDF") as depicted in Ex. 2.4 (Figure 3) attached to the Verified Statement of Joseph Riolo. As Mr. Riolo testified and as acknowledged by Ameritech witness James Smallwood, this configuration requires the placement of only two jumpers or cross-connects, and would reduce the number of tie-cables to one. (Covad/Rhythms Ex. 2.0, Riolo at 14; Hearing Tr. (Smallwood) 359:22, 260: 1-22). Covad and Rhythms state that Ameritech's proposed ILEC-owned splitter configuration, however, does not place the splitter on the MDF, but instead places it in a "common place" and builds out cabling to the intermediate distribution frame ("IDF"). (Ameritech Ex. 1.0 (Schlackman) at 27-28). Covad and Rhythms note that, according to Ameritech's diagram and the testimony of Mr. Smallwood, this configuration requires the placement of five (5) cross connects and four (4) tie-cables. (Ameritech Ex. 1.0, Attachment 2 and Hearing Tr. (Smallwood) 358:1-22. Thus, Covad and Rhythms contend that, by using an inefficient configuration, Ameritech is imposing unnecessary costs associated with three extra cross-connects and three extra tie-cables.

Moreover, by increasing the number of cross-connect and tie cables necessary to provision line sharing, Covad and Rhythms assert that Ameritech necessarily increases the likelihood of failure for CLEC customers. Covad and Rhythms maintain that the increased risk of service failure in Ameritech's proposed configuration not only reflects poor engineering, it also violates the 47 U.S.C. § 251(c)(3) which requires ILECs provide access to UNEs in a nondiscriminatory manner. As Ameritech acknowledged, Ameritech's affiliate, Advanced Data Services ("AADS") uses an integrated splitter functionality that does not require excessive tie-cables and cross-connects, thereby reducing the likelihood of service failure. Covad and Rhythms contend that, by insisting upon a CLEC architecture that requires more points of potential failure than necessary, Ameritech discriminates against CLECs and their customers.

Finally, Covad and Rhythms assert that Ameritech's ILEC-owned splitter configuration favors its own integrated splitter Digital Subscriber Line Access Multiplexer ("DSLAM") equipment and discriminates against CLEC's DSLAM equipment. In particular, Covad and Rhythms state that Ameritech's proposed ILEC-owned splitter configuration increases the length of cable that carries the DSL signal from the customer premises to a CLEC's DSLAM, essentially creating a Z-effect as acknowledged by Ameritech. (Hearing Tr. (Schlackman) at 850: 10-16; 853: 19-22; 854: 1-2) Covad and Rhythms assert that effect would reduce the availability of CLEC DSL services because DSL is a distance sensitive technology. For example, if the Z effect within a multi-storied building added 500 to 1,000 feet to the overall length of cable, it could effectively prohibit Covad or Rhythms from providing service to some

customers served from that particular central office. Covad and Rhythms maintain that AADS, in contrast, would not experience the same distance limitation because of its use of a virtually collocated DSLAM with an integrated splitter.

Covad and Rhythms also dispute that use of Covad's proposed ILEC-owned splitter configuration will result in frame exhaust for three reasons. First, Covad and Rhythms claim that Ameritech has not provided any evidence that in this proceeding that frame space is even approaching present capacity. Second, Covad and Rhythms maintain that the risk of future frame exhaust is unlikely because SBC's Project Pronto architecture uses integrated DLC technology that bypasses the MDF altogether. Finally, Covad and Rhythms contend that newer MDF-mounted splitter technologies are decreasing frame presence and increasing line capacity, making future frame exhaust even more unlikely.

Covad and Rhythms also seek a splitter configuration arrangement (Option #2) under which a CLEC may own its own splitter or have the ILEC provide the splitter with the splitter residing in the "common area" (*i.e.* the ILEC-controlled area to which the CLEC has access for testing purposes). Covad and US West presently use the above configuration for splitter collocation. As a result, Covad and Rhythms assert that the FCC's Advanced Services Order requires Ameritech to implement this "best practice" and provide the same splitter collocation configuration.

C. Staff Position

With respect to the ownership of the splitter, Staff submits that the *Line Sharing Order*, (Tr. 62), does not require Ameritech to own splitters. Staff argues that CLECs who are interested in line sharing have the option to obtain access to the HFPL UNE using their own splitters, as opposed to using splitters that Ameritech might voluntarily provide. (Tr. 67). Staff asserts that CLECs have the same opportunity to purchase splitters as any ILEC.

With respect to the second issue (location of the splitter), Staff notes that it is generally preferable to locate the splitter as close to the MDF as possible, in order for the DSL service to have the greatest range possible.

Staff adds that at this stage of the roll-out of Ameritech's HFPL product, it is questionable whether locations of splitters could be changed without major upheaval.In an effort to prevent this possible upheaval, while still accommodating the desire of Rhythms/Covad to collocate as near the MDF as possible, Staff suggests that Rhythms/Covad be allowed to virtually locate its own splitters close to the frame in central offices where space is available on or near the frame. Staff argues that the GTE decision was based upon the notion that there was no reason for allowing CLEC to collocate in any unused space in the central office. In this case positioning of the splitter is important because it affects the number of customers a CLEC will be able to serve. In light of this fact, Staff believes its alternative solution should be adopted.

D. Commission Analysis and Conclusion

With respect to the first issue (ownership of the splitter), the Commission finds that the *Line Sharing Order* does not require Ameritech to provide splitters. As Ameritech pointed out, the FCC stated in Paragraph 76 of the *Line Sharing Order*:

> We conclude that, subject to certain obligations, incumbent LECs *may* maintain control over the loop and splitter equipment and functions. In fact, both the incumbents and the competitive LECs agree that subject to certain obligations, the incumbent LEC *may* maintain control over the loop and the splitter functionality *if desired*. (Emphasis supplied.)

Additionally, the FCC ruled in Paragraph 146 that

> We conclude that incumbent LECs must either provide splitters or allow competitive LECs to purchase comparable splitters as part of this new unbundled network element. (Emphasis supplied).

These paragraphs clearly indicate that Ameritech is under no legal obligation to make available Ameritech-owned splitters; rather, Ameritech has the option to own splitters. The FCC recently confirmed this interpretation in the *Texas Approval Order*. Specifically, in the course of discussing an AT&T-proposed modification to the FCC's line sharing requirements, referred to as "line-splitting", the FCC, in rejecting AT&T's position, reconfirmed that "[w]ith respect to line sharing, we stated in the *Line Sharing Order* that incumbent LECs have discretion to maintain control over the splitter." Texas Approval Order ¶ 328 (emphasis added). While it is true, as noted by Rhythms and Covad, that the narrow issue before the Commission in the Texas Order was line splitting and not line sharing, a fair reading of the text convinces us that the Commission was addressing the issue of ownership of splitters by ILECs generally and not in the limited manner suggested by the CLECs.

This interpretation also has been adopted by arbitrators in Texas, California and Pennsylvania. Indeed, the *Texas Interim Award* states, "Arbitrators believe that the most reasonable interpretation of the *Line Sharing Order* . . . is that the ILECs can either provide CLECs with the splitter equipment or allow CLECs to use their own splitter equipment." The *California Final Arbitrator's Report* states, "The FCC allows, but does not require, ILECs to own splitters. . . That is, ILEC control is discretionary, not mandatory." Similarly, the *Pennsylvania Recommended Decision* concludes, "I agree with BA-PA that it should not have to bear the financial risk and burden of owning the splitter."

Even if the *Line Sharing Order* was unclear, we could not require Ameritech to provide the splitter functionality. As pointed out by Ameritech, it is only required to unbundled components of its existing network and splitters are not elements of

Ameritech's existing network. Moreover, the splitter does not meet the "necessary" and "impair" standard of Section 251(d). Section 251(d) identifies the criteria that must be satisfied before an ILEC is required to make unbundled network elements ("UNEs") available to CLECs. It states:

> In determining what network elements should be made available for purposes of subsection (c)(3) of this Section, the [FCC] shall consider, at a minimum, whether:
>
> (A) access to such network elements as are proprietary in nature is necessary; and
>
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

The United States Supreme Court has held that this necessary and impair standard requires the [FCC] to determine on a rational basis *which* network elements must be made available, taking into account the objective of the Act and giving some substance to the "necessary" and "impair" requirements. The latter is not achieved by disregarding entirely the availability of elements outside the network, and by regarding any "increased cost or decreased service quality" as establishing a "necessity" and an "impair[ment]" of the ability to "provide . . . services."

Because Rhythms and Covad admittedly can purchase splitters themselves from the same vendors as Ameritech just as readily as Ameritech (Ameritech Ex. 1.0 at 9-10 (Schlackman); Tr. 642), the splitter does not meet the "necessary" and "impair" standard. As Ameritech points out, Rhythms' business plan is to own, control, install and maintain its own splitters, and Rhythms has requested ILEC-owned splitters only in a very small percentage of Ameritech's central offices.

We disagree with Covad's claim that an Ameritech-owned splitter is necessary for it to obtain access to the high frequency portion of the loop. Indeed, Covad does not need Ameritech-owned splitters in order to gain access to the HFPL; rather, Covad can gain access to the HFPL by purchasing and installing its own splitter. The FCC agrees with this position and, in fact, that is what Rhythms has chosen to do for most central offices. (Tr. 67). As such, an ILEC-provided splitter is not necessary to access the HFPL and, hence, it is not part of the HFPL UNE.

With respect to the second issue (where the splitter should be located), the Commission finds that Rhythms and Covad cannot dictate where splitters are located in an Ameritech central office. The D.C. Circuit's decision is controlling here. It held, in vacating several of the FCC's collocation rules:

> It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises, subject to only technical feasibility. There is nothing in § 251(c)(6) that endorses this approach.
>
> GTE Services Corporation et al. v. Federal Communications Commission et al., 205 F. 3d 416, 426 (D.C. Cir. 2000) (emphasis added). We also agree with Ameritech that it must be allowed to manage the use of its central office floor and frame space. The *California Final Arbitrator's Report* reached the same conclusion, stating at page 20, "The CL[E]C . . . may not dictate the location of the splitter owned by the ILEC."

The Commission rejects Rhythms and Covad's argument that the *Line Sharing Order* recommends locating splitters on the MDF. There is absolutely no support for this contention, as paragraph 113 of the *Line Sharing Order* specifically contemplates that splitters will be located *between* the MDF and the other central office equipment.

We also reject Rhythms and Covad's argument that it is more efficient to locate splitters on the MDF. As pointed out by Ameritech, placing splitters on the MDF is only efficient from the narrow economic perspective of Rhythms and Covad and their provision of a single service, xDSL service. Indeed, Rhythms and Covad desire such a configuration so that they do not have to pay for tie cabling. Ameritech, however, should not be required to engineer its central office to optimize the economics for just one particular service or provider. Moreover, the testimony in this case indicates that equipment such as splitters are not installed on MDFs; rather, the MDF is designed for wiring. In addition, frame mounted splitters will take up twice as much frame space as compared to locating the splitters in the collocation area. Additionally, if splitters are mounted on the MDF, Rhythms and Covad will not have test access to the splitter. The Commission also is not persuaded by Rhythms and Covad's argument that locating splitters in the collocation area will reduce the amount of available collocation space. Again, this amounts to reconfiguring Ameritech's network to optimize the economics solely of Rhythms and Covad, to the exclusion of the needs of all other competitors and Ameritech.

In sum, Rhythms' and Covad's arguments merely request this Commission to favor their needs over the needs of all other CLECs and of Ameritech to have sufficient space on the MDF. Rhythms' and Covad's "mandatory menu" approach is contrary to law and, in terms of regulatory policy, unreasonable because it addresses line sharing from the narrow business prospective of Rhythms and Covad's own economic interests. Neither Ameritech nor this Commission has an obligation to ensure the success of Rhythms' and Covad's individual business plans (or any individual carrier's business plans), and it would be unlawful to impose such an obligation on Ameritech. As the *California Final Arbitrator's Report* found, "While a menu of choices may be optimal

from the point of view of CLECs, it is neither required by the FCC nor is it reasonable." *Id.* at 19. This Commission agrees.

In terms of Staff's proposed alternative solution. The Commission is unclear exactly what is being proposed. Staff proposed that Rhythms/Covad be allowed to "virtually locate their own splitters" (Staff BOE at 3) near an MDF. Virtual collocation is a regimen under which the ILEC maintains control over the equipment being collocated. It is unclear how a CLEC could virtually collocate its own equipment. Further, Staff's arguments concerning GTE are also confusing. It is unclear whether Staff is attempting to distinguish GTE because the location of the splitter is important, or arguing that We should simply ignore it for the same reason. Because we are unable to judge either the manner of implementation or the legal arguments offered in support of Staff's alternative solution, we cannot accept it. Accordingly, Ameritech's contract language is adopted.

Issue No. 2: If Ameritech owns the splitter, should it provide splitter functionality to CLECs on a line-at-a-time and/or shelf-at-a-time basis.

A. Ameritech Position

As threshold matter, Ameritech argues that, because it cannot be required to provide splitter functionality at all, it certainly cannot be required to provide splitters on a shelf-at-a-time basis.

Even if it were required to provide splitter functionality to CLECs, Ameritech presents four additional arguments as to why it cannot be required to provide splitter functionality on a shelf-at-a time basis. First, Ameritech maintains that its OSS inventory system cannot provision line sharing on a line-at-a-time basis as well as on a shelf-at-a-time basis. In particular, Ameritech states that its OSS system has been upgraded specifically to inventory each Ameritech owned splitter on a line at a time basis. As a result, Ameritech claims that it would require "massive re-engineering" to provide splitter functionality on a shelf at a time basis. (Ameritech Ex. 1.0 (Schlackman) at 15-16) Moreover, Ameritech asserts that, even if it desired to provide splitter functionality on a shelf at a time basis, it could not do so in the foreseeable future because Telcordia Technologies -- the creator of Ameritech's inventory system – could not begin modifications until after November 2000. In addition to the uncertainties related to timeframe, Ameritech asserts that the costs of the modifications to allow for shelf-at-a-time are similarly unknown.

Second, Ameritech argues that "shelf-at-a-time" will lead to frame exhaust. In particular, Ameritech claims that, while the shelf at a time decreases the number of cross connects, it increases the number of blocks on the frame. (Ameritech Ex. 1.0 at 17).

Third, Ameritech claims that providing splitter functionality on a shelf at a time basis results in an inefficient use of capital for Ameritech. Ameritech maintains that provisioning splitters on a shelf-at-time basis could result in underutilization of splitter capacity and leading to stranded investment by Ameritech. Ameritech also asserts that Covad and Rhythms desire for shelf-at-a-time is anticompetitive as it allows a CLEC to reserve an entire shelf for its own use. (Ameritech Br. at 15).

Finally, Ameritech states that no other ILEC has agreed to provide splitter functionality to Rhythms and Covad on both line-at-a-time and shelf-at-a-time basis.

B. Rhythms/Covad Position

Covad and Rhythms contend that Ameritech must provide CLECs with splitter functionality on a bulk basis because it is technically feasible to do so. Covad and Rhythms again note that the FCC's "best practices" rules regarding access to UNEs provide that a previously successful method of obtaining interconnection or access to unbundled network *is substantial evidence that such method is technically feasible.* 47 C.F.R. § 51.321(a). Covad and Rhythms further emphasize an ILEC may not deny a requested method of obtaining access to a UNE unless it proves to the state commission, by *clear and convincing* evidence, that the requested method is not technically feasible. 47 C.F.R. § 51.5, 51.321(d). Covad and Rhythms maintain that Ameritech has not met its burden in this case because a determination of technical feasibility "does not include consideration of economic, accounting, billing, space, or site concerns." The fact that an incumbent LEC must modify its facilities or equipment to respond to such a request does not determine whether satisfying such a request is technically feasible." 47 C.F.R. § 51.5.

Covad and Rhythms note, as stated in the testimony of Michael Zulevic, BellSouth provides splitter functionality to Covad on a bulk basis. As outlined in Covad and Rhythms Post Hearing Brief, Ameritech, however, has not provided any convincing evidence that the BellSouth method is technically infeasible in Illinois. For example, although Ms. Schlackman claims that Ameritech's software systems "are not capable of supporting" the assignment of splitter functionality in shelves, Ms. Schlackman admitted during the evidentiary hearing that she never asked Telcordia whether such a system could be created. (Ameritech Ex. 1.0, Schlackman at 14; Hearing Tr. (Schlackman) 873:19-22, 874:1-2). Covad and Rhythms note that, contrary to Ameritech's assertions, nowhere in the Telcordia OSS document detailing a "Line Sharing Solution" for SBC does Telcordia state its OSS solution will only provision splitters a port at a time.

Moreover, Covad and Rhythms contend that, because the AADS configuration and virtual collocation of CLEC-owned splitters would require Ameritech to assign the entire splitter shelf to AADS or a CLEC, it is indefensible for Ameritech to contend that its OSS system will not allow the provisioning of splitter functionality in shelf increments.

Covad and Rhythms also dismiss as suspect Ameritech's claim of frame exhaust if it must provide splitter functionality in shelf increments. Covad and Rhythms disagree with Ameritech's contention that the overall number of cables and blocks on the frame increases when splitter functionality is provided in shelf increments as opposed to line increments. Covad and Rhythms observe that the amount of frame space required to serve those customers is identical regardless of whether Ameritech sells the CLEC 192 ports at one time or one port 192 times. Covad and Rhythms further observe that, given the overwhelming demand for line-shared DSL services, the likelihood that CLEC shelf space will remain unused for any significant amount of time is virtually nonexistent. Finally, Covad and Rhythms contend that Ameritech can avoid any stranded investment in the splitter by passing the cost of the splitter to the CLEC.

Covad and Rhythms also cited several benefits resulting from "shelf-at-a-time" provisioning. First, providing splitter functionality in shelf increments, as BellSouth does, allows a CLEC to manage its own capacity to meet demand. As Mr. Zulevic testified, by purchasing splitter functionality in shelf increments, a CLEC can prepare to meet expected consumer demand before customer orders are placed. If, however, CLECs are required to order splitter functionality in line increments only, a CLEC cannot obtain splitter functionality from the ILEC until an end-user places an order with the CLEC. If the ILEC has not managed capacity correctly, the CLEC customer's order will be delayed while the ILEC installs the necessary splitter capacity. Second, Covad and Rhythms assert that providing splitter functionality in shelf increments reduces both the risk of ILEC provisioning errors and time required to provision a line-shared circuit because the splitter can be pre-wired. As stated in the Mr. Zulevic's testimony, the pre-wiring of the splitter eliminates a connection that the ILEC central office technician must make when installing a line-shared circuit and thus requires less time and reduces the number of jumpers that ILEC technician could misconnect. (Covad Ex. 2.0, Zulevic at 14-15).

C. Staff Position

Staff recommends that the Commission order Ameritech to provide splitter functionality on both a line-at-a time and a shelf-at-a time basis. In reaching that conclusion, Staff weighed both the benefits and inefficiencies of provisioning splitter functionality on a shelf at a time basis. In particular, Staff notes that providing splitter functionality on a shelf at a time basis increases: a CLEC's incentive to provide accurate forecasts of their demand for splitter capacity; increases a CLEC's incentive to utilize splitter capacity; permits CLECs to plan and manage their own capacity and; allows CLECs to hardwire the splitter to the DSLAM – reducing the connections needed to the frame and reducing provisioning errors. In assessing the potential inefficiencies, Staff finds Ameritech's claims that its OSS systems could not inventory a shelf at a time for line sharing confusing and unsubstantiated. Staff recognizes, however, that shelf-at-a time resulted in a few inefficiencies, notably manual intervention in the provisioning process, but finds that the benefits outweighed the potential inefficiencies.

D. Commission Analysis and Conclusion

The Commission concludes that Ameritech must provide splitter functionality on both a shelf-at-a-time basis, in addition to the line-at-a-time basis it already offers. We find irrelevant Ameritech's argument that, because it is under no duty to provide splitter functionality (as found above), the issue of the manner in which that functionality is to be provisioned on a voluntary basis is not subject to arbitration. The fact is that Ameritech has agreed to provide splitters that it owns. Once this was done, the manner of provisioning becomes germane.

The Commission finds unpersuasive Ameritech's arguments that its OSS system cannot inventory splitter functionality on a shelf-at-a-time basis because technical feasibility does not include considerations of economic, accounting, billing, space, or space concerns. Ameritech's claim that it cannot provide shelf-at-a-time because Telcordia allegedly cannot turn to the project until November 2000 and has not provided a price quote for the "upgrade" is entirely unavailing. Indeed, we note that Ameritech neither bothered to ask whether a system that supports assignment of splitter functionality in shelves can be created nor has it asked if its current systems could be modified to allow for such an assignment system. Thus, this Commission places no weight on Ameritech's claims that its OSS systems cannot assign splitter functionality in shelf increments.

The Commission does find some merit in Ameritech's argument that provisioning splitter functionality on a shelf at a time could allow CLECs to act in an anticompetitive manner. Ameritech claims that allowing a CLEC to reserve an entire shelf for its own use may effectively bar other CLECs from providing DSL service. As Staff recognized, Ameritech's hypothetical would only occur if absolutely no additional splitters were available for purchase and installation and no additional capacity were available in a central office. While it is somewhat difficult to imagine that such a chain of events would occur, to assure against such an occurrence, the Commission will allow Ameritech, upon the provisioning of splitter functionality on a shelf at a time basis, to also begin charging the requesting carrier for all loops, jumpers, cross connects and other hardware as if the entire splitter shelf were being utilized to provide xDSL service. This should encourage Rhythms and Covad to only order splitter functionality on a shelf at a time basis when the demand warrants such an order, while providing them with the economies and efficiencies of their preferred provisioning option.

Issue No. 3: Whether thirty (30) calendar days is the appropriate interval for augments to provide line sharing.

A. Ameritech Position

Ameritech argues that Rhythm's and Covad's proposal that collocation augments be provided within 30 days of a request should be rejected. First, Ameritech argues

that collocation terms and conditions are beyond the scope of this line sharing arbitration proceeding. Ameritech explains that collocation is not line sharing, and collocation issues should not be brought into this proceeding; rather, the rates, terms and conditions which apply to collocation today should also apply in the line sharing environment. Ameritech also points out that the 30 day interval proposed by Rhythms and Covad is substantially shorter than that set forth in Ameritech's Commission-approved collocation tariff and Commission-approved interconnection agreements. Ameritech argues that Rhythms and Covad provide no justification why Commission-approved collocation intervals and processes in these tariffs and interconnection agreements should be circumvented just for line sharing, thereby giving Rhythms and Covad preferential treatment. Ameritech Ex. 1.0 at 31-32 (Schlackman).

Ameritech points out that it has already agreed to a 30 day collocation augment interval in those instances where a CLEC wishes to reuse existing cabling and dedicate that cabling for line sharing. Ameritech explains that upon receipt of a complete and correct collocation application, Ameritech has agreed to redesignate a CLEC's existing cabling in Ameritech's databases and complete provisioning of the collocation application within 30 days of its receipt. Ameritech also has agreed to waive the normal collocation application fees in these instances. Ameritech Ex. 1.0 at 32 (Schlackman). Ameritech's asserts that its proposed contract language on this issue is reasonable, and the Commission should adopt it.

B. Rhythms/Covad Position

Rhythms and Covad propose that Ameritech be required to provide collocation augments for line sharing within 30 days from when Rhythms and Covad submit requests for such augments. Rhythms and Covad assert that the installation of tie cables and inventory of these facilities in Ameritech's OSS are simple tasks that Ameritech already performs. Rhythms and Covad further assert that, because the FCC's order requires line sharing to be available by a date certain, Ameritech should be planning to install a large number of tie cables and splitters and making other related changes in its central offices that are necessary for line sharing on an expedited basis and in bulk. These activities, Rhythms and Covad argue, can be done efficiently and quickly at any particular serving wire center, making the 30 day installation interval achievable. In support of their position, Rhythms and Covad also assert that Southwestern Bell Telephone Company agreed to provide Rhythms and Covad with installation of entire collocation arrangements in thirty days, and further stated that entire collocation arrangements are more complex than tie cable and line sharing equipment installations.

C. Staff Position

Staff did not specifically address Issue 3 in its testimony.

D. Commission Analysis and Conclusion

The Commission rejects Rhythms and Covad's request that collocation augments be provided within 30 days of a request. Collocation terms and conditions are not a part of this line sharing arbitration; rather, collocation terms are set forth in Ameritech collocation tariff and interconnection agreements that have been approved by this Commission. Moreover, Rhythms and Covad's 30 day interval is substantially shorter than the collocation intervals this Commission has approved in the past and there is no reason for this Commission to require Ameritech to provide Rhythms and Covad with favored treatment over other telecommunications service providers by imposing a shorter interval than those we previously approved.

Issue No. 4: Whether Ameritech should be required to provide CLECs with direct access to the shared physical loop for testing purposes at any technically feasible point.

A. Ameritech Position

Ameritech argues that it should not be required to provide CLECs with direct access to the shared physical loop for testing purposes at any technically feasible point. Rather, under Ameritech's proposed contract language, all CLECs are provided testing for data services in parity with Ameritech or its data affiliate, AADS. CLECs would have test access to the splitters they own twenty-four hours a day, seven days a week ("24 x 7 test access"). CLECs would have direct access to Ameritech-owned splitters when those splitters are located in common areas. In most of the central offices in Illinois that will have Ameritech-owned splitters, those splitters will be installed in common areas, in which CLECs would have 24 x 7 test access at the splitter. However, CLECs would not have direct access to Ameritech-owned splitters if those splitters are installed outside of the common area. Instead, in those instances, CLECs would have test access on a non-intrusive basis only when physically testing at the splitter card. Ameritech Ex. 1.0 at 33 (Schlackman).

In addition, under Ameritech's proposed contract language, Ameritech would permit intrusive testing under certain terms and conditions. First, in connection with Rhythms' and Covad's utilization of the high frequency portion of the loop (HFPL), Rhythms and Covad could perform intrusive mechanized loop testing when they (1) have already established data service on the HFPL, (2) prior to engaging in such testing, inform the end user customer that the testing will interrupt both the data and voice telephone services served by that line, and (3) secure the end user customer's permission to perform such testing. Second, Rhythms and Covad would be required to assume any and all liability for any such intrusive testing that they perform, including the payment of all costs associated with any damage, service interruption, or other degradation or damage to Ameritech's facilities. Rhythms and Covad also would be required to release, defend and indemnify Ameritech, and hold Ameritech harmless, from any claims for loss or damages, including but not limited to direct, indirect or

consequential damages, made against Ameritech by any end user customer, telecommunications service provider or telecommunications user relating to such intrusive testing.

Absent such contract terms, Ameritech proposes that, if Rhythms and Covad believe that intrusive testing is necessary as a result of physical fault troubles on a shared loop, they or the end user should refer these troubles to Ameritech to test, verify, and clear the trouble report if necessary. Ameritech Ex. 1.0 at 33-34 (Schlackman). Ameritech argues that imposing these contractual requirements on CLECs such as Rhythms and Covad is reasonable, as it is Rhythms and Covad who are using Ameritech's facilities to provide telecommunications services, not vice versa. Ameritech further asserts that these requirements are consistent with the FCC's spectrum management policies set out in the FCC's *Line Sharing Order* (at ¶¶ 178-211 generally), which are designed to protect against significant interference with or degradation to existing voice services provided over the public switched telephone network.

Ameritech further asserts that, under Ameritech's proposed contract language, Rhythms and Covad have the capability to test all portions of the shared loop. (Tr. 957-58). According to Ameritech, Rhythms and Covad would have test access opportunities at any Ameritech-owned splitter, and would also have access to Ameritech's remote test access vehicle, MLT. Additionally, Rhythms and Covad have the ability to perform trouble isolation testing at their own DSLAM using normal Internet Service Provider capabilities, i.e., "pinging the modem." Ameritech adds that Rhythms and Covad also can conduct testing at the customer's premise at the Network Interface Device. Ameritech Ex. 1.0 at 35 (Schlackman). Ameritech argues that no additional test access is needed and, in fact, Rhythms and Covad have not identified any portion of the shared loop that they are currently unable to test. (Tr. 957-58).

With respect to Rhythms' and Covad's position that they need direct access to Ameritech's MDF for further testing, allegedly to ensure that Ameritech has wired their circuits correctly, Ameritech argues that this position overreaches, would serve no useful purpose and should be rejected. Ameritech maintains that Rhythms and Covad should not be allowed access to Ameritech's main or intermediate distribution frames for test access purposes, or any other purpose. Ameritech Ex. 1.0 at 35-36 (Schlackman). Such access, Ameritech argues, would not allow Rhythms and Covad to test anything more than what they already can test today. Ameritech states that, other than making vague, unsupported assertions, Rhythms and Covad have provided no evidence that obtaining test access at the MDF is necessary or that Ameritech is unable to properly provision the HFPL absent such MDF test access. Ameritech adds that the MDF access that Rhythms and Covad seek would deny Ameritech the ability to protect its own equipment, a right provided by the FCC in its *Advanced Service Order*, FCC 99-48 at Paragraph 48.

Ameritech also argues that its proposed contract language provides Rhythms and Covad with test access on terms that fully comport with the FCC's Rules issued in connection with the *Line Sharing Order*. See 47 C.F.R. Section 51.319 (h) (7)(I). Ameritech states that its proposed contract language has satisfied this condition by agreeing to provide nondiscriminatory test access at a point at which all carriers providing data services can verify their signals from their DSLAM to the splitter, through the frame wiring and out the splitter to the end user and the Internet Service Provider. Ameritech points out that its proposed contract language goes beyond the FCC's requirements of "test access at the splitter" and provides CLECs with access to Ameritech's Mechanized Loop Testing or MLT. Ameritech Ex. 1.0 at 35-36 (Schlackman).

B. Rhythms/Covad Position

Covad and Rhythms contend that Ameritech must provide CLECs with test access to the shared loop at any technically feasible point including without limitation, to the MDF and the intermediate distribution frame (IDF) in order to comply with the Line Sharing Order's nondiscriminatory test access requirement. In particular, the "[the FCC] requires that incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair activities." (Line Sharing Order ¶ 118) "Such access must be provided in a nondiscriminatory manner." (Id.)

Covad and Rhythms seek direct physical access to the loop at the cross-connect so that CLECs can isolate the particular point in the loop that may need repair. With this type of test access, CLECs could ensure that (1) the technician is working on the proper line by performing an automatic number identification (ANI) test; (2) the ILEC technician has properly installed the cross connects required to provision the DSL circuit. In addition, CLECs occasionally needs the ability to "open" a line to isolate the particular point of trouble. (Covad Ex. 2.0, Zulevic, at 19.)

Covad and Rhythms maintain that Ameritech's test access proposal is insufficient because will not allow CLECs to test the high-frequency portion of the loop. As detailed in the Mr. Zulevic's testimony, Ameritech's testing proposal will not allow CLECs to test the high-frequency portion of the loop from the splitter data port back to the distribution frame, through the cross-connect, and back to the DSLAM. (Covad Ex. 2.0 (Zulevic) at 18.) As Mr. Zulevic averred, this limitation will prevent CLECs from isolating the particular point of failure in the circuit. Although Ameritech has proposed to provide splitters with "test pins," Ameritech has not shown that the test pins will provide the testing functionality for the entire loop that CLECs require.

Moreover, Covad and Rhythms assert that the type of test access sought by CLECs is identical to the type of access ILECs presently provide for their own retail employees. In addition, Covad and Rhythms note that US West has agreed to provide Covad with the test access it seeks here from Ameritech. (Covad Ex. 2.0 (Zulevic) at 4.) Finally, Covad and Rhythms state that the Pennsylvania Arbitrator recently ordered

Bell Atlantic to provide Covad and Rhythms with direct test access, including test access at the Main Distribution Frame, to ensure that that the cross connects have been properly installed. Accordingly, Covad and Rhythms assert that Ameritech should provide the same test access.

C. Staff Position

Throughout this proceeding, Staff has maintained that Rhythms and Covad do not currently have 24-hour access to Ameritech's main or intermediate distribution frames for test access purposes, or any other purpose. Staff has used this fact to recommend that the TELRIC rate for cross connects not be calculated assuming that the splitter is located in Ameritech's main distribution frame. (Staff Ex. 2.0 at 10 (Koch)).

Staff has not provided a position, however, as to whether the CLECs should be allowed direct access to the main or intermediate distribution frames for any purposes, whether it be for the placement of splitters or for testing the loop. It is Staff's understanding that CLECs are not allowed such access due to Ameritech's own policy, and not by any Commission order. Staff has not provided an opinion in this docket as to whether this is an acceptable practice.

D. Commission Analysis and Conclusion

The Commission adopts Ameritech's proposed contract language. Ameritech's language is consistent with 47 C.F.R. Section 51.319(h)(7)(I), which provides that "Incumbent LECS must provide, on a nondiscriminatory basis, physical loop test access points to requesting carriers at the splitter." Indeed, as Ameritech stated, its proposed contract language provides nondiscriminatory test access at a point at which all carriers can verify their signals from their DSLAM to the splitter, through the frame wiring and out the splitter to the end user and the Internet Service Provider. Ameritech even goes further than what is required by Section 51.319(h)(7)(I) and provides CLECs with access to Ameritech's MLT.

The record indicates that, under Ameritech's proposed contract language, Rhythms and Covad will have the ability to test all portions of the shared loop — both the high frequency portion and the low frequency portion. Indeed, Rhythms and Covad have failed to identify any portion of the shared loop that the are currently unable to test. Rather, Rhythms and Covad assert that they should have direct access to Ameritech's MDF for further testing, even though such access would not allow Rhythms and Covad to test anything more than what they already test today. As we concluded earlier in this Arbitration Decision, Rhythms and Covad should not have access to Ameritech's MDF. As the FCC stated in its *Advanced Service Order*, FCC 99-48, at Paragraph 48: "We agree with commenting incumbent LECs that protection of their

equipment is crucial to the incumbents' own ability of offer services to their customers." Accordingly, Ameritech's contract language is adopted.

Issue No. 5: Whether Ameritech should be required to provide the line sharing UNE in a three business day interval from June 6 to September 6, in a two day business interval from September 7 to December 7, and in a one day business interval thereafter and a five business day interval for loops that require deconditioning.

A. Ameritech Position

Ameritech proposes to provision up to 20 orders for the high frequency portion of the loop (HFPL) within 5 business days if no conditioning is required. For more than 20 orders, Ameritech will provision the HFPL within 15 business days. If conditioning is required, Ameritech will provision the first 20 orders for the HFPL loop within 10 business days. For more than 20 orders, Ameritech will provision the HFPL within the provisioning and installation intervals agreed to by the parties. (Ameritech Ex. 1.0 (Schlackman) at 36-37). Ameritech urges this Commission to adopt its proposed 5/10 business day provisioning interval or parity with its data affiliate, whichever is less.

Ameritech maintains that its position should be adopted because parity is the appropriate standard for provisioning intervals. Because its proposed intervals are the same provisioning and installation intervals for unbundled xDSL capable loops, and are also the intervals contained in AADS' interconnection agreement with Ameritech. Ameritech asserts that it has complied with the FCC's *Line Sharing Order.*

In addition, Ameritech states that its provisioning intervals are reasonable given the work required to provision the HFPL and the volume of orders expected. (Ameritech Ex. 1.0 (Schlackman) at 39-40). In particular, Ameritech asserts that it is unreasonable to expect Ameritech to provision a loop within the staggered 3/2/1 intervals proposed by Covad and Rhythms because many loops require digital conditioning (Ameritech Br. at 24).

Finally, while supporting the parity standard, Ameritech maintains that it will provide relevant performance information to the Commission, but opposes providing CLECs with any information regarding the provisioning interval actually experienced by AADS or other monthly performance data. (Ameritech Br. at 22; Hearing Tr. (Schlackman) at 905:6-9).

B. Rhythms/Covad Position

Covad and Rhythms assert that the provisioning interval for line sharing should vary over time as Ameritech gains experience provisioning the high frequency portion of the loop (HFPL). Covad and Rhythms presented evidence that line sharing

arrangements should be provisioned according to the following schedule: from June 6 to September 6, three business days for loops not requiring conditioning; from September 6 to December 7, two business days for loops not requiring conditioning; and after December 7, 24 hours for loops not requiring conditioning. Covad and Rhythms also presented evidence that its proposed 5 business day interval for loops required conditioning is also reasonable. As Mr. Zulevic testified, line-sharing uses a loop that previously has been provisioned to the customer premises and thus the only work required to provision the line sharing UNE is approximately ten minutes of central office work. Mr. Zulevic also testified that line sharing does not require any work to be performed outside of the central office.

Covad and Rhythms also note that several arbitrators have required ILECs to provision line sharing in three business days or less, where no conditioning is required. Covad and Rhythms cite to the Texas Commission's interim award which ordered Southwestern Bell Telephone Company (SWBT), Ameritech's sister affiliate, to provision line sharing over non-conditioned loops within three business days in recognition of the reduced amount of work and time associated with provisioning line sharing. Covad and Rhythms also cite to the Pennsylvania Arbitrator's Recommended Decision ordering Bell Atlantic-Pennsylvania to provide line sharing over non-conditioned loops initially within three business days, with the interval eventually decreasing to one business day.

C. Staff Position

Staff recommends that the Commission adopt Ameritech's proposal regarding provisioning intervals: 5 business days for loops not requiring conditioning and 10 business days for loop conditioning. Staff witness Samuel McClerren justifies the proposal on two grounds: (1) parity; and (2) customer expectations.

Mr. McClerren notes that Ameritech stated that it will provision line shared loops in the same interval as it provides to its own data affiliate, which is what the parity standard envisions. Regarding customer expectations, Mr. McClerren testified that Ameritech should not be expected to provide quicker service for a CLEC customer simply because the service is offered through a different technology such as line sharing. Mr. McClerren further testified that there should be no competitive advantage simply due to differences in technology. Accordingly, as five days is the current service installation requirement under Part 730 for retail customers, Staff recommended a similar 5 business day installation interval here.

D. Commission Analysis and Conclusion

The Commission concludes that the intervals proposed by Covad and Rhythms should be adopted. The undisputed record evidence demonstrates that the high frequency portion of the loop may be provisioned in significantly less time than claimed by Ameritech. Specifically, the record establishes that line sharing requires only about

ten minutes of central office work and requires no work outside of the central office. Accordingly, where no conditioning is required, it is reasonable to expect that Ameritech would be able to provision the high frequency portion of the loop within 3 business days, and eventually, as it gains experience, reduce its provisioning interval to 1 business day. The fact that line sharing uses a loop that has previously been provisioned to the customer's premises reinforces our conclusion.

We are unimpressed by Ameritech's arguments that the work required to provision and install the HFPL requires the 5/10 business day intervals it proposes. We note that the only examples Ameritech provides as to why Covad's and Rhythms' proposed intervals are unreasonable involve loop conditioning. This Commission finds Ameritech's arguments disingenuous. While Ameritech maintains that the phased-in 1 business day interval is unreasonable because its technicians are not available to instantaneously condition a loop for a CLEC, Ameritech ignores that, under the intervals proposed by petitioners and adopted here, it will never be required to condition a loop instantaneously or even within 1 business day. Rather, Ameritech will have 5 business days to provision a loop requiring conditioning. The 3/2/1 business day intervals apply only to loops requiring no conditioning.

We also agree with the state commissions of Texas and Pennsylvania that provisioning intervals for line sharing should be shorter than the intervals for provisioning a standalone UNE loop given the reduced work and time necessary to provision a line shared loop. The Commission finds it persuasive that the Texas Commission has ordered Ameritech's sister affiliate, SWBT, to provision loops for line sharing within 3 business days if no conditioning is required. We also find it compelling that the Pennsylvania arbitrator adopted the same 3/2/1 business day interval we have ordered here.

We also reject any argument that allowing for reduced provisioning intervals is somehow anticompetitive or disadvantages AADS or other CLECs. First, any CLEC, including AADS, can avail itself of the shorter provisioning intervals by opting into Covad's or Rhythms' line sharing amendment. Second, the Commissions finds that the phased intervals adopted here will aid in the deployment of advanced services in Illinois. We are aware that Illinois consumers would reasonably anticipate that data service, provided over an already existing line to his or her home, would be provisioned more quickly than if an entirely new line had to be installed or established to his or her home. Given that Ameritech has failed to demonstrate any reason it requires five business days to provision a line shared loop that requires 10 minutes of work where no conditioning is required, this Commission can only assume that Ameritech has opted to provide itself a cushion to ensure that it always safely meets the interval and thus avoids any penalties. This Commission, however, prefers to provide the benefit to consumers rather than Ameritech and accordingly requires that Ameritech provision the HFPL within the time intervals proposed by Covad and Rhythms.

The Commission also concludes that the five day provisioning interval proposed by Covad and Rhythms for loops that require conditioning is more reasonable that the 10 day interval proposed by Ameritech. While We are cognizant of the fact provisioning a loop that requires conditioning will likely take longer than provisioning a lop that does not, the evidence adduced by Ameritech does not support the 10 day interval it proposed. Ameritech noted that to condition a loop, an engineer would have to send an order to a technician requesting the work. The technician must then be dispatched to the field. Once the technician schedules the field work, he or she may encounter circumstances that make the task difficult to accomplish in an abbreviated time frame. (Ameritech Ex. 1.0 at 37-38) While We agree with all parties that line requiring conditioning may require longer to provision than clean loops, We are not convinced that the work flow addressed above can not be accomplished in five days or less, as opposed to the 10 day interval proposed by Ameritech.

Consistent with the above, we hereby order the parties to amend their interconnection agreements to allow for the phased approach to provisioning intervals proposed by Covad and Rhythms.

Issue No. 7: Whether, in addition to providing line sharing over home run copper loops, Ameritech must 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.

A. Ameritech Position

Ameritech argues that the FCC's *Line Sharing Order* clearly establishes that Ameritech is only obligated to share the copper portion of the loop, and that, in any event, as a policy matter, the Commission should not short-circuit the FCC's consideration of the issue. Ameritech points out that the FCC is currently considering the issue of CLECs providing xDSL service over fiber-fed loops. Ameritech argues that this Commission should not enter a decision in this proceeding that ultimately may be affected by the FCC's final decision on the topic. Ameritech asserts that by doing so, the Commission runs the risk of Ameritech investing a substantial amount of time and money in an attempt to enable the provisioning by CLECs of xDSL service over its fiber-fed loops when, ultimately, the FCC may decide that how and when ILECs are required to do so (if they are required to do so at all) differs from that which Rhythms and Covad seek. This, Ameritech asserts, would be imprudent from an economic, technological and regulatory policy perspective. Ameritech adds that because the FCC is actively considering the issue, there is no need for the Commission to do so concurrently; once the FCC rules, Rhythms and Covad will be able to incorporate the new legal requirements established by the FCC, if any, into their interconnection agreements. Ameritech states that it fully intends to comply with whatever ruling the FCC ultimately issues. Ameritech points out that it has already issued an "accessible letter" in which it commits to permit xDSL service provisioned by CLECs over its fiber-

fed loops once the FCC defines the relevant terms, conditions and requirements. (Covad Schlackman Cross Exhibit 1).

If the Commission does rule on this issue, Ameritech argues that there are two primary reasons why Ameritech should not be required to provide line sharing over fiber-fed digital loop carrier systems. First, Ameritech argues that the *Line Sharing Order* clearly states that line sharing is only required over copper loops or copper subloops. Ameritech Ex. 1.0 at 42-44 (Schlackman). Ameritech points out that the definitions contained in Paragraphs 13 and 26 of the *Line Sharing Order* (relating to the high frequency portion of the loop) and in the FCC's applicable Rule (published at 47 C.F.R. § 51.319(h)) refer only to copper loops and, therefore, do not apply to fiber portions of a DLC system. Ameritech explains that, in a DLC system, analog signals are carried over copper from the customer's premises to a remote terminal (RT). Transport between the RT and the Central Office is then provided over fiber. Thus, copper, with high and low frequency ranges, as described in the *Line Sharing Order*, runs only from the RT to the customer's premises in a DLC system. Ameritech states that in the *Line Sharing Order*, the FCC made clear that, for loops served by DLC systems, an ILEC is only required to provide the CLEC with access to the copper portion of the loop (the copper subloop) at an accessible terminal in the outside plant where technically feasible so that the CLEC could share the copper subloop between the outside plant terminal and the customer's location. Ameritech Ex. 1.0 at 42-44 (Schlackman). Ameritech points out that Paragraphs 91 and 92 of the *Line Sharing Order* explicitly refer to unbundling of the subloop between the customer's premises and an accessible outside plant terminal. In short, Ameritech argues that fiber-fed DLC systems between the remote terminal and central office are *not copper wire in the outside loop plant*, and under paragraphs 91 and 92 clearly are not subject to line sharing. Ameritech Ex. 1.0 at 42-44 (Schlackman).

The second reason Ameritech argues that it should not be required to provide line sharing over fiber is because it is not technically feasible to do so. Ameritech Ex. 1.1 at 8 (Schlackman); (Tr. at 807) ("there's no technical way you can line share with fiber optics.") Ameritech argues that it is not technically feasible to line share across an entire DLC system because the combined voice and data signals cannot be transported across the same optic fiber (line sharing separates frequencies on an analog medium (copper) not a photonic medium). Ameritech points out that the CLECs could utilize the copper sub-loop to line share, but would be required to separate the data signal at the accessible outside plant terminal and carry that data signal on its own facility, while the voice signal would continue on the DLC system back to the central office. Ameritech Ex. 1.1 at 8 (Schlackman).

B. Rhythms/Covad Position

Covad and Rhythms argue that the FCC's definition of line sharing generally describes the ability of two different service providers to offer voice and data over the same line between the customer premises and Ameritech's central office ("CO"). The

parties agree that line sharing is feasible over regular "home-run" copper lines, where the loop is copper all the way from the CO to the customer premises. However, Covad and Rhythms argue that they must also be allowed to line share where a loop is a mix of copper and fiber. Ameritech is deploying a new network architecture dubbed Project Pronto, which utilizes such mixed composition loops. Under the Project Pronto architecture, loops will be copper from the customer premises to a remote terminal ("RT"), and then will be fiber from the RT to the CO. Ameritech has acknowledged that it will provide line sharing to its affiliate over both home-run copper and Project Pronto loops. Voice signals and xDSL signals of all types, including ADSL Asynchronous Transfer Mode ("ATM") bitstreams, can now be multiplexed and carried on a common fiber. There is no technical basis to claim that voice and data traffic cannot be simultaneously shared on the same loop because a portion of the loop is fiber. On the copper portion of the loop, the two types of traffic are separated according to frequency. On the fiber portion, the two types of traffic are separated by the way the traffic is encoded and carried on that portion of the loop. Specifically, both the voice and data traffic can be placed on the same fiber through time division multiplexing.

However, Ameritech is not willing to allow CLECs to line share in the same manner. The new Project Pronto configuration will substantially alter the technical characteristics of a large number of loops that Rhythms and Covad need to provide xDSL services via line sharing by adding large amounts of fiber. Ameritech has argued that Rhythms and Covad may line share only on the copper portion of Project Pronto loops. If Ameritech is successful in so restricting CLECs to line sharing only on copper loops, then CLECs will be able to transmit xDSL-based services over the same line as voice only between the customer's premises and the RT. Once the data traffic reaches the RT and is split from the voice traffic onto separate fiber cables, Ameritech claims line sharing no longer exists. To ensure that CLECs have equal access to all customers regardless of whether they have all copper loops or loops of mixed composition configured in the Project Pronto architecture, Ameritech must allow CLECs to use the fiber portion of the loop to carry traffic from the RT to the CO and to install line cards in Ameritech's digital loop carrier ("DLC") equipment in the RT to support the CLEC's chosen type of xDSL service.

As noted by Rhythms/Covad Witness Ms. Murray, physical collocation in a remote terminal may not be an option in many cases because of the lack of space constraints in Ameritech's remote terminal locations. In addition, the expense of collocation at the remote terminal could place Rhythms and Covad at a substantial financial disadvantage to Ameritech, or AADS, in those instances in which Ameritech or Ameritech Advanced Data Services ("AADS") were able to offer DSL-based services using line cards placed in Ameritech's remote terminal. Unlike at a central office, the level of concentration present at a remote terminal is often as low as a hundred lines in total, which may be too few to justify an entire collocation arrangement in each remote terminal. As a result, the Commission should require Ameritech to offer to place line cards (owned by Ameritech or the CLEC) in the DLC at the remote terminal on behalf of

Rhythms and Covad, and allow Rhythms and Covad to own line cards and install the cards themselves.

Rhythms and Covad argue that it is critical that they be able to install their own line cards, in order to ensure that Illinois consumers have access to the full range of DSL-based services that are technically feasible. Ameritech may choose not to equip each of its DLCs with line cards that can provide the full array of DSL-based services. Such a option is clearly not in the spirit of the UNE Remand Order, which contemplates that "a requesting carrier [be allowed] to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM." Last month, an arbitrator recommended that the Pennsylvania Commission require such offerings by Bell Atlantic in order to comply with the UNE Remand Order. Similar action must be taken by this Commission to ensure that Illinois consumers receive the full benefits of competition, regardless of whether they are served on an all-copper or fiber-fed loop.

C. Staff Position

Staff interprets Paragraphs 91 and 92 of the *Line Sharing Order* to require that Ameritech must provide line sharing on loops that are provided over digital loop carrier systems unless it can demonstrate that such line sharing is not technically feasible. Staff states that it is aware that there are issues that make line sharing over a DLC difficult, however, Staff claims there has been no demonstration by Ameritech that it is not technically feasible. Nevertheless, Staff argues that this Docket is not an appropriate venue to develop line sharing costs for fiber-fed loops. Staff asserts that the issue of costing of provisioning line sharing over fiber-fed loops is not within the scope of this proceeding. The costs associated with provisioning line sharing over fiber-fed loops, Staff states, are different then those for all-copper loops, and therefore the TELRIC pricing needs to be determined separately.

D. Commission Analysis and Conclusion

The Commission finds that Ameritech is required to provide line sharing over fiber-fed "Project Pronto" DLC architecture to CLECs simultaneously with such provision to its retail or affiliate operations. The Commission finds that this requirement is not only technically feasible, but is necessary to promote the deployment of competitive advanced services in Illinois.

Ameritech cites to several definitions in the Line Sharing Order as well as 47 C.F.R. Section 51.319(h) in supporting its assertion that line sharing should be required solely over copper loops. Ameritech further supports its assertions by stating that the FCC affirmatively mandated sub-loop unbundling in areas where DLC is present. Ameritech's position misses the point. The Company ignores the fact that the goal of Congress, as well as the FCC's *Line Sharing Order,* is the deployment of competitive

advanced services.[1] In this vein, the FCC mandated sub-loop unbundling in these instances because line sharing, in many instances, is technically infeasible with existing DLC technology. However, this Commission is well aware of the rapid pace of technological advances in the telecommunications industry which provide benefits to both ILECs and CLECs, and we can not allow these advances to go unnoticed. Although sub-loop unbundling may be the only alternative for line sharing over existing DLC, the evidence provided in this record shows that Next Generation DLC ("NGDLC"), which is the technology deployed in Project Pronto, will allow line sharing over DLC by using time division multiplexing, which uses encoding rather than separate frequencies to separate the voice and data traffic. If this Commission does not require Ameritech to provide line-shared loops over Project Pronto DLC when technically feasible, the deployment of competitive advanced services, especially to residential and small business customers, would likely be diminished since Ameritech would retain monopoly power over a bottleneck facility. This Commission will not allow Project Pronto to be used as a roadblock to competition for advanced services in Illinois. Therefore, the Commission orders Ameritech to provide line sharing to Covad and Rhythms over Project Pronto DLC.

As previously stated, notwithstanding sub-loop unbundling, line sharing over existing DLC may be technically infeasible in many instances. Nevertheless, the burden of proof rests with Ameritech to demonstrate that providing line sharing over any DLC technology is technically infeasible. Furthermore, the requirement to provide line sharing over Project Pronto DLC in no way excuses Ameritech from its obligation to provide Covad and Rhythms access to the high frequency portion of the loop at the remote terminal and the central office.[2]

The Commission is not convinced by Ameritech's claim that it is technically infeasible to line share over fiber optics. The record evidence shows that Ameritech committed to permit xDSL service provisioned by CLECs over its fiber-fed loops once the FCC defines the relevant terms, conditions, and requirements.[3] Additionally, Ameritech plans to provide line sharing over Project Pronto DLC to its advanced services affiliate. Not only does this support the technical feasibility of providing line sharing over NGDLC, but raises a question of Ameritech's treatment of competitive LECs relative to its affiliate. Providing this arrangement to Ameritech's affiliate without providing it to other CLECs does not meet the parity standards contained in the Telecommunications Act of 1996.[4]

Covad/Rhythms Witness Murray indicated that accessing the copper sub-loop at the remote terminal, as proposed by Ameritech, may not be an option due to space constraints and cost. Therefore, if Ameritech was to provide line sharing to its advanced services affiliate over Project Pronto DLC, but make the competitive LECs

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[1] FCC, *Line Sharing Order*, Paragraph 1.
[2] FCC, *Line Sharing Order*, Paragraph 91.
[3] Covad Schlackman Cross Exhibit 1.
[4] Telecommunications Act of 1996, Section 272(c)(1).

access the copper sub-loop at the remote terminal, the CLECs could be functionally and financially disadvantaged. The Commission will not allow Ameritech to unduly discriminate against competitors to the benefit of its affiliate.

Ameritech indicates that the FCC is currently looking into this issue, but concludes that because of this, there is no need for this Commission to do so concurrently. The Commission disagrees. Not only is there a need to rule on this for the reasons above, but the FCC has granted us that authority. The FCC, in its Line Sharing Order, granted state commissions the authority "to impose additional, pro-competitive requirements consistent with the national framework established in this [line sharing] order."[5] We find that the requirements above with respect to Project Pronto DLC fully comport with the competitive national framework for advanced services.

Costs for line sharing over fiber loops will differ from line sharing over copper loops. However, there is evidence in this case to establish interim prices. Ameritech proposed prices for usage of both fiber and copper portions of Project Pronto architecture. Those prices were set forth in an Accessible Letter entered into evidence as an exhibit in this case.[6] While Ameritech has offered no costing evidence to support those prices, the Commission orders that those prices be used in the interim. Those prices will be subject to true-up when permanent costs and prices are determined in the Commission's generic line sharing proceeding (Docket 00-0393).

Finally, we must rule on the terms under which Ameritech will provide line-shared loops to Covad and Rhythms over Project Pronto DLC architecture. Specifically, the terms under which xDSL plug-in cards (which are necessary to allow line sharing over DLC) will be placed in the remote terminal for CLECs as well as the different types of plug-in cards that we will allow to be placed in the remote terminal. The Commission finds that Ameritech is required to install plug-in cards (purchased by either Ameritech or Covad/Rhythms) at its remote terminals, at Covad's and Rhythms' request, thereby allowing the CLECs to provide xDSL service over Project Pronto DLC. To the extent that Ameritech installs plug-in cards for Covad or Rhythms that have been purchased by Ameritech, Covad and Rhythms are required to fully compensate Ameritech for the cost of the plug-in card. Although Covad and Rhythms claim that it is critical to be able to install their own plug-in cards so that consumers have access to a full range of DSL-based services, the Commission is not convinced that there is sufficient evidence on the record to put in place standards that would mitigate the operational and security concerns that granting the requested access would induce. However, we require Ameritech to install plug-in cards which support all DSL-based services requested by the CLECs. If Covad's or Rhythms' business plan calls for a particular DSL service that requires a plug-in card that Ameritech does not provide itself, the burden of proof will lie with Ameritech to prove that the plug-in card is incompatible with Project Pronto DLC technology.

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[5] FCC, *Line Sharing Order*, Paragraph 159.

[6] Schlackman Cross Exh. 1.0 (May 24, 2000 Accessible Letter), at Attachment 1A.

Issue No. 9: Whether Ameritech must test and the CLEC affirmatively accept the line sharing UNE.

A. Ameritech Position

Ameritech asserts that, in determining whether Rhythms' and Covad's position in this arbitration relating to acceptance testing is reasonable, the Commission must consider it in conjunction with their position regarding HFPL provisioning intervals. Ameritech argues that it is unreasonable for Rhythms and Covad to request acceptance testing and provisioning to all occur within 24 hours. (Tr. 606). As described in Issue 5 above, Ameritech argues that the appropriate performance interval for HFPL provisioning alone is substantially longer than 24 hours, and would necessarily be even longer if acceptance testing is also to occur. For this reason, Ameritech argues, Rhythms' and Covad's proposal that Ameritech be required to both provision the HFPL UNE and provide acceptance testing of the line shared service within a single day should be rejected. (Tr. 607).

Under Ameritech's proposed contract language, Ameritech would perform acceptance testing on loops that require technicians to be dispatched to the field to complete work to allow line sharing. On loops that do not require dispatch, Rhythms and Covad would be required to notify Ameritech and define what testing they request. Moreover, Ameritech's obligation is to provide the CLECs with an HFPL UNE that has continuity, line balance, is DSL-capable and has been digitally conditioned, if so ordered by the CLEC. Ameritech would fully test each shared loop for these attributes before completing the HFPL service order. It is Ameritech's position, however, that if the CLEC's xDSL services do not work on the shared loop, but Ameritech has provided continuity and line balancing, and has fully tested the shared loop, the CLEC must accept the HFPL UNE. Ameritech maintains that whether or not the CLEC's xDSL service works at the speed and reach that the CLEC desires should not be a factor. Ameritech Ex. 1.0 at 46 (Schlackman).

Under Ameritech's proposed contract language, and consistent with its previous Commission-approved interconnection agreements, Ameritech has further agreed to clear any trouble isolated to the central office within 24 hours or at parity with the service provided to its data affiliate (AADS), whichever is less. Trouble not isolated within the central office will also be resolved at parity with the service provided to AADS. Ameritech Ex. 1.1 at 9 (Schlackman).

Ameritech claims that Rhythms' and Covad's proposed language is not only unworkable in practice but is contrary to CLECs' long-stated desire for an ILEC "flow through" provisioning environment that includes automatic notification to CLECs of completed provisioning work as soon as the work has been completed. Ameritech states that it has all of the processes in place to maximize such a flow through process and automatic order completion notification. Ameritech points out that when Ameritech

closes a service order for the HFPL UNE (or any other UNE, for that matter), several timelines are triggered, such as billing, provisioning interval, performance measures, and other downstream work that Ameritech will need to initiate.

Ameritech also points out that Rhythms' and Covad's proposal is a radical departure from the provisioning process used for all other UNEs (and already contained in Ameritech's many Commission-approved interconnection agreements). Ameritech asserts that Rhythms and Covad have provided no legitimate reason why the HFPL UNE should be treated differently from all other UNEs in terms of the provisioning process. Ameritech further argues that leaving HFPL service orders open until the CLEC "affirmatively accepts" them would only require additional, unnecessary work, for no good reason. Ameritech states, for example, that a service representative would have to "touch" the order a second time, thereby causing Ameritech to incur additional costs. If Ameritech determines that the shared loop is functioning, Ameritech maintains that there is absolutely no reason to keep the HFPL service order open pending CLECs' affirmative acceptance of the UNE. Ameritech Ex. 1.0 at 46-47 (Schlackman). Ameritech states that its position not only comports with common sense, but also is consistent with the FCC's view on the ILECs' responsibility for completing HFPL service order requests, set forth in Paragraph 174 of the Line Sharing Order.

In response to Staff's recommendation to allow CLECs to test a line shared loop one day in advance of the due date, Ameritech points out that methods and procedures to address the specific issues with regard to testing of new HFPL installations are being developed through the FCC collaborative process and will be jointly filed with CLECs before the Public Utility Commission of Texas, as well as before the California Public Utilities Commission. Ameritech proposes utilizing these same procedures in Illinois once they are established and approved. Ameritech Ex. 1.1 at 8 (Schlackman). In response to Staff's recommendation to give "high priority" to HFPL trouble tickets referred back to Ameritech, Ameritech asserts that it already places a high priority on all trouble tickets, especially where "out-of-service" conditions exist. Staff Ex. 1.0 at 10 (Graves).

B. Rhythms/Covad Position

Because line sharing is a new service, Ameritech may make numerous mistakes in the early days of provisioning. Indeed, Ameritech often has problems provisioning CLECs with UNE loops that are workable and usable. Loop acceptance testing provides CLECs an opportunity to test and verify that a loop is actually working prior to such loop turnover, and to confirm that the loop has been properly provisioned to the correct location. This testing is critically important, because it allows any problem with the loop to be identified and rectified quickly before it is turned over to a CLEC. Just as important, the CLEC has an opportunity to notify its customer when there may be a delay in providing xDSL service on a line shared loop. By identifying and correcting problems early on in the provisioning process, CLECs will be able to increase the number of line shared loops successfully installed the first time, which will result in

greater availability of xDSL service to customers. Covad and Rhythms are requesting that Ameritech conduct acceptance testing prior to the turnover of a line shared loop and that if any problems are found, the CLEC order remain open, and the problem be corrected as part of the provisioning process rather than as part of Ameritech's trouble ticket process.

C. Staff Position

Staff supports Rhythms' proposal for Ameritech to provide loop acceptance testing the day prior to the turnover of the loop.

D. Commission Analysis and Conclusion

The goal of the FCC's Line Sharing Order is to promote the rapid, widespread deployment of advanced services such as xDSL. Therefore, Ameritech should provide CLECs with sufficient advance testing of line shared loops for xDSL service that CLECs can identify and correct problems that prevent the loop from properly supporting xDSL-based services. Ameritech shall provide acceptance testing to CLECs at least one day in advance of the date on which a line-shared loop is turned over to the CLEC, and shall keep the CLEC loop order open until such problem is resolved rather than placing a trouble ticket for the loop in the general population of Ameritech trouble tickets. We are, however, concerned about the impact that acceptance testing may have upon the provisioning requirements imposed earlier in this order. To that end, we modify the conclusions reached above to reflect the fact that, in the event Ameritech offers Rhythms/Covad the opportunity to pre-test a line and they accept the offer, the provisioning intervals will be considered tolled until such time as the line is accepted.

Issue No. 10: Whether a mean-time-to-repair interval of two hours, applied monthly, is the appropriate maintenance and repair time interval.

A. Ameritech Position

Ameritech has proposed as a contractual performance standard a repair interval of 24 hours or parity with Ameritech's data affiliate, AADS, whichever is less. Ameritech Ex. 1.0 at 48 (Schlackman). Ameritech points out that its offer provides parity with its data affiliate, thereby ensuring all data providers will be treated uniformly. Ameritech states that it will respond to all trouble as quickly as possible, often in less than 24 hours, depending on the nature of the problem. Ameritech Ex. 1.0 at 48 (Schlackman).

Ameritech argues that Rhythms' and Covad's proposed repair interval of two hours, on the other hand, is arbitrary and unworkable. Ameritech states that Rhythms and Covad provide no justification why the HFPL UNEs should be treated differently from all other UNEs in this regard. Ameritech asserts that from a maintenance and

repair operations standpoint, there certainly is no basis for singling out the HFPL for preferential treatment. Ameritech states that, as with all other UNEs, trouble found to be in the outside plant would require a dispatch to the field. Resolution would involve dispatch time, drive time, repair time, possible coordination with the assignment center to find a good copper pair, etc. These activities would exceed two hours.

Ameritech further states that not all of Ameritech's offices are staffed with personnel dedicated to maintenance and repair of line sharing equipment. Therefore, if trouble is isolated to an unmanned office, a dispatch would be required that, as stated above, would take significantly longer than 2 hours. For manned offices, Ameritech states, trouble resolution isolated within that office may occur in less than 24 hours, but not two hours. Ameritech states that a technician in such an office may have numerous tickets and orders to work each day and be unable to drop everything to work on an HFPL trouble ticket.

Ameritech adds that, given the complexity of the wiring configuration for line sharing, it may take some time for the technician to trace out the circuit and resolve the problem. Ameritech asserts that it should not be required to incur costs related to an arbitrary and unduly burdensome response time such as that proposed by Rhythms and Covad. Ameritech Ex. 1.0 at 48-49 (Schlackman).

B. Rhythms/Covad Position

Rhythms and Covad are requesting that Ameritech perform repairs for line sharing and the line cards in the DLC or splitter, on a mean-time-to-repair interval of two hours, applied monthly. They are also asking that Ameritech should accept maintenance trouble tickets and perform maintenance and repair on a 24-hour per day, 7-days per week basis. Further, where Ameritech owns the splitter and provides CLECs with access to the splitter, CLECs require access to the splitter, and to the test head for maintenance, repair, and testing on a 24 x 7 basis.

C. Staff Position

Staff recommends that the Commission adopt Ameritech's proposed intervals for repair and maintenance intervals for the same reasons that Staff recommended the Commission adopt Ameritech's proposed provisioning intervals.

D. Commission Analysis and Conclusion

The Commission adopts Ameritech's contract language that Ameritech will provide 24 hour repair or parity with its data affiliate, whichever is less. Again, the Commission believes that there is no reason why the HFPL UNE should be treated differently from all other UNEs. Parity is the appropriate standard. Rhythms and Covad provide no justification for their arbitrary two hour repair interval. Indeed, such a short interval is entirely unreasonable given the amount of time it takes to isolate

trouble and dispatch a technician if necessary. This is particularly true given that many of Ameritech's offices are unmanned. In short, the interval proposed by Rhythms and Covad not only ignores the actual time it takes for maintenance and repair, but also ignores that Ameritech technicians have other work to do besides work for Rhythms and Covad. Accordingly, the Commission adopts Ameritech's proposed contract language.

Issue No. 13: Should Ameritech be allowed to charge for de-conditioning a loop to provide line sharing and, if so, what should that charge be.

A. Ameritech Position

Ameritech contends that it should be allowed to charge for loop conditioning required to enable line sharing. Ameritech maintains that the Commission decision in McLeodUSA Telecommunications Services, Inc. and Ovation Communications, Inc. v. Illinois Bell Telephone Company, Docket No. 99-0525 and the FCC's First Report and Order support its right to recover for such conditioning costs. Accordingly, Ameritech concludes that its proposed language (and presumably rates) for conditioning should be adopted by the Commission.

B. Rhythms/Covad Position

Covad and Rhythms contend that in a forward looking cost study, the nonrecurring charges for line "conditioning" should be zero because items that are classified as interferors (such as load coils) should not occur on any copper loops properly designed over the past 20 to 30 years.

Covad and Rhythms asserts, however, that for purposes of this interim proceeding the Commission should adopt the interim conditioning charges approved in Docket No. 99-0593. Covad and Rhythms maintain that applying the interim Illinois conditioning charges for standalone loops adopted in Docket No. 99-0593 to line shared loops would be consistent with the FCC's conclusion in the *Line Sharing Order* that "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." *Line Sharing Order* ¶ 87. Covad and Rhythms note that Ameritech now agrees that, consistent with the FCC's Line Sharing Order, the interim conditioning rates established in Docket No. 99-0593, would apply as the interim rate for conditioning line shared loops.

C. Staff Position

Staff maintains that Ameritech should be allowed to charge for line conditioning, but rejects the conditioning rates proposed by Ameritech in this filing because they exceed the interim conditioning rates adopted in Docket No. 99-0593. Staff agrees with

Covad and Rhythms that the FCC's *Line Sharing Order* prohibits ILECs from charging more for conditioning a line shared loop than it charges for a stand alone xDSL loop and thus the interim rates in Docket No. 99-0593 must apply as the interim rates for line sharing until Ameritech's cost studies are investigated and examined in Docket No. 00-0393.

D. Commission Analysis and Conclusion

This Commission concludes that the interim conditioning rates for line shared loops cannot exceed the interim loop conditioning rates adopted in Docket No. 99-0593 for stand-alone xDSL loops. The Commission notes that Ameritech's witness Rhonda Meyer conceded that fact, as she must given the clear mandate contained in the FCC's *Line Sharing Order*. This Commission recognizes that Ameritech's cost studies in support of its conditioning rates and the propriety of those charges themselves will be addressed more fully in Docket No. 00-0393 and therefore reserves further discussion until the appropriate point in that proceeding.

Issue No. 15: Whether Ameritech should be prohibited from deploying new technologies or otherwise engaging in activities that impede a CLEC's provision of xDSL services.

A. Ameritech Position

Ameritech argues that it should not be restrained from deploying technologies that may impact CLECs' ability to share copper lines. Allowing Rhythms and Covad to dictate the type of technology that Ameritech deploys, Ameritech asserts, is unnecessary, illegal and would be unduly disruptive of Ameritech's operations. Ameritech further asserts that Rhythms and Covad do not have a right to veto or demand individualized prior notice of technological changes to Ameritech's network, and giving them such a right would prevent Ameritech from properly managing and maintaining its network. Ameritech further argues that Rhythms' and Covad's position conflicts with the FCC's determinations on this issue. Ameritech states that the only FCC rule on this subject, codified at 47 C.F.R. § 51.325, is controlling and is more than adequate to assure that Rhythms and Covad are timely informed of Ameritech activities that may impact their provision of xDSL services.

B. Rhythms/Covad Position

The purpose of the FCC's Line Sharing Order was to foster competition by allowing CLECs access to loops that Ameritech are already able to use to provide ADSL service with POTS on a single loop. Therefore, Ameritech should not be able to deploy any technology, including fiber development, that will limit or impede CLECs' ability to line share on every customer loop without making every attempt to minimize the impact on the CLECs. Ameritech's Project Pronto will substantially change the network architecture, and affect the ability of CLECs to use that architecture, to provide

xDSL-based services. Ameritech's current Methods and Procedures ("M&P") impact Rhythms' and Covad's ability to use the public network to provide xDSL service because Ameritech will support only ADSL over the Project Pronto architecture. Rhythms and Covad offer other types of xDSL service that can be line shared (e.g., RADSL). Thus, Ameritech's policy means that CLECs will be forced either to offer only ADSL or go through the time and expense of trying to move the customer back to a home-run copper loop.

C. Staff Position

Staff presented no testimony and made no recommendation regarding this issue.

D. Commission Analysis and Conclusion

The Commission rejects Rhythms and Covad's proposal as there is no legal support for it. As Ameritech points out, the only FCC rule on this issue is 47 C.F.R. § 51.325, which requires prior notice of network changes to competing service providers in instances where those network changes would either affect a competing service provider's performance or would affect the incumbent's interoperability with other competing service providers. This rule adequately addresses Rhythms and Covad's concerns. Accordingly, the Commission adopts Ameritech's proposed contract language.

Issue No. 16: Whether Ameritech should be required to share with CLECs its fiber DLC deployment plans.

A. Ameritech Position

Under Ameritech's proposed contract language, Ameritech would provide Rhythms and Covad with all final technical publications that address their use of Ameritech's UNEs, including the HFPL UNE, in accordance with and as required by Section 251(c)(5) of the Act and the applicable FCC Orders and Rules. However, Ameritech argues that it is under no legal obligation to provide, and as a matter of policy should not be required to provide, drafts of its internal documents or plans relating to fiber DLC deployment. Ameritech asserts that its drafts and deployment plans are proprietary, and release of those documents to competitors could cause serious competitive harm. Ameritech further asserts that the Commission should not vary from the national standards set by the Act and the FCC. Doing so, Ameritech argues, would be unlawful.

B. Covad/Rhythms Position

Ameritech should provide Rhythms and Covad with all technical specifications and network architecture information, including any Network Operation Plans and any draft or final Methods and Procedures ("M&P") regarding any Ameritech-planned

network deployments that affect CLECs' ability to use the public network to provision advanced services. At a minimum, Ameritech should provide all such information for Project Pronto. Covad and Rhythms have provided evidence that the new Project Pronto architecture will substantially affect the manner in which Ameritech loops may be used to provide xDSL-based services over line shared loops. SBC has provided only one M&P during this proceeding.

C. Staff Position

Staff presented no testimony and made no recommendation regarding this issue.

D. Commission Analysis and Conclusion

Although Ameritech must provide (and has agreed to provide) Rhythms and Covad with information in accordance with Section 251(c)(5) of the Act, Ameritech has no legal obligation to provide the additional information requested by Rhythms and Covad. Indeed, Rhythms and Covad have demonstrated no legitimate need for the documentation they request and, more importantly, much of the documentation is proprietary. Accordingly, the Commission adopts Ameritech's proposed contract language and rejects that proposed by Rhythms and Covad. We further find no support in paragraphs 428 and 430 of the UNE Remand Order which speak to requirements pertaining to current loop conditions but are devoid of any indication that would lead us to conclude that revelations concerning future plans are required to be shared with CLECs.

Issue No. 8: Whether CLECs should have direct electronic access to Ameritech's operational support systems ("OSS").

A. Ameritech Position

Ameritech argues that the FCC has never ordered ILECs to provide CLECs with direct access to an ILEC's back office systems. On the contrary, the FCC has limited CLEC access to the information from these systems, and then only to the extent such information exists. In support of its position, Ameritech cites Paragraphs 426, 428, 430-31 of the UNE Remand Order. Ameritech argues that its agreement to provide the 30+ line-sharing data elements requested by the CLECs in the various POR collaboratives satisfies the requirements of the UNE Remand Order.

Ameritech points out that even Rhythms' witness Anita Taff-Rice admitted that it is access to the "information" that is relevant to OSS functionality. Taff-Rice admits that CLECs need "[a]ccess to a wide range of loop makeup provisioning information." She also admitted that the FCC "UNE Remand Order requires the ILEC to provide access to all loop provisioning information." She further conceded that Ameritech has already agreed to provide this information to the CLECs. Ms. Taff-Rice's conclusion that access

to "information" somehow equates to direct access to Ameritech's back office systems is a non-sequitur.

In addition to arguing that there is no legal basis to support Rhythms and Covad's request for access to Ameritech's back office systems, Ameritech also argues that the multiple FCC and Illinois collaboratives are the appropriate means of resolving the limited issue of direct access to Ameritech's back office systems. In particular, Ameritech states that the are several collaboratives addressing OSS issues and some have resulted in filed plans of record ("POR"). First, the collaborative Advanced Services POR, filed with the FCC on April 3, 2000, addressed the parties' ongoing efforts to resolve loop qualification and loop ordering issues. "This collaborative process resulted in the development of a Future Method of Operation ("FMO") as documented in the Advanced Services POR." Second, the collaborative Uniform and Enhanced OSS POR also addressed OSS issues, including timelines for further enhancements to the pre-ordering GUI. Third, there is "also a collaborative under way in Illinois on OSS issues." Ameritech cites Paragraph 128 of the *Line Sharing Order* as support for its position that the FCC expected these issues to be resolved in the collaborative process.

Ameritech argues that it has or will provide OSS functionality consistent with both the Advanced Services POR and the Uniform Enhanced POR, and Rhythms/Covad have not identified any additional OSS information they contend they need or are entitled to for line-sharing provisioning. Ameritech further argues that Rhythm/Covad have not offered any reasons why direct access to Ameritech back office systems is necessary for line-sharing provisioning. In short, Ameritech recommends that the Commission should allow the remaining OSS issues (including the limited issue of direct access to back office systems) to be addressed and resolved in the continuing collaboratives.

Ameritech also argues that Rhythms/Covad's requests improperly seeks direct access to Ameritech's back office system which contains confidential non-OSS information that is cryptic and not useable to CLECs. Ameritech states that even if the Commission were inclined to decide this issue, it should reject Rhythms/Covad's request for direct access to Ameritech's back office systems. Direct access to these systems, Ameritech argues, raises a number of issues about how Ameritech would protect the confidential and proprietary non-OSS related information in these systems. Ameritech asserts that Rhythms/Covad are not entitled to this information.

Ameritech points out that even Rhythms' witness Taff-Rice admitted that allowing direct access to Ameritech's back office systems raises a number of "concerns about data <u>security</u> and <u>integrity</u>." Ameritech also points out that Taff-Rice conceded that such access "<u>will</u> result in more inquiries" in Ameritech's back office systems, Ameritech suggests that these increased inquiries may harm the system.

Ameritech further states that, even if Rhythms/Covad were given access to back office systems, they likely would be unable to utilize the information. Ameritech states that the databases from which Rhythms/Covad seek access have developed and changed over decades. The result is that information in these systems is stored in a variety of different (and sometimes cryptic) formats. Ameritech further states that this problem is exacerbated by the fact that each region in SBC's network has developed and changed differently and so the format in which information is stored in these systems varies from Pacific Bell to Ameritech to Southwestern Bell.

With respect to Rhythms/Covad's argument that they should have direct access to Ameritech's back office system because it is "possible" that the information received through the gateways is "filtered," Ameritech argues that Rhythms/Covad have failed to identify a single instance of Ameritech "filtering" information.

B. Rhythms/Covad Position

The FCC's Line Sharing Order mandates that CLECs such as Rhythms and Covad have access to OSS necessary to support the provision of xDSL-based service over line shared loops. The FCC defines such OSS broadly to include records, mechanized backend systems and databases (and the information contained therein), gateways and interfaces used to support pre-ordering, ordering, provisioning, testing and maintenance and billing for xDSL services. Merely providing CLECs with the bare minimum of OSS capabilities, some of which have been tailored for Ameritech's ADSL service *does not* comply with this parity obligation.

C. Staff Position

The Commission staff agrees that Rhythms and Covad are legally entitled to all loop provisioning information contained in its possession in any backend system, database or records. The Commission staff also agrees that Ameritech must give Rhythms and Covad access to loop provisioning information through electronic gateways and through direct access so long as the direct access s read-only and the CLECs cannot manipulate or modify the information n Ameritech's databases.

Staff also maintains that if Rhythms/Covad wants <u>direct</u> access to SBC/Ameritech's legacy systems, rather than utilizing an electronic interface such as EDI, it would be unable to support that request.

D. Commission Analysis and Conclusion

Ameritech is obligated to give CLECs non-discriminatory access to all OSS necessary to provision line shared loops for xDSL service. Such OSS must be sufficient to allow CLECs to determine what type of DSL is suitable for a loop (pre-ordering), place orders for the CLEC's chosen type of xDSL service into the Ameritech's systems to be processed and have the line-shared loop provisioned,

tested, and repaired as quickly as possible. The FCC's UNE Remand Order requires that the "incumbent LEC must provide the requesting carrier with non-discriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install." The UNE Remand Order also states that "the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbents' back office and can be accessed by any of the incumbent LEC's personnel." Thus, Ameritech shall make available to Covad and Rhythms all information in its records, databases, or backend systems that may be useful in provisioning xDSL services on line shared loops. In compliance with the requirements of the Telecom Act, Ameritech shall provide such information regardless of whether the information would be useful for a type of xDSL Ameritech intends to provision or not. The FCC has interpreted the non-discrimination requirement contained in the Telecom Act as imposing upon incumbent carriers two separate, but related obligations. First, for OSS functions an ILEC provides to a CLEC that are analogous to functions it provides itself, CLEC access must be "equal...in terms of quality, accuracy and timeliness." Second, the ILEC must give CLECs a meaningful opportunity to compete by providing access to OSS systems and functionalities required to support a service even if there is no ILEC retail analog.

The UNE Remand Order states that "to the extent that [ILEC] employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface." The evidence in this proceeding demonstrates that Ameritech provides to itself a level of integration and flow through for pre-ordering, ordering, and provisioning not available to CLECs.

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

Ameritech is providing gateway access to information via EDI. Ameritech currently does not offer a GUI for pre-ordering and ordering. Ameritech has not currently committed to offer a standardized GUI usable by CLECs in Illinois for pre-ordering (Verigate) or ordering (LEX) until March 24, 2001. However, such GUIs are available in other SBC service areas. Therefore, Ameritech must expedite its efforts to provide such GUIs to CLECs in Illinois. Such GUIs should be available no later than December 2, 2000.

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

Ameritech shall provide Covad and Rhythms read only access to all data contained in any record, database or backend system of Ameritech that may be useful to Covad or Rhythms in the provision of xDSL-based services on line shared loops. To fulfill this requirement, Ameritech must make available all of the data elements SBC has agreed to provide CLECs during the POR process by the effective date of this Order. In addition, Ameritech shall provide information currently available to any Ameritech employee detailing OSS support for line sharing provisioned over the new Project Pronto configuration currently being deployed by Ameritech. Ameritech shall provide updated information to CLECs regarding Project Pronto in advance of additional deployment. Covad and Rhythms must be given access data sufficient to support any type of xDSL-based service that is capable of being line shared, including Rate Adaptive ADSL ("RADSL"), G.Lite and Multiple Virtual Lines ("MVL"), whether or not Ameritech intends to provide such types of xDSL.

So that Covad and Rhythms may determine what information Ameritech has that may be useful in the provisioning of xDSL-based services, Ameritech shall arrange for an audit by Covad and Rhythms representatives of its records, databases and backend systems within 30 days of the date of this order. The databases and backend systems that shall be included in such audit include, but are not limited to the following: LFACS, FACS, APTOS, TIRKS, LEAD/LEIS, SORD, SWITCH, WFA/C, WFA/DO, SOAC, LMOS, MARCH, Premis, LASR, ESOI, FOMS/FUSA, CRIS, CABS, ARES, and ACIS.

The Commission has authority to require Ameritech to provide CLECs with access to all of the loop provisioning data in its records, databases and backend systems, pursuant to the FCC's UNE Remand order. The Commission has authority to require such access even if Ameritech has committed to providing less information in the POR collaboratives with CLECs in conjunction with the FCC's SBC/Ameritech Merger Conditions Order. 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.

PRICING ISSUES

The threshold issue with respect to prices for Ameritech's HFPL UNE product is whether this Commission should set permanent prices in this proceeding or whether those prices should be interim only. Staff asserts that the appropriate forum to determine final prices is the investigation of Ameritech's line sharing tariff, Docket No. 00-0393. As such, Staff recommends that the Commission adopt only interim prices in this proceeding, subject to true-up when Docket No. 00-0393 is completed. Staff Ex. 2.0 at 3 (Koch). In their Supplemental Verified Statements, Rhythms and Covad appear to agree with Staff's recommendation that only interim prices be determined in this recommendation. Rhythms/ Covad Ex. 1.1 at 26. Similarly, Ameritech does not object to Staff's recommendation that the prices established in this case be interim and subject to true-up. The Commission agrees that permanent prices should be set in Docket No. 00-0393 and that this proceeding should set only interim prices that are subject to true-up at the conclusion of Docket No. 00-0393.

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

A. Recurring HFPL Price

1. Ameritech Position

Ameritech proposes that the interim monthly recurring price for utilizing the HFPL be 50% of the Commission approved monthly recurring unbundled loop price. Under this proposal, the recurring monthly price would range from $1.30 to $5.70 for the HFPL depending on the access area (urban, suburban or rural). Ameritech argues that this is a reasonable approach to setting an interim price for this new unbundled element for several reasons.

First, Ameritech argues that this price provides a significant discount to Rhythms and Covad in comparison to the price they would have to pay for an entire loop. This price also recognizes that, because CLECs are receiving dedicated use of the high frequency portion of the loop, they should pay for that use. Ameritech asserts that it is patently unreasonable to require a company to sell any product or service at a zero price, as Rhythms and Covad are proposing in this proceeding. Ameritech asserts that adopting Rhythm and Covad's position would be tantamount to requiring Ameritech to "give away" the HFPL product. Ameritech Ex. 2.0 at 3-4 (Meyer). Such a result, Ameritech argues, would not be competitively neutral, as it would place other broadband service technologies that are not priced at zero (and like the HFPL, arguably have no incremental costs) — such as cable modem facilities or wireless facilities — at a decided competitive disadvantage.

Second, Ameritech argues that its proposed recurring price of $1.30-$5.70 per month would encourage CLECs to enter the residential market. Ameritech points out that, before line sharing was available, CLECs wishing to use Ameritech's facilities to provide xDSL service would purchase an entire loop from Ameritech, at a monthly recurring price of $2.59 to $11.40. Ameritech argues that with line sharing under its proposal, CLECs can purchase the high frequency portion of that loop at a substantial discount — 50 percent off the current loop price — down to $1.30 to $5.70. This, Ameritech argues, will provide a significant incentive for additional data CLECs to enter the local market. In addition, it will encourage the deployment by CLECs of their own facilities, including their own loops, where it is economic to do so. Ameritech Ex. 2.0 at 3-4 (Meyer).

Third, Ameritech points out that its proposed monthly recurring price for the HFPL is consistent with the price agreed to by Covad with other ILECs. Ameritech asserts that Covad reached a voluntary interim agreement with Bell South that provides for a $6.00 interim rate for a line shared loop in all Bell South states. Covad also reached a voluntarily agreement with U. S. West in which Covad may choose an interim monthly rate of either $5.40 or choose a temporary zero rate until January 1, 2001, with the rate rising to $8.25 per month thereafter. These agreements, Ameritech argues, confirm the reasonableness of Ameritech's proposed price. Ameritech Ex. 2.0 at 4 (Meyer).

Finally, Ameritech argues that its proposed recurring HFPL price is fully consistent with the FCC's TELRIC pricing principles. As Covad and Rhythms concede, under the FCC's TELRIC principles, the cost of the loop is a shared cost. Therefore, Ameritech argues, that cost must be allocated between the two services that cause that cost. Ameritech Ex. 2.0 at 5 (Meyer). In support of this conclusion, Ameritech cites the FCC *Line Sharing Order,* where the FCC acknowledged that, when a single loop facility is used to provide both Ameritech voice service and CLEC advanced services on the HFPL, the loop becomes a cost that is shared by those two uses. Because one loop is shared between two services, Ameritech states that there is no economically unique way to establish the loop cost that each service causes; rather, use of the FCC's prescribed TELRIC methodology only allows establishment of the cost of the entire shared facility, i.e., the loop. Since cost causation cannot be established between the HFPL and the voice portion of the loop, the FCC's TELRIC rules acknowledge that pricing of the two services necessarily requires an allocation of the shared loop cost. Ameritech Ex. 2.0 at 5 (Meyer); See generally *First Report and Order*, ¶¶ 674-698; see esp. ¶ 694. Indeed, the FCC has required the states to allocate joint and common costs across the uses of the items that make-up those costs. Ameritech argues that there is no policy or technical rationale for allocating none of the shared cost to one service (the high frequency portion of the loop) and the entire shared cost to the other service (the low frequency portion of the loop). To the contrary, Ameritech claims that it is entirely consistent with these rules to allocate loop costs equally between the ILEC's voice service and the HFPL UNE.

Contrary to Rhythms and Covad's arguments, Ameritech argues that the FCC's *Line Sharing Order* does not mandate a zero price for the high frequency portion of the loop. Ameritech states that Rhythms and Covad have misapplied the paragraphs they cite (¶¶ 41 and 139) in support of their position. Ameritech states that these paragraphs are not mandatory and are completely inapplicable to Ameritech because it has never provided or offered xDSL services. Ameritech states that Rhythms and Covad ignore the purpose of the FCC's statement in Paragraph 139 of the *Line Sharing Order*. According to Ameritech, the FCC merely stated that, whatever price is chosen for the HFPL, it should not place CLECs at a disadvantage compared to an ILEC's own offering of xDSL services. In other words, the loop cost incurred by the CLEC should be the same as that used by an incumbent's retail offering of xDSL service, so the CLEC would not be at a disadvantage when it prices its xDSL services to customers. The crucial fact, Ameritech states, is that Ameritech has never provided xDSL service. Thus, Ameritech asserts, the FCC's pricing suggestion in paragraph 139 means that the price CLECs pay for the HFPL should be the same as the price Ameritech's data services affiliate, AADS, pays for HFPL. This is exactly what will happen under Ameritech's proposal; Ameritech's affiliate and other CLECs would all pay $1.30 to $5.70 per month for using the HFPL. Ameritech Ex. 2.0 at 6-7 (Meyer). In short, Ameritech argues that, under its proposed price, the FCC's principle of competitive neutrality is preserved, because Ameritech will charge AADS the exact same price that it charges CLECs.

Ameritech also points out that, in Paragraph 467 of its Order approving the SBC/Ameritech merger, the FCC recognized that any SBC/Ameritech advanced services affiliate should receive facilities at the same price as other CLECs, as Ameritech proposes. Ameritech Ex. 2.0 at 7-8 (Meyer). Ameritech further points out that in the FCC's SBC/Ameritech merger conditions, the FCC acknowledged that if an SBC ILEC charged unaffiliated CLECs the same amount for a loop as it charged its affiliated CLEC, pro-competitive pricing for xDSL service would result.

Ameritech further argues that a non-zero price for the HFPL would not result in higher than necessary prices for retail xDSL service. Ameritech Ex. 2.0 at 11 (Meyer). Ameritech points out that the price for retail xDSL service is set solely by the CLEC. (Tr. 543-44). Ameritech states that, even if a zero price for the HFPL theoretically might result in lower prices being charged by Rhythms and Covad to their retail customers, this lower price would be anticompetitive as it would allow Rhythms and Covad to essentially get the HFPL loop for free and pass that savings on to its customers. Moreover, Ameritech states that there is no indication that Rhythms and Covad would in fact pass on any cost savings to consumers. To the contrary, neither Rhythms nor Covad have committed to lowering their existing retail prices for xDSL service if the recurring HFPL price were set at zero. (Tr. 542-44).

Ameritech asserts that Rhythms and Covad's windfall argument is legally irrelevant. Ameritech states that Section 252(d)(1) requires that UNE prices be

determined without reference to retail revenues. In addition to being legally irrelevant under Section 252(d)(1) of the Act, Ameritech further argues that allowing it to charge a price that contributes to the recovery of a joint cost does not translate into a "windfall." Ameritech Ex. 2.0 at 10-11 (Meyer). Ameritech maintains that there is no evidence that it recovers the entire cost of the loop in retail rates, especially since those rates have been subject to price cap regulation since 1994. Ameritech argues that its 50% allocation is the only reasonable approach.

With respect to Rhythms and Covad's argument that a zero price is consistent with the policy objective of Section 706 to promote the deployment of advanced services, Ameritech argues that Section 706 has nothing to do with the pricing of UNEs. And even if it did, Ameritech argues, Section 706 is technology neutral and does not permit a particular advanced services technology, such as xDSL, to be favored over other advanced services technologies, such as cable modems and wireless broadband services, in terms of pricing. Ameritech asserts that Rhythms and Covad's zero price proposal for the HFPL clearly violates Section 252(d)(1) of the 1996 Act and, to the extent they are relevant at all, actually undermines Congress' policy objectives of promoting efficient competition and the deployment of all advanced services.

2. Rhythms/Covad Position on Loop Costs

Covad and Rhythms argue that the cost-based, non-discriminatory price for the high-frequency portion of the loop in the home-run copper case is $0. Setting the cost for the loop at $0 is the appropriate monthly recurring charge for use of the loop for several reasons.

First, a $0 price is TELRIC-compliant because Ameritech incurs the same forward-looking economic cost for feeder, distribution and loop termination facilities whether it provides an entire loop, just the high-frequency portion of the loop or just the remaining frequency of the same loop. Ameritech has assigned a $0 cost to the use of loops for the transmission of ADSL for its interstate for its affiliate, Pacific Bell.

The FCC has made clear that under the mandates of the Line Sharing Order, ILECs may not charge CLECs more for access to shared local loops than the amount of loop costs the ILEC allocates to ADSL services when it established its interstate retail rates for those services.

Second, the non-discrimination mandates of the Telecom Act require that UNE prices permit an unaffiliated competitor that is equally efficient as the ILEC or its data affiliate in supplying the competitively provided portions of DSL services, such as the customer premises equipment and Digital Subscriber Line Access Multiplexer ("DSLAM"), to have the same opportunity to earn an overall corporate profit from the offering of DSL-based services as does the incumbent's parent company. The only price for the high-frequency spectrum of the local loop that satisfies this requirement is $0 because that is the incremental cost that Ameritech as a whole experiences when it

supplies the high-frequency spectrum of the loop to its affiliate AADS. Even if Ameritech were to charge its affiliate a nonzero price for the loop, the price would simply amount to a transfer of money from one corporate pocket to another. The effect of a nonzero price on unaffiliated competitors such as Rhythms and Covad, however, is to impose a true cost on those competitors. Recognizing this potential for discrimination, the Texas Commission, in the June 2000 line sharing arbitration, established a $0 charge for the high-frequency portion of the loop, stating that a $0 charge would avoid a price squeeze and is consistent with the general pro-competitive purposes underlying TELRIC principles.

Finally, allowing Ameritech to charge anything above $0 for CLECs use of the loop will result in double recovery. Presumably, this Commission has established prices for Ameritech's retail and wholesale services in Illinois that are designed to recover all allowable loop-related costs. Ameritech does not propose to reduce any of the other loop-related prices in conjunction with the establishment of a positive price for the line sharing UNE. Thus, any revenues that Ameritech receives for line shared loops will represent double recovery of the previously allowed loop costs. Moreover, the prices that Ameritech has proposed for the use of the high frequency portion of the loop could equal or even exceed the price of a stand-alone xDSL loop. As Ms. Meyer acknowledged, the monthly recurring costs for a line shared loop in Zone A under Ameritech's proposed pricing exceed the monthly recurring costs for a standalone UNE loop in the same Zone. Specifically, the monthly recurring costs of a line shared loop in Zone A include the HFPL ($1.30), cross connects (56 cents), the OSS upgrade (87 cents) and the ILEC-owned splitter ($1.32), totaling $4.05 per month. In contrast the monthly recurring costs of a standalone UNE loop include the loop ($2.59) and cross connects (14 cents), totaling $2.73 per month.

3. Staff Position

Staff agrees with many of the assertions made by Ameritech. However, Staff ultimately recommends that the Commission adopt a zero interim monthly recurring charge for the HFPL.

Staff agrees with Ameritech that a zero rated HFPL would cause the CLECs to lose some of their incentive to build facilities. Nevertheless, Staff argues that Ameritech's assignment of 50% of the UNE loop rate is arbitrary and would not necessarily promote efficient investment in facilities.

Staff agrees that if the same price for HFPL is charged to the CLECs and to Ameritech's affiliate, AADS, then there is no competitive advantage to any party. Staff asserts, however, that this logic applies to zero rated services as well as services priced according to Ameritech's proposed methodology.

Staff also agrees with Ameritech that a zero monthly recurring charge for the HFPL necessarily causes a subsidy to occur between voice and data services. Staff

states that if all of the cost of the loop is allocated to voice services, then DSL services will necessarily be subsidized. This, Staff points out, goes against cost causation principals.

Staff argues that the FCC does not mandate a zero rate for HFPL. As Staff reads the FCC's *Line Sharing Order*, there are two specific requirements for the states in determining the rate for HFPL. First, a TELRIC methodology must be employed to divide the shared loop cost. (*Line Sharing Order* at paragraph 139). Second, states are restricted to setting rates that are no more than the loop cost allocated by the Company in its interstate ADSL offerings. (*Line Sharing Order* at paragraph 140).

Staff, however, argues that Ameritech's prices for the HFPL do not meet this first requirement. Staff points out that the Company provided no cost study in support of its proposed monthly charge; it merely allocated 50% of the UNE loop cost to develop the recurring HFPL charge. Staff asserts that the exact percentage of cost that should be allocated to the HFPL should not be determined arbitrarily. If Ameritech wants to charge 50% of the UNE loop cost to the HFPL, Staff asserts that Ameritech must provide a rationale in accordance with TELRIC principles. To date, Staff maintains that this has not occurred.

Staff also argues that the cost of the loop is currently fully recovered by Ameritech's retail rates for voice services, therefore, the Company would be double-recovering at its currently proposed price for the HFPL. Staff states that this double-recovery would have a negative effect on ratepayers, and would also slow the deployment of xDSL technology. This, Staff asserts, does not comply with the Telecommunications Act of 1996, FCC Rules, or Illinois Commerce Commission goals.

Staff recognizes that pricing the recurring monthly HFPL charge at zero also has negative connotations, and therefore may not be an ideal solution in the long run. Nevertheless, for the purpose of this docket, Staff recommends an interim price of zero, subject to true-up.

4. Commission Analysis and Conclusion on Loop Costs

Ameritech shall charge Covad and Rhythms $0 for the monthly recurring charge for use of the high frequency spectrum of a loop to provide xDSL-based services. Such charge complies with the FCC's mandate regarding costs that CLECs may be charged for line sharing and with TELRIC costing principles. We agree with the Texas Commission that a $0 charge also avoids anti-competitive discrimination and double-recovery of Ameritech's loop costs.

The FCC has directed that ILECs may not charge CLECs more for access to shared local loops than the amount of loop costs the ILEC allocates to ADSL services when it established its interstate retail rates for those services. Ameritech has assigned

$0 costs to the use of loops for the transmission of ADSL for its interstate for its affiliate, Pacific Bell. In its federal filing on behalf of Pacific Bell, SBC stated:

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

Ameritech has presented no evidence that line sharing in Illinois presents any different cost allocation issues. Therefore, the proper charge for monthly recurring use of the high frequency portion of the loop for Rhythms and Covad s $0. This determination is not effected by the court's holding in IUB. There the court determined that ILECs are to be allowed to recover the costs of existing facilities that are used by requesting carriers. Here, the use of the HFPL portion of an existing loop by a requesting carrier is cost neutral to Ameritech because the costs of the entire loop are already being recovered from the end user. Because the costs are already being recovered, the concerns of the IUB court are not extant and IUB is inapplicable.

B. Recurring Charges for Cross-Connects Jumpers, Ameritech-Owned Splitter Ports and OSS Service Order Costs

1. Ameritech Position

Ameritech s proposing a price of $1.32 price per splitter port for ILEC-owned splitters. Ameritech proposes a non-recurring charge of $13.17. Ameritech argues that the recurring price for each cross-connect is $.56 per month and is based on the time and labor necessary to do the work. Ameritech Ex. 1.0 at 51-52 (Schlackman). Ameritech states that its proposed price is based on actual costs incurred by Ameritech. Ameritech Ex. 2.0 at 13 (Meyer).

Ameritech disagrees with Rhythms' and Covad's arguments that the price for cross connects should be based on a configuration whereby the splitters are placed on the MDF. Ameritech Ex. 2.0 at 13-14 (Meyer). In support of its position, Ameritech cites Paragraph 145 of the *Line Sharing Order*, in which the FCC states, "we would expect the states to allow the incumbent LEC to adjust the charge for cross connecting the competitive LEC's xDSL equipment to the incumbent LECs' facilities to reflect any cost differences arising from the different location of the splitter, compared to the MDF." Based on this paragraph, Ameritech asserts that the FCC did not intend that the same price would be charged regardless of where the splitter was located.

Ameritech further argues that Rhythms' and Covad's proposal (that the price for cross connects be based on a configuration where splitters are placed on the MDF) misapplies TELRIC principles. Ameritech asserts that Rhythms and Covad's proposal assumes that costs for the HFPL should be based on the network configuration which is most economically efficient for Rhythms and Covad to line share. This position, Ameritech asserts, overlooks the clear fact that TELRIC does not require Ameritech to optimize its network for one service or one competitor. (Tr. 127-28). To the contrary, Ameritech argues, TELRIC takes into account all the services and products that are being provided out of the ILEC's central offices. (Tr. 128). Ameritech argues that Rhythms' and Covad's proposal clearly does not abide by these principles and, therefore, should be rejected by the Commission.

2. Rhythms/Covad Position

Covad and Rhythms have recommended that Ameritech set the per splitter port charge at $0. 89 per port in Illinois. This is the same price proposed by Ameritech in Texas and adopted by the Texas Commission. However on the day that its costing witness appeared for cross-examination, Ameritech submitted a new cost study that, among other changes, increased its splitter investment and total splitter costs by 21 percent each, resulting in a per-port charge of $1.32.

According to Covad and Rhythms, there is no legitimate reason for Ameritech to charge substantially more for the same splitter model in Illinois compared to its proposed charge in Texas. Based on representations SBC has made in other line-sharing proceedings, SBC is purchasing the same splitter model in bulk for deployment throughout the SBC region. According to the testimony of Ms. Murray, labor rates in Illinois should not be substantially different from those in Texas. Therefore, Ameritech should not incur a significantly higher cost per splitter port than would SWBT if the two companies used the same efficient practices to install and maintain those splitters. Covad and Rhythms argue that a 21 percent increase over an already unreasonably high price is simply not acceptable when parties have not had an opportunity to conduct discovery concerning the new alleged costs or to review the backup documentation concerning the increased splitter investment.

Covad and Rhythms also state that Ameritech failed to make any showing as to the reasonableness of the increase for splitter costs on the investment or the benefit to companies such as Rhythms and Covad from the choice of that sort of splitter. Further, Ameritech's increased costs for splitters were calculated improperly. Ameritech estimated the cost of splitter installation and maintenance using an "in-place factor" applied to the investment. Ameritech intends this factor to reflect costs such as power and HVAC (heating, ventilating and cooling) associated with digital circuit equipment, as well as costs such as the tie cables to and from the splitter. Some of these costs are clearly inappropriate because Ameritech admits that the splitter is a passive device that does not require power or cooling. Ameritech's factor cost methodology incorrectly links

splitter expenses to investments in a way that does not reflect the efficient costs that Ameritech would incur.

Covad and Rhythms provided a comparison of the expenses that result from Ameritech's factors to the direct estimate of splitter installation and maintenance costs supported by Covad/Rhythms witness Mr. Riolo, based on his expert engineering knowledge, to demonstrate that the Ameritech factor-based expenses make no sense for a simple, passive device such as a splitter. Although the factor methodology has been historically employed in Illinois, and such approach may be appropriate in some circumstances, in this instance, Ameritech used factors that do not reasonably estimate the relevant costs of splitter usage, and thus are inappropriate.

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

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

3. Staff Position

Commission staff did not have an opportunity to evaluate Ameritech's costs for splitter ports because these costs were revised on the second day of the hearing after staff had supplied written and live testimony n the case. Staff proposed that the recurring costs for cross-connect jumpers be set at the same level as is found in Ameritech's collocation tariff. Commission staff did not address the remaining issues in testimony.

4. Commission Analysis and Conclusion

Ameritech's proposed recurring prices for cross-connect jumpers, for Ameritech-owned splitter ports and for OSS-related enhancements are reasonable should be

adopted. While Covad and Rhythms criticize these proposed charges, their criticisms uniformly miss the point. Covad and Rhythms ignore the critical fact that TELRIC does not contemplate that the incumbent must, for pricing purposes, redesign its network in a way that minimizes the cost of one particular service or maximizes the economic benefits enjoyed by one particular service provider or select group of service providers. Rather, as the FCC stated in ¶ 685 of its First Report and Order, the TELRIC methodology employs a "benchmark of forward-looking cost and existing network design [that] represents the incremental costs that incumbents actually expect to incur in making network elements available to new entrants." Moreover, Covad and Rhythms ignore the fact that Ameritech's proposed prices for these elements use the same cost inputs and the same shared and common cost allocations approved by this Commission in its February 17, 1998 Order in Docket Nos. 96-0486/98-0569 ("Ameritech TELRIC proceeding"). This matter is also directly impacted by the IUB decision, which found that the FCC erred, in adopting a pricing regimen based upon a hypothetical network that is optimally efficient in technology and configuration because Congress, in passing the Telecom Act of 1996, was dealing in reality, not fantasizing about what might be. Based upon this finding, the court held that ILECs are to price UNEs based upon the actual costs of providing them, which is exactly what Ameritech's proposed prices do and Covad/Rhythms do not.

With the exception of Ameritech's proposed recurring charge for cross-connect jumpers, Staff agrees that Ameritech's proposed prices for these other recurring charges should be adopted on an interim basis, subject to true-up once the Commission completes its line sharing tariff investigation docket. With regard to the recurring charge for cross-connects, Staff proposes that the interim price be set at the same $.14 per cross-connect contained in Ameritech's collocation tariff. Staff's proposal in this one regard is misplaced, however, as the work activity covered by Ameritech's collocation cost studies and reflected in its collocation tariff pricing is substantially different from that which served as the basis for Ameritech's line sharing-related cost studies.

As above, Ameritech's proposed nonrecurring charge for cross-connect jumpers is reasonable and complies with the decision of the court in IUB. Likewise, Covad and Rhythms' criticisms miss the mark, for the same reasons described above. Accordingly, the Commission adopts as an interim price Ameritech's proposed price.

The Commission shall adopt the service order charge to be established in Docket 98-0396for unbundled loops as the appropriate charge for line-shared loops. Ameritech's proposed service order charge shall apply in the interim, subject to refund after the Commission adopts a permanent service order charge for stand-alone loops in Docket 98-0396.

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

A. Ameritech Position

Ameritech argues that Rhythms and Covad should pay for all cross-connects and cabling required to enable it to line share. Ameritech Ex. 2.0 at 13 (Meyer); Ameritech Ex. 2.0 at 50 (Schlackman). Ameritech states that the cabling necessary for line sharing is not otherwise recovered nor contemplated in the non-recurring or recurring portion of an end-user's POTS service. Ameritech states that before the existence of line sharing, Ameritech served a retail POTS customer by running a jumper from the end-user cable pair on the MDF to the office equipment ("OE") for the switch port. No additional cabling was required. With line sharing, the end-user cable pair must be connected in the manner described by Ms. Schlackman. Ameritech states that the CLECs are clearly the "cost causers" of this additional cabling and, therefore, should pay for the cabling necessary to obtain access to the high frequency portion of the loop whether they own the splitter or whether Ameritech owns the splitter. Ameritech Ex. 1.0 at 50 (Schlackman).

B. Rhythms/Covad Position

Covad and Rhythms take the position that CLECs should only pay for the single tie cable required to deliver the xDSL high-frequency signal from a splitter placed at Ameritech's Main Distribution Frame ("MDF"). According to their engineering experts, Mr. Riolo, this efficient arrangement would only require placement of two jumpers.

One source of excessive costs, according to Covad is that Ameritech's proposal inappropriately increases costs by configuring cabling through an Intermediate Distribution Frame ("IDF") rather than directly to the MDF. Ameritech has also overstated both the number of such tie cables and jumper activities for which it should be allowed to recover costs, and the cost per individual item or activity.

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

> We would expect that the costs of installing cross connects for xDSL services in general would be the same as for cross connecting loops to the competitive LECs' collocated facilities, particularly where the splitter is located within the incumbent LEC's MDF. Accordingly, we find it reasonable to establish a presumption that, where the splitter is located within the incumbent LECs' MDF, the cost for a cross connect for entire loops and for the high frequency portions of loops should be the same.

> We would expect the states to examine carefully any assessment of costs for cross connections for xDSL services that are in excess of the costs of connecting loops to a competitive LECs' collocated facilities where the splitter is located within the MDF. If the splitter is not located within the incumbent LEC's MDF, however, then we would expect the states to allow the incumbent LEC to adjust the charge for cross connecting the competitive LEC's xDSL equipment to the incumbent LECs' facilities to reflect any cost differences arising from the different location of the splitter, compared to the MDF. We would expect that this amount would be only minimally higher than for cross connecting a splitter located within the MDF to the competitive LEC's xDSL equipment.

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

1. Efficient Number of Tie Cables and Jumpers

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

In the revised cost study that Ameritech submitted during the hearing, the company now assumes that line-sharing arrangements will require six tie cables, at least where there is an Intermediate Distribution Frame ("IDF") in the central office. Covad and Rhythms believe that the Ameritech proposal is excessive for several reasons.

First, Ameritech is proposing to charge for six tie cables where only two tie cables (including the cable otherwise needed for voice-only services) were previously required for standalone loops. Thus, Covad and Rhythms argue that Ameritech's recommendation does not meet the FCC's requirement of being "only minimally higher" that for cross connecting a splitter located within the MDF to the competitive LEC's xDSL equipment.

Second, Covad and Rhythms recommend that the Commission give no weight to the Ameritech scenario that includes an IDF. In its *Advanced Services Order*, the FCC prohibits incumbent local exchange carriers from requiring competitors "to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible." As Ms. Murray explained, Ameritech's inclusion of an IDF in calculating the required tie cables and jumper work to connect a splitter in a line-sharing arrangement is precisely the kind of intermediate interconnection arrangement that the FCC has ruled out. Similarly, Covad and Rhythms argue that Ameritech's rationale for including an IDF does not comport with the "scorched node" approach to forward-looking cost that the FCC has adopted as part of its TELRIC rules.

Finally, Covad and Rhythms note that Ameritech always needs a facility such as a tie cable to link its voice-grade service customer to its switch. This is true regardless of the specific line-sharing arrangement and even for voice only service when no line sharing exists and the high frequency portion of the loop is not used. Thus, they argue, the cost of the existing tie cable should not be assigned to a competitor merely because the service is reconfigured into a line-sharing arrangement.

2. Tie Cable Costs

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

Covad and Rhythms assert that the recurring cost for the two tie cables that Ameritech has reflected in its proposed recurring cross-connect charge appear to be excessive on their face. Ameritech is proposing to charge CLECs for two sections of 100-pin cable each 200 feet long. Yet, Ameritech has provided no justification for these unusually long lengths of cable.

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

3. Cost for Cross-Connect Jumpers

Covad and Rhythms also contend that Ameritech's proposal for jumpers is also too high. Originally, Ameritech proposed identical nonrecurring cross-connect charges for both CLEC- and ILEC-owned splitters, but when it revised its study during the hearing, it distinguished between CLEC- and ILEC-owned splitters. Ameritech now proposes to charge for four jumpers for CLEC-owned splitters and five for ILEC-owned splitters, as opposed to six in both instances in the original Ameritech study. The new study also includes lower work times for the individual jumper efforts, which purportedly reflect Ameritech's experience with line sharing to date. That experience is limited to the jumper work for installing line-sharing arrangements, so Ameritech has made the simplifying assumption that disconnecting a line-sharing arrangement will require the same amount of time as was required for the original connection.

Although Ameritech's revised cost study incorporates fewer jumper placements and removals and generally lower work times than did its original nonrecurring cross-connect study, Covad and Rhythms assert that even the revised study result is overstated. Mr. Riolo's additional live direct provided a detailed critique of the errors in the revised Ameritech cost study, including excessive times for such tasks as login and completeness check and cross office test and the erroneous assumption that it takes as long to disconnect a line-sharing arrangement as to make the original connections. Covad and Rhythms observe that Ameritech's "actual" experience with connecting line-sharing arrangements includes times for jumper work that much more closely match Mr. Riolo's expert judgment than the times that Ameritech's Subject Matter Expert had provided, prior to evaluating the line-sharing experience.

Covad and Rhythms recommend that the Commission adopt the alternative prices for jumper placement and removal that they presented through the direct testimony of Ms. Murray. Those alternative prices reflect the efficient work times that Mr. Riolo has sponsored.

C. Staff Position on Tie Cables and Jumpers

The Commission staff did not have an opportunity to evaluate the charges proposed because Ameritech revised its cost study on this issue on the second day of the hearing, after the Staff had submitted both written and live testimony.

D. Commission Analysis and Conclusion

The Commission finds that, based primarily upon the IUB decision, Rhythms and Covad should pay for all cross-connects and cabling required to line share. As pointed out by Ameritech, the cost of cabling necessary for line sharing is not otherwise recovered by Ameritech. Because the CLEC's line sharing is the direct cause for the cabling both to the splitter, and *back from the splitter* to the switch port, it is only reasonable that CLECs compensate Ameritech for that cabling. As noted above, Rhythms and Covad should pay as interim prices, subject to true-up once Docket No. 00-0393 is completed, the recurring and non-recurring prices for cross-connects and tie cables specified in Ameritech's proposed HFPL Pricing Appendix, as corrected by Ms. Meyer.

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

A. Ameritech Position

Ameritech states that Rhythms and Covad should pay for OSS upgrades necessary to accommodate line sharing. Ameritech explains that the FCC recognizes that ILECs are entitled to recover their line sharing-related OSS costs. Ameritech proposes a monthly rate of $0.87 per line to recover the OSS development costs associated with line sharing. This charge is estimated to last three years (a reasonable amount of time), and will only be charged until Ameritech recovers the costs of its OSS work required to provide the line shared product. It is designed to recover the cost of making changes to OSS necessary to support line sharing and is consistent with the FCC's *Line Sharing* Order. This proposal is based on a quote for one vendor to provide one service: upgrade OSS specifically to accommodate line sharing. In other words, it is a purely incremental cost for line sharing. Ameritech Ex. 2.0 at 14-15 (Meyer).

B. Rhythms/Covad Position

Covad and Rhythms argue that under TELRIC pricing principles, Ameritech should not be allowed to recover any OSS upgrade costs. The evidence in the record demonstrates that the most efficient OSS technology for reasonably foreseeable capacity requirements at this time would be OSS that integrate the capability to track the multiple uses of shared lines. There is no evidence on this record that the cost to install and maintain such forward-looking OSS — if one is starting from scratch (that is,

reconstructing the local network) — would be any greater than the cost of the legacy OSS already reflected in the prices that Ameritech-IL charges for unbundled network elements and interconnection. Thus, there is no evidence that Ameritech-IL has incurred any incremental, forward-looking OSS cost attributable to line sharing.

To comply with the FCC's proposed requirements for recovery of OSS modification costs, Ameritech is required provide a detailed evidentiary basis on which interested parties and the Commission could determine the extent to which any OSS upgrades or modifications benefit Ameritech's own operations (or those of its affiliates), as opposed to being required solely for the provisioning of line sharing for unaffiliated competitors. Covad and Rhythms contend that Ameritech has not met this burden of proof. Covad and Rhythms argue that Ameritech clearly would incur all of the same OSS costs to accommodate its affiliate's (AADS's) retail plans even if there were no line sharing by unaffiliated competitors such as Covad and Rhythms. Thus, the record strongly suggests that there are *no* incremental, forward-looking OSS costs attributable to line sharing by unaffiliated competitors. Accordingly, Covad and Rhythms argue that Ameritech should not be allowed to recover any line sharing-related OSS costs at this time.

C. Staff Position

Staff asserts that Ameritech should be able to charge CLECs for necessary modifications to its OSS for line sharing. Staff also asserts that Ameritech has not yet provided proof that its charge for OSS modification is reasonable. Though there does not appear to be a rational way to determine an appropriate rate for an OSS upgrade at this time, Staff supports the use of Ameritech's proposed OSS upgrade charge on an interim basis, subject to true up.

D. Commission Analysis and Conclusion

The Commission agrees with Ameritech that CLECs should pay for OSS upgrades necessary to accommodate line sharing. The FCC has recognized that ILECs are entitled to recover their line sharing-related OSS costs. The FCC stated in paragraph 144 of its *Line Sharing Order*:

> We find that incumbent LECs should recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element.

The FCC also clearly approved of Ameritech and other ILECs recovering these costs through recurring charges. In the FCC's words:

> [T]he states may require incumbent LECs in an arbitrated agreement to recover such nonrecurring costs such as these incremental

> OSS modification costs through recurring charges over a reasonable period of time . . . .
>
> *Line Sharing Order,* ¶ 144.

This position is also consistent with IUB. The Commission finds that Ameritech's proposed prices for OSS upgrades are reasonable and should be adopted on an interim basis subject to true-up once the line sharing tariff investigation, Docket No. 00-0393, concludes.

Issue No. 13: Should 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.

A. Ameritech Position

Ameritech argues that it should be allowed to charge for any loop conditioning required to enable line sharing. In order for CLECs to provide xDSL service on a shared line, the line must not have limiting devices, such as load coils, repeaters, or bridge taps. Such devices were often put on lines to improve the quality of the voice signal. If such devices are on a line, Ameritech must send technicians to physically detach those devices in order for a CLEC to use a high frequency portion of the loop for xDSL services. Ameritech asserts that these are actual costs that Ameritech incurs to provide line sharing that it would not incur without line sharing. Ameritech argues that, because the CLEC requesting line sharing is causing the cost, that CLEC should pay the cost. Ameritech Ex. 2.0 at 15 (Meyer).

Ameritech points out that, in Docket No. 99-0525, this Commission considered the issue of whether Ameritech should be allowed to charge for line conditioning and concluded that such charges were appropriate. Ameritech also points out that the *Line Sharing Order* allows ILECs to charge for conditioning and, more importantly, Paragraph 382 of the *First Report and Order* specifically provides that requesting carriers must bear the cost of conditioning loops.

B. Rhythms/Covad Position

Covad and Rhythms contend that, in a forward-looking cost study, the nonrecurring charge for line "conditioning" should be zero because those items that are classified as "interferors" should not occur on any copper loops properly designed over the past 20 to 30 years. For the purposes of this interim proceeding, however, the Commission should adopt the interim conditioning charges adopted in Docket No. 99-0593. According to Covad and Rhythms, the position that the interim "conditioning" charges identified in Docket No. 99-0593, which are not specific to line-sharing arrangements, should apply to line-sharing situations is consistent with the FCC's finding that "[t]he conditioning charges for shared lines, however, should never exceed

the charges incumbent LECs are permitted to recover for similar conditioning on stand-alone loops for xDSL services." (Line Sharing Order ¶ 87)

C. Staff Position

With respect to Line Conditioning, Staff argues that this Docket is not an appropriate venue to develop such charges. Staff asserts that line conditioning charges are currently being addressed in Docket 99-0593 (special construction docket) and the rates determined in that docket should be applicable to HFPL line conditioning charges.

Staff notes that in the FCC's Order approving the SBC/Ameritech merger, the FCC ordered Ameritech to: 1) file cost studies and proposed rates for conditioning xDSL loops; 2) pending the approval of state specific rates, and subject to true-up, make available to advance service providers any rates (greater than zero) for xDSL loop conditioning contained in effective interconnection agreements to which any SBC/Ameritech incumbent LEC is a party; and 3) condition, at no charge to the requesting advanced services provider, unbundled loops of less than 12,000 feet. Staff states that Ameritech filed cost studies for loop conditioning on April 5, 2000. Those studies will be investigated in Docket No. 00-0393 (the Commission investigation into Illinois Bell Telephone Company Proposed implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service Tariff, initiated June 1, 2000.) Staff asserts that Docket No. 00-0393 will afford the Commission more time to thoroughly review Ameritech's cost studies for loop conditioning.

Staff maintains that until the Commission approves final rates in the Docket 00-0393 or Docket 98-0396, the Texas Arbitration rates qualify for adoption as interim rates for loop conditioning.

D. Commission Analysis and Conclusion

Both Covad/Rhythms and Ameritech agree that, consistent with the FCC's *Line Sharing Order*, the interim conditioning rates established in Docket No. 99-0593 would apply as the interim rate for conditioning line-shared loops. Therefore, the Commission will adopt the conditioning charge for line-shared loops on an interim basis.

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

A. Ameritech Position

Ameritech argues that Rhythms and Covad should pay for Ameritech to provide loop qualification information for a line shared loop. Ameritech Ex. 2.0 at 17 (Meyer). Ameritech asserts that this charge is for the work which must be performed by

Ameritech's engineers to provide the actual loop make-up data to the requesting CLEC. Ameritech states that the loop qualification process provides the CLEC with information to determine whether a loop is capable of allowing the CLEC to deploy its xDSL service over the high frequency portion of the loop. These costs, Ameritech asserts, are directly caused by the CLEC's request for the high frequency portion of the loop and, as such, should be directly recovered from the CLEC. Ameritech maintains that its position is consistent with the pricing requirements of section 252(d)(1) of the 1996 Act. Ameritech Ex. 2.0 at 17 (Meyer).

B. Covad/Rhythms' Position

Covad and Rhythms argue that competitors should not pay Ameritech to determine whether a loop desired for line sharing is capable of providing DSL. Instead, Ameritech should provide competitors with access to the loop makeup information necessary for the competitor to make its own determination of whether a loop is "qualified" for DSL. Access to such information is required by the FCC's UNE Remand Order, as discussed above. According to Covad and Rhythms, the TELRIC-based price for access to such loop makeup information is at or near $0, as commissions in two other SBC states have recently concluded. The Texas Commission found that "SWBT should be fairly compensated for the real time access to its OSS functionalities required" to provide competitors with loop makeup information and established an interim nonrecurring "dip charge" of $0.10 per loop for such information. The Arbitrator in a recent Kansas arbitration proceeding between Covad and SWBT similarly ordered that, based on SBC's planned Project Pronto network upgrades, SWBT's loop qualification price should be $0.

C. Staff Position

Staff did not specifically address Issue 14 in its testimony.

D. Commission Analysis and Conclusion

The Commission finds that Rhythms and Covad should pay Ameritech's costs to provide loop qualification information. Rhythms and Covad are the "cost causers" and, according to the holding of IUB, the cost of providing such information should be recovered from them.

V. COMPLIANCE WITH ARBITRATION STANDARDS

Under § 252(c) of the 1996 Act, a State Commission must apply three standards in resolving open issues and imposing conditions upon parties to an agreement subject to arbitration. The first standard requires the state commission to assure compliance with Section 251 and any rules promulgated under Section 251. The Commission has reviewed each of the conclusions reached above and finds that they are in compliance with the relevant statutes and rules. The second standard requires the state

commission to establish rates for interconnection, services, or network elements according to subsection (d). The prices adopted above comply with the criteria in Section 252(d). The final standard requires the state commission to provide a schedule for implementation of the terms and conditions by the parties to the agreement.

As a final implementation matter, the parties shall file, no later than 15 calendar days from the date of service of this Arbitration Decision, the complete amendment to their Interconnection Agreement conforming with this decision for Commission approval pursuant to § 252(e) of the Act.

By order of the Commission this 17th day of August, 2000.

Chairman