For the foregoing reasons, MCI WorldCom asserts that the Commission should determine that the computer processing costs that Ameritech applies on a per service order basis should be excluded from the nonrecurring service ordering charges. To allow Ameritech to include these costs in charges for every service order can pose a barrier to entry [*75] and therefore should not be allowed. *See* FCC Local Competition Order, P 747. Moreover, MCI WorldCom contends the rates should be structured consistent with the manner in which the costs of providing the elements are incurred. Ameritech's proposed method of recovering its computer processing costs unnecessarily inflates nonrecurring service order charges, is not pro-competitive and is inconsistent with the manner in which costs are incurred. For these reasons, MCI WorldCom urges the Commission to order Ameritech to include the computer processing costs in the recurring charges for all unbundled network elements and to remove them from the non-recurring cost study. This method of cost recovery is pro-competitive and consistent with the manner in which Ameritech is incurring these costs. Ankum Rebuttal, MCI WorldCom Ex. 1.1, p. 4; Jenkins Rebuttal, MCI WorldCom Ex. 2.1, p. 10.

iv. Work Times

With the exception of activities undertaken by the Service Center ("SC") and Network Element Control Center ("NECC"), MCI WorldCom points out that Ameritech utilized only SME interviews in estimating its nonrecurring charges. Jenkins Direct, p. 17; Jenkins Surrebuttal, p. 7. Ameritech only [*76] conducted time and motion studies with respect to two work groups that formed the basis for its nonrecurring charges. Tr. 554. MCI WorldCom noted that the Commission gave Ameritech clear direction concerning the preparation of cost studies. Ameritech was given the option of conducting a standard time and motion study, or to use subject matter experts ("SME") to develop cost estimates. In either case the following instructions applied: "That approach should start with an identification and documentation of forward looking workflows, identification of estimators, the development of detailed written estimation instructions, provisions for averaging the individual estimates, development of documentation, etc." AT&T/MCI WorldCom Initial Brief, pp. 72-73.

Ameritech, MCI WorldCom asserts, has not lived up to the Commission's directives related to the requirement to submit "sufficiently forward-looking" studies that are based on "primarily automated processes." Jenkins Direct, pp. 21. As MCI WorldCom witness Mr. Jenkins observed, Ameritech outlined a cost study methodology that supports the Commissions directives. Unfortunately, this approach was only used for the SC and NECC workgroups. [*77] AT&T/MCI WorldCom Initial Brief, p. 73.

The SME interview method, which Ameritech relied upon for the vast majority of the assumptions contained in its study, was, according to MCI WorldCom, seriously lacking in supporting detail and, therefore, wholly unreliable. For example, MCI WorldCom asked Ameritech to explain what was meant by its description that only "limited observations [were] available" with respect to certain work group activities and to describe for each of the work groups where estimates were used in place of or in addition to direct observations. MCI WorldCom also asked Ameritech to list the volume of orders by type that were processed by the work group on a system flow through basis during the study period and the associated % of total orders by type that the volume represents (flow through rate). Ameritech's response included the following statement: "The volume of service orders by type that flowed through the work groups during the time of the study was not tracked and is not available." Jenkins Direct, MCI WorldCom Ex. 2.0, p. 22.

Similarly, Ameritech was asked why the forward looking analysis focus was only on SC and NECC process steps and access systems. Ameritech's [*78] response was that "The forward looking analysis only focuses on the Service Center and NECC because those were the only areas identified with planned enhancements over the next three years." *Id.* MCI WorldCom states that it is clear that Ameritech did not take into account OSS enhancements that Ameritech committed to in order to obtain approval of its merger with SBC even though such enhancements were contemplated prior to the time that Ameritech's nonrecurring cost study was filed in this proceeding and prior to the time Ameritech obtained SME time estimates regarding work activities. Ameritech relied upon the SME interviews for the vast majority of estimates for activities and times on which their NRCs are based. Jenkins Direct, Ameritech Ex. 2.0, p. 11; Schedule RJF-3, pp. 298-326.

v. Recommended Rates

In summary, based on Mr. Jenkins' extensive analysis of Ameritech's nonrecurring cost studies and the substantial deficiencies he identifies, MCI WorldCom urges the Commission to (1) reject Ameritech's nonrecurring costs and (2) adopt Mr. Jenkins' recommended adjustments to Ameritech's proposed nonrecurring rates as set forth at pages 59-60 to Mr. Jenkins' direct testimony, [*79] MCI WorldCom Ex. 2.0, and as described in Attachment A to that testimony. In addition, there should be a single change record work only charge applied to UNE-P migration "as is" orders and to orders for new customers and additional lines served via the UNE-P. MCI WorldCom maintains that Ameritech's pro-

posed nonrecurring cost study should be rejected in its entirety and replaced with the study as adjusted by Mr. Jenkins or the NRCM study supported by AT&T witness Turner. AT&T/MCI WorldCom Initial Brief, p. 77.

e. Ameritech Illinois' Response

i. Elimination or Minimization of Nonrecurring Costs

Ameritech Illinois asserts that the Commission should reject the CLECs' argument that nonrecurring costs are "barriers to entry" that should either be eliminated or minimized in order to advance competition, and argues that such costs should either be recovered in a competitively neutral manner or shifted over to the recurring side of the cost ledger, to be paid gradually over an extended period of time.

First, Ameritech Illinois asserts that the CLECs' arguments fall outside the scope of this docket. According to Ameritech Illinois, the Commission opened this docket so that Ameritech [*80] Illinois could present new nonrecurring cost studies that more accurately reflect its actual costs. The Commission did not direct Ameritech Illinois to spread nonrecurring costs over recurring charges, or to develop a mechanism for spreading such costs over all customers to be recovered in a "competitively neutral" fashion.

Second, Ameritech Illinois argues that the evidence in this case demonstrates that the proposals of the CLECs represent poor public policy. If the Commission does not require CLECs to pay the costs they cause when entering the marketplace and ordering UNEs from Ameritech Illinois, the Commission will be forcing Ameritech Illinois to bear those costs and to subsidize the entry of CLECs. Ameritech Illinois asserts that nothing in the Public Utilities Act or TA96 justifies requiring Ameritech Illinois, and its ratepayers, to furnish CLECs with the capital they desire for market entry. Further, Ameritech Illinois cites Section 13-102(f) of the Public Utilities Act, which provides that "the competitive offering of all telecommunication services will increase ... efficiency." *220 ILCS 5/13-102(f).* Ameritech Illinois contends that the Commission cannot advance this [*81] legislative goal by encouraging inefficient CLEC entry.

ii. Forward-Looking Costs and Long-Run Time Frames

Ameritech Illinois also disputes claims by Covad/Rhythms, Staff, and AT&T that Ameritech Illinois' studies relied upon inappropriate time frames and failed to reflect enhancements to Operation Support Systems ("OSS") that might result from proceedings conducted pursuant to Condition 29 of the SBC/Ameritech Illinois Merger Order in Docket 98-0555.

With respect to the issue of whether Ameritech Illinois' TELRIC studies assume an appropriate long-run set of assumptions, Ameritech Illinois asserts that its studies satisfy this requirement. Specifically, Ameritech Illinois' witness Dr. Aron testified that subject matter experts had scrutinized Ameritech Illinois' nonrecurring costs processes and adjusted those processes based on forward-looking technologies that could be economically implemented over a three-year planning horizon. Further, Ameritech Illinois argues that such planning horizon is particularly appropriate in light of the fact that the Commission has criticized an attempt to project market conditions seven years into the future (in the context of depreciation issues) [*82] and has stated that, "we do not believe that 'forward-looking' is synonymous with 'gross speculation.'" TELRIC Order, p. 28. By using a planning horizon of three years, Ameritech Illinois asserts that it has avoided such "gross speculation."

Ameritech Illinois also disagrees with the premise of arguments that Ameritech Illinois' studies should have reflected the implementation of Merger Condition 29. Ameritech Illinois asserts that its studies comply with the TELRIC Order, and could not have conducted such studies to comply with as-yet unknown findings that might emerge as a result of this merger condition. Therefore, imposing an *ex post facto* standard based on whatever findings emerge from the implementation of Merger Condition 29 is outside the scope of the instant compliance proceeding.

Ameritech Illinois also argues that, in comparison to the nonrecurring charges of other ILECs, Ameritech Illinois' proposed charges are among the lowest in the nation, and thus, the Commission should find that Ameritech Illinois' ranking constitutes substantial evidence that Ameritech Illinois has calculated its nonrecurring costs on a forward-looking basis. Dr. Aron presented Ameritech Illinois' [*83] ranking by comparing the sum of Ameritech Illinois' proposed service order and line connection charges for unbundled voice grade loops to similar charges imposed by other ILECs. According to Ameritech Illinois, this comparison places Ameritech Illinois in the bottom quarter of all ILECs in all states, ranking 62 out of 77 ILECs. Disputing Covad witness Murray's criticism that Dr. Aron's comparison utilized out-of-date data, Dr. Aron testified that she reviewed the rates and updated them where appropriate. As a result of the update, some ILECs moved up in the rankings and some ILECs moved down, but Ameritech Illinois contends that it continued to rank in the lower quarter of ILECs in terms of the sum of its service ordering and line connection charges.

iii. Recurring Cost Studies

Ameritech Illinois argues that the Commission should reject Intervenors' criticism that Ameritech Illinois' nonrecurring cost studies are inconsistent with its recurring cost studies and its implication that Ameritech Illinois' nonrecurring cost studies improperly include recurring costs.

First, Ameritech Illinois claims that its nonrecurring cost studies use assumptions that track those used in the [*84] recurring cost studies presented to the Commission as part of the original TELRIC proceeding. Both sets of studies apply long-run incremental costing principles by starting with existing network configurations (in case of recurring studies) and existing order processes (in the case of nonrecurring studies) and, from that starting point, estimate costs based on forward-looking, least-cost technology and ordering processes that are available. According to Ameritech Illinois, just because its recurring cost studies were performed at an earlier point in time than the nonrecurring cost studies does not mean, as Intervenors suggest, that the studies are inconsistent with one another.

Second, Ameritech Illinois disputes Intervenors' contention that the network architecture that forms the basis for Ameritech Illinois' nonrecurring cost studies is out of date. To the contrary, Ameritech Illinois argues that its nonrecurring cost studies of ordering processes reflect the use of forward-looking technology in Ameritech Illinois' network, including the deployment of digital loop carrier and fiber in the feeder portion of the network. Ameritech Illinois further asserts that it appropriately [*85] did not include technology in its studies that would have increased Ameritech Illinois' forward-looking costs, such as GR-303 integrated digital loop carrier technology. Ameritech Illinois points out that Covad/Rhythms witness Riolo even acknowledged that the deployment of GR-303 technology may not be cost efficient for an incumbent local exchange carrier.

Third, Ameritech Illinois argues that Intervenor's testimony that Ameritech Illinois is improperly recovering recurring costs in its nonrecurring cost studies is simply wrong. While Intervenors implied that Ameritech Illinois was improperly recovering the costs of various recurring activities such as digging trenches, connecting a drop, and providing dial tone, the evidence establishes that Ameritech Illinois is not proposing to recover such costs in its nonrecurring cost studies.

Fourth, with respect to the recovery of OSS computer-related costs, Ameritech Illinois argues that Intervenors erroneously accused Ameritech Illinois of recovering "all of Ameritech's OSS costs" in its nonrecurring study. Ameritech Illinois points out that, in fact, it assigned only a portion of two OSS-related costs to its nonrecurring cost study, [*86] those for computer processing costs associated with processing service orders and those reflecting the system operator time of running the computer processing equipment associated with service orders. Ameritech Illinois properly assigns these computer costs to its nonrecurring cost studies because these costs are volume-sensitive, direct costs that would not be incurred if service orders were not generated by CLECs. Furthermore, contrary to surrebuttal testimony Ameritech Illinois claims that it does not double recover these computer processing costs because these costs are not recovered in Ameritech Illinois' shared and common cost studies.

Finally, with respect to Project Pronto, Mr. Florence testified that Ameritech Illinois had not given consideration to this initiative when it developed its nonrecurring costs. He pointed out that this was consistent with Ameritech Illinois' recurring cost studies. He testified that while Project Pronto is not directly reflected in Ameritech Illinois' nonrecurring costs, the equipment deployed by Project Pronto is equivalent to the equipment that is reflected, from both a functional and cost perspective.

iv. Digital Loop Costs and Charges [*87]

Ameritech Illinois proposed to disaggregate its analog and digital loop nonrecurring costs and charges. Ameritech Illinois argues that the Commission's TELRIC Order broadly criticized Ameritech Illinois' studies. Accordingly, the disaggregation of these costs and charges falls within the scope of this proceeding and permits Ameritech Illinois to more accurately present its costs for digital and analog loops. Ameritech Illinois further argues that it does not agree with Staff's position that because the new digital rates are higher in some cases than retail rates the Commission should reject the new digital rates. Ameritech Illinois points out that the retail rates are out of date and were developed years ago. Further, Ameritech Illinois argues that the TELRIC Order rejected a sum-of-the-parts pricing test and therefore rejected any requirement that TELRIC-based rates not exceed retail rates.

v. NRCM

AT&T and MCI WorldCom presented a Nonrecurring Cost Model ("NRCM") through AT&T witness Turner. The NRCM reflects their view of what ILEC nonrecurring cost studies and costs should look like throughout the country.

Ameritech Illinois asserts, however, that the evidence presented by [*88] Mr. Florence demonstrates that the NRCM does not accurately portray Ameritech Illinois' nonrecurring costs. For several reasons, Ameritech Illinois argues that the Commission should not adopt the NRCM.

First, Ameritech Illinois asserts that the Commission should find that consideration of the NRCM falls outside the scope of this proceeding. The Commission opened this proceeding by directing "Ameritech Illinois to recalculate its service ordering costs" and told Ameritech Illinois to provide more support for its line connection rate. TELRIC Order, pp. 89-90. Because the Commission was focusing on the issue of compliance, the Commission did not invite other parties to submit their own nonrecurring cost studies, such as the NRCM, in its ordering language directing compliance.

Second, the NRCM is a generic, proxy model. Ameritech Illinois contends that the run of the NRCM produced by AT&T and MCI WorldCom for this docket does not even reflect Ameritech Illinois' actual labor rates, a key component of any accurate portrayal of costs. According to Ameritech Illinois, the NRCM ignores many Ameritech Illinois-specific inputs/costs, and such a generic model clearly cannot provide an [*89] answer to the question of whether Ameritech Illinois has complied with the Commission's previous order directing Ameritech Illinois to recalculate "its ... costs." TELRIC Order, p. 9.

Third, Ameritech Illinois argues that AT&T also has failed to provide an adequate foundation for the Commission to consider the NRCM in the docket. Specifically, Ameritech Illinois points to Mr. Turner's testimony that he had never conducted a forward-looking nonrecurring charge cost study; could not name any of the principal developer/experts that are responsible for the NRCM; could not say whether they had visited any Ameritech Illinois facility for direct observations or had any experience whatsoever in an Ameritech service territory; could not explain how many previous versions of the NRCM might have been issued; and did not attend any meetings where the "experts" identified the actual time to perform a particular activity before developing a forward-looking estimate for that time. In contrast, Ameritech Illinois asserts that Mr. Florence's testimony establishes that his calculation of nonrecurring costs are based on time and motion studies, direct observation, and interviews of people actually [*90] doing the work in question. In addition, Mr. Florence has provided the parties process flow descriptions, narrative documentation, data reflecting average time estimates, as well as interview notes.

Ameritech Illinois also asserts that because the NRCM is not based on any observations of Ameritech Illinois-specific processes, it produces cost estimates with no grounding in reality. This assertion is demonstrated by consideration of the issue of service order flow-through versus manual intervention, "or fall-out." The NRCM adopts an overall fall-out rate of 2%, in total, for all of Ameritech Illinois' wholesale order and provisioning systems. However, in actuality, the percentage of fall-out is much higher. According to Ameritech Illinois, fallout occurs for three reasons. In some instances, an order falls out "by design" from a particular system due to the complexity of a service order. For example, all loops served by integrated digital loop carrier systems must be converted to a copper facility or a universal digital loop carrier system before they can be unbundled. When such loops are ordered, they are designated by a special code requiring manual intervention to take place so [*91] that the loop can be converted. Moreover, system errors sometimes occur because the service requested does not match data in the Ameritech Illinois' systems. Some of these errors are due to incorrect data in the system; some of these errors are due to incorrect information being placed on an order. Ameritech Illinois contends that it is merely an inevitable fact that such errors occur on a regular basis. Finally, CLECs cause errors that in turn cause their orders to fall out of the ordering and provisioning processes. For example, Mr. Florence referred to a one week period when 3,000 orders were processed at the UNE service center and 2,700 of them, or 90%, "fell out" and required supplemental orders.

Notwithstanding these causes of "fall out," Ameritech Illinois argues that the best evidence of the unreasonableness of the 2% fall-out rate assumed by the NRCM comes from AT&T and MCI WorldCom's documentation of concerns expressed by their own expert witnesses, which states in relevant part:

> There is witness concern that we do not have enough concrete data at this time to refute ILEC, and possibly any Commission, disbelief that 1-2% is reasonable assumption for fallout at this time. [*92] There is concern that individual systems and interfaces may offer a 1-2% flow through but that when all the databases, and systems in, for example, the provisioning process, are put together a 1-2% flow through performance is not "do-able" in the foreseeable future. Am. Ill. Ex. 3.1, p. 52 (Florence Rebuttal).

Accordingly, Ameritech Illinois argues that the Commission should reject the entire NRCM model which is premised on this unrealistically low fall-out rate.

Nevertheless, in defending the NRCM's low, assumed fall-out factor, Mr. Turner testified that he relied on the 1% fallout rate achieved by SBC's Easy Access Sales Environment ("EASE") system in developing his own 2% fallout number. However, Ameritech Illinois asserts that Mr. Turner's reliance on the EASE system provides no reasoned support for his position. According to Ameritech Illinois, EASE is an acronym for a single service ordering system used to generate certain retail and resale service orders in Southwestern Bell territory. Thus, the 1% fall-out achieved through EASE is not comparable to the 2% overall fall-out rate that Mr. Turner urges the Commission to impose on numerous Ameritech Illinois systems. Ameritech [*93] Illinois further asserts that because EASE is a single system, it does not provide OSS support for the provisioning of all orders. Therefore, if a system like EASE were to be used by Ameritech Illinois, it would be used in combination with other systems necessary for provisioning services whose own fall-out rates have to be incorporated into a proper study of costs.

Fourth, Ameritech Illinois contends that the EASE system processes only simple orders. Customers having more than five residential or thirty business lines do not submit their orders through the EASE system. By contrast, Ameritech Illinois' ordering and provisioning systems do not accept only simple orders, and thus, Ameritech Illinois was required to take this fact into account in estimating nonrecurring costs, including those caused by fall-out of complex orders.

In addition, Ameritech Illinois asserts that EASE cannot be used to process orders for UNEs. Thus, when the EASE fallout was calculated it did not reflect the coordination and engineering required of UNE-type orders but not required of simple retail and resale orders. Nonetheless, Ameritech Illinois asserts that it was not able to ignore the fall-out and [*94] costs caused by such engineering and coordination when calculating its costs, which reflect fallout rates ranging from 2.3% to 100%. Ameritech Illinois therefore argues that Mr. Turner's attempt to prop up the NRCM's assumed fall-out rate of 2% by reference to the EASE system is unpersuasive and should be rejected by the Commission.

Fifth, Ameritech Illinois argues that Staff's support of the CLECs' recommendation with respect to establishing an overall fall-out rate should be rejected as unreasonable. While Staff testified that a 2% fall-out rate might not be realistic for Ameritech Illinois' UNE service ordering and provisioning systems because SBC's success with EASE had been for "migration orders" (that do not involve UNEs), Staff nevertheless supported the assumption of an overall, low fall-out rate. Ameritech Illinois disputes Staff's position because Staff s own witness admitted that all systems relied upon by ILECs are prone to error at some point, and if one actually did a fall-out study for each system, the fall-out rate for each system would likely be different. In addition, Ameritech Illinois claims that Staff's position should be rejected because Staff admitted that [*95] it had conducted no independent investigation of ILECs to determine whether any ILEC was capable of provisioning services with 2% fall-out rate. In contrast, Staff's testimony indicates that while it might be convenient to adopt a single fall-out rate, such an approach is not realistic given the expected fall-out variations between systems. Further, Ameritech Illinois asserts that Staff's testimony provides no evidence to support its recommendation that either Mr. Turner's NRCM model fall-out assumption be accepted or that some other low, overall fall-out rate be adopted by the Commission.

Sixth, in addition to assuming an unrealistic fall-out rate in order to reduce ILEC nonrecurring costs, Ameritech Illinois identifies other unrealistic assumptions made by the NRCM. For example, Ameritech Illinois asserts that the NRCM assumes absolutely no involvement by Ameritech Illinois service representatives in processing UNE orders, despite the fact that no such system currently exists that would avoid Ameritech Illinois service representative involvement in processing such orders. In addition, Ameritech Illinois contends that the NRCM does not provide for the recovery of computer processing [*96] costs. However, according to Ameritech Illinois such computer service processing costs are directly identifiable and properly recovered in Ameritech Illinois' nonrecurring charges.

Finally, Ameritech Illinois requests the Commission to recognize the fact that the state commissions of North Carolina, South Carolina, and Mississippi have specifically rejected the NRCM, and urges this Commission to likewise reject the NRCM as an unrealistic proxy model with no basis in reality with respect to Ameritech Illinois' forward-looking, nonrecurring costs.

vi. MCI WorldCom Witness Jenkins

Ameritech Illinois contends that the Commission should also reject the recommendations of MCI WorldCom witness Earl Jenkins to make various modifications to Ameritech Illinois' nonrecurring cost studies as an alternative to the NRCM. Specifically, Mr. Jenkins based his recommendations on his view that Ameritech Illinois' costs are not forward-

looking; that activities associated with connection and disconnection of some unbundled elements are overstated; and that other activities described in Mr. Florence's studies lack adequate documentation.

First, Ameritech Illinois disputes MCI WorldCom's presentation [*97] of Mr. Jenkins as an expert in "operations process evaluation and improvements for telephone companies." MCI WorldCom Ex. 2.0, p. 1. Ameritech Illinois points out that on cross examination, Mr. Jenkins's answers indicated that he had not conducted an objective evaluation of Ameritech Illinois' nonrecurring service ordering and provisioning processes. For instance, Mr. Jenkins admitted that he had failed to engage in a comprehensive, objective analysis of the ordering and provisioning systems of MCI WorldCom or any other CLEC as a benchmark against which to compare his recommendations concerning Ameritech Illinois' ordering and provisioning processes. Tr. 137. According to Ameritech Illinois, Mr. Jenkins's failure to do so means that Ameritech Illinois, and the Commission, have no way to evaluate the reasonableness of Mr. Jenkins's recommendations in comparison to the very industry which is claiming that his proposed changes are reasonable. In particular, Ameritech Illinois asserts that Mr. Jenkins's 2% fall-out recommendation is suspect given his admissions that he did not seek information from any of his CLEC clients about whether any of them had achieved a similar 2% fall-out rate, [*98] and that the 2% rate was not necessarily reasonable.

Ameritech Illinois further asserts that Mr. Jenkins's fall-out recommendation is suspect because while Mr. Jenkins admitted that the complexity of orders increases with the number of ordering and provisioning systems involved, Mr. Jenkins admitted that he did not even determine how many systems Ameritech Illinois has, even though he supports an extremely low fall-out recommendation. According to Ameritech Illinois, Mr. Jenkins's failure to consider or understand the number and complexity of Ameritech Illinois' current ordering and provisioning systems should lead the Commission to doubt the reliability and accuracy of Mr. Jenkins's recommendations.

Second, Ameritech Illinois contends that Mr. Jenkins's recommendations conflict with those developed through the NRCM. For example, Mr. Jenkins recommends a time for running a jumper that is approximately ten times greater than the time recommended by Mr. Turner. On the other hand, Mr. Turner recommends a cost related to the fall-out of orders that is more than 5 times greater than the cost recommended by Mr. Jenkins. In addition, Ameritech Illinois points out that Mr. Jenkins and [*99] Mr. Turner did not assume the same labor rates; Mr. Jenkins used Ameritech Illinois-specific labor rates, but Mr. Turner, through the NRCM, failed to input Ameritech Illinois' specific labor rates. Ameritech Illinois argues that these significant differences between the recommendations of each these witnesses should give the Commission serious pause as to the reliability of any of their estimates.

Third, Ameritech Illinois asserts that Mr. Jenkins's analysis is replete with other problems. For example, Mr. Jenkins does not include a shared and common cost loading in his proposed view of nonrecurring costs. According to Ameritech Illinois, such approach is inconsistent with the FCC's TELRIC methodology which, the FCC stated, would "include a reasonable allocation of forward-looking joint and common costs." *First Report and Order,* CC Docket 96-98, P 672 (rel. Aug. 8, 1996). Further, Ameritech Illinois contends that Mr. Jenkins's recommendations are based only on his own personal experience, which does not include any experience observing Ameritech Illinois' processes for ordering and provisioning. Nevertheless, Mr. Jenkins consistently recommends drastic reductions in estimates [*100] of work times, or wholesale elimination of certain processes, even though Ameritech Illinois' estimates and recommendations are developed by subject matter experts ("SMEs") who have actual experience provisioning Ameritech Illinois UNEs. For these reasons, Ameritech Illinois urges the Commission to credit Ameritech Illinois' estimates of its work times and recommendations concerning processes over those of Mr. Jenkins.

vii. MCI WorldCom Witness Dr. Ankum

Ameritech Illinois asserts that the Commission should reject MCI WorldCom witness Dr. Ankum's recommendation that computer processing costs not be recovered in nonrecurring service order charges. According to Ameritech Illinois, Dr. Ankum's recommendation is based on the erroneous premise that such costs are either shared or common costs of service ordering and processing and, therefore, should be recovered through recurring charges.

Ameritech Illinois claims that Dr. Ankum ignores the fact that service ordering is a nonrecurring function. That is, every time a CLEC places an order, Ameritech Illinois processes that order on a one-time basis, and not on a recurring basis over a period of time. Ameritech Illinois further contends [*101] that Dr. Ankum ignores the fact that computer processing costs are a *direct* cost of the nonrecurring, service ordering function. Accordingly, Ameritech Illinois urges the Commission to find that Ameritech Illinois' calculation of its nonrecurring costs are in compliance with the TELRIC Order.

f. Commission Analysis and Conclusion

Our TELRIC Order rejected the nonrecurring cost studies originally proposed by Ameritech based on the fact that Ameritech failed to provide adequate support for its proposed costs and that the nonrecurring cost studies assumed manual intervention rather than the use of primarily automated interfaces. We directed Ameritech to submit forward looking nonrecurring cost studies supported by detailed information and to describe with specificity what nonrecurring charges would apply and in what circumstances. We expressly instructed Ameritech to provide very specific backup information, including identification and documentation of forward looking workflows, identification of estimators, the development of detailed written estimation instructions, provisions for averaging the individual estimates, development of documentation, etc. Finally, we directed Ameritech [*102] to change a single assumption, that orders would be placed through a fully automated process. The NRC study submitted falls short of expectations. A number of observations are warranted.

First, rather than base its nonrecurring cost studies upon forward looking, least cost, most efficient network technologies, processes and systems, including Operation Support Systems, or OSSs, Ameritech's studies are based on its *existing* network architecture and processes and incorporate only those technologies and process improvements that Ameritech *actually* plans to deploy in the next three years. This is the antithesis of a forward looking cost study not only because it encompasses actual rather than forward looking technologies and processes, but because even if it were appropriate to focus on actual planned enhancements and improvements, the three year planning horizon is wholly arbitrary. Certainly there is no legitimate reason to exclude efficiencies that can be expected to occur beyond a thirty six month window. It is apparent here that Ameritech gamed the system by choosing a planning horizon for calculating non-recurring costs that was just short of the planned enhancements associated [*103] with Project Pronto (specifically the addition of Litespan 2000 equipment), while including the Litespan equipment in it recurring cost study, which was performed at an earlier point in time. See Tr. 391-392

Even if it were appropriate to limit a nonrecurring cost study to those enhancements that Ameritech plans to make over a three year planning horizon, Ameritech's nonrecurring cost studies fail to meet even its own stated objective. For example, Ameritech's cost studies do not assume any additional efficiencies resulting from the rollout of Project Pronto, a rollout that has already begun to occur. Tr. 388-394, 406-408, 411, 415-417, 548-549, 552-553. Ameritech's cost studies also fail to incorporate the OSS enhancements Ameritech had committed to in seeking approval of its merger with SBC, even though such enhancements were contemplated by Ameritech prior to our conditional approval of its merger on September 23, 1999. In fact, in compliance with our Merger Order in ICC Docket No. 98-0555, Ameritech was required to submit by January 8, 2000 a Plan of Record for developing and deploying application-to-application interfaces for OSS as well as integrating its OSS processes, reflecting [*104] a "comprehensive plan for improving the OSS systems and interfaces available to CLECs in Illinois." Merger Order, p. 185.

Nevertheless, Ameritech's nonrecurring cost studies, submitted after the Plan of Record filing date, do not take into consideration the increased flow through that should result from the OSS enhancements being implemented pursuant to Ameritech's merger agreement. The OSS enhancements that were implemented in 2000, and those that are to be implemented this year, are designed to improve the flow through of wholesale orders, but are not accounted for in Ameritech's study. By Ameritech's own admission, its cost study fails to account for the planned change to its billing systems by October 2001 so that all UNEs and UNE combinations, including the Platform, will only require one service order. This places the new system on the same footing as the EASE system used by SBC, which has attained a fall out rate of less than 1%. Ameritech witness Mr. Florence candidly conceded on cross examination, and Ameritech acknowledged in its Initial Brief, that its nonrecurring cost study erroneously assumes that two service orders will be required on an ongoing basis. Ameritech's cost [*105] witness, Mr. Florence, admitted that Ameritech's agreement to provide a single interface for submission of UNE orders was "new information" to him, seriously undermining the credibility of his entire presentation. Tr. 558. We are also troubled by the fact that Mr. Florence testified that two state commissions had rejected the AT&T/MCI Nonrecurring Cost Model when, in fact, those commissions had already adopted the Model, casting serious doubt upon his entire testimony in support of Ameritech's nonrecurring cost study.

These glaring omissions make it abundantly clear that Ameritech failed to take into account major deployments and enhancements in evaluating the service center process and network provisioning steps that would be minimized or eliminated over a three year period. Also, readily apparent in the compliance filing and conceded by Mr. Florence, is the fact that nowhere in the supporting documentation can we determine what, if any, assumptions the subject matter experts employed by Ameritech made in making these determinations. One of the specific directives given Ameritech in the TELRIC Order was to list the assumptions used in developing costs.

We also agree with MCI WorldCom [*106] witness Mr. Jenkins that Ameritech's cost studies contain numerous other flaws that result in inflated nonrecurring charges that CLECs must pay. For example, Ameritech provides no writ-

ten reports or other support for its flow through rates and fails to use a single fallout factor for the complete end-to-end connect/disconnect processes; instead, it views each process step in isolation. As noted by MCI WorldCom witness Jenkins, this has the effect of accumulating fall out and increasing costs. Ameritech's cost study also makes no adjustment for Ameritech cleaning up and then maintaining its databases to eliminate fallout caused by database contamination. As AT&T witnesses Dr. Selwyn and Mr. Turner testified, such database synchronization is a necessary prerequisite to a properly performed nonrecurring cost study. Similarly, as MCI WorldCom witness Mr. Jenkins also pointed out, Ameritech's cost study does not assume that it performs any root cause analyses to seek out and resolve problems causing fallout, nor does it distinguish between fallout resolution costs and the costs associated with planned/designed manual intervention due to fallout.

For example, Ameritech provides no support [*107] for its low flow through rates (and, conversely, its high fall out rates). These rates are directly at odds with the 99% flow through rates Southwestern Bell Telephone Company ("SWBT") reports for its own EASE system, which was made available to CLECs for ordering UNE loop and port combinations in 1999. Ameritech's flow through and fallout rates are also out of line with the 5% fallout rate reported by another of its sister affiliates, Pacific Bell. The fallout rates experienced by SWBT and Pacific Bell are much more in line with the 2% fallout rate recommended by Mr. Jenkins, which reflects reasonable forward looking quality/cost efficiencies. This 2% fallout rate is the same fallout rate assumed by the NRCM sponsored by AT&T witness Mr. Turner. Adopting a 2% fallout rate is also consistent with the 2% fallout rate adopted by the Michigan Public Service Commission.

We also agree with AT&T and MCI WorldCom that Ameritech should eliminate the computer processing costs it applies per service order. These costs are not a direct cost to a CLEC ordering a UNE. Rather, computer processing costs are costs common to all network elements, and are more appropriately recovered through recurring [*108] charges. Recovery of computer processing costs via recurring charges is also consistent with the way Ameritech incurs its costs, which is on a monthly basis. Accordingly, we order Ameritech to remove all computer processing costs from its nonrecurring charges and to include these costs in the recurring charges for all UNEs to the extent Ameritech has not done so already.

We also find the work times in Ameritech's cost studies to be inadequately supported. Ameritech admits that it only conducted time and motion studies for two of its nine work groups; information regarding the remaining seven work groups was based on subjective SME interviews. While it is true that the TELRIC Order ordained the use of SME interviews, Ameritech's own data request responses indicated that its cost studies are based on "limited observations" and that the volume of service orders by type that flowed through were not tracked and not available and, therefore, not subject to quantitative analysis. Moreover, Ameritech conceded that its forward looking analysis focus was only on two of the nine work groups (Service Center and NECC) because those were the only areas identified with planned enhancements over [*109] the next three years, making the purpose of the SME interviews unclear and their utility to the cost studies questionable. Further, and perhaps more troubling, the TELRIC order specifically required Ameritech to assume primarily automated ordering. Ameritech's study, instead, apparently assumed that the brunt of its operation would be status quo, by only assuming that two of the work groups would be enhanced, while the vast majority would remain static.

These significant flaws lead to the inevitable conclusion that Ameritech's cost studies fail to comply with our TELRIC Order requiring well-documented, forward looking cost studies based upon primarily automated processes as well as the FCC's TELRIC methodology. Ameritech's failure to comply with our directives results in nonrecurring charges that are severely inflated. For example, under Ameritech's proposed service ordering charges, the nonrecurring charges to migrate a customer from Ameritech to a CLEC via the UNE-Platform is almost $ 12.00, while the NRCM calculated a charge of 29 cents, the state of Michigan has imposed a 35 cent charge for the same migration, and MCI WorldCom witness Jenkins proposed a charge of $ 1.02.

For all [*110] the above reasons, we reject the nonrecurring cost studies of Ameritech. For the purposes of this docket, we accept the analysis propounded by MCI WorldCom witness Mr. Jenkins.

We find Ameritech's assertions that the cost studies performed by the Intervenors are beyond the scope of this docket curious. In the event we were to again reject Ameritech's cost studies, it would be incumbent upon us to establish just and reasonable rates. Without the other cost studies, there would have been no record basis upon which to do so. In accepting Mr. Jenkins' recommendations, we caution against anyone reading more into this decision than is warranted. As the above discussion makes clear, the Commission is, unfortunately, faced with a dilemma beyond its own making, due the fact that Ameritech, when faced with what was the seemingly simple task of incorporating new assumptions

concerning automated order taking into the cost of providing UNEs, instead spit the bit and submitted a mountain of unexpected material, raising numerous extraneous issues with which the Commission must now deal. As anyone reading this Order should readily discern, the filing has consumed vast resources of all the parties [*111] involved, and the Commission must now bring the curtain down. In doing so, we have selected Mr. Jenkins' analysis because it started with Ameritech's seriously flawed costs studies with the attendant inappropriate assumptions, inefficiencies and process flows and then adjusting them to make its nonrecurring charges more reasonable and forward looking than those proposed by Ameritech.

This is not to say that the NRCM proposed by AT&T witness Selwin does not have attractive attributes. To the contrary, the idea that costing can be reduced to mathematical certainty is always an appealing idea. But here, the adoption of a specific cost model, on this record, is simply not appropriate, in light of the number of cost dockets that are currently pending before the Commission and the likelihood that adoption here would result in arguments relating to the precedential or preferential treatment to be given the NRCM model in those dockets, thereby complicating them unnecessarily.

We therefore adopt the recommended adjustments of Mr. Jenkins, which are more in keeping with past practices of the Commission in relying upon experts to propose adjustments to utility provided data in arriving at reasonable [*112] approximations of costs and just and reasonable rates. The nonrecurring charges listed in the AT&T/MCI WorldCom Joint Reply Brief reflect the adjustments that Mr. Jenkins made to Ameritech's proposed TELRICs plus mark-ups that were added to the adjusted TELRICs to account for shared and common cost loadings. We adopt those adjusted rates in their entirety. We direct Ameritech to replace in its tariffs the MCI WorldCom adjusted rates that correspond to the proposed Ameritech rates that now appear in those tariffs. We also require Ameritech to tariff a single change record work only charge to apply to UNE-Platform migration "as is" orders and to orders for new customers and additional lines served via the UNE-Platform.

2. Fill Factors

a. Ameritech Illinois' Position

The TELRIC Order required Ameritech Illinois to rerun its cost studies utilizing the fill factor assumptions and the 9.52 percent cost of capital as recommended by Staff, and the latest projection lives and percentages prescribed by the FCC as recommended by AT&T/MCI WorldCom. TELRIC Order, p. 136. According to Ameritech Illinois witness Ruth Ann Cartee, Ameritech Illinois has complied with the TELRIC Order by modifying [*113] its input assumptions for capital structure, depreciation, and fill factors. In response to AT&T's claim that Ameritech Illinois had not included revisions to the future net salvage percentages adopted by the FCC for metallic and non-metallic underground cable, Ms. Cartee made such adjustments. Ms. Cartee further testified that the adjustments had a *de minimis* impact on Ameritech Illinois' loop rates, ranging from zero percent in Zone B for basic loops to .5% for four wire analog loops in Zone A. In addition, Ameritech Illinois pointed out that Staff found that Ameritech Illinois had modified its input assumptions in its TELRIC study in compliance with the TELRIC Order.

Ameritech Illinois contends that the Commission should find that it has complied with the TELRIC Order with respect to modifications to those input assumptions. Ameritech Illinois also contends that, in the interest of administrative efficiency, the Commission should defer implementing the minimal rate adjustments associated with changes to the net salvage values described above pending the review of Ameritech Illinois' updated TELRIC cost studies which have been submitted to the Commission in the merger proceeding. [*114] After such review is completed, Ameritech Illinois would reflect the new salvage values and any other cost input changes in its UNE rates.

b. Staff's Position

Staff finds that Ameritech Illinois has appropriately modified its cost studies relative to the fill factors, capital structure and depreciation input assumptions.

c. Intervenors' Position

Intervenors agree with Ameritech Illinois' adjustments but oppose Ameritech Illinois' proposal that it not be required to amend its tariff until the outcome of any docket examining post merger cost studies. They argue that Ameritech should not be permitted to continue reaping a windfall under admittedly improperly calculated rates while a docket examining the April 2000 cost study submission proceeds.

d. Commission Analysis and Conclusion

The Commission agrees with Ameritech Illinois and Staff that Ameritech Illinois has complied with the TELRIC Order's requirements concerning fill factors, depreciation, and cost of capital assumptions. Ameritech Illinois utilized fill factors that are consistent with those proposed by Staff in Docket Nos. 98-0486/0569. Moreover, Ameritech Illinois utilized debt ratios and the cost of debt recommended [*115] by Staff -- and ordered by the Commission -- to produce cost of capital assumptions. Such inputs yielded a weighted average cost of capital of 9.52 percent, which is consistent with the TELRIC Order. The Commission also agrees with Staff that, consistent with the TELRIC Order, Ameritech Illinois utilized the economic lives and net salvage percentages recommended by AT&T/MCI WorldCom in the TELRIC proceeding.

The Commission notes that none of the Intervenors provided a quantitative analysis of the revenue impact of adjusting net salvage values, from which we infer that Ameritech Illinois's representations that the impact would be *de minimus* is correct. Given the likelihood of such a *de minimus* impact, considerations of administrative efficiency convince us we should defer requiring Ameritech Illinois to implement the minimal rate adjustments associated with the net salvage values

3. Shared and Common Costs Pools

a. Ameritech Illinois' Position

Pursuant to the TELRIC Order, Ameritech Illinois was required to make certain modifications/adjustments to its shared and common costs including: (1) reducing the UNE-related and shared cost pool to remove various expenses for three [*116] employees not deemed properly assigned to UNE-related activities; (2) reallocating the costs associated with corporate strategy and public policy functions from the shared cost pool to the common cost pool; (3) adjusting the common cost pool to remove expenditures for charitable contributions and other retail related expenses; and (4) adjusting the methodology to make it consistent across all UNEs for allocating shared and common costs. TELRIC Order, pp. 50-52, 54.

b. Staff's Position

The Staff is of the opinion that Ameritech has complied with the Commission's Order regarding adjustments to shared and common cost pools. Staff Exhibit No. 1.0 at 7; 2.2 at 3; *see also* Ameritech Exhibit No. 1.0, Schedule RAC-5; 1.1 at 2-3. Staff notes, however, that when new UNEs are introduced, all else being equal, the total extended TELRIC pool increases. Staff Exhibit No. 1.0 at 8-9. This, in turn, should cause the shared and common costs applied to each element to decrease. Id. Staff is of the opinion that this would ultimately result in lower prices for UNEs. Id. Therefore, to properly assign shared and common costs to new UNEs, Ameritech should recalculate the shared and common [*117] costs (as well as the NVS costs) based on extended TELRIC. Id.

Staff indicated it did not believe that the record in this proceeding is sufficiently well developed to determine to what extent the allocation of shared and common costs to additional UNEs, will result in reductions of UNE rates. Accordingly, the Staff was of the opinion that Ameritech has satisfied this condition, but noted that an investigation of the issue of shared and common UNE costs could be appropriate in future.

c. Intervenors' Position

AT&T maintains that Ameritech's compliance studies understate the "Extended TELRIC" calculation that, in turn, overstates the shared and common cost allocations. Accordingly, AT&T posits that Ameritech's shared and common cost allocations do not comply with those approved by the Commission in the Ameritech TELRIC Order.

AT&T witness Michael Starkey explained that the "Extended TELRIC" calculation simply multiplies the estimated demand for all unbundled network elements times the final TELRIC costs for those elements (the result of this arithmetic is the "Extended TELRIC" figure). The shared and common cost percentages to be applied to the TELRICs for all unbundled elements [*118] is then derived by dividing the shared and common cost pools resulting from Ameritech's shared and common cost study by the extended TELRIC. Therefore, Mr. Starkey reasoned, if the extended TELRIC is understated, the shared and common cost percentage mark-up is overstated. Starkey Direct, AT&T/McLeod Ex. 1.0, pp. 6-7.

Mr. Starkey testified that Ameritech has unreasonably underestimated its extended TELRIC in several respects. For example, in one instance, Ameritech understated its extended TELRIC as a result of its recalculation of its Usage Billing Development charge. He explained that the Commission originally ordered Ameritech to recalculate its Usage Billing Development charge by using Staff's revised TELRIC costs. The Commission then directed Ameritech to arrive at a

per-unit Billing Development charge by using a specific formula utilizing a specific demand figure. Before being directed to alter the calculation of its Billing Development charge, Ameritech included a TELRIC cost using a demand of the specific number of units. Pursuant to the modifications required by the Commission in its TELRIC Order, Ameritech, in its compliance studies, recalculated the Billing Development [*119] charge and determined a new TELRIC for this service. Mr. Starkey testified that this particular revision to the Billing Development charge appears to be in compliance with the Commission's TELRIC Order. However, he noted that when calculating the new extended TELRIC for its Billing Development charge, Ameritech returned to its original unit demand assumption for this charge (instead of the number of units ordered by the Commission). Thus, AT&T urges the Commission to require Ameritech to revise this miscalculation. Starkey Direct, AT&T/McLeod Ex. 1.0, pp. 7-8.

Moreover, AT&T contends that Ameritech also failed to include demand for other unbundled network elements in its Extended TELRIC calculation. Specifically, Mr. Starkey noted that Ameritech failed to include demand for fifty-one interoffice transport unbundled elements, transiting services, common transport, local switching daily usage feed, and the physical collocation cancellation charge. Starkey Direct, AT&T/McLeod Ex. 1.0, p. 9.

In addition, Mr. Starkey pointed out that Ameritech failed to incorporate the effects of demand elasticity in its Extended TELRIC calculation. Mr. Starkey explained that the elasticity of demand is [*120] a measure of the degree to which the demand increases as the price decreases. For any normal good or service, with all else equal, as the price decreases the demand for the good or service increases--this is a fundamental principle of economics. In recalculating its extended TELRIC, Mr. Starkey testified that Ameritech ignored the fact that, pursuant to the Commission's TELRIC Order, many of the prices it had originally recommended for its UNEs would decrease and, in some circumstances, decrease significantly. If prices decrease, the demand for those elements would likely increase. Mr. Starkey summarized that despite the fact that implementing the Commission's TELRIC Order resulted in significant UNE price decreases from those Ameritech originally proposed (and the inflated prices assumed when it first estimated the demand for its UNEs), Ameritech's compliance studies nonetheless uses the same demand figures it used in its original study. Starkey Direct, AT&T/McLeod Ex. 1.0, pp. 9-10.

AT&T urges this Commission to require Ameritech to incorporate the increased demand for UNEs as a result of the lower UNE prices resulting from the Commission's TELRIC Order. Mr. Starkey emphasized that [*121] it is simply unreasonable for Ameritech to conclude that even though its UNE prices are decreasing -- in some cases significantly -- that its demand estimates will not increase. By ignoring the elasticity of demand for UNEs, Mr. Starkey testified that Ameritech understates its extended TELRIC, in turn, inflating its shared and common cost percentage mark-up. Thus, the Commission should require Ameritech to revise its demand estimates based on the fact that its TELRIC prices have decreased as a result of the Commission's Ameritech TELRIC Order. Starkey Direct, AT&T/McLeod Ex. 1.0, p. 11.

d. Ameritech Response

Ameritech Illinois argues that the Commission should reject AT&T's claims that Ameritech Illinois overstated its shared and common costs and, specifically, that it failed to adjust demand for UNEs upward to reflect lower prices and a stimulation of demand. *First,* Ameritech Illinois claims that in the TELRIC proceeding, the Commission considered and rejected AT&T's contention that the assumed level of demand for UNEs should be adjusted upwards. TELRIC Order, p. 40. *Second,* Ameritech Illinois asserts that AT&T presented no evidence in this proceeding that demand for [*122] UNEs over the level assumed when the TELRIC studies were originally performed has increased. In fact, Ameritech Illinois claims that it has experienced no demand whatsoever for some UNEs, such as unbundled local switching.

Ameritech Illinois further asserts that Staff's position that Ameritech Illinois must rerun its shared and common cost model (and thus reallocate such costs to UNEs to reflect the addition of "new charges") is premised on a number of faulty assumptions. Nonetheless, Ameritech Illinois agrees with Staff that this issue can be deferred to a future investigation.

Finally, Ameritech Illinois also claims that requiring it to rerun the shared and common cost model would be a wasteful and unproductive endeavor in light of the fact that Ameritech Illinois recently updated its TELRIC cost studies and filed them with the Commission in compliance with the SBC/Ameritech Merger Order, Docket No. 98-0555, Finding 12. These updated studies are awaiting Commission review. Accordingly, Ameritech Illinois argues that the Commission should find that Ameritech Illinois has fully complied with the Commission's directives with respect to reductions, reallocations, and revisions to its [*123] shared and common costs.

e. Commission Analysis and Conclusion

The evidence indicates that the values specified in the TELRIC Order concerning shared and common adjustments are applied throughout the entire Ameritech region, and as a result of the TELRIC Order, the total reduction of the shared and common cost pools was approximately $ 4.2 million. Ameritech Illinois' share of that reduction was 32.81% or $ 1.4 million. Ameritech Illinois witness Ms. Cartee made these adjustments and testified that in order to make the methodology for allocating shared and common costs consistent, she eliminated the use of a "fixed cost per loop allocator" and, instead, allocated shared and common costs to all individual UNEs, including loops, on the basis of relative, extended TELRICs. The Commission finds that this methodology satisfies the TELRIC Order's requirements for Ameritech Illinois to make certain modifications and adjustments to its shared and common costs.

Finally, as above, the Commission finds that in the interest of administrative efficiency, Ameritech Illinois should not be required to rerun the shared and common cost model as requested by Staff. The Commission finds that Ameritech [*124] Illinois has adequately complied with the Commission's directives with respect to reductions, reallocations, and revisions to shared and common costs.

4. Non-Volume Sensitive Costs

a. Ameritech Illinois' Position

Pursuant to the TELRIC Order (p. 56), Ameritech Illinois is required to assign its non-volume sensitive ("NVS") costs to the TELRICs with which they are associated "rather than assigning them based on extended TELRIC." In addition, the TELRIC Order requires Ameritech Illinois to eliminate such costs from its tariffed rates after 3 years, which Ameritech Illinois has done in its updated studies filed in compliance with the Illinois Merger Order. Ameritech Illinois contends that it therefore has complied with these directives by allocating NVS costs to specific groupings of UNEs, interconnection, and local transport and termination offerings. While Staff asserts that Ameritech Illinois should be required to modify its TELRIC studies in this proceeding to reflect the elimination of NVS costs, Ameritech Illinois contends that such a requirement would not be administratively efficient. Ameritech Illinois therefore asserts that the Commission should find that Ameritech [*125] Illinois has complied with the Commission's directives with respect to such costs.

b. Staff's Position

Based upon Ameritech Illinois' representations that it will remove NVS costs from TELRICs in April 2001, Staff was of the opinion that Ameritech has satisfied this requirement. Id. The Staff recommends that the Commission direct Ameritech to recalculate the total costs of UNEs to the NVS costs in April 2001. Id.

c. Intervenors' Position

Intervenors took no position on this issue.

d. Commission Analysis and Conclusion

The Commission is satisfied with Ameritech Illinois' allocation of NVS costs to specific groupings of UNEs, interconnection, and local termination offerings. The Commission will further examine whether Ameritech Illinois has eliminated such costs from the studies filed in compliance with the Illinois Merger Order in the docket dedicated to those issues. Thus, the Commission finds that Ameritech Illinois has complied with the TELRIC Order's directives with respect to NVS costs. Again, as above, for reasons of administrative efficiency, Ameritech Illinois will not be ordered to recalculate the total costs of UNEs to reflect the removal of all NVS [*126] costs.

5. Unbundled Local Switching

a. Ameritech Illinois' Position

The TELRIC Order directed Ameritech Illinois to file a new ULS cost study and, in the interim, establish a flat ULS recurring rate of $ 5.01 per line per month. TELRIC Order, p. 59. Ameritech Illinois asserts that it has complied with the Commission's directive and adopted the prescribed, flat ULS rate. Ameritech Illinois also states that by agreement of the parties it did not submit a new ULS cost study in this proceeding. Instead, Ameritech Illinois filed a new ULS cost study along with its updated TELRICs in April 2000 pursuant to the Commission's SBC/Ameritech Merger Order. Therefore, Ameritech Illinois asserts that it has complied with the TELRIC Order's directive to file a flat $ 5.01 ULS rate, and that it has provided the Commission with a new ULS cost study, as directed, as part of the April 2000 merger filing.

b. Staff's Position

The parties to this docket agreed that, rather than file a ULS cost study in the instant proceeding, Ameritech was to file a new ULS cost study along with its updated TELRICs in April 2000. Staff Exhibit No. 1.0 at 10. After some delays, this process is underway, and the [*127] Commission is investigating propriety of Ameritech's filing in response to this requirement. Illinois Commerce Commission on Its Motion v. Illinois Bell Telephone Company: Investigation into Tariff providing Unbundled Local Switching with Shared Transport, ICC Docket No. 00-0700, *Order Initiating Proceeding* (November 1, 2000). Accordingly, Staff finds that no ruling on this issue is necessary in this proceeding.

c. Intervenors' Position

While the Intervenors do not specifically argue that the $ 5.01 ULS-IST rate was inappropriate, they argue vociferously that the filing as a whole was inappropriate. These arguments are addressed more fully in Section 10 below.

d. Commission Analysis and Conclusion

By agreement of the parties, Ameritech Illinois did not file a new ULS study in this proceeding because a new ULS study was submitted with Ameritech Illinois' updated TELRICs as part of its April 2000 filing in connection with the SBC/Ameritech Merger Order in Docket 98-0555. Further, the Commission may evaluate such study in Docket 00-0700. Accordingly, the Commission agrees with Staff that no ruling on this issue is necessary in this proceeding, and finds that Ameritech [*128] Illinois has complied with the TELRIC Order's directives concerning ULS.

6. Loop and Port Billing

a. Ameritech Illinois' Position

In the TELRIC Order, the Commission directed Ameritech Illinois to remove billing expenses that the Company inadvertently double-recovered. However, the Commission's TELRIC Order directed that such expenses be double-removed from both Ameritech Illinois' loop and port billing expenses and its service coordination fee costs. Compare TELRIC Order, p. 90 with p. 136, Finding 10. Ameritech Illinois assumed that the Commission erred in directing that these expenses be removed twice from the Company's cost. Ameritech Illinois states that it has complied with its understanding of the intent of the Commission's directives by removing billing expenses from its unbundled loop and unbundled local switching port cost studies but not removing them from its service coordination fee costs. Therefore, Ameritech Illinois asserts that the Commission should find that Ameritech Illinois has complied with the TELRIC Order in this respect.

b. Staff's Position

In the Second Interim Order, the Commission directed Ameritech to remove duplicative expenses that were included [*129] in both the loop and port billing expenses and the service coordination fee. Second Interim Order at 90.

Staff indicates that there appears to be a scrivener's error with respect to this issue in the Order. Specifically, the Commission's analysis and conclusion with respect to this issue states that Ameritech should remove the duplicative expenses from the loop and port billing expenses, Second Interim Order at 90. In contrast, the terms of Ordering Paragraph 10 direct Ameritech to remove the expenses from the Service Coordination Fee. Second Interim Order, Ordering Paragraph 10.

A review of the loop expenses convinced Staff that Ameritech removed the duplicative expenses from the loop and port billing expenses. Ameritech Exhibit No. 1.0, Schedule RAC-5 at 136-143, 191. Staff considers this to be a reasonable solution, since the Commission acknowledged Ameritech's decision to remove them from the loop and port billing expenses at the time of the Second interim Order. Accordingly, the Staff is of the opinion that Ameritech's filing satisfies the requirements of the Second Interim Order in this regard. Staff Exhibit No. 1.0 at 31.

c. Intervenors' Position

Intervenor's [*130] took no position on this issue.

d. Commission Analysis and Conclusion

The Commission finds that Ameritech Illinois has correctly interpreted and properly complied with the Commission's intent and directives by removing billing expenses from its unbundled loop and unbundled local switching port cost studies but not removing them from its service coordination fee costs.

7. Collocation Costs

a. Ameritech Illinois' Position

In the TELRIC Order, the Commission directed Ameritech Illinois to recalculate its collocation construction costs to reflect the "median square foot charges published by Means." TELRIC Order, p. 97. Ameritech Illinois presented evidence that it complied with this directive by reducing its original per square foot cost assumption of $ 197 per square foot to reflect the R.S. Means median square foot charge of $ 132 per square foot.

b. Staff's Position

In the Second Interim Order, the Commission directed Ameritech to recalculate collocation costs based on a more reasonable assumption of the median square foot charges published by RS Means Building Construction Cost Data guide. Second Interim Order at 97. Ameritech has, in the Staff's opinion, complied [*131] with this directive. Per the TELRIC Order, Ameritech re-calculated the floor space calculations based on the median square foot unit cost ($ 132) as opposed to the 3/4 percentile unit cost ($ 167). Staff Exhibit No. 1.0 at 31.

c. Intervenors' Position

Intervenors did not take a position on this issue.

d. Commission Analysis and Conclusion

The Commission finds that Ameritech Illinois has complied with the TELRIC Order's directive to recalculate construction costs. The Commission further notes that Staff found that Ameritech Illinois has complied with the Commission's directive concerning collocation construction costs, and no other party has objected.

8. Power Consumption Charges

a. Ameritech Illinois' Position

In the TELRIC proceeding, the Commission directed Ameritech Illinois to recalculate its power consumption charges in accordance with Staff's proposal. TELRIC Order, p. 99. Ameritech Illinois asserts that it has complied with the Commission's directive and, in accordance with the Staff proposal, calculated its power consumption cost on a per kilowatt hour basis.

b. Staff's Position

The Commission, in the Second Interim Order, directed Ameritech to recalculate power [*132] consumption charges based on Staff's methodology as proposed in that matter. Second Interim Order at 99. In that docket, the Staff proposed that the power consumption charge should be based on usage and not per-circuit capacity of the equipment located in the cage. Second Interim Order at 99. Accordingly, the Staff recommended that Ameritech should recalculate the charge and either provide a cost on a per-unit basis, which is measured for the power consumed, or reduce the charge to a square foot basis, which closely mirrors its actual charges. Id.

In response to this order, Ameritech has provided cost support based on a per-unit basis, or a per Kilowatt Hour (KwH) basis. Staff Exhibit No. 1.0 at 32. This cost includes not only the cost of a KwH that Ameritech would pay the power company, but recovers the cost of battery and rectifier, emergency power backup, and incremental air conditioning costs. Id. Accordingly, the Staff is of the opinion that Ameritech has complied with this requirement. Id.

c. Intervenors' Position

Intervenors did not take a position on this issue.

d. Commission Analysis and Conclusion

The Commission finds that Ameritech Illinois is [*133] in compliance with the TELRIC Order concerning power consumption charges. In addition, Staff has agreed that Ameritech Illinois complied with the TELRIC Order in this respect, and no other party has objected to Ameritech Illinois' actions.

9. Transiting

a. Ameritech Illinois' Position

The TELRIC Order required Ameritech Illinois to "include transiting language in its compliance tariff and provide supporting cost studies." TELRIC Order, p. 107. Ameritech Illinois argues that it has satisfied this requirement. Specifically, Ameritech Illinois filed a revised cost study for transiting on April 3, 1998 and asserts that the currently effective

interconnection tariff includes the necessary rates, terms, and conditions for transiting. *See* Ill. C.C. No. 20, Part 23, Section 2.

b. Staff's Position

The Second Interim Order requires Ameritech to include transiting language in its compliance tariff, and provide supporting cost studies. Second Interim Order at 107. While Ameritech has provided cost support for this elements, Staff Exhibit No. 1.0 at 33, the Staff is of the opinion that there are defects in Ameritech's filing. Specifically, the tandem transport facility mileage [*134] cost for transiting is considerably higher than the tandem transport facility mileage cost for reciprocal compensation. Id. The difference is caused by a mileage adjustment that multiplies the facility cost per minute per mile by over seven times. Id. This adjustment is termed the "PATEL act. air miles[,]" Ameritech Exhibit No. 1.0, Schedule RAC-5 at 389, and results in users of transiting service having to pay over seven times more to utilize the tandem transport facilities than do carriers who terminate traffic on Ameritech's network via a tandem switching arrangement and pay the tandem transport facility mileage reciprocal compensation rate. Staff Exhibit No. 1.0 at 33. While Ameritech has not provided support for this adjustment within the scope of this proceeding, Id., the Staff has found another explanation for this charge. Staff Exhibit No. 1.0 at 33-4. This explanation appears on the website that Ameritech has established for its CLEC customers, TCNet. Id. According to the explanation of this charge provided by Ameritech on TCNet, the surrogate will be used in cases where actual facility mileage cannot be determined. Id. As Ameritech already assumes a specific [*135] (although proprietary) transport facility mileage rate to derive the average cost of tandem transport facility mileage cost for transiting, Id., this adjustment is redundant, and should not be permitted. Id.

c. Intervenors' Position

Intervenors did not take a position on this issue.

d. Commission Analysis and Conclusion

The Commission finds that Ameritech has not fully complied with the requirement that it file transiting language in its compliance tariff and provide supporting cost studies. As the Staff notes, Ameritech's tariff contains an adjustment entitled "PATEL act. air miles", which is unsupported, and which results in users of transiting service having to pay over seven times more to utilize the tandem transport facilities than do carriers who terminate traffic on Ameritech's network via a tandem switching arrangement and pay the tandem transport facility mileage reciprocal compensation rate. We are aware of no justification for this adjustment, and Ameritech has provided none. Without more, we will not approve a tariff which has one group of customers paying seven times what another group pays for the same service, especially where, as here, the second group [*136] pays reciprocal compensation for termination to Ameritech and the first does not. Accordingly, we order Ameritech to file a tariff that eliminates the "PATEL act. air miles" differential, or alternatively, provide adequate cost support for it.

10. Shared Transport

a. Ameritech Illinois' Position

The TELRIC Order directed Ameritech Illinois to file a tariff for "common or 'shared' transport in accordance with our findings herein, within 45 days of entry of this Order." TELRIC Order, p. 107. The Commission also directed Ameritech Illinois to adopt the interim rate for shared transport proposed by AT&T witness Mr. Webber in the TELRIC case until another rate could be established. *Id.* Ameritech Illinois filed a timely tariff for shared transport on April 3, 1998. That tariff included the interim rate for shared transport established in the TELRIC Order, with the expectation that permanent rates could be set in another proceeding.

As stated above, the Commission initiated this docket on June 3, 1998 to determine compliance with the TELRIC Order. Before the docket could get off the ground, however, the SBC/Ameritech merger proceeding began (Docket 98-0555), and this case was placed [*137] on hold, in part because shared transport issues were being debated in the merger proceeding.

On September 23, 1999, the Commission issued the *Illinois Merger Order.* Once again, that decision addressed the issue of shared transport. As one of the conditions to approving the merger, the Commission ordered Ameritech Illinois to (1) make an "interim" version of shared transport, as described in the order, available before the merger closing; and (2) within one year of the merger closing, to make available a "long term" version of shared transport that uses Advanced Intelligent Network ("AIN") triggers and removes some of the difficulties with interim shared transport. *Illinois*

Merger Order, at 183-84, 250. *See also* Memorandum Opinion and Order, *In the Matter of Ameritech Corp. and SBC Communications Inc.,* CC Docket 98-141, App. C at 1155-56 (rel. Oct. 8, 1999) ("*FCC Merger Order*"). Significantly, the version of shared transport required by the *Illinois Merger Order* was somewhat different from that required by the TELRIC Order. The merger order recognized that shared transport cannot be provided other than in combination with local switching, whereas the TELRIC [*138] Order had purported to require a version of shared transport that could be provided separate from local switching. Am. Ill. Ex. 4.1, p. 4 (Hampton Rebuttal); *see Illinois Merger Order,* p. 252. Consequently, the *Illinois Merger* Order's shared transport requirement effectively superseded the shared transport requirement in the TELRIC Order.

In compliance with the *Illinois Merger Order,* Ameritech Illinois filed a tariff for interim shared transport (known as Unbundled Local Switching with Interim Shared Transport, or "ULS-IST") on September 21, 1999 (Advice No. 7160), which was allowed to go into effect on September 22, 1999. That tariff included a rate for interim shared transport of $ 0.006497 per minute. Am. Ill. Ex. 4.0, pp. 8-13 (Hampton Direct). The Commission did not open any investigation of the tariff. At status hearings in this case, Ameritech Illinois agreed to CLEC requests to address the development of the rate for ULS-IST in this proceeding. As a result, the testimony here focused exclusively on the proper rate for interim shared transport.

Just as the ULS-IST requirement in the *Illinois Merger Order* superseded the version of shared transport required in [*139] the TELRIC Order, however, the ULS-IST requirement itself was superseded by Ameritech Illinois' tariffing of Long-Term Shared Transport, or "ULS-ST," in October of 2000, as required by the *Illinois Merger Order* and *FCC Merger Order.* At Staff's recommendation, the Commission allowed that tariff to take effect on October 8, 2000 and to be amended as of October 9, 2000. *See* Order, Ill. C.C. Dkt. No. 00-0636. The Commission then initiated an investigation of the ULS-ST tariff under *220 ILCS 5/9-250.* That investigation, started on November 1, 2000, is now proceeding as Docket No. 00-0700.

Because the ULS-ST tariff entirely replaced the ULS-IST offering, which is no longer available and cannot be made available while ULS-ST is offered, Ameritech Illinois moved to strike all testimony relating to ULS-IST in this proceeding, based upon the theory that the issue of what price applies to ULS-IST is now moot. Staff supported this proposal. The Hearing Examiner denied Ameritech Illinois' Motion to Strike, but stated that issues regarding ULS-ST would not be addressed in this case and that the sole remaining issue with regard to ULS-IST was whether the offering complied with the TELRIC [*140] Order.

Ameritech Illinois contends that time has passed this issue by for purposes of this docket. Ameritech Illinois asserts that the only currently available version of shared transport is one that is being addressed in a separate tariff investigation, Docket 00-0700. Moreover, Ameritech Illinois claims that while the Hearing Examiner indicated that it might be proper to consider Ameritech Illinois' now-extinct offering of Interim Shared Transport for compliance with the TELRIC Order (Tr. 233-34), Ameritech Illinois has in fact done exactly what the TELRIC Order required. Accordingly, Ameritech Illinois asserts that there is no need for the Commission to analyze an extinct version of the shared transport product offering that (i) fell within a safe harbor established by the *Illinois Merger Order,* which stated that approval of the ULS-IST tariff would be proof of compliance with that order, (ii) is no longer available as a result of an explicit requirement of the *Illinois Merger Order* and the *FCC Merger Order,* and (iii) was never ordered by any CLEC anyway. Ameritech Illinois argues that such analysis would not only waste the Commission's resources, but also could result [*141] in an improper advisory opinion on a matter about which there is no live case or controversy. *See Harrisonville Tel. Co. v. Commerce Comm'n, 176 Ill. App. 3d 389, 392-93 (5th Dist. 1988); Illinois Industrial Energy Consumers: Request for Declaratory Ruling, Ill. C.C. Dkt. No. 98-0607, 1999 Ill. PUC LEXIS 202,* at *11-12 (Mar. 10, 1999).

Ameritech Illinois argues that at this point there are no compliance issues left to resolve with respect to either the TELRIC Order or even the *Illinois Merger Order.* Any question of "compliance" with the TELRIC Order has been superseded by the Commission's own actions, which imposed new and different shared transport obligations as part of the *Illinois Merger Order.* According to Ameritech Illinois, the only chance it had to "comply" with the TELRIC Order, before the *Illinois Merger Order,* was to file a shared transport tariff within 45 days of the TELRIC Order, which it did. Ameritech Illinois also contends that even if one assumed, *arguendo,* that compliance with other orders could be addressed here, there can be no dispute as to Ameritech Illinois' compliance with the long [*142] term shared transport requirement of the *Illinois Merger Order.* Ameritech Illinois timely filed its tariff for ULS-ST, and that tariff took effect on the prescribed date, and any further issues regarding the tariff will be resolved in the investigation in Docket 00-0700.

Ameritech Illinois further asserts that there can be no dispute as to Ameritech Illinois' compliance with the interim shared transport requirement of the *Illinois Merger Order,* which stated:

> Joint Applicants [SBC and Ameritech Illinois] are ordered ... to provide this Commission with proof of the implementation of the "SBC/Texas interim version" of shared transport in Illinois prior to the close of this merger ... The filing of a tariff with this Commission containing such SBC/Texas interim version and our approval of such tariff (which must occur before the Joint Applicants may close on the merger) shall constitute compliance with this condition ... We further order the Joint Applicant[]s to import the rates agreed to in Texas for the interim version of shared transport (i.e. pre-AIN) until such time as Illinois-specific TELRIC rates can be determined, and are filed and approved by the Commission. In [*143] the event, however, that there are rate structure differences, technical infeasibilities, or other significant impediments to the importation of Texas shared transport rates to Illinois, Ameritech shall file currently available, Illinois-specific, TELRIC-based rates for its interim shared transport offering, provided the results are reasonably comparable to the importation of Texas rates. *Illinois Merger Order,* at 183-84, as modified by the Amendatory Order on Rehearing, Ill. C.C. Dkt. No. 98-0555, pp. 7-8 (Nov. 15, 1999); *see also id. at 250* (also as modified by the Amendatory Order on Rehearing).

According to Ameritech Illinois, there is no dispute that Ameritech Illinois filed a timely tariff for ULS-IST and it was effectively approved by the Commission, otherwise the merger would not have been allowed to close. Ameritech Illinois asserts that the filing and approval of the tariff constituted *per se* compliance with the Merger Order. As the Commission made clear, "the filing of a tariff with this Commission containing such SBC/Texas interim version and our approval of such tariff ... *shall constitute compliance with this condition." Illinois* [*144] *Merger Order,* pp. 183, 250 (emphasis added). Thus, Ameritech Illinois contends that compliance of the ULS-IST tariff with the *Illinois Merger Order* has already been established, and it would be arbitrary and capricious for the Commission to pry open this "safe harbor" and purport to reexamine Ameritech Illinois' compliance in the context of this case.

Ameritech Illinois further argues that, even if the use of this safe harbor did not end this issue, there can be no question that Ameritech Illinois has complied with the specifics of the *Illinois Merger Order.* Specifically, Ameritech Illinois presented evidence that, as contemplated by the Amended Order on Rehearing in the Illinois merger docket, the ULS-IST tariff included an Illinois-specific rate because of rate structure differences between Texas and Illinois. Ameritech Illinois witness Hampton testified that the Illinois-specific rate was reasonably comparable to the importation of the Texas rate, and indeed, was lower than the Texas rate would have been after being adjusted to reflect an Illinois rate structure. Because of the short timeframe available, the Illinois rate was computed by adding together existing TELRIC-based [*145] rates for the various components of shared transport and applying appropriate factors to come up with an overall per-minute rate and nonrecurring charges. Ameritech Illinois asserts that this is all that the *Illinois Merger Order* required.

Finally, Ameritech Illinois cites yet another reason not to delve into compliance issues and ULS-IST. According to Ameritech Illinois, there would be no useful remedy even if non-compliance could be proven, because no CLEC purchased ULS-IST. Thus, there would be no true-up issue if the ULS-IST rate were found to be too high. Ameritech Illinois further contends that the Commission could not award damages even if a CLEC had ordered or attempted to order ULS-IST. In addition, Ameritech Illinois claims that the Commission could not order any revision to the ULS-IST rate because that rate is no longer in effect and, as a result of the Illinois and FCC merger orders, Ameritech Illinois is currently required by law to offer a different version of shared transport. Ameritech Illinois therefore urges the Commission to find, as the Staff noted in its Report in Docket 00-0700, that issues regarding ULS-IST are now moot and need not be addressed in this [*146] proceeding.

b. Staff's Position

On September 21, 1999, Ameritech filed a tariff (Advice No. 7160) with the Commission. Staff Exhibit No. 1.0 at 34-5. This tariff, which became effective on September 22, 1999, sets forth Ameritech's propose rates, terms, and conditions for Unbundled Local Switching with Interim Shared Transport (ULS-IST). Id. at 35. Ameritech filed this tariff for the purposes of complying with the Commission's Order approving the SBC/Ameritech merger. *See, generally,* In the Matter of the Joint Application of ABC Corporation and Ameritech Corporation, ICC Docket No. 98-0555, *Final Order* (September 23, 1999). In that Order, the Company agreed to the following interim commitment:

> To accelerate the availability of a shared transport offering, Ameritech Illinois shall provide to this Commission, prior to Merger Closing Date, proof of the implementation in Illinois of the SBC/Texas Interim version of shared transport. The filing of a tariff with this Commission containing such SBC/Texas interim version as well as the Commission approval of such tariff (which must occur before the Joint Applicants may close on the merger) shall constitute compliance [*147] with this condition. Prior to Commission approval such tariff shall be reviewed by Commission Staff with a Staff recommendation to the Commission for approval or disapproval. In addition, the Joint Applicants shall import to Illinois the rates agreed to in Texas for the interim version, until such time as Illinois-specific rates can be delivered. At such time the interim rates will be subject to a true-up (emphasis added).
>
> ICC Docket No. 98-0555, Final Order at 250 (Merger Condition 28)

This interim solution was to be adopted until Ameritech deploys AIN network capabilities, which is to begin within one year of the Merger Closing Date.

On November 15, 1999, the Commission, in its Amendatory Order on Rehearing, ICC Docket No. 98-0555, amended Condition 28 as follows:

> In addition, the Joint Applicants shall import to Illinois the rates agreed to in Texas for the interim version of shared transport (i.e., pre-AIN) until such time as Illinois specific rates can be determined and are filed and approved by the Commission. In the event, however, that there are rate structure differences, technical infeasibilities, or other significant impediments to the importation of [*148] Texas shared transport rates to Illinois, Ameritech shall file currently available, Illinois - specific, TELRIC - based rates for its interim shared transport offering, provided the results are reasonably comparable to the importation of Texas rates
>
> ICC Docket No. 98-0555, Amendatory Order on Rehearing at 8.

The merger condition cited above clearly requires Ameritech to import to Illinois Texas rates until such time as it can deliver Illinois-specific rates. Id. Moreover, the Commission authorized Ameritech to file Illinois-specific rates on an interim basis only in the event that "rate structure differences, technical infeasibilities, or other significant impediments ... [prevent] the importation of Texas shared transport rates to Illinois ... provided the results are reasonably comparable to the importation of Texas rates[.]" Amendatory Order on Rehearing at 8, (emphasis added).

While Ameritech filed a tariff, it did not import to Illinois the shared transport rate agreed to in Texas. Staff Exhibit No. 1.0 at 35-6. Instead, Ameritech filed what it considers to be an Illinois-specific rate, and thereby avoided importing the Texas rate. Id. According to Ameritech, [*149] it filed Illinois-specific rates, as opposed to importing Texas rates, because "[it] determined that there were substantial rate structure differences that prevented importation of SBC's Texas rates, even on an interim basis." Ameritech Exhibit No. 4.0 at 20. Ameritech avers that "the TELRIC methodology adopted in Texas did not distribute costs between rate elements consistent with the requirements of the Commission's February 1998 TELRIC order in Docket No. 96-0486/0569." Id. As an example, the Texas rate for switching is usage-sensitive based, while the Illinois ULS is based on a flat-rated monthly charge per port. Staff Exhibit No. 1.1 at 4.

Further, Ameritech contends that it "cannot precisely measure the originating and terminating access minutes by each ULS-IST port." Ameritech Exhibit No. 4.0 at 14. This, asserts Ameritech, effectively requires a "rough justice" access charge settlement scheme, resulting in a modest credit to CLECs per ULS port. Staff Exhibit No. 1.1 at 4-5. In fact, the "identification" problem is one of identifying the carrier originating calls made to (terminated to) a UNE-P customer. The merger order clearly refers to the originator of a call terminated [*150] to a CLEC's UNE-P customer as not being identifiable. Merger Order at 252. Attachment 4 of Ameritech's Ordering guide for Unbundled Local Switching and Interim Shared Transport contains ULS-IST Call Flow diagrams. Where a CLEC originates calls the diagram indicates that, "ILEC Provides Billing Records: Local MOU [minutes of use] by CLEC A's Originating End User (DUF) [daily usage feed]." Staff Exhibit No. 2.2 at 6. To Staff, this demonstrates that originating *minutes* can be tracked. Id.

The Illinois-specific rates proposed by Ameritech fail to meet the requirements of the Merger Order for several reasons. First, they are *15 times higher* than the corresponding Texas rates. Staff Exhibit No. 1.1 at 4. The Merger Order permits Ameritech to use Illinois-specific interim rates to the extent that they are "comparable" to Texas rates. Amendatory Order on Rehearing at 8. While the word "comparable" is clearly subject to a certain degree of interpretation, it is

difficult to imagine any situation where a good or service is priced "comparably" to another where it costs 1,400% more.

Second, the Illinois-specific rates are not based on an actual cost study, but rather upon a manipulation [*151] of other TELRIC rates. Staff Exhibit No. 1.1 at 11. Ameritech derived its Illinois-specific ULS-IST usage rate by calculating a "weighted blend" of currently available TELRIC rates as well as other rate elements derived by performing calculations on currently existing TELRIC rates. Staff Exhibit No. 1.1 at 6. Further, underlying this methodology, (1) Ameritech assumes that all traffic between its switches utilizes IST and all traffic to non-Ameritech switches utilizes IST-transit; and (2) within the supporting calculations, Ameritech calculates usage-sensitive switching costs from the interim flat-rated TELRIC rate ($ 5.01) for a ULS port. Id.

Third, and related to the previous point, it is clear that Ameritech could have, if it had elected to, developed a far more accurate cost estimate for this rate by using the NCAT modeling tool. Staff Exhibit No. 1.1 at 11.

Staff recommends that the Commission decline to adopt Ameritech's proposed ULS-IST usage rate. Rather, the Staff recommends that the Commission order Ameritech to import the Texas rate to Illinois, and set the Access Charge Settlement at ($ 3.62) in the manner recommended by Dr. August Ankum, who gave testimony in this [*152] matter on behalf of MCI WorldCom. (*See, generally,* MCI WorldCom Exhibit No. 1.0P) or, in the alternative, find that Ameritech has failed to comply with the TELRIC Order but decline to order the importation of the Texas rate.

The Staff notes as a final matter that setting an interim rate in this proceeding may be a relatively abstract exercise. The Commission has initiated ICC Docket No. 00-0700 to investigate costs associated with, and determine the proper permanent rate for, shared transport. This proceeding has been set for expedited resolution, and it is therefore likely that a permanent rate will be set in the near term. Moreover, since there has been no demand for Ameritech's shared transport offering, setting the proper interim rate is unnecessary for purposes of truing up payments already made for the service. Staff Exhibit No. 2.2 at 7, n. 4.

c. Intervenors' Position

AT&T and MCI WorldCom recognize that Ameritech has withdrawn its interim shared transport, or ULS-IST, offering. However, consistent with the Hearing Examiner's ruling that the issue of whether Ameritech's ULS-IST offering complied with the Commission's prior orders is ripe for determination in this proceeding, [*153] AT&T and MCI WorldCom submit the following points conclusively demonstrate that Ameritech's ULS-IST offering did not, under any reasonable interpretation, comply with the applicable prior Commission orders. AT&T/MCI WorldCom Initial Brief, p. 49.

AT&T and MCI WorldCom contend that Ameritech's ULS-IST offering has several critical flaws, many of which violate prior Commission orders. First, AT&T and MCI WorldCom argue that Ameritech's proposed rate for ULS-IST violates the Commission's Merger Order approving the merger of Ameritech Illinois and SBC in ICC Docket No. 98-0555 ("Merger Order"), far exceeds the cost of providing ULS-IST and ignores the Commission's prior orders on local switching. Second, AT&T and MCI WorldCom assert that Ameritech's ULS-IST proposal violates a CLEC's right to provide access service (particularly originating access service) despite prior Commission findings and orders to the contrary. Third, AT&T and MCI WorldCom point out that Ameritech's proposal did not include a permanent transiting capability as part of shared transport. AT&T/MCI WorldCom Initial Brief, pp. 49-50.

i. The Merger Order

AT&T/Z-Tel witness Mr. Gillan testified that despite the fact [*154] that Ameritech's position on shared transport -- a position that never arose outside the Ameritech region to any significant degree -- has been rejected at least seven times both at the state and federal level, it was not until 1999 -- while its merger proceeding with SBC was pending -- that Ameritech finally tariffed its ULS-IST offering. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 8-10. Mr. Gillan explained that Condition 28 of the SBC/Ameritech Merger Order in ICC Docket No. 98-0555 clearly required that Ameritech must offer, in Illinois, shared transport at the Texas rate on an interim basis. This "interim" period ends, for pricing purposes, when TELRIC-based rates are approved by the Commission. If there are any core differences between the Illinois and Texas shared transport arrangements, then Ameritech is permitted to propose alternative rates -- provided, however, that the results are reasonably comparable to the importation of Texas rates. Mr. Gillan emphasized that the straightforward requirement of this condition is that Ameritech offer shared transport in Illinois, charging the Texas rate. That rate is 0.0399 [cents]/minute. By comparison, Mr. Gillan pointed out that Ameritech's [*155] proposed rate is 0.653 [cents]/minute -- an amount roughly 16 times higher than the Texas rate. He also noted that there is no difference be-

tween shared transport in Illinois and shared transport in Texas that should prevent the Texas rate from applying. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 10-12.

ii. Ameritech's Shared Transport Cost Study

AT&T and MCI WorldCom emphasize that, in an earlier compliance filing made immediately after the Commission's Ameritech TELRIC Order, Ameritech's own shared transport cost study produced a shared transport rate virtually identical to that in Texas (0.0395 [cents]/minute in Illinois, compared to 0.0399 [cents]/minute in Texas). Specifically, AT&T and MCI WorldCom point out that in response to the Commission's Second Interim Order in the TELRIC Proceeding, Ameritech filed a number of compliance studies, including a study for shared transport. See Direct Testimony of William Palmer, Ameritech Ex. 3.4 ("Palmer TELRIC Shared Transport Study"), ICC Docket No. 96-0458/0569, filed April 3, 1998, relevant portions of which are contained in Exhibit JPG 1.1 attached to the Direct Testimony of AT&T/Z-Tel witness Mr. Gillan (AT&T/Z-Tel Ex. 1.0). Mr. [*156] Gillan also noted that the composite rate for shared transport using Ameritech's own Illinois-specific filing is 0.0395 [cents]/minute -- a cost that is 0.0004 [cents]/minute less than the Texas rate that Ameritech was ordered to file as a condition of its merger approval. Mr. Gillan testified that this Illinois-specific, TELRIC Shared Transport cost of 0.0395 [cents]/minute originally filed by Ameritech in compliance with the Commission's TELRIC order includes all the costs that it should. Thus, Mr. Gillan demonstrated that Ameritech's own TELRIC Shared Transport Cost Study confirms that the Texas rate is both reasonable and appropriate -- reasons that would justify "importing" the Texas rate, even if the rate had not already been ordered by the Commission. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 11-13.

AT&T and MCI WorldCom point out that rather than file the Texas rate or the rate of 0.0395 [cents] from its original TELRIC compliance filing, however, Ameritech filed a rate of 0.653 [cents]/minute. This highly inflated rate, Mr. Gillan testified, incorrectly includes a number of local switching costs that are not appropriate to include in the rate for shared transport. In fact, he [*157] noted that more than 80% of Ameritech's proposed rate for shared transport consists of local switching costs. Remarkable to Mr. Gillan, Ameritech included these switching costs in its ULS-IST shared transport rates despite the fact that Ameritech's TELRIC Shared Transport Cost Study, filed in March/April 1998 as part of its initial compliance filing, correctly excluded end-office costs, recognizing that these costs are recovered in the price of unbundled local switching. Palmer TELRIC Shared Transport Cost Study, page 5; Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 14-15.

AT&T and MCI WorldCom argue that Ameritech had it right the first time -- there should be no costs in shared transport associated with end-office functions because these costs are already included in the rates for local switching. AT&T emphasizes that this conclusion is particularly significant in Illinois where the Commission has concluded that such end-office costs are not usage sensitive, and should be recovered in a flat-rate, per-line, charge for ULS. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 15-17.

iii. The Commission's TELRIC Order

AT&T and MCI WorldCom maintain that it is incorrect to bundle end-office costs in [*158] the rate for shared transport for several reasons. First, as Mr. Gillan testified, local switching and shared transport are distinct network elements, with cost based prices unique to each. As the Supreme Court noted in *Iowa Utilities Board,* "unbundling" may mean establishing separate prices for separate network elements, even if the elements themselves are not offered individually. Mr. Gillan explained that principles of unbundling require that end-office costs be recovered in the rates for local switching, not shared transport. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 17-18.

Second, Mr. Gillan pointed out that with respect to these specific costs (i.e., trunk port costs at the end-office), the Commission has already determined that they should be included in the rate for unbundled local switching. *See* TELRIC Order, page 121, requiring that Ameritech "... impose a single monthly recurring charge for its ULS offering instead of separate charges for line side and trunk side ports ...." By attempting to impose these costs in both the ULS and Shared Transport rates, Mr. Gillan emphasizes that Ameritech attempts to double-recover these costs. The Commission has already rejected [*159] Ameritech's similar attempt to double-recover trunk-port costs when it sought to charge both IXCs and CLECs for the same facility in the Ameritech TELRIC proceeding. TELRIC Order, p. 115. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 17-18.

In the example cited above, Mr. Gillan noted that Ameritech attempted to double recover by charging two carriers (the CLEC and the IXC) for one cost. In the instance of ULS-IST, the insult is even greater -- Ameritech proposed to charge the same carrier (the CLEC) twice, once in the ULS charge and again through the sale of shared transport. Mr. Gillan reasoned that Ameritech may not agree with the Commission-established ULS rate ($ 5.01 per line), but that does

not change the fact that it is the ULS rate element that recovers these trunk-port costs. Gillan Direct, AT&T/Z-Tel Ex. 1.0, p. 19.

Finally, Mr. Gillan testified that Ameritech inflated its proposed shared transport rate by claiming that $ 2.50 of the flat-rated ULS rate is really "usage related" (Ameritech Exhibit 4.0 (Hampton), p. 13), in direct contravention of this Commission's Ameritech TELRIC Order requiring that Ameritech implement a flat-rated ULS rate of $ 5.01. *See* Order dated February [*160] 17, 1998, ICC Docket Nos. 96-0486/0569, p. 59. This is yet another example, Mr. Gillan pointed out, of Ameritech simply ignoring those decisions of the Commission with which it disagrees. Mr. Gillan noted that the Illinois Commission conducted the most extensive evaluation of ULS cost-structure in the nation, and concluded that a flat rate was most appropriate. TELRIC Order, page 59. Prior to its merger, Ameritech's own proposals confirmed that its switch costs were not usage sensitive, at least up to the design limits of the switch. *See* Ameritech Exhibit 3.3 (Palmer Local Switching Cost Study), Docket 96-0486/0569, filed March 24, 1998, p. 9. Mr. Gillan reasoned that the practical effect of Ameritech's attempt to unilaterally reclassify the local switch as usage sensitive, however, would *not* be to import the Texas shared transport rate (which is what the Commission ordered), but to import the Texas structure for unbundled local switching (thereby evading the Illinois Commission's finding that the ULS element be flat-rated). While Ameritech's Texas-based parent may prefer a usage-rate, under the policies and rates established by this Commission, Mr. Gillan emphasized that [*161] there are no additional switch-usage costs to impose on shared transport. He noted that the fact that unbundled local switching is priced differently in Illinois than Texas does not, however, relieve Ameritech of its obligation to import the Texas shared transport rate. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 19-20.

iv. Access Revenue

AT&T and MCI WorldCom maintain that Ameritech's shared transport proposal also undermines the UNE-P purchaser's right to provide access to its subscribers. Mr. Gillan pointed out that the Illinois Commission first ordered Ameritech to recognize the UNE-P purchaser as the provider of access in June, 1996 in its Wholesale Order. *See* Order, Dockets 96-0458/0531 Consolidated, June 26, 1996, page 65 ("We also reject Ameritech's position that the purchasing carrier should not retain the revenues for exchange access provided through the leased network elements. As Staff observes, once the incumbent LEC has received the cost-based price for the LSP [i.e., the local switching platform], the purchasing carrier is entitled to the use of the network element and all revenues for services therefrom.").

Although this requirement would appear clear, Mr. Gillan [*162] testified that it immediately fell in dispute, both in the context of Ameritech's Section 271 review proceeding (Docket 96-0404) and in subsequent compliance and TELRIC proceedings. Although Ameritech indicated in early 1997 that it would respect the UNE-P purchaser as access provider, this commitment proved to be an illusion. *See* Reply Brief of Ameritech, Docket 96-0404, February 19, 1997, page 60 ("Several of the IXCs continue to complain that they are not being given the opportunity to charge for terminating access. (AT&T Br., pp. 49-50; CompTel Br., pp. 25-29). This is no longer an issue. Ameritech Illinois has agreed to conform its treatment of originating and terminating access to provide IXCs with the opportunity they seek."). Consequently, Mr. Gillan pointed out that the Commission again ordered Ameritech to respect the UNE-P purchaser as the provider of access service in 1998 in the Ameritech TELRIC Order. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 22-23.

Mr. Gillan noted that even Ameritech agrees that the UNE-P purchaser is entitled to the full collection of access charges on the traffic originating and terminating with its subscribers. Mr. Gillan reasoned that the problem [*163] is that being "entitled" to these revenues is not enough -- the CLEC must also be able to bill, collect (and ultimately deposit) revenues for them to have commercial significance. Ameritech's proposed treatment of access provides a perfect illustration of its strategy to change the debate, but not the outcome. From the very beginning, the Commission (and the FCC) made clear that the UNE-P purchaser is entitled to these access revenues. Yet, even though Ameritech acknowledged the relationship, its shared transport offering would not honor it. *See* Ameritech Exhibit 4.0 (Hampton), p. 15 ("... when a CLEC's end user served by ULS-IST originates or receives intraLATA or interLATA traffic carrier by an IXC, Ameritech-Illinois will collect the relevant access charges."). Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 23-24.

Rather than respect the UNE-P purchaser as access provider, Mr. Gillan points out that Ameritech instead proposed to "credit" the CLEC an amount based on the average Ameritech toll user. Ameritech claimed that it had to rely on a surrogate "rough justice" approach because it was unable to "precisely measure" the originating and terminating access minutes for each ULS-IST [*164] purchaser. Mr. Gillan testified that there were two fundamental problems with Ameritech's proposal. The first is that Ameritech extended its "rough justice" proposal to originating access without justification, and the second concerned the level of the credit itself. Gillan Direct, AT&T/Z-Tel Ex. 1.0, p. 24.

There was no legitimate reason for Ameritech to apply a surrogate to estimate originating access minutes; rather, Mr. Gillan opined that it was simply another tool employed by Ameritech to deprive the CLEC of its role as access provider and to deprive it of access revenues. From the very beginning, Mr. Gillan testified, Ameritech carefully characterized its measurement problems as relating to terminating access only. Even in 1997, when it first "conceded" the issue in its Reply Brief in its Section 271 investigation, Ameritech acknowledged that the only dispute involved terminating (not originating) access traffic. Reply Brief of Ameritech, Docket 96-0404, February 19, 1997, p. 60.

Mr. Gillan noted that the SBC/Ameritech Merger Order also recognized the fact that Ameritech claimed to lack the ability to accurately record terminating call detail only. Order, Docket 98-0555, page [*165] 255 ("Ameritech Illinois states that it does not have the ability to record terminating detail based on its current network architecture.").

Moreover, Mr. Gillan pointed out that when SBC/Ameritech initially explained its shared transport filing, it described its measurement problems as relating only to terminating traffic (local and long distance) and 800 traffic. Joint Applicants' Response to Certain Issues Relative to Shared Transport, Docket 98-0555, November 9, 1999, p. 6 ("... Joint Applicants intended to solve the technical and network issues that have plagued shared transport from the outset (e.g., ensuring that CLECs can deliver traffic to, and receive traffic from, customers served by other CLECs; and allowing CLECs to bill and collect for terminating access, 800 traffic, and traffic subject to reciprocal compensation"). Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 25-26.

Despite the fact that prior to filing its ULS-IST tariff Ameritech raised the issue of its inability to measure terminating access only, Mr. Gillan asserts that Ameritech's shared transport offering proposed a broad embargo on all access charges -- originating as well as terminating -- with "compensation" [*166] to the CLEC based on averages, irrespective of the CLEC's actual traffic volume, and despite the fact that the problems that affect the measurement of terminating access do not apply to originating access. *Id.*

Significantly, Mr. Gillan points out that no other RBOCs have applied a surrogate for originating access minutes, because there is no reason to. Originating call detail records created at the switch can (and do) capture the needed information. There is no reason to rely on a surrogate when actual originating records are available -- particularly given the competitive significance of originating access charges. Mr. Gillan testified that Ameritech's insistence on applying a surrogate for originating access minutes was competitively significant because it deprived CLECs of access charges to which they were entitled. Most "local" entrants offer full-service packages that combine local and long distance services. Mr. Gillan asserted that in order for an entrant to reflect its originating cost in its retail toll rates, the CLECs' originating access cost must track toll usage "minute-for-minute." An "average" credit -- as Ameritech proposed -- cannot be factored into lower toll [*167] prices, which typically vary with usage. For instance, Mr. Gillan explained that in New York, Z-Tel (using UNE-P) offers customers local/toll packages that include a choice among a 200 minute, 400 minute and 600 minute "block" of usage. The price of each package reflects the fact that Z-Tel is the originating access provider for each of these minutes. Mr. Gillan testified that it is impossible for such a carrier, however, to offer such defined service packages if the only "access credit" it receives assumes the toll usage of the average customer. Gillan Direct, AT&T/Z-Tel Ex. 1.0, pp. 25-26.

Mr. Gillan summarized that Ameritech had no reasonable basis for refusing to respect the UNE-P purchaser as the provider of originating access service, and Ameritech's ULS-IST offering violated prior Commission orders requiring it to do so. Ameritech's proposed "rough justice" system for originating access was unnecessary and competitively harmful because it preclude CLECs from offering local/toll packages, which is exactly the form that "local" competition takes. AT&T/Z-Tel Ex. 1.0, pp. 27-28.

Consequently, AT&T and MCI WorldCom urge this Commission to conclude, yet again, that Ameritech has [*168] failed to comply with this Commission's pro-competitive orders by failing to file a shared transport tariff, all in blatant disregard for and noncompliance with the Commission's Merger Order, TELRIC Order and Wholesale Order.

In addition to the issues raised by AT&T and MCIWorldCom, Z-Tel Communications also urges the Commission to address the ULS-IST issue and indicates its belief that the reason no CLEC took service under the offering was that Ameritech actively frustrated any attempts at taking the service by failing to ever undertake the engineering steps necessary to provision the service in the first place, waiting, instead, until the permanent solution was prepared for roll out.

d. Commission Analysis and Conclusion

It is ironic indeed that Ameritech contends it would be a waste of our resources to spend time evaluating whether Ameritech's ULS-IST tariff, now withdrawn and replaced with Ameritech's ULS-ST offering, which is currently under investigation in Docket No. 00-0700, complied with our prior orders requiring Ameritech to provide shared transport.

Ameritech argues that no CLEC has used it anyway; thus, there is no reason to investigate it. We find Ameritech's argument [*169] wholly disingenuous and designed to stave off the inevitable conclusion that Ameritech's ULS-IST offering fails to comply with our prior orders. The real question is not whether it complies with our prior orders, but how many of our prior orders it defies. In addition, given the currently pending USL-ST tariff investigation, repeating the Commission's positions on issues that will, in all likelihood reappear there, may serve the parties well be providing pronouncements of recent vintage to use in arguments there.

We are similarly unconvinced by Ameritech's desperate attempt to deflect a determination of whether its ULS-IST complied with our prior orders by arguing that to make such a determination would constitute an illegal declaratory ruling. We are not being asked to make a declaratory ruling. A declaratory ruling is one where an applicant requests that we make a determination as to whether a particular rule or statute would apply to future conduct or a future specific set of facts and circumstances. There is no risk of speculation here. Ameritech's obligation to file its ULS-IST tariff has already occurred, and the conduct, facts and circumstances being examined have already occurred. [*170] We are not being asked to make a declaratory ruling. Rather, we are simply being asked to determine whether an offering Ameritech was required by us to file -- and did file -- complied with our prior orders spelling out Ameritech's obligations concerning that offering.

The answer is no, Ameritech has not, under any reasonable interpretation, complied with our prior orders requiring it to provide shared transport. Our Merger Order expressly required Ameritech to import to Illinois the rates agreed to in Texas for interim shared transport. We gave Ameritech the option of filing Illinois-specific rates *provided the rates are reasonably comparable to the importation of Texas rates.* Instead, Ameritech filed a tariff with rates that are more than 16 times higher than the Texas rates. We reject Ameritech's argument that the rates it filed in Texas were "incorrect" because the rates overlooked various costs that should have been recovered. In the first place this is simply a collateral attack on the Texas results, which is inappropriate in this forum. Secondly, this argument could have been raised in the Merger case, but apparently was not, from which we infer that no modifications should [*171] have been made to the Texas rates prior to importation into Illinois. Our Merger Order clearly specified that the Texas rates would be "the rates agreed to in Texas" -- not some hypothetical set of Texas rates. Ameritech failed to comply with our Merger Order as it relates to the filing of interim shared transport.

We also agree with AT&T, MCI WorldCom and Z-Tel that Ameritech's noncompliance is even more egregious than just violating the Merger Order. The rates filed by Ameritech for ULS-IST were also inconsistent with the shared transport cost study originally filed with us by Ameritech in compliance with our TELRIC Order. This shared transport cost study demonstrated that the Texas rates we required Ameritech to import were not only accurate, but almost identical to the shared transport rate originally calculated by Ameritech.

We also agree with the CLECs that Ameritech's ULS-IST offering failed to comply with the flat-rate, non-usage sensitive ULS rate of $ 5.01 that we adopted in the TELRIC Order by attempting to recover end office trunk port costs, appropriately recovered in the ULS rate, in both the ULS rate element and through the sale of shared transport, and by claiming [*172] that $ 2.50 of the flat-rated ULS rate is really usage related. Our extensive investigation of Ameritech's ULS cost structure conclusively demonstrated that Ameritech's switch costs are not usage sensitive, and Ameritech's attempt to unilaterally reclassify the local switch as usage sensitive is a blatant violation of our TELRIC Order.

Finally, Ameritech's ULS-IST offering violated our Wholesale Order and our TELRIC Order by failing to comply with our conclusion that the ULS purchaser is entitled to all access revenues. Under Ameritech's ULS-IST offering, Ameritech kept the access revenues and gave the ULS purchaser an access credit after applying its "rough justice" to both originating and terminating minutes of use. While we agree that Ameritech's alleged difficulty measuring call detail for terminating access may have justified applying a "rough justice" proposal to terminating access minutes, Ameritech's ULS-IST offering extended this "rough justice" proposal to originating access minutes which Ameritech had acknowledged it was able to measure on several prior occasions in sworn testimony.

Thus, we conclude that Ameritech's ULS-IST offering failed to comply with our Wholesale Order, [*173] our TELRIC Order, our Merger Order, Ameritech's own shared transport cost study and Ameritech's prior sworn statements that it is able to measure originating call detail.

11. ULS Usage Development and Implementation Charge

a. Ameritech Illinois' Position

The TELRIC Order directed Ameritech Illinois to recalculate its ULS Usage Development and Implementation Charge in accordance with the proposal made by Staff. TELRIC Order, p. 120. According to Ameritech Illinois, Staff's proposal required Ameritech Illinois to exclude trunking development costs from the development of this charge.

b. Staff's Position

The Second Interim Order directs Ameritech to recalculate the Usage Development and Implementation Charge in accordance with Staff's proposal. Second Interim Order at 120. Ameritech provided evidence showing that it recalculated its ULS Billing Development ("UBD") Charge in accordance with Staff's proposal. Ameritech Exhibit No. 1.0, Schedule RAC-5, Tab 5 at 288-290. Accordingly, the Staff is of the opinion that Ameritech has satisfied this requirement.

c. Intervenors' Position

The Intervenors' position is set forth fully in the portion of this order discussing shared [*174] and common costs and will not be reiterated here.

d. Commission Analysis and Conclusion

As we did in our discussion of shared and common costs, the Commission agrees with Ameritech Illinois and Staff that Ameritech Illinois has complied with the TELRIC Order's directive to recalculate its ULS Usage Development and Implementation Charge. Ameritech Illinois property used the same demand number for allocating shared and common costs that it originally used in compliance with the TELRIC Order, wherein the Commission did not order Ameritech Illinois to modify the demand number originally used for allocating such costs. TELRIC Order, pp. 35-54.

B. Non-cost issues

1. Tariff language

a. Ameritech Illinois' Position

The TELRIC Order (at p. 90) directs Ameritech Illinois to ensure that "all tariff provisions relating to any nonrecurring charges [for UNEs] be specific and clear as to how and when those charges apply." As part of its April 3, 1998 tariff filing, Ameritech Illinois filed revised tariff pages in Ill. C.C. No. 20, Part 19, Section 3 (Unbundled Local Switching), Section 5 (Unbundled Tandem Switching), and Section 12 (Unbundled Interoffice Transport) to clarify how the nonrecurring [*175] charges associated with those UNEs would apply. Since the April 3, 1998 filing, Ameritech Illinois has filed two tariffs regarding network element combinations. These tariffs, for Unbundled Local Switching with Interim Shared Transport (filed September 21, 1999) and for the Provision of Existing Combinations of Network Elements ("UNE-P" filed Dec. 25, 1999), detailed the nonrecurring charges applying to those combinations. Mr. Florence testified regarding the creation and basis for the nonrecurring charges for UNEs as set forth in Ameritech Illinois' current tariffs, and as proposed to revise those tariffs in this docket, and Mr. Suthers explained how those charges apply. Different nonrecurring charges apply to different UNEs. Nonrecurring charges also may differ for the same UNE depending on the type of order the CLEC places.

i. Unbundled Loops

Ameritech Illinois requires two types of nonrecurring charges for an unbundled loop: (1) a Line Connection Charge, and (2) a Service Ordering Charge. Ameritech Illinois' tariff currently sets the Line Connection Charge, which applies on a per-loop basis, at $ 25.08. Ameritech Illinois asserts that line connection costs include the costs [*176] of the monitoring, central office provisioning, engineering, dispatch, and installation work functions. There currently are two types of Service Ordering Charges, which apply on a per-order basis. The "Serving Ordering Charge-Establish" applies when a loop is ordered, and the "Service Ordering Charge-Add or Change" applies each time a service is added or changed on an existing loop. The current rates for both types of Service Ordering Charges are $ 13.17.

Ameritech Illinois presented revised cost studies for loop nonrecurring charges with the direct testimony of Mr. Florence in January 2000. These revised cost studies make three basic changes to the current rate structure. *First,* the studies separate the costs to process an order for an analog loop into three categories. The new Service Ordering Charge categories would be "Initial," "Subsequent," and "Record" (as opposed to the current categories of "Establish" and "Add or Change"). Ameritech Illinois claims that this modification is necessary to establish a separate, lower charge for situations where only "record work" is required to meet the CLEC's request. The "Initial" and "Subsequent" changes also are

lower than the current [*177] "Establish" and "Add or Change" charges. This rate structure is consistent with the rate structure currently used for the ULS Service Ordering Charge.

Second, Ameritech Illinois, in the revised cost studies, distinguished between analog and digital loops by separating the costs incurred to provision an analog loop from those incurred to provision a digital loop. According to Ameritech Illinois, this is appropriate because digital loops involve much more extensive work and therefore create significant provisioning cost differences as compared to analog loops. By separating the analog and digital loop costs in this way and then dividing the nonrecurring costs for digital loops into three new categories of charges ("Administrative," "Design and Central Office Connection," and "Carrier Connection"), Ameritech Illinois proposes to adopt the same rate structure used for unbundled transport and for special access services. "Administrative" costs are for the service and order activities performed to initiate the service request by the service center and for any order-related activities by "downstream" work groups. "Design and Central Office Connection" costs are for the line connection [*178] activities associated with analyzing CLEC requests for service, design of the circuit to meet transmission requirements, selection and assignment of local facilities, connection of equipment at the central office, and testing of the connection within a central office. "Carrier Connection" costs are for the line connection activities required to make the physical connections from the serving wire center to the CLEC, including the coordination and testing necessary to ensure that transmission parameters have been achieved.

Third, Ameritech Illinois' revised cost studies create different Service Ordering Charges for loops ordered on a stand-alone basis versus loops ordered as part of the existing UNE-P, as there are different cost characteristics in the two situations. In particular, Ameritech Illinois notes that there is no Line Connection Charge for a loop ordered as part of a UNE-P, and the Service Ordering Charge for a UNE-P loop includes computer processing costs only and therefore is lower than the comparable charge for a stand-alone loop.

In addition, Ameritech Illinois witness Mr. Suthers provided a series of examples of how the nonrecurring charges would apply to a wide [*179] variety of unbundled loop orders in Schedule MBS-2 to his direct testimony. These examples show the applicable charges both under the current rate structure and under Ameritech Illinois' proposed rate structure and show the charges for both analog and digital loops.

ii. Unbundled Local Switching ("ULS")

Ameritech Illinois generally applies two nonrecurring charges for ULS: (1) a nonrecurring charge for the ULS port, and (2) a Service Ordering Charge. In terms of port charges, Ameritech Illinois presented evidence that the ULS product can include either a line port or a trunk port, depending on how the CLEC wants to connect to the switch. Line ports and trunk ports carry different nonrecurring charges. With respect to line ports, there are standard nonrecurring charges for all types of simple and complex line ports. These charges apply on a per-port basis. There also is a nonrecurring Conversion Charge that applies whenever one type of line port is changed to another type of line port. As for trunk ports, the nonrecurring charge for a Direct Inward Dial ("DID") trunk port applies on an individual channel basis, while the nonrecurring charge for a Digital Trunking Trunk Port or the [*180] ULS Trunk Port applies on a per 24-channel basis, not on an individual channel basis.

In terms of the Service Ordering Charge, Ameritech Illinois states that the Service Ordering Charge for ULS varies depending on the type of port and type of work requested by the CLEC. The variance reflects the different functions that are performed to process orders for different port types. The Service Ordering Charge for a line-side port or a trunk-side port differs depending on whether the feature complexity of the requested port is considered "basic" or "complex." Ameritech Illinois further states that the Service Ordering Charge varies depending on whether the CLEC is initiating service on a port ("Service Ordering Charge-Initial"), adding or changing service on an existing ULS port or feature ("Service Ordering Charge-Subsequent"), or making changes and/or additions to records only ("Service Ordering Charge-Record").

Ameritech Illinois adds that other nonrecurring charges might apply to ULS in special situations. Nonrecurring Centrex System Charges, including Common Block Establishment, System Change or Rearrangement, and System Feature Activations would apply in certain situations involving [*181] Centrex ports. A Subsequent Training Charge would apply when a carrier requests training after the initial training obligation has been completed. A ULS Billing Establishment Charge will apply the first time a CLEC orders ULS in a particular switch. There also would be a nonrecurring charge when a CLEC requests custom routing with ULS. To demonstrate, Ameritech Illinois presented an updated cost study for the Service Ordering Charges associated with ULS. This study provides updated cost/rate level information which has changed since the April 3, 1998 tariff filing, but does not change the rate structure just described.

iii. ULS-IST

Ameritech Illinois asserts that Unbundled Local Switching with Interim Shared transport ("ULS-IST") has been superseded by long-term shared transport (ULS-ST), and thus, need not be addressed in this case. However, Ameritech Illinois contends that had any CLEC ordered ULS-IST before it was superseded, the CLEC would have paid the same nonrecurring charges as for ULS, with one exception. Ameritech Illinois states that the one difference between the nonrecurring charges for ULS and for ULS-IST was that the current ULS tariff has certain nonrecurring charge [*182] rate elements where the rate is shown as "TBD" (To Be Determined). Those rate elements were not included in the ULS-IST tariff. Ameritech Illinois presumes that the nonrecurring charges for long-term shared transport will be addressed in the investigation of the tariff for that offering (Docket No. 00-0700).

iv. UNE-P

Ameritech Illinois explains that nonrecurring charges for the existing UNE-P include the nonrecurring charges of the component elements, such as the loop and shared transport. However, Ameritech Illinois adds that the nonrecurring Line Connection Charge for an unbundled loop and the nonrecurring port charge for ULS (or shared transport, which includes ULS) do not apply to the UNE-P. *See* Tariff Ill. C.C. No. 20, Part 19, Section 15. Thus, the nonrecurring charges that apply to the existing UNE-P are Service Ordering Charges, specifically (1) the Service Ordering Charge that applies to the loop type ordered as part of the existing UNE-P (also called the UNE-P ordering charge) of $ 3.15, and (2) the Service Ordering Charge that applies to the ULS/shared transport order. Am. Ill. Ex. 2.1, Sch. MBS-5, Original Sheet 29.1 and 1st Revised Sheet 33 (Suthers Rebuttal). [*183] According to Ameritech Illinois, two service order charges are necessary because Ameritech Illinois currently creates and processes two separate orders to complete a UNE-P request.

Ameritech Illinois also provided examples of what charges would apply to typical, expected types of existing UNE-P orders. These examples show the nonrecurring charges under both the current rate structure and proposed rate structure for loops. According to Ameritech Illinois, the rate structure for ULS is not being changed, but the Service Ordering Charge for a loop ordered as part of the UNE-P is different than for a stand-alone loop.

v. UTS

Ameritech Illinois explained that the nonrecurring charges for unbundled tandem switching ("UTS") include a charge for the unbundled tandem switch trunk port and a Service Ordering Charge. The trunk port charge is either an "Initial Charge," which applies when the UTS port is established, or a "Subsequent Charge," which applies for any addition or rearrangement of a channel on a UTS port. The Subsequent Charge applies on a per-trunk group basis. The Service Ordering Charge applies to any order that includes UTS ports. More than one port can be included on an order, [*184] but all must be served out of the same tandem switch and have the same carrier-requested due date. This Service Ordering Charge covers the same functions as the Service Ordering Charge for unbundled loops. Ameritech Illinois asserts that it is not proposing any changes to the UTS nonrecurring charges included in its April 1998 compliance filing.

vi. UDT

Ameritech Illinois states that there are two types of nonrecurring charges for unbundled dedicated transport ("UDT"). One, nonrecurring charges apply when certain capabilities or features of UDT are ordered. The capabilities or features with nonrecurring charges are Clear Channel capability for DS1 services and 1+1 Protection with Cable Survivability for OC3, OC12, and OC48 services. Two, there are nonrecurring charges that apply for specific work activities associated with installing new elements or rearranging installed elements. According to Ameritech Illinois, the three types of charges that fall into this category are: (1) the "Administrative Charge"; (2) the "Design and Central Office Connection Charge"; and (3) the "Carrier Connection Charge." The amount of these charges varies depending on the type of transport ordered [*185] (*e.g.,* DS1, DS3, OC3, OC12, or OC48). These charges apply in the same manner as similar charges associated with special access service. Ameritech Illinois asserts that it is not proposing any changes to the UDT nonrecurring charges included in its April 1998 compliance filing.

b. Staff's Position

In the Second Interim Order, the Commission directed Ameritech to resubmit tariff language that is clear and specific as to when nonrecurring charges apply. Second Interim Order at 90. Nonrecurring charges can be broken down into charges for separate unbundled network elements loops, unbundled local switching, shared transport (interim shared transport), and collocation. Staff Exhibit No. 2.0 at 4.

Staff finds several areas in which Ameritech's filing appears to be deficient with respect to this issue. Specifically, with respect to loop charges, the application of special construction charges does not appear to meet the Commission's requirements for clarity and specificity. Staff Exhibit 2.0 at 4. Staff recommends that the proper solution to this problem is to prohibit the application of these charges altogether unless and until Ameritech chooses to imposed the charges on retail [*186] customers. In the improbable circumstance that Ameritech elects to impose these charges upon its retail customers, Staff recommends that the UNE tariff should, at a minimum, specify that such charges will be applied in a non-discriminatory manner. Ameritech's filing does not comply with this requirement, and would allow precisely such discrimination in the assessment of special construction charges. Staff Exhibit No. 2.0 at 5. Accordingly, Ameritech should be required to revise its tariffs in a manner consistent with this proposal.

Further, with respect to charges for unbundled local switching, it is unclear when and how the custom routing charge would be applied. Staff Exhibit No. 2.0 at 5. So that the tariff is clear regarding how and when these charges are assessed, Ameritech must specify how many line class codes would be required for a CLEC to route OS/DA calls to their own or a third-party facility (i.e. route 0, 0+, 411, and 555-1212 to a non-Ameritech platform). Staff Exhibit No. 2.0 at 6. The current filing does not do so, and is therefore deficient. In contrast to this tariff, Ameritech's offering of unbundled local switching in Michigan makes clear which charges apply to [*187] custom routing. Michigan Bell Telephone Company Tariff M.P.S.C. No. 20R, Part 19, Section 3. In Michigan, CLECs are charged for specialized routing on a per route per switch basis. This approach appears to be consistent with what Ameritech is to provide pursuant to the Second Interim Order. The Staff, therefore, recommends that this approach be adopted in Illinois.

Finally, it is unclear whether a CLEC would be required to collocate in an Ameritech central office when it purchases custom routing, in order to route traffic to its own OS/DA platform. Id. Ameritech also identifies new charges, specifically "Service Ordering Charge - Initial", "Service Ordering Charge - Subsequent", and "Service Ordering Charge - Record" as well as other nonrecurring charges. Ameritech Ex. 2.0 at 9. However, Ameritech has not submitted tariff language to implement these additional charges. Staff Exhibit No. 2.0 at 7. Staff urges the Commission to find that Ameritech has not submitted "specific and clear" tariff provisions in the proposed tariff. (Id.)

c. Intervenors' Position

Intervenors note that, while Ameritech witness Mr. Silver sponsored testimony which purportedly provided clear direction [*188] as to what NRCs apply to various ordering scenarios involving combinations of UNEs, (Silver Direct, Ameritech Ex. 1.0, p. 6, Schedule MBS-1) Ameritech's CPO tariff does not set out the applicability of charges in a simple straightforward manner. MCI WorldCom explained that CLECs must first divine that separate loop and port service charges apply to a single UNE-P order and then they must go to Ameritech's loop tariff and its unbundled local switching tariff to find the charges that add up to the UNE-P NRC. Unfortunately, the only way a CLEC would know that is by reading Mr. Silver's testimony. Indeed, Mr. Silver who testified about the clarity of Ameritech's proposal had problems determining exactly which NRCs applied to UNE-P orders under the proposed tariffs. (Tr. 299-300) Given the Commission's admonition in its TELRIC Order that "tariff provisions relating to any nonrecurring charges be specific and clear as to how and when those charges apply," MCI WorldCom maintains that Ameritech's proposed compliance filing clearly falls short. TELRIC Order, p. 90. MCI WorldCom urges the Commission to order Ameritech to file tariffs that include the kind of detail contained in Ameritech Ex. [*189] 2.0, Schedule MBS-1.

Moreover, AT&T and MCI WorldCom point out that despite the fact that this Commission clearly ordered Ameritech to file tariffs that will allow "the Commission, new entrants even Ameritech Illinois to cogently determine how and when nonrecurring charges apply," Ameritech's own tariff witness, Mr. Florence was, in many instances, unable to identify various charges, or to describe how, when or if they apply. Tr. 300, 302, 305-307, 311, 325-331, 347, 370, 376-380. Contrary to the Ameritech TELRIC Order, however, AT&T and MCI WorldCom contend that Ameritech's tariff is anything but "specific and clear as to how and when those charges apply." Ameritech TELRIC Order, p. 90.

Finally, MCI WorldCom pointed out that Ameritech did not address the issue of NRCs that should apply to UNE-P orders for new customers and second lines. Assuming that the Commission in this proceeding confirms Ameritech's obligation to combine UNEs that it ordinarily combines in its own network for itself and its retail customers (a matter addressed fully below), MCI WorldCom asserts that it is imperative that CLECs know exactly what NRCs will apply in those situations. Mr. Silver did testify that [*190] the appropriate NRC for new and second lines would be the same as the NRC applicable to migrate as is orders. Tr. 307-309. Thus, based on Mr. Silver's sworn testimony, whatever the Commission decides the appropriate NRC is for UNE-P migrate as is orders is the same NRC that should apply to UNE-P orders for new customers and second lines. Accordingly, MCI WorldCom urges the Commission to make clear

that the charges for new and second lines will be applied in that manner and direct that Ameritech's CPO tariff make that clear. AT&T/MCI WorldCom Initial Brief, pp. 76-77.

d. Commission Analysis and Conclusion

Despite the fact that we clearly ordered Ameritech to file tariffs that will allow "the Commission, new entrants even Ameritech Illinois to cogently determine how and when nonrecurring charges apply," Ameritech's own tariff witness was, in many instances, unable to identify various charges, or to describe how, when or if they apply. Tr. 300, 302, 305-307, 311, 325-331, 347, 370, 376-380. While Ameritech's tariff witness was able, under cross examination, to piece together the nonrecurring charges that would likely apply to some ordering scenarios, CLECs cannot be reasonably expected [*191] to read Mr. Silver's testimony and engage in cross examination each time they wish to place a service order. The nonrecurring charges a CLEC is expected to pay when it places an order for UNEs and/or UNE combinations were ordered to be clear and easily ascertainable. They are not. That said, We order Ameritech to file new tariff sheets setting forth with specificity the NRCs that apply when various UNEs are ordered. Our suggestion is that each UNE tariff have a separate section that sets forth the NRCs that apply, rather than cross-referencing other tariffs. In any event, Ameritech should accept AT&T and MCIWorldCom's invitation and use Mr. Silver's Schedule MBS-1 as the starting point to determine the level of specificity that users will require in deciding which NRCs apply to which UNEs.

2. End-to-End Bundling Issues

a. Ameritech Illinois' Position

The TELRIC Order directed Ameritech Illinois to provide various types of information regarding the rates at which a CLEC could lease existing combinations of network elements. The TELRIC Order speaks of providing this information for "each UNE combination identified by AT&T/MCI and WorldCom." TELRIC Order, p. 125. Subsequent to the [*192] TELRIC Order, however, certain significant events occurred, including the Supreme Court's invalidating the FCC's rule listing unbundled network elements, the subsequent FCC order creating a new national list of unbundled network elements, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket 96-98 (rel. Nov. 5, 1999) ("*UNE Remand Order*") and the SBC/Ameritech merger.

In light of these developments, and at the Hearing Examiner's suggestion, the parties exchanged letters to determine what UNE combinations still should be addressed in this proceeding. On December 7, 1999, MCI WorldCom and AT&T sent letters to Ameritech Illinois describing certain types of combinations they would like Ameritech Illinois to address. Ameritech Illinois responded with a letter on December 12, 1999 detailing the combinations that it planned to address in its testimony. As the letter explained, Ameritech Illinois intended to address those combinations that appeared to be of the greatest interest to MCI WorldCom and AT&T, consistent with the current legal requirements regarding UNEs [*193] and UNE combinations, but would not address new UNE combinations or other AT&T and MCI WorldCom proposals that were not required by law and/or went beyond the scope of the case. MCI WorldCom and AT&T did not respond to this letter, and Ameritech Illinois therefore proceeded to submit testimony addressing the existing UNE combinations identified in its December 12 letter. Specifically, as promised in that letter, Ameritech Illinois addressed shared transport (ULS-IST) and the existing "UNE Platform" or "UNE-P." As AT&T requested, Ameritech Illinois addressed the existing UNE-P both with and without OS/DA services, and with only OS or only DA service.

i. Matters Raised by the TELRIC Order.

Ameritech Illinois claims that it has provided the type of information that the TELRIC Order described with respect to UNE combinations. The TELRIC Order (p. 125) directed Ameritech Illinois to address the following five areas.

> a. Description of the extent to which the separate elements of each combination are combined in Ameritech Illinois' own network for its own use.
>
> b. The separate unbundled element prices which Ameritech Illinois proposes would apply to a purchase of the combination.
> [*194]
> c. The description of any additional activities and costs of those activities which are required to provide each unbundled elements combination where recovery of the cost of those activities is sought.

d. An identification of each nonrecurring charge which Ameritech Illinois proposes would or may apply to the purchase of the unique combination; including an identification of all nonrecurring charges which Ameritech Illinois proposes would or may apply to the situation where end users' existing service is converted "as-is" to a new entrant.

e. A description of the basis for calculation of each nonrecurring charge Ameritech Illinois proposes would apply.

Mr. Suthers explained that Ameritech Illinois provides service to its existing customers via all of the network elements included in the UNE-P with OS/DA, and that the other UNE-P options reflect a subset of the network elements that are combined in Ameritech Illinois' network to provide service to Ameritech Illinois' customers. Shared transport and ULS would also be combined in Ameritech Illinois' network for its own use, as the shared transport network element cannot be provided separately from ULS. However, Ameritech Illinois [*195] witness Mr. Silver explained that there are instances where separate elements are not combined for use in Ameritech Illinois' own network, such as when a customer moves out of a location and the network elements are, for one reason or another, disconnected (*e.g.,* so the loop could be used to serve another customer) or deactivated in some way.

Ameritech Illinois asserts that the separate UNE charges associated with any existing UNE combination would include the rates for each individual UNE in the combination, although not all nonrecurring charges may apply. Thus, for example, the rates for the loop portion of a combination could vary depending on the type of loop the CLEC requests. The recurring charges for individual UNEs are set forth in Ameritech Illinois' tariff or applicable interconnection agreements. Because Ameritech Illinois provides custom routing for OS and DA, these services do not have to be provided as UNEs and therefore would be priced at market-based rates. *47 C.F.R. § 51.319(f)*; *UNE Remand Order,* PP 441-42, 470; *Texas 271 Order,* P 348 ("obligations that do not fall within a BOC's obligations to provide unbundled network elements are not subject to the [*196] requirements of sections 251 and 252, including the requirement that rates be based on forward-looking economic costs"). Memorandum Opinion and Order, *Application of SBC Communications Inc. et al.,* CC Docket 00-65 (rel. June 30, 2000).

Ameritech Illinois witnesses Mr. Suthers and Mr. Florence further explained the nonrecurring charges that would apply to UNEs provided as part of existing combinations. According to Ameritech Illinois, besides the recurring and nonrecurring charges for each UNE, there is no third category of charges that would apply to UNE combinations.

Ameritech Illinois asserts that the nonrecurring charges for a UNE-P would vary depending on the specific type of service the CLEC orders. Mr. Suthers provided examples of how different nonrecurring charges would apply in different situations in Schedules MBS-1 and MBS-2 to his direct testimony. According to Ameritech Illinois, additional charges also might apply depending on how the CLEC chose to provide service. For example, if the CLEC wanted to use custom routing for OS/DA, the additional charges listed in the CLEC's interconnection agreement or Ameritech Illinois' tariff (Ill. C.C. No. 20, Part 19, Section 14, [*197] Sheet 2) would apply.

Ameritech Illinois asserts that the nonrecurring charges for UNE combinations have been established at the level of TELRIC plus a reasonable level of shared and common costs, consistent with both the FCC's and this Commission's rules. Mr. Florence further explained and supported the calculation of the various nonrecurring charges for UNEs in his testimony.

ii. Matters Raised by CLECs

Ameritech Illinois contends that AT&T and MCI WorldCom have attempted to go beyond the scope of this docket by including testimony on various non cost-related issues regarding UNEs and UNE combinations. Specifically, AT&T and MCI WorldCom submitted testimony asking the Commission to order Ameritech Illinois to affirmatively combine UNEs for CLECs and to provide OS and DA as UNEs and asking the Commission to order Ameritech Illinois to combine UNEs for CLECs to create a new UNE-P when the CLEC orders a new or second line. Ameritech Illinois argues that these and similar non-cost issues have nothing to do with whether Ameritech Illinois has complied with the TELRIC Order. Rather, all of the extraneous issues raised by Mr. Gillan and Ms. Lichtenberg are ultimately product issues [*198] that concern what products and services Ameritech Illinois should be required to offer to CLECs, not with implementation of the TELRIC Order. Ameritech Illinois contends that none of these issues made it onto the 13-issue list in the Staff Report that formed the basis for initiating this docket. Accordingly, Ameritech Illinois asserts that these ancillary issues, which can better be addressed (and in some cases are already being addressed) in other dockets, should not be considered here.

Ameritech Illinois contends that MCI WorldCom's issues regarding Ameritech Illinois' provision of OS/DA should be rejected. According to Ameritech Illinois, the *UNE Remand Order* establishes that OS and DA are no longer automatically defined as UNEs, and therefore can be priced at market rates unless and until an ILEC stops offering customized routing or a compatible signaling protocol to enable CLECs to direct local OS and DA traffic to their own switches. *UNE Remand Order,* PP 441-42, 463; *47 C.F.R. § 51.319(f).* Ameritech Illinois presented evidence that it provides customized routing for local OS and DA traffic. Therefore, Ameritech Illinois asserts that federal law authorizes Ameritech Illinois [*199] to charge market rates for OS/DA and there is no need to consider UNE rates for those services in this case. Ameritech Illinois also states that it provides the existing UNE-P both with and without the OS/DA, or with either OS or DA in isolation. In addition, Ameritech Illinois made clear that in addition to providing custom routing for OS/DA, it provides CLECs with the option to receive branded or unbranded OS/DA services with the UNE-P.

Although nothing in the TELRIC Order raises the issue of whether an ILEC can be required to combine UNEs for a CLEC to create a UNE-P, AT&T and others urge the Commission to create such a requirement in the context of this compliance docket. Specifically, AT&T witness Mr. Gillan claimed that the Commission ordered Ameritech Illinois to provide the new UNE-P (by which he means a platform of elements combined for the CLEC by Ameritech Illinois, rather than a platform that was already combined at the time of the CLEC's order) in 1996 in Dockets 95-0458/0531 (commonly referred to as the "*Wholesale Order*") and should simply reinforce that requirement here. Ameritech Illinois asserts, however, that the Commission has already made clear that it did [*200] not require incumbents to combine UNEs for CLECs in the *Wholesale Order.*

Ameritech Illinois further argues that both Mr. Gillan and Ms. Lichtenberg focus their arguments on the specific question of whether Ameritech Illinois should be required to combine UNEs when a customer orders a new or second line. Ameritech Illinois notes that the Commission has expressed its intention to consider that precise issue in Docket 00-0700 as part of the investigation of Ameritech Illinois' tariff for long-term shared transport. See Order, Ill. C.C. Dkt. No. 00-0700 (Nov. 1, 2000) (directing the parties in that case to present evidence on "whether Ameritech's restriction on ordering new and additional (i.e. second line) loops in combination with unbundled local switching and shared transport is appropriate and should be maintained"). Accordingly, Ameritech Illinois argues that the Commission should not undermine that docket by prejudging the exact same issue here.

Ameritech Illinois also presented extensive legal arguments in response to the CLECs' claim that the Commission has the authority to require Ameritech Illinois to combine UNEs for CLECs.

AT&T and MCI WorldCom also assert that Ameritech [*201] Illinois should be required to provide the "Enhanced Extended Loop" or "EEL" as an unbundled network element. Ameritech Illinois asserts that CLECs view the EEL as a combination of an unbundled loop and dedicated transport that is assembled by the ILEC and provided to CLECs on an "unrestricted" basis. According to Ameritech Illinois, this is a product issue that has nothing to do with compliance with the TELRIC Order. Indeed, the concept of EELs was never raised at all in the TELRIC proceeding. Moreover, Ameritech Illinois argues that the FCC has made clear that the EEL, new or existing, is not an unbundled network element in itself. *UNE Remand Order,* P 478. The FCC has also made clear that ILECs are required to provide loop-dedicated transport combinations when they already exist to provide special access service to other carriers and are "converted" to UNEs, and even then, the FCC has imposed several crucial restrictions on when such "conversions" are required. Thus, in addition to being beyond the scope of this case, Ameritech Illinois asserts that CLECs' request for new, "unrestricted" EELS has absolutely no record support.

MCI WorldCom also raises an issue regarding whether [*202] Ameritech Illinois should have to provide voicemail or other non-telecommunications services in connection with the UNE-P. Once again, Ameritech Illinois asserts that this is a product-related issue that has nothing to do with costs or rates. Moreover, Ameritech Illinois points out that voicemail is not even a telecommunications service and therefore is not subject to the requirements of Sections 251 and 252 of TA96 or the PUA. *See e.g., In the Matter of Application of BellSouth Corp. et al. for Provision of In-Region, InterLATA Services in Louisiana,* CC Docket 98-121, P 314 (rel. Oct. 13, 1998). Therefore, Ameritech Illinois asserts that issues regarding voicemail and other non-telecommunications services are not properly part of this docket.

b. Staff's Position

In the Second Interim Order, the Commission directed Ameritech to address end-to-end bundling issues raised by AT&T and MCI/WorldCom. Second Interim Order at 125. Specifically, the Commission directed Ameritech to provide, with respect to such issues, the following information:

1) A description of the extent to which the separate elements of each combination are combined in Ameritech Illinois' own network [*203] for its own use;

2) The separate unbundled element prices which Ameritech Illinois proposes would apply to a purchase of the combination;

3) The description of any additional activities and the costs of those activities which are required to provide each unbundled element combination where recovery of cost of those activities is so;

4) An identification of each non-recurring charge which Ameritech Illinois proposes would or may apply to the purchase of the unique combination; including an identification of all non-recurring charges which Ameritech Illinois proposes would or may apply to the situation where end-users' existing service is converted "as is" to a new entrant; and

5) A description of the basis for calculation of each non-recurring charge Ameritech Illinois proposes would remain apply.

Second Interim Order at 125.

Staff finds that the evidence supplied by Ameritech in response to the Commission's directive does little to enlighten these questions. Staff notes that the Ameritech witness who addresses this issue, Michael Suthers, failed, in a rather dismissive manner, to address certain combinations of UNEs requested by AT&T and MCI WorldCom, describing them [*204] as combinations containing dedicated transport that require extensive "custom" work and which accordingly cannot be considered pre-assembled combinations. Ameritech Exhibit No. 2.0 at 19-24. This, according to Staff, flies in the face of the Second Interim Order, which provides that "Ameritech's ULT [unbundled local transport] proposal is inconsistent with the FCC order and with the common understanding of shared transport." Second Interim Order at 106. It is clear that the Commission understands the UNE platform combination to be the combination of loops, unbundled switching and what Ameritech now calls "interim shared transport." Staff Exhibit No. 2.0 at 8.

Moreover, this evidence fails the "specificity" test to the extent that it does not make clear what UNEs a CLEC must purchase. The extent of Mr. Suthers explanation is that "the appropriate nonrecurring charges associated with Custom Routing Service would apply." Ameritech Ex. 2.0 at 21. This explanation is clearly not adequate, as it does not clarify whether ULS trunk port must be purchased, if collocation is required, or if dedicated facilities can be purchased to route the traffic.

In the context of Ameritech position relating [*205] to the CLECs desire to provide service to new customers, and second lines requested by existing customers, using UNE-P, Staff notes that, until well into these proceedings, Ameritech's TCNet website contained service offerings which indicated that Ameritech offered UNE-P to CLECs seeking to provision new and second lines. Staff Exhibit No. 2.1P at 2-3. Ameritech deleted these offerings after the Staff prefiled Staff Exhibit No. 2.1P. Staff Exhibit No. 2.2 at 5. Since Ameritech authorized the dissemination of this ordering guide on its TCNet website, the ordering guide may be considered probative of Ameritech's understanding of whether it should properly offer UNE-P to CLECs which wish to provision new or additional lines. *See, generally,* Staff Exhibit No. 2.1P.

In addition, the Staff has learned of arbitration awards issued in arbitration proceedings undertaken before the Indiana Utility Regulatory Commission and Wisconsin Public Service Commission which appear to support the proposition that ILECs are obligated to offer UNE-P for provisioning of new and second lines. See, generally, Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, [*206] AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc., 05-MA-120, *Arbitration Award* (Oct. 12, 2000); AT&T Communications of Indiana, Inc./Ameritech Indiana Arbitration, IURC Cause No. 40571-INT-03, *Order* (November 21, 2000). Pursuant to each of these awards, ILECs were required to offer CLECs new UNE combinations. Id.

The Staff is of the opinion that Ameritech should be required to offer UNE-P to CLECs seeking to provision service to new customers and additional lines. Apart from Ameritech's tacit belief, as evidenced in its ordering guides, that it must do so, and the fact that other state Commissions have required it, SBC offers it in Texas. Staff Exhibit No. 2.1 at 6. Accordingly, the Staff recommends that this Commission require Ameritech to offer UNE-P to CLECs seeking to provision service to new customers and additional lines.

c. Intervenors' Response on New and Second Lines

Ameritech has argued in this proceeding that it is not obligated as a matter of law to provide the UNE Platform to CLECs who wish to provide service to new customers or customers seeking additional lines. As will be discussed in further detail below, that [*207] argument is wrong and should be rejected. There are two separate and distinct issues that the Commission must address -- (1) whether Ameritech is currently obligated to provide UNE Platform for new customers, additional and second lines and (2) if not, whether Ameritech can be ordered by a state commission to do so. AT&T and MCI WorldCom submit that Ameritech is obligated to provide such combinations under current law and that, in any event, the Commission if fully authorized to order Ameritech to provide such combinations and should do so here.

Simply stated, any combination of network elements that Ameritech Illinois ordinarily combines in its network and that permits AT&T, MCI WorldCom and other CLECs to provide telecommunications services to end users should be made available by Ameritech Illinois on an unrestricted basis. Ameritech Illinois should be required to provide UNE combinations to allow CLECs to provide service to new customers, or to offer additional lines to existing customers, just as Ameritech Illinois does for its retail customers. Moreover, the conversion of existing service to UNE-based service of the same functionality (*e.g.,* migrations "as is" to UNE-P) [*208] does not and should not entail physical work or separation of facilities or equipment, and the customer's dial tone should be preserved.

i. The Platform

In October 1995, LDDS (now part of MCI WorldCom) first petitioned this Commission to order Ameritech to provide "... the underlying network, facilities, equipment, and related support, to enable LDDS to design and offer its own local exchange, exchange access, and other services. This petition -- improved through important contributions from Staff -- was granted by the Commission on June 26, 1996 pursuant to Illinois State law. Wholesale Order, pp. 63-64; AT&T/Z-Tel Ex. 1.0, p. 37. From there, the Platform model was successfully advocated in Washington, D.C. and adopted by the FCC in its First Report and Order. AT&T/Z-Tel Ex. 1.0, p. 5. The Commission again ordered Ameritech in late 1996 and early 1997 to provide the UNE-Platform in the AT&T/Ameritech arbitration proceeding (*see* Orders in ICC Docket Nos. 96-AB-003/004, 96-AA-001) and the MCI/Ameritech arbitration proceeding. *See* Order in ICC Docket No. 96-AB-005. Yet again, in its Second Interim Order dated February 17, 1998 in the Ameritech TELRIC investigation, ICC Docket [*209] Nos. 96-0486/0569, the Commission reiterated Ameritech's obligation to provide network element combinations, including the Platform. Ameritech TELRIC Order, pp. 125-126.

Ameritech now indicates that when a customer orders service for the first time (e.g., it is moving into the service area), or is ordering additional (e.g., second, third, etc.) lines, a CLEC cannot use UNE-P to serve that customer. AT&T/Z-Tel Ex. 1.0, pp. 37-38. Furthermore, Ameritech has indicated that it will not provide an "extended loop" (Enhanced Extended Link, or EEL), because it is a combination of loop and transport that does not preexist in its network. AT&T/Z-Tel Ex. 1.0, p. 38.

These policies (if permitted) would deny the benefits of competition to new customers, prevent customers of UNE-P based competitors from ordering additional lines, and prevent CLECs with their own networks from efficiently extending service over a broader area. Obviously, such restrictions cannot be justified on *policy* grounds. There is no good reason to actually *sanction* a result where existing lines can be served by UNE combinations, but new lines, second lines, or extended lines cannot. Consequently, the only real issue [*210] is whether the Commission is *precluded* from requiring Ameritech to include such arrangements (which it ordinarily combines) in its UNE offerings. The answer is clearly no. AT&T's and MCI's proposals and requests for UNE combinations are consistent with federal law and lead to the conclusion that the Commission should require Ameritech Illinois to offer UNE combinations without restriction.

ii. Ameritech Illinois' Current Obligations

As an initial matter, this Commission has required Ameritech Illinois to offer UNE combinations in the past as a result of the first arbitrations between Ameritech and AT&T and Ameritech and MCI. Thus, Ameritech Illinois is already contractually obligated to provide a number of network element combinations pursuant to its Interconnection Agreements with AT&T and MCI. Moreover, the Ameritech TELRIC Order expressly requires Ameritech to provide network element combinations, and goes so far as to require Ameritech to specify what work activities, if any, and corresponding charges would apply when AT&T, MCI or another CLEC orders these network element combinations. Second Interim Order, ICC Docket Nos. 96-0486/0569 (February 17, 1998)("Ameritech TELRIC [*211] Order"), pp. 125-126. In fact, during a November 24, 1999 status hearing in this docket, Ameritech requested and AT&T and MCI agreed to provide Ameritech with a tentative list of UNE combinations they would like Ameritech to address in this proceeding. At the direction of the Hearing Examiner, AT&T and MCI provided these lists to Ameritech on December 7, 1999. *See* AT&T Silver Cross Ex. 1 (AT&T list) and AT&T Silver Cross Ex. 2 (MCI list).

During the arbitrations in the 1996-1997 time frame (*see* ICC Docket Nos. 96-AB-003/004 and ICC Docket No. 96-AB-005), Ameritech did not even raise the issue of whether it was required to offer the UNE combinations. The only issue Ameritech raised was whether it would be required to make certain UNE combinations such as the UNE Platform without operator services and directory assistance available as standard offerings. The Commission resolved this issue by requiring Ameritech to offer this particular UNE combination on a bona fide request basis (rather than as a standard offer). There is no question, however, that Ameritech Illinois is required to provide (pursuant to the terms of its Commission-approved interconnection agreements) UNE combinations, [*212] including a UNE-Platform and a loop-transport combination, or EEL. There is also no question that each of these combinations is technically feasible and should be made available to CLECs. Not only do existing interconnection agreements obligate Ameritech to provide combination UNEs ordinarily combined in Ameritech's network, but Ameritech so-called Combined Platform Offering ("CPO") tariff does as well. Ameritech's argument that it must only provide combinations of UNEs where they "currently exist" is not consistent with the its own interpretation of its Combined Platform Tariff. In this regard, AT&T and MCI WorldCom note that Ameritech's Combined Platform Tariff became effective December 25, 1999. Ameritech has a website called TC-Net. This website is used by Ameritech Information Industry Services ("AIIS"), Ameritech's wholesale affiliate, purportedly to provide useful information to CLECs on how to order unbundled elements, combinations of elements, resale services, as well as information on how to interface with Ameritech's OSS and generally how to interact with AIIS in order to provide local service in Ameritech's territory. On this website, there is an ordering guide titled [*213] "Combined Platform Offering, Illinois Tariff Offering." This document was issued in conjunction with the Illinois CPO tariff that went into effect December 25, 1999. It is clear from the content of the "Combined Platform Offering" ordering document that Ameritech intended new lines and additional lines to be ordered by CLECs. Based on the contents of the "Combined Platform Offering" unbundled element ordering guide it is obvious that the authors of the guide did not view the Illinois CPO tariff as prohibiting the use of the UNE Platform for new lines, additional lines, or second lines.

iii. FCC Rule 315(b)

Regardless of Ameritech's own confusion about its obligations, its legal argument that it is not required to provide the UNE Platform for new customers, additional lines and second lines is dubious at best. 47 C.F.R. 315(b) provides "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." A reasonable reading of 47. C.F.R. Section 315(b) encompasses combining UNEs that the ILEC currently combines, even if they are not yet specifically connected. FCC Rule 51.315(b), *47 C.F.R. 51.315(b)*, as definitively construed [*214] by the FCC in the First Report and Order, and affirmed by the United States Supreme Court, continues to have the same meaning and effect it had when the FCC adopted the rule in 1996. In the First Report and Order, the FCC concluded that ILECs should be required to combine elements when technically feasible to do so at the request of CLECs, because CLECs often are not able to combine them for themselves. The rules enforcing this obligation clarified that this obligation existed in two distinct situations: when the elements are "ordinarily combined" in the ILEC network, and when the elements are not ordinarily combined. The former obligation is set out in Rule 51.315(b), and the latter, which potentially involved claims that the requested combinations were not technically feasible, in Rules 51.315(c)-(f).

In paragraph 296 of the First Report and Order, the FCC first explained that "currently" was intended to mean "ordinarily." That explanation was hardly necessary; this understanding of "currently combines" is clear enough from the context of the rule itself. On its face, Rule 51.315 distinguishes between the types of combinations that ILECs "currently combine," *see* Rule 51.315(b), [*215] and those the ILECs do not "ordinarily" combine, *see* Rule 51.315(c). The FCC distinguished between these two types of combinations because only the latter raised issues of technical feasibility -- there is no question that a combination that currently or ordinarily exists in the ILECs' networks is technically feasible. Therefore only truly new types of combinations were intended to be addressed in Rules 51.315(c) - (f), which contain the rules to address claims of technical infeasibility.

The Eighth Circuit's decision to vacate Rule 51.315(b) was reversed by the Supreme Court and the rule was reinstated. The question of the validity of FCC Rules 51.315(c) - (f) was addressed by the Eighth Circuit in its July 18, 2000 decision in *Iowa Utilities Board v. FCC, 2000 WL 979117* (8th Cir. July 18, 2000) ("IUB III"). As discussed below, the Eighth Circuit's decision in *IUB I* did not hold that requiring ILECs to combine elements not ordinarily combined in their networks violates TA96 -- it simply found that TA96 does not compel such a requirement. State commissions do have the authority to order combinations.

Ameritech's position is that the term [*216] "currently" in Rule 51.315(b) refers to individual customer situations and means "preexisting" or "as is." In other words, Ameritech attempts to impose an extremely narrow reading of

315(b) in order to justify its position that it can prohibit CLECs from obtaining the UNE Platform to serve new customers, additional or second lines. Ameritech's narrow reading limits combinations to specific customer combinations that are presently in place, rather than the type of combinations that ILECs currently provide to themselves and customers as a matter of course. Such a narrow interpretation of Rule 51.315(b) would make no sense in light of the FCC's previous regulatory scheme and the sound policies behind it. Combining elements that are currently or ordinarily combined in the ILEC network (a loop and a port, for example) raises no issues of technical feasibility, and plainly is meant to be addressed in Rule 51.315(b), and not in the technical feasibility Rules 51.315(c) - (f).

Additionally, such a narrow construction of 315(b) would produce discriminatory results. For example, based on Ameritech's interpretation of Rule 51.315(b), it could deny a CLEC's request to provide a new line to [*217] a customer who just moved to the area on the grounds that the elements requested by the CLEC are not "currently combined" for that particular customer. As discussed below, Ameritech can and would provide the same combination of elements for itself to serve the same customer. The same would be true for additional or second lines. This is discriminatory. The Commission recognized in paragraph 481 of the Order that the Supreme Court upheld Rule 51.315(b) "based on the nondiscrimination language of section 251(c)(3)" of TA96. Therefore, any interpretation of Rule 51.315(b) that produces such discriminatory results should be expressly rejected.

For all of these reasons, the Intervenors urge the Commission to reject arguments that Ameritech is not required to provide the type of combinations (the UNE Platform) that it ordinarily combines for itself and its retail customers as a matter of course. Ameritech is required by Rule 315(b) to provide CLECs with combinations of UNEs that it ordinarily provides to itself and to its retail customers as a matter of course. To the extent there is any question as to whether Ameritech is required to do so, and there is not, the Commission has the full [*218] authority to order Ameritech to provide combinations of elements, including the UNE Platform, that do not "currently exist" in its network.

iv. State and Federal Law

Even if 47 C.F.R. 315(b) did not impose on Ameritech an obligation to combine UNEs ordinarily combined in its network, which it does, it is clear that the Commission has the authority to require Ameritech to combine UNEs in any event. Ameritech Illinois' position on providing UNE combinations is that the federal Act, as interpreted by the Eighth Circuit in *Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997)* (subsequent history omitted) ("IUB I") and Iowa Utils. Bd. v. FCC, Nos. 96-3321 et al (8th Cir., July 18, 2000) and the FCC's UNE Remand Order cannot be read to require Ameritech Illinois to provide UNEs that are "ordinarily combined" or, for that matter, any UNE combinations where specific facilities are not already combined in its network because, as Ameritech Illinois contends, CLECs want Ameritech Illinois to affirmatively combine UNEs at the CLECs' request. Ameritech Illinois, however, concedes that it is obligated by 47 C.F.R. Section 315(b) to provide CLECs [*219] with pre-existing UNE combinations that are already combined in Ameritech Illinois' network.

Certainly the recent IUB III decision relied upon so heavily by Ameritech Illinois has not changed its obligation to offer UNE combinations. IUB III simply has no limiting effect on the Commission's previous orders requiring Ameritech Illinois to offer UNE combinations and the UNE Platform without restriction. Moreover, it has no effect on this Commission's ability to do so once again in this case. The effect of the Eighth Circuit's decision can be stated simply. It vacated rules of the FCC that, while in effect, bound state commissions and constrained their decisions regarding UNE combinations and pricing.

Notwithstanding IUB III, state commissions such as this one remain free to act based on their own interpretations of the Act, and to exceed the scope of current FCC regulations on UNE combinations. The Eighth Circuit's interpretation *of the Act* (as distinguished from the FCC's regulations pursuant to the Act) will control only within the Eighth Circuit. Each state commission's decision will be subject to review in the appropriate federal district court and court of appeals. [*220] State commissions outside the Eighth Circuit are thus not bound by the IUB I and IUB III decisions, and their decisions will be upheld if an appropriate Court of Appeals disagrees with the Eighth Circuit's rulings.

Moreover, to the extent Ameritech Illinois bases its claim that it has no obligation to combine elements in a nondiscriminatory fashion on the rationale of the Eighth Circuit with respect to FCC Rules § 315(c)-(f), its claim is based upon a fallacy. In vacating rules § 315 (c)-(f) (in 1997), the Court of Appeal's decision was premised on the view that: (a) the ILECs would prefer to grant competitors access to combine network elements themselves, and (b) that the FCC's rules otherwise required the ILECs to perform unreasonable extra work. For instance, the court emphasized that "the Act does not require the incumbent LECs to do all the work." IUB I, at 813 (emphasis in original). The latter assumption is invalid by definition with respect to elements that are "ordinarily combined."

It is for these reasons that courts outside of the Eighth Circuit have recognized their obligation to apply what they believe to be the correct interpretations of the Act, even [*221] when the Eighth Circuit has expressed a contrary view. For example, the Ninth Circuit upheld an interconnection agreement requiring US WEST to provide combinations of network elements despite the fact that the Eighth Circuit had struck down the FCC's rules upon which the state commission had relied in imposing the requirements. *MCI Telecommunications Corp. v. US WEST Communications, 204 F.3d 1262, 1268 (9th Cir. 2000).* In so holding, the Court observed:

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

Finding the Eighth Circuit's interpretation of the Act unpersuasive, the Ninth Circuit [*222] ruled that *the state commission could mandate combinations under the Act. Id.* And US WEST's petition for certiorari, which erroneously claimed that the Ninth Circuit's decision was inconsistent with the Hobbs Act, was then denied by the Supreme Court. *See US WEST Communications, Inc. v. MFS Intelenet, Inc., 120 S. Ct. 2741 (2000).*

Likewise, the federal district court in Colorado rejected the notion that the Eighth Circuit's construction of the Act precluded other courts from adopting a different interpretation. US WEST Communications, Inc. v. Hix, Civ. Action No. 97-D-152, slip op. (D. Co. June 26, 2000). Like the Ninth Circuit, that court held that the fact that the Eighth Circuit had vacated certain FCC rules "does not compel the conclusion that" interconnection agreements incorporating those rules "are prohibited by the Act." *Id.* at 14. "Instead, the Court must question whether the interconnection agreements ... are consistent with the Act, independent of [the FCC's rules]." *Id.* Moreover, on August 28, 2000, that court denied US WEST's Motion to alter the judgment on the basis of the Eighth Circuit's decision on remand in IUB [*223] III, correctly recognizing that the latter decision "is not a change in controlling legal authority." US WEST Communications, Inc. v. Hix, Civ. Action No. 97-D-152, Order Denying Motion to Alter or Amend Judgment (D. Co. Aug. 28, 2000).

In addition, the U. S. Court of Appeals for the Fifth Circuit has held that state commissions are not precluded by the Act from requiring ILECs to provide combinations of elements not ordinarily combined in the ILECs' networks. *Southwestern Bell Telephone Company v. Waller Creek Communications, Inc., 2000 WL 1091669* (Aug. 21, 2000 5th Cir.).

Each of these federal court decisions was issued *after* the FCC rules that had required ILECs to combine separate elements not ordinarily combined in the ILEC's network were vacated by the Eighth Circuit. The Waller Creek decision was issued after the Eighth Circuit's recent decision in IUB III. The Waller Creek Court made clear that the Eighth Circuit decision had no bearing on the authority of commission's outside of the Eighth Circuit to order ILECs to combine network elements not currently combined in ILEC networks. In rejecting the notion that such a requirement [*224] would somehow violate the Act, the Waller Creek Court held:

> Further there is nothing "illegal" about the provision requiring SWBT to combine network elements for Waller or any other CLEC. Nothing in the Telecommunications Act forbids such combinations. Even if the Eighth Circuit's decision on this issue is correct -- which we do not decide today -- it does not hold that such arrangements are prohibited; rather, it only holds that they are not required by law.

Waller Creek, 2000 WL 1091669, at *7.

Therefore, even if one assumes that Ameritech Illinois' interpretation of the FCC's Rules and Eighth Circuit opinion is literally correct (and AT&T and MCI WorldCom certainly do not concede that it is), such a view does not mean that the Illinois Commerce Commission cannot enforce a rational combinations policy through its own authority.

The Commission also has full authority under Illinois law to require Ameritech to combine UNEs. Section 13-505.5 of the Illinois Public Utilities Act ("IPUA"), *220 ILCS 5/13-505.5* provides ample authority for the Commission to order Ameritech to provide unrestricted UNE-P. Indeed, the Commission has relied on that [*225] specific provision in the past to require Ameritech to provide end-to-end network element bundling. See Resale/Wholesale Order, Docket Nos.

95-0458/95-0531 (June 26, 1996), pp. 64; TELRIC Order, p. 125. Indeed, it would appear as though the Commission has already ordered Ameritech to provide unrestricted UNE-P when it rejected Ameritech arguments in the TELRIC proceeding and the Resale/Wholesale proceeding that it shouldn't be required to provide unrestricted end-to-end bundling. In rejecting Ameritech's critique of end-to-end unbundling, the Commission stated:

> The Commission rejects Ameritech Illinois' critique of end-to-end network element bundling. As stated in our Order in Docket 95-0458/0531, the offering of end-to-end bundling is consistent with the requirements set forth in the 1996 Act. The Commission also agrees with Staff's position that there are significant benefits to the availability of end-to-end network element bundling as a means of provisioning local service. For example, with the availability of end-to-end network element bundling, the new entrant will not be tied to the incumbent LEC's retail price structure. Therefore, it can provide end users with a wider [*226] array of service offerings and pricing options.

TELRIC Order, p. 125.

The restrictions that Ameritech intends to apply to its UNE Platform offering appear to be inconsistent with the Commission's TELRIC Order. In any event, Ameritech's attempt to impose restrictions on the availability of UNE-P in Illinois through its tariff offering should be found to be unjust and unreasonable under Section 9-250 of the IPUA, *220 ILCS 5/9-250*. Intervenors urge the Commission to determine that under 9-250 that the just and reasonable rules to be observed by Ameritech require Ameritech to affirmatively combine UNEs which Ameritech ordinarily combines for itself or its retail customers upon request. In addition, and to the extent necessary, the Commission can order Ameritech to do so pursuant to Section 13-505.5 of the IPUA, 220 ILCS 13-505.5. The Commission should order Ameritech to modify its CPO tariff to make this obligation clear. MCI WorldCom Ex. 3.1, p. 6.

v. Other Agency Orders

Moreover, other state commissions in the Ameritech region have ordered Ameritech to provide UNE combinations. Ameritech and AT&T are involved in a subsequent round of arbitrations in the other four states in [*227] the Ameritech region -- Michigan, Wisconsin, Indiana and Ohio. Three of these state commissions -- those in Wisconsin, Michigan and Indiana -- issued rulings in those arbitration proceedings on October 12, November 20 and November 20, respectively. While the Michigan Commission deferred the issue to its pending generic proceeding, the Wisconsin and Indiana Commissions have both determined that they have the authority under state law to require Ameritech to combine, at AT&T's request, unbundled elements that Ameritech "ordinarily combines" in its network, regardless of whether those elements are currently combined.

The Wisconsin Arbitration Panel concluded: "The Panel finds that it has the authority under state law to require Ameritech to provide new combinations of UNEs to CLECs ... The Panel further finds that federal law does not prevent the Panel from acting under state law." AT&T Silver Cross Ex. 3, Arbitration Award, Docket 05-MA-120, p. 53 (October 12, 2000).

In concluding that federal law did not preclude it from ordering Ameritech to provide new UNE combinations, the Wisconsin Arbitration Panel explained:

> It is clear that the underlying statute does not preclude the Panel's [*228] consideration of AT&T's proposals regarding combinations of unbundled network elements. In the passage cited above, the Supreme Court addressed this point squarely:
>
> > [Section 251(c)(3)] does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form. Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundled basis" in § 251(c)(3) means "physically separated." *citing AT&T Corp. v. Iowa Utils. Bd., 525 U.S. at 394.*

> The Panel finds there is no authority under federal statute or rule to govern or guide its decision on access to network element combinations.
>
> As discussed above, the Panel has authority under both state and federal law to consider matters submitted to its discretion. The Panel concludes that, under its discretionary authority under federal law, as well as under the PSCW's authority under Wisconsin law, it has authority to consider the merits of the AT&T proposal on UNE combinations and issue the award discussed below.

AT&T Silver Cross Ex. 3, Arbitration Award, Docket No. 05-MA-120, pp. 21-22 (October 12, 2000).

Similarly, the Indiana Utility Regulatory [*229] Commission issued an Order on November 20, 2000, concluding that it had the authority to order additional (i.e., new) combinations and that doing so would further the Act's goal of promoting local exchange competition:

> We find that AT&T is correct in its contention that we are not bound by the courts' holdings in the *IUB* line of cases. Acting within our discretionary authority, we find that due to the specific circumstances of the local exchange market, and in light of the overall intent of the Act to dismantle the economic and legal barriers to competition in the market, at this time and in this agreement it is proper for Ameritech Indiana to be required to provide additional combinations of UNEs at the request of AT&T.

Order, Cause No. 40571-INT-03, p. 45 (Nov. 20, 2000).

In discussing the effect of the *IUB* line of cases, the Indiana Commission concluded that rather than limit the authority of state commission, the *IUB* line of cases *expanded* the authority of state commissions to require ILECs to provide UNE combinations to CLECs:

> Although the *IUB* cases served to vacate certain aspects of Rule 51.315, this line of cases does not effect our authority [*230] to require Ameritech Indiana to provide additional combinations of UNEs to AT&T.
>
> ****
>
> The *IUB* line of cases determined that the FCC exceeded its authority when it determined that all ILECs would be required to provide UNE combinations at the request of the CLECs. *This line of cases does not limit a state commission's authority to order an ILEC to combine network elements at the request of a CLEC in order to encourage competition in the local exchange market.*
>
> ****
>
> Like the Ninth Circuit, we are persuaded that we have the discretionary authority to require an ILEC to provide combinations of network elements to CLECs. [footnote omitted] The effect of the *IUB* line of cases and its progeny is to *expand the authority of state commissions, not to limit them.* The Eighth Circuit, finding that the FCC exceeded its authority in promulgating Rule 51.315, returned to state commissions the authority to require ILEC's to combine UNEs at the request of CLECs so long as such action comports with the purpose of the Act and assists in breaking down the entry barriers into the local exchange market. *See MCI Telecom., 204 F.3d at 1268*

Order, Cause [*231] No. 40571-INT-03, pp. 46-47 (Nov. 20, 2000).

Intervenors assert that adopting Ameritech Illinois' position would effectively preclude CLECs from providing (on a UNE basis) new lines to existing customers -- whereas Ameritech Illinois can and, according to Mr. Silver will serve those customers (Tr. 266-268) -- and from providing services to new customers -- whereas Ameritech Illinois can and, again according to Mr. Silver, will serve those customers (Tr. 256-258, 265-266) -- when they move from out of state or

across town into a new home or apartment. With such restrictions in place Ameritech Illinois would deny to CLECs access to the exploding, and lucrative, demand for second lines by residential customers.

Intervenors urge the Commission to explicitly require Ameritech to provision existing UNE combinations, including the UNE Platform, such that the end user customer will not experience any loss of service -- i.e., leaving a customer without dial tone -- when that customer is migrated from Ameritech Illinois to the CLEC. Any physical disconnection of combined elements by an ILEC is a bald violation of the Act and FCC Rule 315(b), which prohibits "an incumbent LEC separating requested [*232] network elements that the incumbent LEC currently combines." *47 C.F.R. § 51.315(b).* And yet Mr. Florence, who conducted Ameritech's cost studies underlying its proposed nonrecurring charges, including its proposed charge for migrations, admitted during hearing that he is unsure whether Ameritech Illinois is physically disconnecting the elements when migrating customers to AT&T and other CLECs. Tr. 563-564. The fact that this violates the Act (and the FCC rules) aside, from a competitive entrant's viewpoint the loss of dial tone during "migration" would have a tremendously negative impact on AT&T's ability to offer competitive service comparable to Ameritech Illinois' retail offer (which experiences no such loss of dial tone).

In short, there is no reason in law why the Commission should not reject Ameritech Illinois' legal arguments *in toto.* As a variety of courts and state commissions have recognized, neither the IUB line of decisions, nor the FCC's UNE Remand Order, singly or in combination, prevents this Commission from deciding that Ameritech Illinois should be required to provide UNE combinations as requested by the CLECs. This Commission should continue to require Ameritech [*233] Illinois to offer, without restriction, UNE combinations and the UNE Platform. Any combination of network elements that Ameritech Illinois ordinarily combines in its network and that permits CLECs to provide a telecommunications service to an end user should be made available by Ameritech Illinois. For example, Ameritech Illinois should be required to provide UNE combinations to allow CLECs to provide service to new customers, or to offer additional lines to existing customers, just as Ameritech Illinois does for its retail customers. The conversion of existing service to UNE-based service of the same functionality (e.g., migrations "as is" to UNE-P) does not and should not entail physical work or separation of facilities or equipment, and the customer's dial tone should be preserved. In these circumstances, only a service order migration charge should apply.

d. Intervenors Response on OS/DA

The issue of whether Ameritech should be required to provide Operator Services and Directory Assistance ("OS/DA") was addressed within the context of this compliance proceeding. AT&T, MCI WorldCom and the Staff all addressed this issue. MCI WorldCom Ex. 3.0, pp. 13-15; AT&T/Z-Tel Ex. 1.0, [*234] pp. 41-42; Staff Ex. 2.0, p. 10. The issues with respect to OS/DA are really two-fold -- first, how Ameritech will provide OS/DA and second, how that OS/DA should be priced. The CLECs and Staff argue that Ameritech should be required to provide OS/DA as a UNE at TELRIC rates. Id.

MCI WorldCom witness Lichtenberg testified that promises associated with the provisioning of OS/DA have been made, but experience has demonstrated that when the time came to implement such services, MCI WorldCom discovered that (1)Local Operator Services (0-,0+ 10 digit local, 411, 555-1212 and HNPA-555-1212) were not included, but only IXC OS/DA traffic was included; (2) dedicated trunking was required from every end office to the MCI WorldCom platform; or (3) dedicated trunking was required to a foreign central office from every end office and dedicated trunking was further required from this office to the MCI WorldCom platform. With MCI WorldCom's OS/DA platform, MCI WorldCom, based on traffic volume, would like to elect to pick up the traffic at an end office or have the call routed over Ameritech's Shared Transport to an Ameritech access tandem where MCI WorldCom would pick up the traffic. Hence, [*235] the OS/DA traffic would traverse the same trunking routes that access traffic traverses except this traffic would be rated at TELRIC rates.

As Ms. Lichtenberg testified, MCI WorldCom would like to be able to route its local operator traffic to its own OS/DA platform but she was uncertain as to whether Ameritech will provide the routing that is necessary to do that, and she was further uncertain whether Ameritech can provide the signaling that MCI WorldCom's OS/DA platform requires. MCI WorldCom Ex. 3.0, pp. 13-14. As a result of Ameritech's inability to provide either translations from MOSS signaling to FGD or to route this traffic directly to FGD trunk ports without losing the FGD attributes of the call, Ms. Lichtenberg noted that MCI WorldCom would not be able to route traffic to its OS/DA platform or to the OS/DA platform of an alternative OS/DA provider.

The testimony in this proceeding illustrates that there has been no demonstration as to how Ameritech will provide CLECs with the ability to route OS/DA traffic to their own platforms or the OS/DA platforms of third party providers. Because of this, the Commission should require Ameritech to make OS/DA available as a UNE at TELRIC [*236]

rates until Ameritech successfully demonstrates, through testing, that it can route OS/DA traffic in the manner required by CLECs to enable them to get traffic to their own or third party OS/DA platforms. This OS/DA UNE should be branded for CLECs at their request. Such a directive is fully consistent with the FCC's requirement that ILECs provide OS/DA on an unbundled basis where the ILEC fails, at the point of origination and without the required use of dedicated or specialized trunking, to provide customized routing and protocol conversion where necessary to the CLEC's OS/DA platforms. See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, released Nov. 5, 1999 ("UNE Remand Order"), at P463; Rule 51.319(f).

e. Intervenors Response on Non-Telecommunications Services

Another area of contention with respect to Ameritech's CPO tariff is the explicit restriction that non-telecommunications services shall not be included with provision of combinations of elements. MCI WorldCom Ex. 3.0, pp. 4-5 (citing Illinois Bell Telephone [*237] Company, Tariff ILL.C.C. No. 20, Part 19, Section 15, Original Sheet No. 1). The tariff says that the "non-telecommunications" services that Ameritech will not make available with combinations include but are not limited certain specific services including, for example, voice mail. That restriction means, among other things, that a customer wishing to change from Ameritech to a CLEC providing service via UNE Platform may be prevented from obtaining a service, such as voice mail, that the customer may already have and want to retain if he or she switches to the CLEC. If for technical reasons the CLEC is unable to provide the non-telecommunications service because the CLEC is providing service via UNE Platform, then the customers may be disinclined to switch from Ameritech's service simply because they cannot obtain voice mail from a CLEC providing service via UNE Platform.

Ameritech should not be allowed to retain this unjust and unreasonable restriction in its CPO tariff. Southwestern Bell Telephone Company ("SWBT") voluntarily agreed in Texas to allow customers to purchase non-telecommunications services, such as voice mail, on a stand-alone basis. By allowing customers to purchase [*238] non-telecommunications services from SWBT on a stand-alone basis, CLECs are able to provide service to end user customers via UNE-P while SWBT can and will provide services, such as voice mail, to the same customers. See MCI WorldCom Ex. 3.1, Schedule SL-1. This solution was agreeable to SWBT in Texas and is no reason why Ameritech should be opposed to implementing the same arrangement in Illinois.

Indeed, pursuant to the Commission's order conditionally approving the SBC/Ameritech merger, Ameritech should be compelled to provide the same non-telecommunications services with UNE-P that its parent company provides in Texas. See Order, Docket 98-0555 (Sept. 23, 1999), Condition 27, p. 246. There is a similar requirement under the FCC's Order conditionally approving the merger. For these reasons alone the Commission should direct Ameritech to make clear in its CPO tariff that it will offer non-telecommunications services on a stand-alone basis to customers of CLECs that provide service using combinations of UNEs.

Furthermore, the Commission should order Ameritech to provide such non-telecommunications services in conjunction with UNEs because it makes sense from a public policy [*239] perspective. Such a directive would help promote competition, not hinder it, and would allow Ameritech to receive revenue it would otherwise forego. For these reasons, the Examiner and the Commission should direct Ameritech to provide non-telecommunications services, such as voice mail, on a stand-alone basis as its sister company in Texas already does. To this end, the Commission should direct Ameritech to remove language from its Combinations tariff that indicates that non-telecommunications services will not be made available with the UNE Platform and replace it with language that clearly indicates that non-telecommunications services, including voice mail, will be made available on a stand alone basis.

f. Commission Analysis and Conclusion

i. Matters Raised by the TELRIC Order

The Commission agrees with the claims by Staff that "the evidence supplied by Ameritech in response to the Commission's directive does little to enlighten these questions." Staff Init. Br., p. 22. The Commission finds that Ameritech Illinois has not provided the requisite information for each of the five areas concerning UNE combinations identified by the TELRIC Order, and thus, has not complied with [*240] the TELRIC Order in this respect.

ii. Matters raised by CLECs

We agree with AT&T, MCI WorldCom and Z-Tel that we have the legal authority to order Ameritech to provide combinations of unbundled network elements ordinarily combined in Ameritech's network, and that public policy not

only supports, but commands, that we require Ameritech to provide such combinations if we are to promote mass market competition for residential and small business customers in Illinois. We therefore require Ameritech to provide to CLECs combinations of unbundled network elements that Ameritech ordinarily combines for its own use or for the use of its end user customers, including the unbundled network element Platform and Enhanced Extended Links, or EELs. This includes, of course, providing the UNE-Platform to CLECs for the purpose of serving new lines and additional, or second, lines to their customers. Given that Ameritech ordinarily combines these elements in its network for its own use or for the use of its end user customers, we find that there are no legal or technical impediments to requiring Ameritech to provide the UNE-Platform for new and second lines. In fact, this approach was recently adopted [*241] by the legislature in PA 92-22, which imposes the exact unbundling requirement ('combine any sequence of unbundled elements that it ordinarily combines for itself") that is imposed here.

Our conclusion is supported both by the law and the overwhelming record evidence. We have long recognized the competitive significance of the UNE Platform and are aware of the fact that the market entry plans of UNE-Platform CLECs, including AT&T, MCI WorldCom and Z-Tel, may very will hinge upon their ability to serve new and additional lines via the UNE-Platform. We acknowledge the obvious fact that the market for new and second lines is significant, and that the ability of CLECs to serve these lines is critical to their ability to fairly compete with Ameritech. We also agree that there is no legitimate policy reason for protecting this market segment from competition, and that it would be unjust, unreasonable and discriminatory to freeze CLECs out of this significant market. Nor will we deny the benefits of local competition to those customers that are new to a location or who, like many other customers, desire additional lines to their home or place of business. If a customer has chosen a local [*242] service provider, we will honor that choice for all the customer's lines, not just those lines that were previously served by the incumbent LEC.

We agree with AT&T and MCI WorldCom that while we are bound by the Eighth Circuit's invalidation of the FCC's rules, the Eighth Circuit's interpretation of the federal Act does not control the dispositions made herein. We are free to interpret the federal Act consistent with the policies and goals underlying it, and we will interpret it to appropriately implement those policies and goals, which are designed to promote competition in all telecommunications markets. We agree with AT&T and MCI WorldCom -- and, indeed, many other state commissions, federal district courts and federal Courts of Appeal addressing this very same issue -- that we have the authority to require Ameritech to provide combinations of network elements that Ameritech ordinarily combines in its network, including the UNE-Platform for new and additional lines. We also agree with the CLECs that FCC Rule 315(b) compels the conclusion that Ameritech is currently obligated to combine unbundled network elements that it ordinarily combines in its network, *even if the particular* [*243] *physical components of the network elements are not currently physically combined or connected.* We also agree with AT&T and MCI WorldCom that the FCC, in promulgating Rule 315(b), used the word "currently" to mean those elements "ordinarily" combined in the ILECs' networks. *See* FCC First Report and Order, P296. Thus, we are persuaded that Rule 315(b) encompasses combinations actually combined and ordinarily combined in Ameritech's network, and that Rules 315(c)-(f), now vacated, encompass those network elements not ordinarily combined by Ameritech. Indeed, we find that Ameritech's interpretation of Rule 315(b) is unreasonably narrow as it would limit combinations to specific customer combinations that are presently in place, rather than the *type* of combinations the ILECs currently provide to themselves and customers as a matter of course. To limit Rule 315(b) as Ameritech suggests is nonsensical and constitutes bad public policy. Were we to adopt Ameritech's interpretation, we would be severely limiting the benefits of local competition to those customers who, by pure and simple happenstance, happen to be served by an actual preexisting loop and port. This distinction is [*244] both arbitrary and discriminatory, and we reject it as a matter of law and as a matter of policy.

We also agree that even if Rule 315(b) did not already require Ameritech to provide network element combinations that it ordinarily combines in its network, we have the authority under both federal law and state law to require Ameritech to provide such combinations. We agree with the analysis of AT&T and MCI WorldCom -- and, indeed, that of various district courts and circuit courts of appeal -- that the *IUB* line of cases does not preclude us from requiring Ameritech to provide unbundled network elements under either state or federal law. As we indicated earlier, the Eighth Circuit's interpretation of the Act is not controlling upon us, and we agree with the Ninth and the Fifth Circuits and the various federal district courts addressing the issue that we have the authority, consistent with the federal Act, to require Ameritech to provide combinations of network elements that it ordinarily combines in its network, and we hereby exercise our authority to do so. Indeed, as AT&T and MCI WorldCom aptly noted, years ago we ordered Ameritech to provide unrestricted end-to-end unbundling [*245] pursuant to Section 13-505.5 of the Illinois Public Utilities Act. We conclude that Ameritech's attempt to impose restrictions on the availability of the UNE-Platform is unjust and unreasonable under Section 9-250 of the Public Utilities Act.

We also note that our conclusion to require Ameritech to provide new combinations is consistent with additional actions we have previously taken, including the interconnection agreements between Ameritech and AT&T and Ameritech and MCI WorldCom, which require Ameritech to provide network element combinations, including the Platform, without restriction, as well as the TELRIC Order, which expressly requires Ameritech to provide network element combinations. In addition, we are also cognizant of the fact that numerous state commissions, including all in the Ameritech region that have addressed the issue, have required ILECs to provide various combinations of network elements that the ILEC ordinarily combines in its network, even after the *IUB* line of cases. Finally, as noted above, this approach was recently adopted by the Illinois legislature, whose action are binding upon the Commission. To that end we adopt, and pursuant to Section 13-501 [*246] of the Telecommunications Act, require Ameritech to file, on an interim basis, a combinations tariff identical to the proposed combinations tariff submitted by AT&T/MCI WorldCom in Attachment 2 to the Joint Reply Brief of those parties.

Finally, we also require Ameritech, consistent with the record evidence presented by AT&T and MCI WorldCom and the FCC's UNE Remand Order, to provide operator services and directory assistance as unbundled network elements at TELRIC rates until such time as Ameritech successfully demonstrates, after testing and our approval of terms, that CLECs have the ability to route their OS and DA traffic to their own OS and DA platforms or to those of a third party provider.

The Commission finally finds that MCI WorldCom's claims that Ameritech Illinois should have to provide voicemail or other services in connection with the UNE-P are beyond the scope of this docket.

III. FINDINGS AND ORDERING PARAGRAPHS

The Commission having considered the entire record herein and being fully advised in the premises is of the opinion and finds that:

(1) Illinois Bell Telephone Company, d/b/a Ameritech Illinois ("Ameritech Illinois"), is a telecommunications carrier [*247] as defined by the Public Utilities Act;

(2) the Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to the Illinois Public Utilities Act and the federal Telecommunications Act of 1996;

(3) this docket involves an investigation of Ameritech Illinois' compliance with this Commission's Order in Docket Nos. 96-0486/0569 issued on February 17, 1998 ("TELRIC Order");

(4) pursuant to Staff's Report identifying 13 compliance issues regarding the TELRIC Order, the Commission issued an order on June 3, 1998 ("June 3, 1998 Initiating Order") initiating the instant proceeding to examine Ameritech Illinois' compliance with the TELRIC Order;

(5) following this Commission's issuance of the June 3, 1998 Initiating Order, the Commission opened Docket 98-0555 to investigate the merger between Ameritech Corporation and SBC Corporation, which encompassed some of the same TELRIC studies, shared/common cost, shared transport, and other issues identified by the Commission for investigation in the instant proceeding;

(6) Ameritech Illinois has satisfied the Commission's directives in the TELRIC Order with respect to fill factors, capital structure, and [*248] depreciation costs;

(7) the implementation of minimal rate adjustments associated with net salvage values discussed in the TELRIC order should be deferred pending the Commission's review of Ameritech Illinois' TELRIC cost studies submitted pursuant to the Order of the Commission in Docket 98-0555;

(8) Ameritech Illinois should not be required to submit duplicative cost studies concerning shared and common cost pools or ULS in the context of this case;

(9) Ameritech Illinois has inappropriately calculated the nonrecurring costs associated with service ordering and line connection costs as required by the Commission's directives set forth in the TELRIC Order;

(10) Ameritech Illinois complied with the Commission's directives in the TELRIC Order concerning loop and port billing expenses and the service coordination fee by removing billing expenses from its unbundled loop and unbundled local switching port cost studies but not removing them from its service coordination fee costs;

(11) Ameritech Illinois has failed to specifically explained the application of nonrecurring charges for Unbundled Loops, Unbundled Local Switching, Unbundled Tandem Switching, Unbundled Interoffice [*249] Transport, Unbundled Local Switching with Interim Shared Transport (ULS-IST), the existing UNE-P, Unbundled Tandem Switching, and Unbundled Dedicated Transport; all of which were required by the Commission's directives set forth in the TELRIC Order;

(12) the rates filed for ULS-IST were inappropriate because the Texas rate was not imported; the rate that was included was not comparable to the Texas rate; Ameritech failed to provide any reasonable explanation for the difference and; Ameritech attempted to recover non-usage sensitive end-office local switching costs in a usage sensitive rate, in violation of numerous prior Commission orders;

(13) in compliance with the TELRIC Order, Ameritech Illinois has not provided the requisite information for each of the five areas concerning UNE combinations identified in the TELRIC Order and inappropriately refused to provide UNE combinations to provision new and second lines to CLECs seeking to provide service through the UNE-P;

(14) Ameritech Illinois has revised its tariffs and/or cost studies in compliance with the Commission's directives in the TELRIC Order concerning: non-volume sensitive costs, collocation, power consumption, transiting, [*250] ULS usage and development and implementation charges;

(15) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law herein;

(16) the materials submitted by the parties in this proceeding on a proprietary basis or for which proprietary treatment was requested are hereby considered proprietary and should continue to be accorded proprietary treatment;

(17) any petitions, objections or motions in this docket that have not been specifically disposed of should be disposed of in a manner consistent with our conclusions herein.

IT IS THEREFORE ORDERED that, because Ameritech Illinois has failed to comply with many of the Commission's directives in the TELRIC Order issued in Docket Nos. 96-0486/0569, Ameritech shall, within forty five days of the entry of a final order (including any disposition of an application for rehearing) in this docket, file tariffs that comply with the discussion, findings and conclusions herein.

IT IS FURTHER ORDERED that, in the event the compliance filing is found to be inappropriate, Ameritech will be subject to any and all statutory [*251] penalties available to the Commission.

IT IS FURTHER ORDERED that minimal rate adjustments associated with net salvage values, shared and common cost pools, and the rate for ULS will be examined in the Commission's review of Ameritech Illinois' TELRIC cost studies submitted in compliance with the Order in Docket 98-0555.

IT IS FURTHER ORDERED that any materials submitted in this proceeding for which proprietary treatment was requested shall be accorded proprietary treatment.

IT IS FURTHER ORDERED that any petitions, objections or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with our conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and *83 Ill. Adm. Code 200.880*, this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 16th day of October, 2001.

(SIGNED) RICHARD L. MATHIAS

Chairman

TAB G

LEXSEE 2002 IND. PUC LEXIS 219

IN THE MATTER OF THE COMMISSION INVESTIGATION AND GENERIC PROCEEDING ON AMERITECH INDIANA'S RATES FOR INTERCONNECTION, SERVICE, UNBUNDLED ELEMENTS, AND TRANSPORT AND TERMINATION UNDER THE TELECOMMUNICATIONS ACT OF 1996 AND RELATED INDIANA STATUTES

CAUSE NO. 40611-S1; PHASE I

Indiana Utility Regulatory Commission

2002 Ind. PUC LEXIS 219

March 28, 2002, Approved

PANEL: [*1] Camie J. Swanson-Hull, Commissioner; Abby R. Gray, Administrative Law Judge

OPINION: BY THE COMMISSION:
Camie J. Swanson-Hull, Commissioner
Abby R. Gray, Administrative Law Judge

On January 18, 2001, the Indiana Utility Regulatory Commission issued its Order in this Cause opening an investigation to consider issues that had not been finalized in the 40611 Cause. The Order also found that Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana ("Ameritech Indiana" or "Ameritech") and other interested parties should file comments on what open issues and UNEs should be addressed in this docket. Initial Comments were filed by Ameritech Indiana, Sprint Communications Company, L.P. and United Telephone Company of Indiana, Inc., d/b/a/ Sprint ("Sprint"), Intelenet Commission ("Intelenet") and Indiana CLECs, consisting of AT&T Communications of Indiana, Inc. ("AT&T"), WorldCom, Inc. ("WorldCom"), McLeodUSA, TCG Indianapolis, Time Warner Telecom of Indiana, L.P. ("Time Warner") and Z-TEL Communications ("Z-Tel"). Reply comments were filed by Ameritech Indiana and the Indiana office of the Utility Consumer Counselor ("OUCC"). On February 1, 2001, the Intelenet Commission [*2] filed its Request for Intervention. The Commission granted the Intelenet Commission's Request to Intervene on February 9, 2001.

On August 2, 2001, at 1:30 p.m. in Room TC10, Indiana Government Center South, Indianapolis, Indiana, pursuant to notice duly published as required by law, a prehearing conference and preliminary hearing was held in this Cause. At the prehearing, Ameritech Indiana, the OUCC, WorldCom, McLeodUSA, Intelenet Commission, Time Warner and Z-Tel appeared and participated. Representatives of Sprint and AT&T also appeared and participated in discussions held off the record. The Commission determined that this Cause should be divided into two phases. The Commission issued its Prehearing Conference Order on August 29, 2001, which, among other things, established the issues to be considered in Phase I and Phase II of this subdocket. Phase I was to address "the rate for unbundled local switching ("ULS"), including the port and usage costs, if any, the shared transport component of ULS and recurring and nonrecurring charges for all UNE combinations, including new installations when facilities are present but dial tone is not present, and migrations."

On October 15, 2001, [*3] Ameritech prefiled the direct testimony of Michael D. Jarmon, Michael D. Silver and Dr. Kent A. Currie; and, AT&T and WorldCom prefiled the Direct Testimony of Steven E. Turner.

On November 8, 2001, Ameritech filed corrected exhibits to the Direct Testimony of Michael D. Silver.

On November 20, 2001, Ameritech prefiled the Responsive Testimony of Dr. Kent A. Currie and the Rebuttal Testimony of Michael D. Jarmon; the Intelenet Commission prefiled the Testimony of Jerry Sullivan; the OUCC prefiled the Testimony of Ralph Sorrell; and, Z-Tel prefiled the Reply Testimony of Dr. George S. Ford.

On November 21, 2001, the Intelenet Commission prefiled the Testimony Nunc Pro Tunc of Jerry Sullivan; and, WorldCom and McLeod prefiled the Rebuttal Testimony of Dr. August H. Ankum.

On December 11, 2001, Ameritech prefiled the reply testimony of Michael D. Jarmon, Michael D. Silver and Dr. Kent A. Currie; AT&T and WorldCom filed the Surrebuttal Testimony of Steven E. Turner. During the Phase I hearing, McLeod adopted and sponsored all testimony of Steven E. Turner.

On December 13, 2001, the OUCC filed its Motion to Strike Testimony of Dr. Kent A. Currie and its Memorandum in Support of Motion [*4] to Strike Testimony.

Hearing was held in this Cause on December 18-20, 2001 in Room TC10, Indiana Government Center South, Indianapolis, Indiana, pursuant to notice duly published as required by law. At the hearing, Ameritech Indiana, the OUCC, WorldCom, AT&T, McLeodUSA, Intelenet Commission, and Z-Tel appeared and participated.

Based upon the applicable law and the positions of the parties, the Commission now finds as follows:

1. Jurisdiction. *Indiana Code 8-1-2-5* permits the Commission to prescribe reasonable conditions and compensation for physical connections between public utilities engaged in the provision of telecommunications services in Indiana. Congress also passed legislation on the subject of telephone interconnection, included in the Telecommunications Act of 1996 ("TA96" or "the Act"). Section 252(d) of that Act specifically authorizes each state utility commission to determine the just and reasonable rates for interconnection services, network elements, and transport and termination of traffic in accordance with the standards set forth in the Act. Furthermore, Ameritech Indiana is a public utility as defined by the Indiana Code. Therefore, this Commission has [*5] jurisdiction over Ameritech Indiana and the subject matter of this Cause.

2. Introductory Comments. Indiana is at a critical crossroads as competition in the state telecommunications market struggles to emerge. Six years after passage of the Telecommunications Act of 1996, the advent of local competition -- particularly in the residential market -- still has not arrived. We are administratively aware that SBC/Ameritech dominates the local exchange marketplace, including almost the entire residential market and over 90% of the business marketplace. n1 The Commission is also administratively aware of the problems in the most recent few years facing CLECs, with announced plans for bankruptcy, restructuring, or fire sales of their assets as their market valuations drop. We also are aware of the progress recently being made in neighboring states to jump-start local competition.

n1 *See 2001 Telephone Report to the Regulatory Flexibility Committee of the Indiana General Assembly ("Reg. Flex Report").* As the Reg. Flex. Report shows, CLECs statewide only serve 2.2% of total residential access lines and X% of total business access lines. We also noted in the recent AT&T/Ameritech Interconnection Arbitration Proceeding: "there is virtually no local exchange competition in the State of Indiana". Cause No. 40571-INT-03, at p. 44 (November 20, 2000)

[*6]

It has become evident that more must be done to open Indiana's market to competition. This point became abundantly clear in 2000, as Ameritech consumers encountered substantial problems with the quality and reliability of local service, but had few, if any, alternatives in the market.

3. Nonrecurring Costs for UNE-P.

A. Ameritech Indiana. Ameritech presented three witnesses in this proceeding. Of the three witnesses, Ameritech Witness Michael D. Silver addressed in the most detail issues relating to NRCs for UNE-P.

In his direct testimony, Mr. Silver discussed the recurring and non-recurring charges that Ameritech is proposing in response to the Commission's requirement that Ameritech file tariffed rates associated with those UNE combinations ordered in the AT&T/Ameritech arbitration, as well as "migrations." Mr. Silver proposed the following NRCs for most UNE combinations, broken down into customer migrations and new combinations: (1) Combinations 1 and 2: $ 28.71 and $ 102.05 for migrations and new combinations, respectively; and (2) Combinations 3, 4, 5B: $ 14.57 and $ 43.90, for migrations and new combinations, respectively. (*See*, Silver Reply, Rev. Att. 2 [*7] and 3; and Silver Direct, Att. 4, 5, 6)

In his Reply testimony filed December 11, 2001, Mr. Silver replied to the responsive testimony filed by AT&T/WorldCom/McLeod Witness Steven Turner, Z-Tel Witness Dr. George Ford, and Intelenet Witness Jerry Sullivan. Specifically, Mr. Silver addressed issues raised concerning the validity of NRCs for Ameritech Indiana's UNE-P combinations. Mr. Silver pointed to an August 16, 2000 order in Cause No. 40611 as support for Ameritech's position

that the Commission is foreclosed from examining cost studies for NRCs. Mr. Silver quoted a selected part of the order, where the Commission ruled that Ameritech is required to file a tariff for "basic UNE elements," and "that there is no reason to further delay the implementation of the January 26, 2000 Order and that permanent prices be established for the original list of UNEs." (Silver Reply at 2) Mr. Silver interpreted this language to mean that only recurring costs are at issue here, and asserted that "it is apparent Ameritech has already received approval for the NRCs associated with the UNEs which make up the UNE combinations required to be filed in Ameritech's tariff." (Silver Reply at 3) Mr. Silver [*8] also attacked the cost model presented in the testimony of Mr. Turner, stating that the model does not include actual costs. Instead, Mr. Silver recommended that the Commission establish NRCs for UNE combinations by adding the "sum of the approved NRCs associated with each of the UNEs being combined." (Silver Reply at 4)

Under cross-examination, Mr. Silver testified that the Commission orders establishing the nature of Phase I of this proceeding were the August 16, 2000 Order in Cause No. 40611, and the January 18, 2001 and July 3, 2001 orders in this proceeding. (Tr. AA-18, 27) Although aware of the Commission's August 29, 2001 order in this case, Mr. Silver did not rely upon its discussion of the issues in this case and the filing requirements in preparing his testimony. (Tr. AA-18)

Mr. Silver testified that he was a witness addressing UNE pricing in the recent AT&T/Ameritech interconnection arbitration, Cause No. 40571-INT-03. (Tr. AA-27-28) Mr. Silver stated that UNE combinations rates were not set in the arbitration proceeding. (*Id.*) Mr. Silver reviewed page 44 of the Commission's November 20, 2000 order in that case, where the Commission ruled:

> Regarding the application [*9] of NRCs, we agree with Ameritech Indiana that certain NRCs are appropriate for migrating customers. Ameritech Indiana states, and AT&T does not rebut that certain chargeable activities do occur (e.g., billing and translations). Therefore the real issue is, are the NRCs proposed by Ameritech Indiana appropriate for the work being performed. We recommend that this issue be deferred to our cost docket in Cause No. 40611-S1. Because no cost studies or other information were provided in this proceeding [Cause No. 40571-INT-03], there is no evidence [i.e., no cost studies] in this record [Cause No. 40571-INT-03] to make any decision on what the appropriate NRCs should be. Until then, the rates will be as proposed by Ameritech Indiana pending completion of our decision in the cost docket, subject to a true-up to be effective on the date of this new agreement.

Upon reviewing this finding, Mr. Silver disagreed that the issue of the underlying costs for providing UNE combinations was deferred to this case, and instead postulated that only the charges were at issue here. (Tr. AA-30) Thus, the NRCs proposed by Ameritech are based on this interpretation, and Ameritech's position that UNE combination [*10] rates are established by the sum of the parts. (Tr. AA-85) Mr. Silver also testified that Ameritech has no tariff in place in Indiana today with NRCs for UNE Combinations. (Tr. AA-25)

Mr. Silver also offered testimony on Ameritech's proposed UNE combination rates here versus those ordered in Illinois, Michigan and Ohio. (Tr. AA-33-38) Mr. Silver testified that the migration NRC for UNE combinations in Michigan is $ 0.35 for migrations, but could not recall the NRC for new combinations. (Tr. AA-33-34) Mr. Silver also testified that the NRC for new migrations in Ohio is $ 0.74. (*Id.* at 34) While testifying that the Illinois NRC for migrations is $ 1.02, Mr. Silver did not know the Illinois NRC for new combinations. (*Id.*) Using these numbers from Indiana's neighboring states, Mr. Silver testified that Ameritech's proposed NRCs for UNE Combinations 1 and 2, if adopted by the Commission, would result in a UNE combination migration rate here that is 82 times the Michigan rate and 28 times the Illinois rate. n2

> n2 The Indiana rate is 38 times the Ohio rate, if the potential OSS rate element, which has yet to be established, is excluded. (Tr. AA-36-37)

[*11]

In his reply testimony, Mr. Silver was critical of certain of the CLECs' comparisons between Ameritech Indiana's proposed charges and charges in other Ameritech states, arguing that these comparisons were either inaccurate or incomplete:

New Installations

Illinois

In response to a question whether a comparison of the UNE-P NRC for new installations that Ameritech proposed in Illinois ($ 11.79) with what Ameritech proposed in Indiana was appropriate, Mr. Silver answered, "No. The question to be asked is, are the rates being charged by Ameritech Indiana based on IURC approved TELRIC cost studies. The answer is clearly yes." (Silver Reply at 5) Beyond this philosophical objection, Mr. Silver argued that, for new UNE-P combinations, the charge Ameritech offered in Illinois ($ 11.79) only included loop and switch port ordering charges and did not include the loop connection charge or the port charge. He stated "nothing in the [ICC's] Order denies Ameritech the ability to charge for the loop and port charges when providing new UNE combinations." (Silver Direct at 6)

Migrations

Illinois

Mr. Silver acknowledged that "the Illinois Commerce Commission has ordered that [*12] the NRC ordering charges for a UNE-P migration be a records charge only," -- i.e., without any loop or port charges. (Silver Direct at 6)

Michigan

Mr. Silver stated that "The $ 0.35 migration NRC cited by Mr. Turner only applies to UNE-P combinations containing a line port. For migrations of UNE-P migrations containing trunk ports, Ameritech's NRC is $ 36.38." (Silver Reply at 6, 7) He also stated that, "in cases where a CLEC orders an existing UNE-P combination that does not have dialtone, Ameritech Michigan receives both a port installation NRC and a port service order NRC instead of the $ 0.35 referenced by Mr. Turner." (Silver Reply at 7, footnote 7)

Ohio

According to Mr. Silver, the $ 0.74 UNE-P migration charge in Ohio also does not include a trunk port charge. (Silver Reply at 7) In addition, in Ohio, "CLECs will also be charged an OSS charge and where features have to be activated or changed in the switch, there is a feature charge NRC."

In Responsive testimony, Ameritech Indiana witness Dr. Kent Currie attempted to rebut portions of the testimony filed by AT&T/WorldCom/McLeod witness Steven Turner regarding the AT&T/WorldCom/McLeod Nonrecurring Cost Model ("NRCM"). [*13] Using Ameritech's cost study filed in Cause No. 40785-S1 (the Opportunity Indiana 2000 proceeding), n3 Dr. Currie maintained that the NRCM relies on an overly restrictive and unreasonable concept of nonrecurring costs. In addition, he maintained that inputs used by the NRCM were generally incorrect and unreasonable. Dr. Currie stated that a significant problem with the inputs used in AT&T/WorldCom/McLeod's study was that AT&T/WorldCom/McLeod substituted a "futuristic infrastructure" in place of the actual network that will be unbundled. Dr. Currie believed the problem manifested itself in various assumptions including AT&T/WorldCom/McLeod's assumptions for Integrated Digital Loop Carrier ("IDLC"), dedicated inside plant ("DIP"), dedicated outside plant ("DOP"), and operations support systems ("OSS") fallout. Specifically, according to Dr. Currie, the 1996 Act requires that nonrecurring costs be based on the ILEC network that will be unbundled. Dr. Currie maintained that the NRCM could not be rendered useful in this proceeding, even if "reasonable" inputs are used. Other specific criticisms are: (1) the NRCM "assumes a utopian OSS which is based on the most up-to-date OSS and processes, [*14] even though these are not currently used by Ameritech." (Currie Responsive at 4); (2) the order 98% flowthrough assumption in the NRCM is too high because it should not apply "to all the back office legacy provisioning systems down stream from the ordering process" (*Id.*); and (3) the NRCM's time estimates "represent unrealistically low expectations of the time needed for activities to provide UNEs in Indiana". (*Id.* at 5) Dr. Currie also testified that the NRCs for UNE-P presented here as proposed by Mr. Turner are much lower than those derived from AT&T's TOC studies that set NRCs for DS-1 and DS-3 special access services. According to Dr. Currie these studies, which are for AT&T private line services in 1989 and 1997 for the states of Maryland and Alabama, respectively, are relevant impeachment of the NRCM, which was prepared for use with Ameritech in Indiana in 2001.

n3 The cost study was not made a part of the record in that proceeding.

In his Reply testimony, Dr. Currie stated that Ameritech Ohio's testimony [*15] shows that its Indiana flowthrough for UNE-P orders will be in the range of 70-85%. Hence, Dr. Currie recommended that the Commission disregard the 98% flowthrough estimate posited by Mr. Turner. (Currie Reply at 68) Dr. Currie also stated that the Texas PUC established a UNE-P migration rate of $ 2.58, and noted this was not based upon any cost study presented by Southwestern Bell Telephone Company ("SWBT"). (*Id.* at 69)

Dr. Currie testified under cross examination that he had no opinion whether the prices for UNE combinations should be determined by subtracting from the sum of the combined UNEs the costs that are avoided by virtue of their purchase as a package. (Tr. AA-132-133) Dr. Currie had no recommendation on how the Commission should price UNE combinations.

Dr. Currie testified that Ameritech's cost studies used in Cause No. 40611 were done in 1996, with compliance studies prepared in 1998. (Tr. AA-136) Dr. Currie testified that Ameritech's wholesale service cost studies submitted in Cause No. 40785-S1 were not used by the Commission to establish UNE rates, including NRCs for UNE combinations, since wholesale services were outside of the stipulation approved in the proceeding. [*16] (*Id.* at 137-138)

Dr. Currie also testified that Ameritech is adopting a new, highly efficient OSS in March 2002. (Tr. AA-139) Finally, Dr. Currie testified that the Texas NRC UNE combination migration rate of $ 2.58 referenced in his testimony was stipulated to by Ameritech's affiliate, SWBT. (Tr. AA-147)

In his direct testimony, Ameritech Indiana Witness Mr. Jarmon addressed the network components necessary to assemble the UNE combinations outlined in AT&T's Interconnection Agreement ("ICA") with Ameritech Indiana, Article IX, Table 1. According to Mr. Jarmon, the Commission had directed Ameritech to file a tariff regarding the UNE combinations in that Table. Mr. Jarmon presented testimony to provide information on the various elements needed to create such UNE combinations.

In Responsive testimony, Mr. Jarmon sought to rebut Mr. Turner's testimony dealing with the NRCM by addressing Dedicated Inside Plant ("DIP") and Dedicated Outside Plant ("DOP") engineering and construction procedures used in Ameritech Indiana. Additionally, Mr. Jarmon addressed the differences between the DOP and Connect Through ("CT") policies of Ameritech Indiana.

B. AT&T/WorldCom/McLeod. AT&T/WorldCom/McLeod [*17] sponsored Mr. Steven E. Turner to propose NRCs for UNE-P. Mr. Turner sponsored three pieces of testimony, each of which is summarized in turn.

i. NRC Issues/Costs Associated with Initiating, Discontinuing and General Provisioning Related Issues

According to Mr. Turner, the NRCM applies forward-looking, long-run economic cost principles by assuming a network engineered using forward-looking technologies and efficient processes. AT&T/WorldCom/McLeod argue that any examination of ILEC processes, and how they are accounted for in the NRCM, therefore should primarily rely upon Mr. Turner's testimony, with some additional information from Z-Tel Witness Dr. George Ford, since Ameritech provided no contrary evidence.

Mr. Turner testified that nonrecurring costs are onetime costs for activities required to initiate or provide wholesale services, interconnection, or unbundled network elements. More specifically, nonrecurring costs are onetime costs associated with establishing, disconnecting, or rearranging a communications service at the request of a customer.

The types of ILEC activities that should be modeled are those associated with the preordering, ordering, and/or provisioning processes. [*18] *Pre-ordering* is the process by which a CLEC interfaces with the end-user and, for existing customers, accesses existing service databases, determines the customer's needs, and gathers information necessary to be able to create an accurate local service order. This includes information about the services, if any, currently subscribed to by the end user, the customer's service address, the facilities available to provide service to the end user, telephone number assignments, and related information. (Turner Direct at 5) A CLEC depends on the ILEC a great deal in the preordering stage. For example, prior to placing a service order with the ILEC for an existing ILEC customer migrating to the CLEC, the CLEC must verify this information against the ILEC's records for that same customer.

Ordering is the process of placing an order requesting the various services or unbundled network elements needed to satisfy the needs of the end user. Most ordering is done by the CLEC electronically submitting a Local Service Request ("LSR") to the ILEC via an electronic gateway. The ILEC generally responds electronically with a positive confirmation of order acceptance. (Turner Direct at 6)

Provisioning [*19] is the process by which an ILEC, after receipt of an order, performs the necessary functions, such as assigning and connecting all of the network elements, required to provide service to the CLEC customer. All services or UNEs are not provisioned the same way. There are two types of provisioning processes: (1) Non-Designed, which is used for services such as POTS and Integrated Services Digital Network Basic Rate Interface ("ISDN BRI"); and (2) Designed, which is used for services such as DS1 special circuits.

In simple terms, a "Non-Designed" service is one where no special planning or engineering work is required to provide the service. The typical circumstance is the provision of basic local exchange service to a residential customer. No special engineering is required to provide this service or the elements underlying it. A "Designed" service, on the other hand, is an engineered service. A designed service uses inventory not typically needed for POTS type service and therefore requires special engineering to implement the service.

According to Mr. Turner, often ILECs, including Ameritech, assume that the purchase of the unbundled network element or the purchase of the existing [*20] combination of elements utilized to provide basic local services must be treated as "designed" or special circuits. The "design" process calls into play the use of equipment and labor that a non-designed circuit does not, resulting in higher costs. Mr. Turner argues that CLEC services should not have to go through an expensive design process that the ILEC does not perform for its own retail services. For example, according to the CLECs, an unbundled 2-wire analog loop can and should be provisioned in a non-designed process.

According to Mr. Turner, the ILECs have consistently developed mechanized, efficient systems and processes to manage large volumes of orders for the services that they themselves provide. Wholesale orders can also be processed electronically, as are orders for retail basic services. (Turner Direct at 6-8)

According to Mr. Turner, because the study should reflect forward-looking, efficient costs, a major assumption is to understand and utilize forward-looking network element technologies of the network architecture supporting recurring rate development. Forward-looking technologies are the most efficient, least cost technologies that are generally available in the [*21] marketplace today. Nonrecurring costs should be based on a network architecture that takes advantage of intelligent, processor-controlled network elements that can communicate over standard interfaces to the OSS systems in such a manner that little or no manual intervention is required for provisioning or maintenance activities. These technologies work hand in hand with the OSS to minimize cost and improve customer service.

In addition, Mr. Turner argued that a proper forward-looking study must be based on the assumption that any work functions that do occur must be consistent with efficient processes. For example, technicians are capable of handling multiple tasks so there should be no assumption that each order requires a separate trip by the technician. Some central offices are staffed 24 hours a day, while others are not. When work is required in these non-staffed offices, the employees should be dispatched with several jobs at one time. Cost estimates should not be based on the assumption that employees perform work on a single order at a time. Mr. Turner suggested that factors such as "quantity of orders per dispatched trip" and "ratio of lines served by non-staffed central [*22] offices" affect the costs to be assigned to any one order.

Mr. Turner argued that efficient companies dispatch technicians and equip them with mechanized field access systems that allow them to communicate with the OSS. They can complete orders, get new work assignments, close trouble tickets, update databases, get remote access to test systems, and complete their work in a mechanized fashion. Here again, Mr. Turner argued that the cost studies should reflect efficient, technology-based practices. If forward-looking technologies are not coupled with efficient processes, then consumers will not see the benefits of the technologies. (Turner Direct at 8-10)

ii. A Nonrecurring Cost Model Should Apply The Use Of The ILEC's Efficient, Fully Integrated Operations Support Systems Which Are Accessible To CLECs And Permit Them To Transact Business With The ILEC Via An Electronic Interface.

According to Mr. Turner, OSS are the electronic, software driven computer programs and databases that telecommunications companies use to manage the functions of preordering, ordering, provisioning, repair, maintenance, and billing processes for both their retail and wholesale operations. OSS assumptions [*23] are important to the development of a nonrecurring cost model. OSS have a very significant impact on nonrecurring costs because the major drivers of nonrecurring costs are labor times and labor rates. The less manual intervention, the less costly it is to establish service and the more rapidly the incumbent can fill a service order.

As these automated systems were developed and refined over the past two decades, the critical element for such systems became flowthrough, meaning that the processing of a problem or request for service would flowthrough sev-

eral computer systems and be resolved without human intervention. The reduced reliance on human intervention due to advances in OSS has significantly reduced the incremental nonrecurring costs associated with functions such as preordering, ordering, provisioning, maintenance, and billing. Accordingly, Mr. Turner argued, the NRCs that are charged to CLECs should reflect these cost savings.

Mr. Turner argued that most of an ILEC's systems are electronically linked and are dependent on one another. Fallout refers to errors in the electronic flowthrough process. For example, in an electronic ordering process, if one of the OSS receives [*24] erroneous or incompatible information from another OSS, the order will be designated as a process "fallout" and may require manual intervention to correct or complete the order. Other causes of fallout include communication link failures between different OSS, software release incompatibility, polluted databases, hardware failures, or system maintenance problems. Fallout is important because in many instances it is the only cost driver for an otherwise seamless electronic flowthrough process. (Turner Direct at 15)

Mr. Turner further stated, "Greatly reducing fallout will lower operating costs for the incumbent local exchange carrier. Moreover, if the incumbent fully cleans up its databases, it will also be able to reduce the number of service orders for its own end user services that fallout because of the unavailability of facilities. This will occur because cleaning up the databases will give the incumbent more accurate information about its facilities and the rates of growth of use of those facilities in geographic specificity. This also will lower the incumbent's costs because it will enable a higher fill level on facilities." (Turner Direct at 17)

iii. Nonrecurring Charges For [*25] ILEC Bundled Services And Unbundled Network Elements Should Be Based Upon The Forward-Looking Economic Cost Of Fulfilling These Transactions Assuming The Most Efficient Use Of The Integrated Operations Support Systems That Are Available Today.

According to Mr. Turner, the current generation of ILEC OSS is designed to provide a high level of automated and flowthrough functionality. All of the best available OSS that exist today, when operated in an efficient manner, provide for flowthrough functionality and can have minimal fallout -- though ILECs that have allowed their databases to become polluted with erroneous data may well be experiencing high levels of fallout that harm service to both retail and wholesale customers. n4 Mr. Turner states that it should not be necessary to build or buy anything new to achieve flowthrough functionality -- though again, ILECs with polluted databases may have to perform remedial maintenance. (Turner Direct at 20)

n4 Ameritech Indiana's OSS are currently under investigation in Cause No. 41657.

[*26]

According to Mr. Turner, Ameritech Indiana's flowthrough rate for the same period for UNE-P orders exceeds **[confidential %]**. n5 Thus, Mr. Turner argued that, according to Ameritech Indiana's own self-reported data, its fall-out rate for UNE-P orders is less than **[confidential %]**.

n5 *See*, Ameritech Indiana Confidential Cross Exhibit No. 4.

iv. The AT&T/WorldCom/McLeod Nonrecurring Cost Model Applies Forward-Looking Long-Run Economic Principles By Assuming A Network Engineered Using Forward-Looking Technologies And Efficient Processes.

Consistent with the above principles, the major assumptions employed in the AT&T/MCI NRCM are: (1) a network engineered using forward-looking technologies and efficient processes; (2) an electronic ordering interface between the CLEC and ILEC that incorporates front-end edits to minimize service order errors and the ability for those errors to be returned electronically; (3) an efficient OSS environment with unpolluted databases to minimize fallout; (4) electronic provisioning [*27] where possible; (5) POTS services are non-designed services; and (6) OSS investment and maintenance costs are recovered in existing recurring rates.

The NRCM develops cost estimates for the different nonrecurring functions by identifying and estimating the associated costs of each activity that will be performed by an ILEC when a CLEC requests a wholesale service, interconnection, and/or an unbundled network element. By identifying and estimating costs associated with each activity, the NRCM develops a "bottoms-up" estimate of nonrecurring costs. (Turner Direct at 22)

According to Mr. Turner, the methodology is as follows. First, all of the activities required to complete a Local Service Request are identified and listed. Second, for each activity, based on the consensus of the NRCM panel of experts, an estimate is provided of the amount of time (in minutes) required to perform each activity. Third, once the activity time has been determined, the work group associated with that type of labor is incorporated to determine what the labor cost would be. Fourth, since some activities may not have to be performed in all instances (for example, some activities that are required when using [*28] an unbundled copper loop are not required when using an unbundled fiber loop), the Model also incorporates the probability of an activity happening. A panel of experts collectively discussed and reached consensus on the activities, probabilities, and work time estimates included in the Model. A labor rate expert, working with all the technical experts to determine the appropriate class of labor associated with each activity, helped develop the labor rates. Fifth, the NRCM calculates the cost of each of the activities comprising a NRC Element Type using the following formula:

Activity Cost = Activity Probability * Time (Minutes) * Rate ($ /Hour) / 60

Sixth, the model sums the costs of the activities for each element type and then applies a variable overhead factor to convert the calculated cost to a price proposal. This input represents the loading factor for variable overhead expenses not already captured in the model. The labor rates used by the NRCM are unique to Indiana. (Turner Direct at 23-24)

Mr. Turner testified that each of these judgments in the NRCM represents the consensus of a number of experts. An explanation of each is provided in the Non-Recurring Cost Model Technical [*29] Assumptions Binder ("NTAB") documentation attached to Mr. Turner's testimony as Appendix SET-2. (Turner Direct at 24)

The Model currently calculates preordering, ordering, provisioning, and disconnecting nonrecurring costs for 49 Network Element types. n6 Some examples are POTS/ISDN BRI, 4-Wire UNE Loop, and DS1 and DS3 Interoffice Transport. Section 28 of the NTAB provides a complete list and detailed description of each element type. n7

n6 The Commission notes, however, that the proponents of the NRCM only included 10 of those Network Element types in the material filed in this proceeding.

n7 Because Phase I of this proceeding addresses NRCs for UNE combinations, and not additional NRC rate elements, Mr. Turner ran the NRCM for 10 network element types rather than all 49. These costing results all relate to UNE-P migrations and new installations, and whether 2-wires or 4-wires are used. (Turner Direct at 24-25)

"Migration" occurs when the CLEC requests the existing services and facilities for a customer of the [*30] ILEC to be moved to the CLEC. "Installation" occurs when the incumbent establishes any new or additional service for a CLEC customer. "Disconnect" occurs when the CLEC requests that the ILEC no longer provides a service or unbundled network element. (Turner Direct at 25)

The NRCM assumes the efficient operation of the ILEC OSS (Legacy systems) architecture that currently exists within the industry and that the proponents believe to be typical (Section 15 of the NTAB further defines the criteria and environment for these OSS). In addition to activities that are required for preordering, ordering, and provisioning, the Model includes certain activities that the CLECs believe would be necessary if there were fallout. The time and costs associated with these manual activities are included in the cost of completing the related local service request. (Turner Direct at 25)

The NRCM assumes a fallout rate of 2 percent. According to Mr. Turner, Ameritech Indiana currently reports fallout rates of less than **[confidential %]** n8 for its OSS under certain circumstances, and SWBT's fallout rate is less than 2% under certain circumstances. According to Mr. Turner, it was the consensus of the [*31] experts who developed the NRCM that Ameritech's existing OSS, when operated and maintained efficiently as SWBT currently is operating and maintaining its EASE system, should experience fallout rates of that magnitude. The NRCM experts recognized, however, that while a 1% fallout rate is a reasonable objective -- and even though, in their collective opinion, it is more consistent with actual data submitted here by Ameritech Indiana -- it might not be fully achieved in all instances and therefore agreed to use a fallout rate of 2%. (Turner Direct at 26)

n8 *See*, Ameritech Indiana Confidential Cross Exhibit No. 4.

The CLECs argued that the forward-looking fallout rate is based on the use of OSS that they believe are currently available to all ILECs. The CLECs believe that, if the OSS and associated databases are operated and maintained efficiently, then the ILEC's existing systems would have fallout rates of about 2%. Based upon those two assumptions, the CLECs believe that a forward-looking fallout rate of 2% is much [*32] closer to the fallout rate that would prevail in an efficient, competitive market. (Turner Direct at 26)

According to Mr. Turner, the NRCM further assumes the use of forward-looking, currently available technologies. Specifically, for provisioning and maintenance, the NRCM assumes the use of Local Digital Switches, GR-303 IDLC for loops served by a fiber feeder, DCS, SONET rings for transport, and a low profile, punch down block main distributing frame ("MDF") for terminating copper loops in the central office. The CLECs believe that the assumption that Ameritech is using these technologies is important because they use intelligent processor controlled network elements that can communicate over standard interfaces to the OSS in such a manner that, according to the CLECs, little or no human intervention is required for provisioning and maintenance activities.

The Model also assumes Ameritech will proactively maintain its network by performing basic network maintenance to ensure that it only provides high quality products and services to the CLEC. In addition, some NRC scenarios incorporate costs for pre-service testing such as a 1000 Hz. test for a 4-wire circuit to ensure that the [*33] service is performing optimally before it is released to the CLEC. The time required to conduct a 1000 Hz. test is assumed to be one minute. (Turner Direct at 26-27)

v. Nonrecurring Costs For Customer Migration.

The activities to migrate a customer using the UNE Platform are accomplished electronically through the electronic gateway and Ameritech's OSS. Thus, in the CLECs' opinion, the cost for a migration order is potentially processing time only.

If an order does fall out in the ILEC's provisioning process, the NRCM estimates the costs associated with the manual time required to resolve fallout problems. The NRCM estimates that the time to analyze and resolve the problem by a technician is 17.5 minutes, which is an average work time for the activities being performed. (Turner Direct at 28)

For a platform migration, all necessary facilities, including Inside Plant at the Central Office, are assumed to be in place, or dedicated and therefore cross-connect activity is not modeled. In addition, the provisioning process would not need to negotiate for release of the customer's facilities before the migration, as would be the case for migration of only the customer's loop. (Turner [*34] Direct at 28-29)

vi. Nonrecurring Costs For Installation.

The CLECs argued that the nonrecurring costs for installing a two-wire loop for basic service ("POTS") or for an Integrated Services Digital Network/Basic Rate Interface ("ISDN/BRI") loop are the same because virtually the same Ameritech activities are required. Using existing systems, the CLECs argued that the only difference between provisioning these loops from an OSS standpoint is that the order for a basic two-wire loop would flow to the Telcordia Memory Administration Recent Change ("MARCH") system, and the order for an ISDN BRI loop would flow to the Architel ASAP system. The CLECs argued that both MARCH and ASAP are designed to update the switch automatically. (Turner Direct at 29)

vii. Nonrecurring Costs For Disconnection.

Disconnect occurs when a service to a customer is ended. While ILECs, including Ameritech in its model, typically model installation NRC charges to include the cost of disconnection, the NRCM separates installation and disconnection for costing and pricing purposes. Moreover, the disaggregation of installation and disconnect costs and prices also allows the new entrant the ability to benefit [*35] from certain practices with respect to Dedicated Inside Plant ("DIP") and Dedicated Outside Plant ("DOP").

The DIP and DOP processes allow for rapid activation or deactivation of services at an end user location without the need for physical disruption of the facility because, with DIP and DOP, physical connections remain in place and only a command from the OSS to the network element is necessary to activate or deactivate the service. Mr. Turner states that, if a new entrant chooses to have service deactivated using only software commands, disconnection NRCs become almost nonexistent. CLECs state that Ameritech's current disconnect policy adheres to this practice of DIP and

DOP in order to provide immediate service activation to the next customer at that premise. Thus, by modeling the installation separately from disconnection, the new entrant would have the same benefits from the DIP and DOP processes as does the ILEC. (Turner Direct at 29-30)

Turner Reply Testimony. Mr. Turner's reply testimony addressed Ameritech's NRC proposal. According to Mr. Turner, Ameritech witness Mr. Silver confirms that Ameritech intends to charge the total of the individual nonrecurring charges for [*36] the elements involved. As a result, for example, Ameritech proposed a nonrecurring charge of $ 102.05 for a new combination of a loop and switch port and a nonrecurring charge of $ 72.72 n9 for a migration of a loop and switch port. (Turner Reply at 2)

n9 Ameritech later changed its proposed NRC for UNE-P migrations to $ 28.71 to reflect a change in position, to no longer charge an analog line port charge for migrations. (See, Reply Testimony of Ameritech Witness Silver, Rev. Att. 2 and 3).

Mr. Turner asserted that Ameritech has not conducted any studies of the costs associated with ordering an unbundled switch port in combination with an unbundled loop -- the UNE Platform. Instead, according to Mr. Turner, Ameritech relied upon nonrecurring charges found in tariffs filed with the Commission by Ameritech on October 19, 2001 and has simply documented how it is computing the nonrecurring charges from those tariffs. n10

n10 Silver Direct at 12.

[*37]

Mr. Turner testified that Ameritech's proposed NRC for new installations ($ 102.05) is based on the summation of four separate nonrecurring charges: (1) Loop Service Order Establishment ($ 14.57); (2) Line Connection Charge per Termination ($ 29.33); (3) Analog Line Port ($ 44.01); and (4) Analog Line Port Service Order ($ 14.14). n11 Mr. Silver indicates that the $ 72.72 nonrecurring charge for migrations was based on the summation of three separate nonrecurring charges n12: (1) Loop Service Order Establishment ($ 14.57); (2) Analog Line Port ($ 44.01); and (3) Analog Line Port Service Order ($ 14.14). n13 These nonrecurring charges come from an earlier cost docket that established the individual nonrecurring charges for the unbundled elements (assumed to be provided one-at-a-time, in isolation) -- not a combination such as the UNE-Platform as is the topic of the present proceeding.

n11 Silver Direct, Corrected Attachment 2, Lines 6-9.

n12 Ameritech later changed its proposed NRC for UNE-P migrations to $ 28.71 to reflect a change in position, to no longer charge an analog line port charge for migrations. (*See*, Reply Testimony of Ameritech Witness Silver, Rev. Att. 2 and 3)

[*38]

n13 Silver Direct, Corrected Attachment 2, Lines 6 and 8-9.

Mr. Turner testified that, from the CLECs' perspective, the primary problem with Ameritech's "sum of the parts" approach to setting rates is that Mr. Silver has not evaluated the cost implications of ordering unbundled loops and switch ports in combinations that are already working and will be simply migrated to the CLEC placing the UNE-Platform order. Moreover, Mr. Silver has made no assessment of the cost impact of Ameritech having these elements already sitting in a combined form, but not yet in service -- specifically, the loop is already cross connected to the switch port, but not currently activated for service in the switch. (Turner Reply at 3-4)

Mr. Turner further pointed out that Ameritech has indicated that it intends to process all UNE-P orders through the same service center. An Ameritech Ohio witness stated that Ameritech intends to process all UNE-Platform orders out of a centralized work center for the Ameritech territory. n14 Mr. Turner stated that the important implication of this

testimony is that the costs for handling [*39] UNE-Platform orders should not vary significantly between the Ameritech states. (Turner Reply at 4-5)

n14 Before the Public Utilities Commission of Ohio, *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*, Case No. 96-922-TP-UNE, Tr., Volume 7, at 96.

In light of Ameritech's common order processing approach, Mr. Turner therefore focused on Ameritech's NRCs for UNE-P in other states to determine whether Ameritech Indiana's proposal was reasonable. Mr. Turner testified that in Illinois, Ameritech offered a nonrecurring charge of $ 11.79. Mr. Turner noted that this was Ameritech's "going-in" position for Illinois -- not the $ 102.05 and $ 72.72 nonrecurring charges that Ameritech has proposed here [for new installations and migrations, respectively.] (Turner Reply at 5-6) AT&T requested a nonrecurring charge in Illinois of $ 0.29 (*Id.*) Ultimately, the Illinois [*40] Commission ordered a nonrecurring charge of $ 1.02 -- a charge much closer to that proposed by the AT&T/WorldCom/McLeod Nonrecurring Cost Model than to Ameritech Illinois' proposal of $ 11.79. Mr. Turner stated that it is quite disingenuous for Ameritech to offer that the cost to combine an unbundled loop and switch port in Illinois is $ 11.79 and offer in Indiana that the cost should be in excess of $ 100 for new orders and $ 70 for migration orders. (Turner Reply at 5-6) In Michigan, the Commission-approved nonrecurring charge for UNE-P migration orders is $ 0.35. (Turner Reply at 9) And finally, in Ohio, the Commission recently ordered a nonrecurring charge for UNE-P migration orders of $ 0.74. (*Id.*) The AT&T/WorldCom/McLeod Indiana NRCM produces a nonrecurring charge of $ 0.25.

Mr. Turner also testified that in Texas, Southwestern Bell Telephone Company entered into a stipulation with AT&T and WorldCom regarding to the nonrecurring charges for UNE-P migration orders. In that stipulation, Southwestern Bell Telephone Company agreed to charge only an electronic service order charge of $ 2.58 for UNE-Platform migration orders. This charge was based on cost studies that were evaluated [*41] in 1997 and, as such, the charges that other Ameritech states are developing are more current and appropriate. (Turner Reply at 10) However, this charge does establish an upper threshold on what the UNE-Platform migration nonrecurring charge should be. (*Id.*)

Therefore, Mr. Turner concluded that the AT&T/WorldCom/McLeod proposal is much more consistent with what is being ordered across the Ameritech region than the proposal that Mr. Silver has offered this Commission, and indeed, is also closer to what Ameritech's affiliate voluntarily offered in Texas. (Turner Reply at 9-10) Mr. Turner therefore recommended that Ameritech's proposal of $ 102.05 for new orders and $ 72.72 for migration orders for the UNE-Platform nonrecurring charge should be rejected. (Turner Reply at 5-6)

Mr. Turner's reply testimony also revisited the issue of UNE-P order flowthrough. Mr. Turner stated that when an order flows through between the CLEC and Ameritech, it does not require manual intervention, and therefore, in his opinion, it does not require the costly intervention of technicians completing the service order. (Turner Reply at 6) Moreover, the importance of flowthrough is borne out by the intense [*42] effort that has been expended by Ameritech and CLECs in establishing the electronic interfaces that will be used for order flow to Ameritech in various OSS and Section 271 proceedings throughout the five Ameritech states, including Cause No. 41657 in Indiana.

Mr. Turner concluded that Ameritech's failure to conduct UNE-P cost studies consistent with the flowthrough projections that arise from this type of OSS environment could cause problems. It does not appear that Mr. Silver, or any other Ameritech witness, performed a cost study to determine whether the flowthrough rate for UNE-P orders would be higher than for discrete, unbundled loop and port orders, which were the sole focus of the cost study on which his nonrecurring charges are based. (Turner Reply at 6)

Turner Surrebuttal Testimony. Mr. Turner's surrebuttal testimony addressed Ameritech's criticisms of the NCRM made in Ameritech's responsive filing. Mr. Turner noted that Ameritech's criticisms of the NRCM fell into five areas:

1. The NRCM uses nonrecurring cost definitions that invalidate it from being used to calculate nonrecurring costs; n15
2. The NRCM applies the flowthrough/fallout percentages for systems in [*43] a manner that misapplies SBC's representation of the capabilities of its systems; n16

3. The NRCM utilizes time estimates for nonrecurring activities from a panel of experts that do not represent the same times Ameritech's experts believe apply to the tasks; n17
4. The NRCM does not explicitly permit Ameritech to recover the cost for OSS systems; n18
5. The NRCM uses Dedicated Inside Plant (DIP) and Dedicated Outside Plant (DOP) assumptions of 100 percent that Ameritech believes overstate the actual level of DIP and DOP in its network. n19

n15 Responsive Testimony of Dr. Kent A. Currie on Behalf of Ameritech Indiana (hereafter "Currie Rebuttal"), Cause No. 40611-S1, November 20, 2001, at 4.

n16 Currie Rebuttal at 4.

n17 Currie Rebuttal at 5.

n18 *Id.*

n19 Currie Rebuttal at 33-36 and Rebuttal Testimony of Michael D. Jarmon on Behalf of Ameritech Indiana (hereafter "Jarmon Rebuttal"), Cause No. 40611-S1, November 20, 2001, at 3-12.

Mr. Turner pointed out the sum effect of these criticisms on the NRCs [*44] proposed by the NRCM. Mr. Turner proposed a nonrecurring cost for the UNE-P of $ 0.25. By way of comparison, Mr. Turner calculated that, if the Commission took all of the changes that Ameritech Witness Dr. Currie proposed and implemented these in the NRCM except for the change in the fallout percentage, the new nonrecurring charge would be $ 0.33. Thus, according to Mr. Turner, all of the other changes that Dr. Currie proposed only increased the cost by $ 0.08. However, Mr. Turner argued that, when all of Dr. Currie's changes are implemented including changes to the fallout percentage, the new nonrecurring charge for the UNE-Platform is **[Confidential $]**. "In other words, while all of Dr. Currie's modifications except for flowthrough lead to only a difference of **[Confidential $]**, the change in the flowthrough percentage accounts for **[Confidential $]** in difference between my proposed cost and Ameritech's. (Turner Surrebuttal at 17) According to Mr. Turner, the flowthrough assumption accounts for 96.4 percent of the difference between his run of the NRCM and Ameritech's. n20 (Turner Surrebuttal at 29)

n20 Ameritech Confidential Cross Exhibit No. 4 shows Ameritech Indiana's actual flowthrough capability is even higher than estimated by the NRCM.

[*45]

Mr. Turner additionally rebutted new alternative values for NRCs presented for the first time by Ameritech Witness Currie in his responsive testimony. Rebutting Dr. Currie's first criticism that the NRCM ignores cost causation principles and therefore uses improper inputs, Mr. Turner stated that cost causation is the main principle distinguishing Ameritech's proposal for nonrecurring costs from that presented by the Joint Sponsors in the NRCM. Mr. Silver indicated that the $ 102.05 nonrecurring charge is based on the *summation* of four separate nonrecurring charges: (1) Loop Service Order Establishment ($ 14.57); (2) Line Connection Charge per Termination ($ 29.33); (3) Analog Line Port ($ 44.01); and (4) Analog Line Port Service Order ($ 14.14). n21 Mr. Silver indicated that the $ 72.72 nonrecurring charge is based on the summation of three separate nonrecurring charges: (1) Loop Service Order Establishment ($ 14.57); (2) Analog Line Port ($ 44.01); and (3) Analog Line Port Service Order ($ 14.14). n22 These nonrecurring charges come from an earlier cost docket that established the *individual* nonrecurring charges for the unbundled elements -- not a *combination* such as [*46] the UNE-Platform, which is the topic of the present proceeding. (Turner Surrebuttal at 4)

n21 Direct Testimony of Michael D. Silver on behalf of Ameritech Indiana, Cause No. 40611-S1 (hereafter referred to as "Silver Direct"), Corrected Attachment 2, Lines 6-9.

n22 Silver Direct, Corrected Attachment 2, Lines 6 and 8-9.

Mr. Turner testified that Ameritech's approach improperly skews the results. In his opinion, Ameritech's approach does not take into consideration the following Commission directive from the main docket:

> For the purposes of this UNE pricing order, we find that Ameritech Indiana should provide prices for those combinations already included in its various interconnection agreements. The prices for such combinations should be determined by subtracting from the sum of the combined UNEs those UNE costs which are avoided by virtue of their purchase as a package. n23

Mr. Turner also rebutted Ameritech's argument that the NRCM includes "no one time labor cost for any service or UNE" because "labor [*47] is hired year after year" making it appear as if it were a recurring cost. n24 Mr. Turner stated, "Dr. Currie has created a red herring argument to rebut in his testimony that absolutely does not represent the approach taken in the NRCM." (Turner Surrebuttal at 5) Mr. Turner asserted that incremental labor costs are included in the NRCM even though labor is hired "year after year." (*Id.*)

n23 Indiana Utility Regulatory Commission Order, Cause No. 40611, June 30, 1998 at 47.

n24 *Id.*

Mr. Turner also responded to Dr. Currie's argument that the NRCM could include capitalized assets used to provide unbundled network elements because these are only ordered one time. n25 Mr. Turner stated that Dr. Currie has again "created a red herring argument so that he can criticize it. However, the reality is that capitalized assets that should have their costs recovered over their useful lives are recovered as recurring charges -- as Ameritech does -- and the NRCM does not include these costs in the NRCM. In short, Dr. Currie [*48] may not like the precise wording of definitions used in the NRCM, but the negative inferences that he has drawn from the definition have absolutely not been incorporated in the NRCM." (Turner Surrebuttal at 6)

n25 *Id.*

Mr. Turner also responded to arguments made by Dr. Currie relying upon Ameritech's cost studies filed, but never approved for the setting of wholesale rates, in Cause No. 40785-S1. First, Mr. Turner noted that Ameritech did not file any cost studies supporting its proposed nonrecurring charges with its direct case in this proceeding even though this Commission specifically directed Ameritech to do so, as discussed earlier. Mr. Turner's second point was that he could not evaluate these criticisms because Ameritech did not file the cost studies in this proceeding. (*Id.*) As such, even though the cost studies to which Dr. Currie compared the NRCM are not in this proceeding, Mr. Turner stated the comparison would be useful because it illustrates that Ameritech's studies were not combination studies. [*49] (Turner Surrebuttal at 6-7)

Mr. Turner also rebutted Ameritech's theory that the NRCM assumed the use of systems that Ameritech may not deploy in the foreseeable future. He stated that the NRCM did not assume hypothetical or futuristic systems, but instead assumed the efficient deployment of systems that Ameritech already has in place for itself. Moreover, the NRCM reasonably assumed that Ameritech will perform for CLECs with flowthrough for these systems at a comparable level to the flowthrough Ameritech experiences for its own orders. (Turner Surrebuttal at 7)

Mr. Turner rebutted Dr. Currie's testimony regarding flowthrough, stating that, in his opinion, the primary problem is that Dr. Currie has redefined flowthrough in such a way that it has no real meaning. Dr. Currie has defined flowthrough as follows:

> Flowthrough is generally defined as the mechanized transcriptions of service requests into the service provider's order format such that it facilitates automated processing. Flowthrough applies solely to the OSS ordering function, not the OSS provisioning function. n26

n26 Currie Rebuttal at 10.

[*50]

Mr. Turner strongly disagrees with this definition; he believes that the definition of flowthrough should include pre-ordering, ordering, and provisioning. (Turner Surrebuttal at 9)

Mr. Turner testified that the most fundamental flaw in Ameritech's flowthrough argument, however, from the CLECs' perspective, is the flowthrough rate. Dr. Currie provided a rerun of the NRCM using assumptions that Ameritech believes are appropriate. In this rerun, Ameritech represents that the end-to-end flowthrough rate should be **[Confidential %]**. (Turner Surrebuttal at 11) According to the CLECs, this figure, however, is inconsistent with Ameritech's own performance data for both resale and UNE-P in Ohio and Indiana. CLECs argued that this shows that Ameritech's actual flowthrough rate is even greater than that estimated in the NRCM. (Currie Rebuttal, Currie Response Support 1, NRCM Output Tab. *See*, Ameritech Confidential Cross Exhibit No. 4)

Mr. Turner rebutted Ameritech's criticism of the NRCM that it does not use time and motion studies, noting that Ameritech did not provide a cost study with its direct filing for nonrecurring charges, and further failed to provide a time and motion study [*51] in his rebuttal testimony. Moreover, Dr. Currie did not identify any specific time adjustments that he would propose for this proceeding. (Turner Surrebuttal at 16)

Mr. Turner rebutted Ameritech's contention that the Commission should rely upon AT&T TOC studies prepared for use on other states for private line services. Mr. Turner noted that these studies were prepared in 1997 or before, are not specific to Ameritech Indiana, and were not prepared with TELRIC principles in mind. Moreover, these studies were not relied on in any way to develop the inputs for the NRCM. Rather, a team of experts with experience with the incumbent LEC processes in question was assembled to develop the inputs used for the NRCM. (Turner Surrebuttal at 17-18)

Mr. Turner also rebutted Ameritech's criticisms of the nonrecurring cost definitions used in the NRCM. According to Mr. Turner, there are two classes of costs that Dr. Currie believes should be recovered in nonrecurring charges that are not presently included in the NRCM. First, the nonrecurring cost model does not explicitly account for OSS cost. In other words, the NRCM does not estimate the cost for OSS development and implementation and divide this [*52] by the number of activities to arrive at a cost per order for OSS. Second, the NRCM does not include the cost for customer service representatives within Ameritech to manually handle orders originating from the CLECs across an electronic interface. (Turner Surrebuttal at 19-20)

Mr. Turner noted that the OSS costs are legitimate. The forward-looking cost associated with providing the OSS necessary to provision orders should be recovered through existing recurring rates as discussed more fully below. However, Mr. Turner argued that the customer service representative costs are not legitimate. According to Mr. Turner, the CLECs bear these costs directly. When an end user customer contacts the CLEC to order service, it is a CLEC customer service representative that takes the order from the customer and populates its own system with the information necessary to provision the order. This system is then connected electronically to Ameritech to pass the information that is necessary to provision the order within Ameritech. Mr. Turner argued that Ameritech's customer service representatives do not enter into this process because the CLEC customer representative has already collected the information [*53] necessary to complete this order and provided the information (electronically) to Ameritech. (Turner Surrebuttal at 20)

Thus, according to Mr. Turner, where there is fallout for UNE-P orders, it would not be in the form of an Ameritech customer service representative. Instead, Mr. Turner argued, fallout for UNE-Platform orders should be sent directly to the Recent Change Machine Administration Center ("RCMAC") to handle the problem. It is the RCMAC that resolves these problems and the fallout should be sent directly this organization rather than unnecessarily being routed through an Ameritech customer service representative. (*Id.*)

Mr. Turner also argued that efficient OSS costs should be recovered through recurring rates. He argued that the systems costs that Ameritech is attempting to recover through nonrecurring charges, as described above, are already included in the support assets and overhead loading factors. Mr. Turner stated the OSS run on various computers. According to Mr. Turner, the various TELRIC models of recurring costs use the general-purpose computer accounts to build the estimates of recurring costs of unbundled network elements. "The computers on which the OSS [*54] run are kept operational 24 hours per day, so there is no incremental power costs to perform any of these transactional functions. The various TELRIC models use power accounts to build estimates for recurring costs of unbundled network elements.

Thus, both the hardware and power costs are recovered in recurring rates. In short, the NRCM assumes that the costs of the underlying OSS (hardware, system software, processor costs, updates, and upkeep) are recovered in the incumbent's recurring wholesale and retail rates. Additionally, mechanization in general lowers costs in the long run." (Turner Surrebuttal at 21-22)

Mr. Turner responded to Ameritech witness Jarmon's concern whether there should be separate charges for the disconnect and the installation of service. First, Mr. Jarmon agreed with Mr. Turner that "installations and disconnections are two separate activities" and therefore a close linkage to the principle of cost causation would require that there also be two separate charges. n27 It is because of the principle of cost causation that the NRCM separately identifies installation and disconnection costs. Second, Mr. Turner recognized that many Commissions have already set a [*55] precedent of combining the installation and disconnect costs into a single nonrecurring charge and it would not necessarily make sense at this point in Indiana to revisit this approach. As such, if the Commission determines that the charges should be combined, the Commission should direct that Ameritech also incorporate the concept of time value of money into the disconnect cost and discount the disconnect charge for the average time that the unbundled element would be in service. n28 (Turner Surrebuttal at 23-24)

n27 Jarmon Rebuttal at 15.

n28 Specifically, the Commission would need to identify a time period over which the disconnect cost would be discounted. Mr. Turner recommended five years. The Commission would then identify the present value factor using the cost of money it has determined for Indiana. If the Commission used, for example, a cost of money of 9.5 percent the present value factor would be 0.6352 (1 / (1 + 0.095) 5). The resulting factor would be multiplied times the disconnect cost and added to the installation cost to derive the combined nonrecurring charge.

[*56]

Mr. Turner also rebutted Ameritech's concerns about the NRCM's assumption regarding the DIP and DOP. It appears that Ameritech's main concern is over the DIP and DOP levels that the NRCM assumed, which is 100 percent. Mr. Jarmon's testimony represented that the DOP percentage in Ameritech's network would be approximately **[Confidential %]**. n29 He also indicated that the DIP percentage would be approximately **[Confidential %]**. n30 The average of these two values would yield an approximate dedicated plant percentage of **[Confidential %]**. "The question is, on a forward-looking basis, what this rate should for DIP and DOP be." (Turner Surrebuttal at 24) Mr. Turner provided some considerations this Commission can evaluate in at least framing this question. First, Mr. Turner argued, most of the UNE-P orders that are placed are for migrations of existing Ameritech customers to the CLECs network. Most of these orders are for unbundled loops (where DOP is vital) or for unbundled loop-port combinations (where DIP and DOP are both vital). Mr. Turner stated that he believes these orders would constitute approximately 90 percent (or more) of the orders that are being placed by CLECs with [*57] Ameritech. In other words, according to Mr. Turner [and assuming that 100% of these types of migration orders should be considered DIP or DOP], a minimum percentage to use for DIP and DOP is 90 percent even if Ameritech did not pre-wire anything in its network. Second, the remaining 10 percent of UNE-P orders will be for new service. Even if Mr. Jarmon's conservative value of **[Confidential %]** is used and applied to the 10 percent of orders that are for new service, this yields a DIP and DOP percentage of approximately 95 percent. Thus, there is a strong support for a very high DIP and DOP percentage (Turner Surrebuttal at 24-26)

n29 Jarmon Rebuttal at 5.

n30 Jarmon Rebuttal at 11.

Mr. Turner also disputed Mr. Jarmon's claim that lines that are already connected may not be considered "dedicated" by Ameritech. Mr. Jarmon's concern is that Ameritech may implement the customer with cross-connect arrangement and therefore not consider this arrangement as "dedicated." Specifically, Mr. Jarmon notes the following: [*58]

For example, in the central office, a switch port and loop that are connected through an proficient cross connect, would be dedicated. If however the switch port and loop were connected through multiple tie

> pairs and multiple frames due to a lack of facilities or frame congestion, it would be dedicated. These types of connections are much less proficient and would not be as likely to be dedicated. n31
>
> n31 Jarmon Rebuttal at 10.

Mr. Turner disagreed with Mr. Jarmon because, from his perspective, Mr. Jarmon did not account for TELRIC principles in determining the forward-looking dedicated plant percentage. Mr. Turner stated that it would not be consistent with TELRIC to assume that Ameritech's implementation of loop-port combinations for its own use or wholesale use would be implemented in an inefficient manner. Under this interpretation of TELRIC principles, Mr. Turner argued that it would be appropriate to assume that combined loops and ports represent dedicated plant. (Turner Surrebuttal at 26-27)

Turner Cross-Examination [*59] Testimony. Under cross-examination, Mr. Turner opined that, in the event the Commission were to adopt each of Ameritech's criticisms of the NRCM (other than modifying the NRCM fallout assumptions, which Mr. Turner testified are more conservative than Ameritech Indiana's own fallout data), the NRC would only increase to $ .33. (Tr. AA-275) Mr. Turner also testified that, in his opinion, actual Ameritech Indiana fallout rate data for electronic orders supports the NRCM's assumptions. (Tr. AA-276)

C. Z-Tel. Dr. George Ford provided an analysis of the relative reasonableness of rates based on a "TELRIC test" he developed through analyzing various FCC Section 271 orders. The basic premise of Dr. Ford's analysis (which utilizes the FCC's HCPM Universal Service model) is that UNE rate differentials should comport with UNE cost differentials across states. (Ford Reply at 3-5) Dr. Ford used this test in addressing switch and transport costs.

Although the HCPM does not produce estimates for NRCs, Dr. Ford asserted that the logic is still valid for comparison purposes. (Ford Reply at 11) Dr. Ford argued that, since SBC will provide migrations and new installations for CLEC customers [*60] through an integrated OSS system, this is reasonable. (Ford Reply at 11-12) For reference, Dr. Ford looked to other SBC states, particularly, Texas, Ohio, Illinois and Michigan. Dr. Ford set out the comparisons between Indiana and these other, selected SBC states as follows:

Jurisdiction	UNE-P Migration	UNE-P Installation
Ameritech Michigan (approved)	0.35	17.82
Ameritech Ohio (approved)	0.74	NA
Ameritech Illinois (approved)	1.02	1.02
SBC Texas (approved)	2.56	23.09
Ameritech Indiana (proposed)	28.71	102.50

(Ford Reply at 16)

Dr. Ford explained the rates proposed by Ameritech Indiana could impede the development of competition in Indiana in two ways. According to Dr. Ford, in an absolute sense, the high rates would cut deeply into the margin of a new entrant, and make it difficult to make a business case for entering a market. In addition, Dr. Ford argued that, in a relative sense, these rates would deter market entry in Indiana especially, as competitors would invest capital in neighboring states with rate levels they would perceive to be more reasonable (Ford Reply at 17-18; *See* also GSF Reply Ex 3)

On redirect examination, Dr. Ford explained the business [*61] decision that faces a new entrant:

> The entry decision of a company like Z-Tel is not terribly complicated. We consider what we can sell the service for. We consider how much it costs to put the service together and the cost for the UNE elements are a big chunk of that cost. And we subtract them and hope it's positive. And if it is, we then say, okay, then now we have to recover the nonrecurring charge. And if it takes an unreasonable amount of time just to recover the nonrecurring charge out of the margin of revenues over incremental costs, then you

don't enter. And a hundred dollars, it takes a long time to recover a hundred dollars on nonrecurring charge. (Tr. 318, 1. 4-17)

Dr. Ford concluded, "If we get a decision here like we got in the other states, Z-Tel will be here selling service." (Tr. 319, 1. 12-14)

D. Findings. As we stated in our August 29, 2001 Order, this proceeding is divided into two phases. The first phase "will address the rate for unbundled local switching ("ULS"), including the port and usage costs, if any, of the shared transport component of ULS and recurring and nonrecurring charges for all UNE combinations, including new installations when [*62] facilities are present but dial tone is not present and migrations." (Order at 2) Thus, in this phase of the case we set the nonrecurring charges for various UNE combinations, as well as the monthly recurring port charges.

As we required in our August 12, 2001 Order, interested parties were offered the opportunity to file cost-studies supporting proposed rates on October 15, 2001. On that date, only AT&T/WorldCom/McLeod filed cost studies supporting their proposed NRCs. Ameritech did not, and later took the position in testimony and its briefs that its NRCs were previously approved in Cause No. 40611, and that it was not seeking a change to these rates. Moreover, in its brief, Ameritech further argued that the Commission is *foreclosed* from even considering new NRCs here unless they were somehow based upon Ameritech's cost studies filed five years ago in Cause No. 40611. n32

n32 Ameritech Witness Dr. Currie referred to cost studies filed in the Opportunity Indiana 2000 case, Cause Nos. 40785-S1/40849. The studies Dr. Currie references, however, were not presented here. In addition, the settlement in the Opportunity Indiana 2000 case, specifically Part X, exempts wholesale services from the rates set. Hence, we are not relying upon these cost studies.

[*63]

We reject Ameritech's argument. It is clear that Phase I of this proceeding expressly is designed to establish NRCs for UNE-P, which means that parties filing a particular cost model should support the proposal with a cost study. We said that repeatedly in a number of orders, including the most recent procedural order issued on August 29, 2001, n33 and also explicitly said so in the AT&T/Ameritech Indiana interconnection case, where we deferred the issue of establishing NRCs for UNE combinations to the instant case because no cost studies or other information were provided in that proceeding. n34

n33 Ameritech's witnesses stated that they did not rely upon the August 29, 2001 order for the requirement that parties proposing a cost model file cost studies on October 15, 2001 with their direct case. (*See*, Tr. AA-27).

n34 Order, Cause No. 40571-INT-03 at 44 (November 20, 2000). *See, also*, page 49 of that Order, where we stated that the "pricing for permanent rates for all combinations should be dealt with in Cause No. 40611-S1."

[*64]

Moreover, Ameritech itself previously acknowledged that cost studies would be submitted here. In Ameritech Indiana's Submission of Suggested Process and Schedule filed on July 16, 2001, Ameritech noted that it "contemplates that Ameritech Indiana will perform at least twenty to twenty five cost studies." Ameritech's decision to forego filing cost support is therefore certainly not based upon any contrary Commission decision, and is inconsistent with its earlier declaration that it would file "twenty to twenty five cost studies."

We are therefore left with a record that contains one cost study -- the AT&T/WorldCom/McLeod Nonrecurring Cost Model ("NRCM"). We will therefore examine that cost model and consider Ameritech's criticisms of it, to determine what NRCs should be established.

The NRCM is based upon the following assumptions regarding Ameritech's OSS:

. Highly integrated and automated (electronic/non-manual) OSS; this assumption logically leads to a high flowthrough rate for pre-ordering, ordering, and provisioning, expressed as a single (combined) percentage.
. A fallout rate of 2% or less.
. Manual work times should reflect appropriate intervals based on the use of forward-looking [*65] network technologies.
. Service orders are typically processed through a non-designed POTS provisioning process as opposed to a designed services process (A non-designed POTS provisioning process will be less expensive than a designed services process).
. Incorporates automated "Intelligent Network Elements" (SONET, GR-303 IDLC, DCS/EDSX, LDS, etc.) in its assumptions (this would lead to a higher flowthrough level for the provisioning of orders.
. The same work centers, work groups, technicians, and associated labor rates are generally modeled at parity with how Ameritech provides similar services to itself.
. Only costs for activities that cannot be reused for future customers are included as a nonrecurring cost.
. Installation and disconnection are calculated separately to account for cost differences dependent on a new entrant's disconnect decisions regarding DIP/DOP.

In analyzing the CLECs' arguments regarding the NRCs for UNE-P and other combinations (based, in large part, on the NRCM), we first consider whether to set the nonrecurring charges for UNE-P and other combinations equal to the sum of the component UNEs or to view the UNE-Platform and other combinations as distinct [*66] offerings that require their own prices. Even if Ameritech had refiled now its five-year old cost studies originally used in Cause No. 40611, Ameritech's rate proposal here, which uses a sum of the parts methodology to price UNE combinations, would ignore our oft-repeated rejection of such an approach for UNE combination pricing. n35 This is because we required in our June 30, 1998 Order in Cause No. 40611 that the prices for UNE combinations "should be determined by subtracting from the sum of the combined UNEs those UNE costs which are avoided by virtue of their purchase as a package." n36 To ensure that Ameritech would comply with this mandate when we established permanent pricing, we directed Ameritech to this requirement in the AT&T/Ameritech arbitration. n37 We therefore reject Ameritech's NRC proposal to use a sum-of-the-parts approach to setting nonrecurring charges for the UNE-Platform and the other combinations requested by the CLECs in this Subdocket.

n35 *See* Tr. at AA-85.

n36 Order, Cause No. 40611, June 30, 1998 at 47.

n37 Order, Cause No. 40571-INT-03, November 2000 at 49.

[*67]

The primary Ameritech criticism of the CLECs' NRCM is of the manual fallout rate for electronic UNE-P orders used by the NRCM. There are several significant disagreements between the CLECs and Ameritech regarding flowthrough and fallout issues. First, the CLECs claim that preordering, ordering, and provisioning systems and processes are seamlessly integrated and that flowthrough should be measured based on that assumption. (Turner Surrebuttal at 8-11) In reaching the position that flowthrough or fallout rates should include a measurement for provisioning, the CLECs appear to assume that Ameritech will rarely, if ever, disconnect inside or outside plant dedicated to serving a current, individual Ameritech customer prior to migrating the customer to a CLEC and that little or no dispatch or field work will be required. An assumption of a high flowthrough/low fallout rate for provisioning, when coupled with the CLECs' assumption of an integrated chain of preordering, ordering, and provisioning OSS, and the assumption of high flowthrough rates for pre-ordering and ordering, leads to the assumption of a high flowthrough rate for that entire OSS chain, which (Mr. Turner would argue) should [*68] be reported a single percentage figure.

Third, CLECs argue that flowthrough rates for retail and resale transactions, systems, and processes should be used as a proxy for UNE-P flowthrough rates. (Turner Surrebuttal at 14,15) In arriving at their proposed fallout rate of 2%, the CLECs claim that one of Ameritech's affiliates within SBC, SWBT, achieves a flowthrough rate of less than two percent using the EASE system, a proprietary system for SWBT's retail and resale orders. (Turner Surrebuttal at 9, 10)

Finally, Mr. Turner argued that the UNE-P orders for Migrations, Installs, Disconnects, and Feature Changes (the CLECs' proposed Combinations No. 1 through 4) are not complex orders. Mr. Turner argued that orders for Combina-

tions No. 5 through 10 (all EELS offerings) "are considered complex orders in the NRCM in that they are a combination of a loop and a dedicated transport." (Turner Surrebuttal at 12, 13)

Regarding DIP and DOP, Mr. Jarmon includes DIP and DOP rates on pages 11-12 of his confidential rebuttal testimony. We make the following observations regarding the DIP and DOP rates that Mr. Jarmon reported in his rebuttal testimony. First, he reports separate DIP and DOP rates, [*69] rather than a single (combined) DIP/DOP rate. (Jarmon Rebuttal at 11, 12.) Second, Mr. Jarmon's reported DOP rate is significantly lower than the rate that Mr. Turner claims he reported. (Turner Surrebuttal at 25) However, the DIP and DOP rates that Mr. Jarmon included do not appear to be specific to UNE-P or other combinations. Furthermore, Mr. Jarmon did not differentiate between DIP and DOP rates for customer migrations and those for new installations, regardless of the products or services involved. Thus, while an assumption of 100% DIP and DOP rates for UNE-P and EELS may be higher than what Mr. Jarmon has observed, his testimony does not allow us to determine an alternative figure for either DIP or DOP. We are particularly wary of assuming such low DIP and DOP rates for customer migrations for Combinations No. 1, 5, and 8 that the CLECs have proposed.

While we cannot predict with certainty what Ameritech Indiana's flowthrough rates will be over the long run, it is reasonable to assume that flowthrough rates will increase substantially in the long run as Ameritech replaces many (although not necessarily all) of its manual processes with more efficient electronic processes and [*70] systems. We believe it is appropriate to create incentives for Ameritech to behave in a more efficient manner and to reduce its reliance on manual processes wherever possible, and as soon as possible; such incentives can include setting prices that assume a high flowthrough rate (although not necessarily the 98% rate that CLECs propose).

Based upon the evidence of record and consistent with the FCC's TELRIC methodology, we find that the minimum flowthrough rate to be used in this subdocket is 90%, which is derived by adding five percentage points to the upper end of the range (85%) expressed by Ameritech Ohio witness, Mr. Mitchell (90% = 85% + 5%), to induce Ameritech to achieve greater efficiencies. (Currie Reply at 68). We will continue to monitor the pertinent flowthrough and change management documentation from SBC/Ameritech (including, but not limited to, the Ameritech FlowThrough and Exceptions documentation, the 24-Month AIT Flowthrough Plan, the 12-month OSS and change management view document and miscellaneous accessible letters), as well as flowthrough Observations and Exceptions or other documents, data, or information provided to the Commission in the context of the 3rd [*71] party test of Ameritech's OSS, or elsewhere in Cause No. 41657. As flowthrough definitions, assumptions, or business rules change; as flowthrough rates projected for the near future increase; and as the Commission learns more about both potential and actual flowthrough/fallout rates and the factors which may contribute to those rates (for example, in the 41657 OSS/Section 271 proceeding), we may revisit the flowthrough and fallout assumptions that we are requiring the parties to use in this Order.

Comparison of NRCs between SBC/Ameritech States

We note the considerable record evidence that Indiana's neighbors have already adopted NRCs similar to those proposed by Mr. Turner under certain circumstances. In Illinois, Michigan and Ohio, Ameritech is required to charge NRCs of $ 1.02, $ .35 and $ .74, respectively. This contrasts with Ameritech's NRC proposals here that range between $ 28.71 and $ 102.05. Indeed, Ameritech's affiliates in other states (Texas and Illinois, for example) have agreed to or proposed NRCs that are substantially smaller than what Ameritech sought here.

Mr. Silver's argument that we should rely on previously approved cost studies in setting NRCs for UNE-P [*72] and other combinations appears to be based on the argument that NRCs for UNE-P and other combinations should be based on a sum-of-the-parts methodology using rates that Ameritech alleges we have previously approved. We have rejected this argument, both in Cause No. 40611 n38 and elsewhere in the instant order.

n38 Cause No. 40611, Order at 47 (June 30, 1998).

We now address Ameritech's concerns that CLECs are not making a fair comparison. As noted below, we are deferring any decisions on the costs and prices related to certain Ameritech OSS or functionalities; thus, we need not consider this portion of Mr. Silver's concerns here. Excluding the OSS charges, Mr. Silver identified three scenarios in which he believes the actual (complete) NRCs in other Ameritech states were higher than what the CLECs reported in the instant subdocket:

. Line port installation charges for migration of existing combinations without dial tone in Michigan
. Trunk port installation charges for UNE-P migrations in Michigan and Ohio.
. Loop [*73] and port charges for new UNE combinations in Illinois

We note, first of all, that Ameritech did not dispute the accuracy of the $ 0.35 and $ 0.74 UNE-P migration NRCs for Michigan and Ohio, respectively. Keeping in mind our rejection of the sum-of-the-parts pricing methodology, the Company's primary remaining concern seems to be that those charges were incomplete and that additional charges would apply in certain circumstances. Ameritech's position is confusing. We will discuss Mr. Silver's three scenarios in the order presented above. In his reply testimony filed in this subdocket, in response to the question, "Would Ameritech still apply the Port NRC to a request for UNE-P migrations", Mr. Silver stated, "No. Ameritech has reconsidered its earlier position, and has decided to only charge the unbundled loop service order NRC and the unbundled port service order NRC for UNE-P migrations." (Silver Reply at 4)

Regardless of what it may charge in Michigan, it appears that Ameritech is *not* proposing to charge "line port installation charges for migration of existing combinations without dial tone" in Indiana. Thus, it is proper to exclude these line port installation charges from [*74] the NRC for Combination No. 1. CLECs did not request a UNE-P combination that included a trunk port and trunk (loop-switch-trunk), nor did Mr. Silver propose any NRCs for such a combination. Therefore, Mr. Silver's comments about the exclusion of trunk port installation charges from the $ 0.35 and $ 0.74 NRCs from Michigan and Ohio, respectively, is irrelevant to the discussion of what the appropriate charge should be for the CLECs' proposed Combination No. 1. Therefore, it is also proper to exclude the trunk port installation charges from the NRC for Combination No. 1. We have addressed the port charge elsewhere in this Order; hence, we do not need to discuss that charge again here for new UNE-P installations. As no party has disputed the loop rate in Phase I of this Subdocket, we do not need to address the loop rate in this Order, either, for Combination No. 2.

While a comparison of the rates and charges between jurisdictions is not a substitute for rate setting, it can operate as a check on proposed rates here and their connection to approved rates in related jurisdictions. Thus, such an analysis cannot tell us what the precise UNE-P charges in Indiana should be to the penny. It [*75] can and does tell us, however, that a rate that is as much as one hundred times higher in Indiana than in Illinois must be supported with clear and convincing evidence. Even though given the opportunity, Ameritech has failed to provide such justification. We therefore conclude that none exists. We have already rejected the notion that the NRCs for UNE-P and other combinations should merely equal the sum of various prices that the Commission may have already approved in the past. Thus, Ameritech's philosophical objections to assessing (in Indiana) the $ 11.79 charge it proposed in Illinois, rather than assessing the sum of various charges Ameritech alleges this Commission has previously approved, are rendered moot. A comparison between the NRCs that Ameritech proposed for new installations here and what it proposed in another state is perfectly reasonable, from a philosophical or conceptual standpoint. Next, we note the implication in Mr. Silver's testimony that the $ 11.79 proposed in Illinois only included loop and port service order charges. As we are deferring a decision on OSS charges, the NRC we set for new UNE-P installations need not include those charges.

OSS Charges [*76]

The Commission agrees with the Parties that OSS charges are legitimate. (Turner Surreply at 19, 20.) However, there is insufficient evidence in the record to establish those charges. We will revisit this issue after the Commission determines the 3rd party OSS test that KPMG Consulting and the Test CLEC are currently conducting is complete, or at least substantially complete, for Indiana. At a minimum, parties should be prepared to file testimony on whether Ameritech should assess the following charges for UNE-P and other combinations in Indiana and, if so, under what circumstances: service ordering charges and feature ordering charges (if any). Parties should be prepared to file cost studies for these charges and propose rates or charges, as well. We will provide more detailed instructions at the appropriate time.

Summary

New entrants must only incur costs equal to those that Ameritech would incur using a forward-looking network architecture and efficient OSS. If the CLEC faces additional costs and obstacles, the CLEC is burdened with a barrier to entry and Ameritech has no incentive to become efficient. Nonrecurring costs must be based upon forward-looking long-run economic [*77] principles or the CLECs will have little chance to break into current ILEC markets.

We therefore find that Ameritech's proposed NRCs for UNE-P and other combinations are so high as to be unjust and unreasonable. Consistent with our analysis and findings, herein, we find that the following assumptions should be made:

1. Assume a 90% flowthrough rate/10% fallout rate for new UNE-P installations and migrations, for the purpose of setting NRCs.
2. Assume no line port installation charges for UNE-P migrations
3. Assume no trunk port installation charges for UNE-P migrations
4. OSS charges for UNE-P and other combinations to be calculated separately and determined later
5. The discrepancy between Turner and Ameritech's proposed NRCs, excluding the impact of differing flowthrough assumptions, shall be calculated as $ 0.08 for Combinations No. 1 through 4 and 32% ($ 0.08/$ 0.25) for Combinations No. 5 through 10. This discrepancy factor shall be added to the NRCs that assume a 10% flowthrough rate, as described elsewhere.

We find these changes should produce the following rates and charges:

Elements	Non-Recurring Charge
POTS/ISDN BRI Migration (UNE Platform)	$ 0.37
POTS/ISDN BRI Install (UNE Platform)	$ 0.41
POTS/ISDN BRI Disconnect (TSR/UNE Platform)	$ 0.41
Feature Changes	$ 0.41
2 Wire Loop, different CO Migration	$ 30.78
2 Wire Loop, different CO Install	$ 12.98
2 Wire Loop, different CO Disconnect	$ 11.95
4 Wire Loop, different CO Migration	$ 31.24
4 Wire Loop, different CO Install	$ 13.56
4 Wire Loop, different CO Disconnect	$ 13.09

[*78]
For Elements No. 1 through 3, because Mr. Turner did not calculate a price assuming a 10% fallout rate, we used the average percentage differentials between the prices resulting from 2% and 10% fallout rates (Turner Surrebuttal at 12) and applied them to the migration, install or disconnect UNE-P offering, as applicable (15%, 30%, and 30.5%, respectively). We assumed that a feature change (Element No. 4) was comparable to a UNE-P install, in its level of complexity and workload. Thus, we multiplied $ 0.25 by 1.15, 1.3, 1.305, and 1.3, for Combinations No. 1, 2, 3, and 4, respectively. We then added $ 0.08 to each of these products, to reflect the difference that Mr. Turner identified between the prices proposed by the CLECs and the prices proposed by Ameritech, absent the impact of any assumptions about flowthrough and fallout rates. For the last six elements we added 32% to each rate in the 10% fallout column in Turner Surrebuttal (page 12). As we did not have a summary statistic comparable to the $ 0.08 differential for Combinations No. 5 through 10, we used the percentage differential between the $ .25 and $ .33 figures (32%) as a proxy for the impact of using Ameritech's [*79] assumptions, rather than the CLECs' assumptions. We then multiplied the price associated with the 10% fallout assumptions by 1.32 to develop the final price shown in the table above.

4. Unbundled Local Switching.

A. Ameritech Indiana. Ameritech did not propose a new charge for the Unbundled Switch Port in this proceeding. Instead, the Company took the position "that the Commission has not required new cost support for the unbundled port associated with shared transport." (Currie Reply at 4) As a result, no new Unbundled Network Element proposal has been made. (Currie Reply at 4) This is based upon the Company's reading of the Commission's Order setting the scope of this proceeding. As Dr. Currie indicated on cross examination:

> Q. So if the Commission did believe that its Order required a cost study for unbundled ports associated with shared transport to be done in this docket, that would not be found in your testimony. Is that correct?
>
> A. You're not going to find something that's not there, that's correct. (Tr. 114, 1. 2-8)

Ameritech proposed that its pre-existing monthly rate of $ 5.34 for unbundled switch port remain in effect. (Tr. 49, 1. 19-24; WorldCom/Z-Tel [*80] Cross Exhibit No. 4)

B. AT&T/WorldCom/McLeod. Dr. August H. Ankum testified and recommended a flat monthly rate for unbundled local switching of $ 2.75. This flat rate would recover all costs previously recovered through the port charge, as well as the switching investment that Ameritech proposes be recovered through a usage component. Alternatively, if the Commission were to adopt a bifurcated rate structure for unbundled local switching, Dr. Ankum recommended a monthly port charge of $ 2.16 together with a usage charge of $ .000246 per minute of use. n39 (*See* also Ankum Rebuttal at 14-15)

> n39 These numbers reflect revisions made by Dr. Ankum during cross-examination. (Tr. 363, 1. 14-20)

Dr. Ankum's calculation of his recommended rates uses Ameritech's Switching Information Cost Analysis Tool ("SICAT"), corrected for alleged errors, to determine switching investments. Using Ameritech's own templates, these investments are converted into monthly costs that capture certain associated expenses by applying [*81] an annual charge factor ("ACF"). Next, other associated costs are added, including those costs typically recovered through a stand-alone port charge such as part of the MDF, telephone number, intercept, directory and other expenses. Finally, **[Confidential %]** is added for shared and common costs. This results in the $ 2.75 flat monthly charge for unbundled local switching that Dr. Ankum is recommending. (Ankum Rebuttal at 14-15)

On cross and redirect examination, Dr. Ankum indicated that he believes it is preferable as a matter of economics and regulatory policy to price unbundled switching on a flat rate basis, rather than including a port charge with an additional usage-sensitive component. n40 As an economic matter, Dr. Ankum asserted that the vendor contracts upon which Ameritech procures switches do not include a usage sensitive component. (Tr. 439, 1. 5-21) In other words, Dr. Ankum argued that, according to the vendor contract, Ameritech pays for switches on a per-line basis, and the switches are engineered to accommodate the volume of calling generated by those lines. Dr. Ankum asserted that there is sufficient excess capacity built into the per-line price of the switch [*82] that "the issue of usage becomes entirely irrelevant." (Tr. 369, 1. 1-25) Dr. Ankum further asserted that Ameritech does not incur real usage sensitive costs for average lines under its current DND switch contracts. (Ankum Rebuttal at 17) and that the switch contracts do not contain usage-based charges. (Ankum Rebuttal at 16) Thus, according to Dr. Ankum, a cost study that attempts to apply a usage-sensitive cost to a port charge really only converts a fixed charge into a minute-of-use ("MOU") charge, and does not follow cost causation principles. (Tr. 440, 1. 6-12)

> n40 As Dr. Ankum suggested, all port charges are flat rated; the issue is whether the switching component is included in that flat rate or separately stated as a usage-sensitive element. (Tr. 449, 1. 5-13)

As a matter of regulatory policy, Dr. Ankum suggested that a flat-rate switching charge is consistent with the Indiana market for local service because Ameritech Indiana's retail service is priced on a flat-rate basis. Since Ameritech

incurs these costs [*83] on a flat basis and charges for them on a flat basis at retail, Dr. Ankum argued that setting the wholesale price on a usage-sensitive basis would impair the development of local competition. He stated:

> The CLEC would be assessed usage charges, even though Ameritech itself would not assess such usage charges on the end user. And obviously where it concerns certain types of customers that have above-average usage, the CLEC would be charged a cost that begins to exceed what the -- what is assigned to a retail customer. In addition, for the high volume user, the competitor would begin to overcompensate Ameritech. In other words, we would be charged a cost greater than that which Ameritech incurs. (Tr. 449, 1.21-450, 1. 7)

For these reasons, Dr. Ankum recommended that his proposed flat-rated charge be adopted. (Tr. 448, 1. 16-24)

Dr. Ankum testified that it would be incorrect to continue the application of Ameritech's current port charge of $ 5.34 for any of several reasons:

First, the Commission's Order in this Cause directed the parties to provide evidence on "the rate for unbundled local switching ("ULS"), including the port and usage costs, if any...." n41 Despite this explicit [*84] direction from the Commission, Ameritech did not file cost support for its port charge and instead insists that "the analog line port charge is not at issue in this proceeding; it was approved by the IURC in Docket No. 40611 and Ameritech Indiana is not proposing to change the approved rate." n42

n41 *In the Matter of Ameritech Indiana*, Cause No. 40611-S1, Prehearing Conference Order, August 29, 2001 at 2, as cited by Ankum Rebuttal at 10.

n42 Ameritech Indiana's Responses to WorldCom Inc.'s Second Set of Data Requests, Answer to DR 11, as cited by Ankum Rebuttal at 11.

Second, the old rate is based upon expired switching vendor contracts that are now two generations out of date, and not on SBC's current switching vendor contracts. (Ankum Rebuttal at 11) Those contracts expired in 1996. (Tr. 452, 1. 14-17) Dr. Ankum also testified that the prices Ameritech pays for switches have decreased with each subsequent generation of vendor contracts. (Tr. 435, 1. 4-17; 25; Tr. 436, 1. 1-8)

Third, the old port rate is based [*85] on the old Switching Cost Information System ("SCIS") model, which is no longer in use and, like the vendor contracts upon which Ameritech relies, is also now two generations out of date. (Ankum Rebuttal at 11-12)

Fourth, the old rate of $ 5.34 is greatly inflated compared with the rates proposed by Ameritech itself in other states based on updated data for use of the same switching facilities, as Dr. Ankum indicated in response to cross examination by the Public. (Tr. 345-348). Indeed, the old Indiana rate of $ 5.34 is comparable to an Illinois rate of $ 5.01 that was implemented based on the same vintage of contracts. In a more recent Illinois proceeding, however, based upon new data not utilized by Ameritech here, the Company's own proposed charge dropped from this $ 5.01 to $ 1.94. (Tr. 347, 1. 11-348, 1. 3) n43

n43 *See* also, WorldCom/Z-Tel Cross Exhibit No. 4.

Finally, an additional complexity is created by Ameritech's refusal to update its port charge, while proposing to revise its usage-sensitive switching [*86] charges. The propriety of the SICAT cost model is discussed in more detail below with respect to switching investment costs. A second problem arises because of Ameritech's strategy to selectively update *switching* costs, but not *port* costs, through SICAT (the second generation successor of SCIS). The SICAT model allocates switching investments between (1) usage-sensitive (CCS-related) investments that are the basis for ULS-usage rates and (2) port-related investments that are the basis for monthly port rates. Under this construction (discounting possible problems with SICAT), one never recovers more than 100 percent of switch investment *provided that*

both port costs and ULS-usage costs are considered in the same proceeding. By refusing to do this, Ameritech has eliminated one of the crucial safety valves against over-recovery. (Ankum Rebuttal at 12-13; emphasis in the original)

Dr. Ankum testified that even though Ameritech did not propose a new port rate, its switching studies ("SICAT") feed into its Network Usage Cost Analysis Tool ("NUCAT"), which support the charges for Unbundled Local Switching, as discussed below. The SICAT analysis also is relevant to support Dr. [*87] Ankum's proposed port charge. According to Dr. Ankum, to utilize the SICAT output, however, it is first necessary to correct multiple alleged errors in its application. Dr. Ankum summarized those alleged errors into six major categories as follows:

First, according to Dr. Ankum, Ameritech fails to fairly represent its switch vendor contracts and prices. Switch vendors extend large discounts to Ameritech for newly placed circuit switches; Dr. Ankum asserts that these discounts are not fully reflected in SICAT. As a result, according to Dr. Ankum, SICAT does not produce a Total Element Long Run Incremental Cost, but instead creates a short-run marginal cost study. The result is to overstate costs, according to Dr. Ankum. (Ankum Rebuttal at 37-38; Ankum Rebuttal at 50-55)

Second, Dr. Ankum argued, SICAT assumes an unjustified and unrealistic ratio of low-cost new/replacement lines and relatively higher-cost growth lines. New and replacement lines are cut over, or installed, at the time the switch is placed into service. Growth lines are put into service at a later time to accommodate increased customer demand. (Ankum Rebuttal at 40) Growth lines typically cost two to three times as much [*88] as replacement lines, so, to the extent that Ameritech overestimates the number of growth lines, it also over-recovers costs from CLECs. (Ankum Rebuttal at 41)

Dr. Ankum testified that Ameritech has excluded millions of lines from its computations in SICAT, which skews its line counts. He stated that it calculates the number of growth lines by counting the growth on all of SBC's switches in its 13-state service area. By contrast, the number of new and replacement lines was calculated by counting the handful of new switches that Ameritech plans to install in its five-state service region. In its SICAT calculations, Ameritech does not include millions of lower cost replacement lines on its existing switches, which Dr. Ankum argues must be counted to properly follow TELRIC principles. (Ankum Rebuttal at 43-44) In this case, Ameritech proposed a ratio of 30 percent lower-cost new/replacement lines and 70 percent higher-cost growth lines. Dr. Ankum testified that this precise ratio has already been proposed by Ameritech and rejected by the Michigan and Wisconsin Commissions for its failure to comply with TELRIC principles. (Ankum Rebuttal at 48-49; Tr. 352, 1. 11-355, 1. 25) In his calculations, [*89] Dr. Ankum did include the millions of lower cost replacement lines that Ameritech had excluded. Consistent with this assumption, Dr. Ankum recommended a ratio of 70 percent new/replacement and 30 percent growth lines. (*Id.*) Both the Michigan and Wisconsin commissions have adopted this same replacement to growth line ratio, according to Dr. Ankum. (Tr. 354, 1. 7-22)

Third, Ameritech introduces a per minute of use charge for local switching - based on usage cost calculations in both SICAT and NUCAT. n44 According to Dr. Ankum, however, SBC's own switching contracts demonstrate that Ameritech does not incur any usage costs. Instead, according to Dr. Ankum, it purchases its switching facilities on a per line and per trunk basis, with sufficient capacity to accommodate significant growth in usage so that usage is simply not a cause of switching costs. n45 Dr. Ankum alleged that the per minute-of-use charges assumed by Ameritech's use of SICAT are not based on current switch vendor contracts; instead, he argues, Ameritech bases them on a set of 1998 letters that are neither part of the vendor contracts, nor reflect any separate contractual obligation. (Tr. 438, 1. 3-23)

n44 Usage is frequently expressed in terms of a measurement referred to as Centum Call Seconds ("CCS"). [*90]

n45 Peak usage for an average line in Indiana is about **3.6** CCS, according to Ameritech, and the basic analog line under the Lucent contract is engineered to handle **9.18** CCS at the peak. (Ankum Rebuttal at 18, citing Ameritech Indiana's Responses to WorldCom, Inc.'s Second Set of Data Requests, Answer to DR 3 and Lucent Contract 99006538, Exhibit 12A).

Fourth, according to Dr. Ankum, Ameritech has applied inappropriately low fill factors in SICAT. He argues that these fill factors are not found in Ameritech's switch contracts, which assume considerably greater operating efficiency. As Dr. Ankum indicated on cross-examination:

> The contracts include a contractual obligation on the part of the vendors to maintain a level of fill, below which they shall not fall. And so I would suggest to the Commission that we don't get engaged in a whole theoretical debate about where fill factors should be, that we simply go to the contract under which Ameritech has been operating for the last five years, where it has contracts in place that determine the fill factors. (Tr. 351, 1. 13-23)

Doing this [*91] results in a fill factor of **[Confidential %]**. (Ankum Rebuttal at 55)

Fifth, Dr. Ankum asserted that Ameritech's proposed switch technology mix (Lucent, Nortel and Siemens) does not reflect a least-cost network. According to Dr. Ankum, Ameritech assumes a network with twice as many Lucent switches as Siemens switches. Dr. Ankum stated that Ameritech's own calculations in SICAT indicate that the Lucent switches are more than two-and-one-half times more expensive than the Siemens switches. Dr. Ankum argued that the relative proportion of the different vendors' switches should be adjusted to capitalize on the relative value of the less expensive switches. Dr. Ankum would lower the percentage of Lucent switches from **[Confidential %]** to **[Confidential %]** and increase the percentage of Siemens switches from **[Confidential %]** to **[Confidential %]** (leaving the percentage of Nortel switches, which are priced between the Lucent and Siemens switches, unchanged). (Ankum Rebuttal at 57-59)

Sixth, According to Dr. Ankum, Ameritech assumes an inappropriately low line-to-trunk ratio of **[Confidential #]** (*i.e.* the switch needs one trunk port per **[Confidential #]** lines). [*92] This greatly increases the number of trunk ports that are needed on the switch beyond the number that Dr. Ankum stated is appropriate and thus drives up costs higher than Dr. Ankum believes is appropriate. The line-to-trunk ratio used in Illinois is **[Confidential #]**. Dr. Ankum argued that the calling patterns between the two states are similar and that, therefore, the Indiana number is unwarranted and should be adjusted to be consistent with the experience in Illinois. (Ankum Rebuttal at 61-62)

C. Z-Tel. Utilizing the FCC's HCPM Universal Service model, the basic premise of Dr. Ford's analysis is that UNE rate differentials should comport with UNE cost differentials across states. (Ford Reply at 3-5) The FCC has compared UNE rates between states in various Section 271 proceedings. Using Texas as a reference state, Dr. Ford concluded that the flat-rate switching charge in Indiana should be no more than $ 4.17 per month as a maximum. (Tr. 315, 1. 7-19)

D. Ameritech Reply.

1. Switch Usage Costs. In reply, Dr. Currie testified again on behalf of Ameritech. Dr. Currie confirmed that Ameritech had proffered no new cost studies for unbundled ports and reiterated [*93] his view that the Commission had not required that it do so. Since no new rates were proposed by Ameritech, no new cost studies were appropriate, he indicated. (Currie Reply at 4) Dr. Currie suggested that Dr. Ankum's arguments regarding port charges are incorrect because "the Commission has already approved permanent ULS port charges in Cause No. 40611 based on a compliance cost study." (*Id.*) Any action to set a new charge would constitute a re-application of TELRIC, the standards for which have not been set by the FCC. (Currie Reply at 4-8) Additionally, Dr. Currie takes exception to many of Dr. Ankum's adjustments to the SICAT model in computing a port charge and finds them to be either misinformed or the product of selective computations. (Currie Reply at 9-11)

Dr. Currie asserted that a primary issue in this proceeding is whether it incurs usage-sensitive costs for local switching, and whether it may recover those costs via a usage-sensitive rate element based on minutes of use in its ULS-ST offerings. Ameritech Indiana argues that even though it generally pays its switch vendors on a flat-rate, per-line basis, it nonetheless incurs usage-sensitive switching costs. (Currie [*94] Reply at 12) Ameritech Indiana asserted that the usage-sensitive rate element for the ULS portion of ULS-ST is necessary for it to recover these usage-sensitive costs.

Dr. Currie explained that the investment cost of the switch matrix -- the equipment inside the switch that channels calls from the line port to the trunk port -- is driven by, and tied directly to, how much the switch is used at the peak time (*i.e.*, the time of maximum use). Ameritech Indiana explains that a switch's capacity to channel calls at the peak time is known as "CCS" (or "Centi- Call Seconds") capacity.

Dr. Currie stated that Ameritech Indiana incurs usage-sensitive switching costs tied to increases in CCS capacity in the following ways. First, Dr. Currie explained that the switch vendors do not install switches with sufficient CCS capacity to accommodate all potential usage. (Currie Reply at 14) As the CCS usage of a switch increases, additional

equipment must generally be installed to accommodate that usage -- equipment such as additional trunk ports, umbilicals, line units, and extra switching modules. *Id.* (Ameritech Indiana witness Mr. Jarmon also detailed the types of equipment added to switches [*95] in response to increases in usage. (Jarmon Reply at 7) Due to the addition of this equipment, a higher-usage switch costs the vendor more to provide than a lower-usage switch serving the same number of lines. (Currie Reply at 14) Dr. Currie explained that the switch vendors will not simply "eat" the costs of providing the additional equipment necessary to accommodate a higher-usage switch, but will instead pass these costs to Ameritech Indiana by adjusting their per-line prices upward at the first opportunity in order to maintain their expected level of profits. (Currie Reply at 14)

Second, Dr. Currie explained that Ameritech pays for "CCS jobs." These are orders that Ameritech places with its vendors for additional equipment necessary to handle growth in usage beyond that contemplated by the vendors at the time of switch installation. (Currie Reply at 14) And, contrary to the CLECs' suggestion, he stated that the charges for these jobs are based in the contracts; according to Ameritech, the contracts under which it currently purchases switching equipment (the SBC DND contracts) are the basis for determining how much Ameritech must pay for the additional equipment provided in CCS [*96] jobs. (*Id.* at 13)

Dr. Currie argued these examples show that usage is a cost-driver for switching -- without increases in usage, there would be no need to augment the switches with additional equipment -- and that Ameritech incurs these costs. (Currie Reply at 15) Consequently, Ameritech Indiana asserted that it is irrelevant whether switch vendors charge usage-based rates in their contracts. Dr. Currie stated that the contractual per-line prices are simply the way it *pays* for switching, but those prices say nothing about whether Ameritech incurs usage-based costs. Ameritech Indiana argued that it is the job of the cost analyst to take the per line prices provided in the contracts and determine the portion that is usage-related. And in fact, Ameritech Indiana noted that its vendor contracts *do* contain express provisions that cause it to incur usage sensitive costs when it buys switches. Dr. Currie also noted that one vendor's DND contract specifies per-line prices that are expressly dependent on the amount of usage for the line: the per-line prices are different for three different blocks of usage, and a higher usage line costs more than a lower usage line. (Currie Reply [*97] at 12; *see also* prices listed at Ameritech Cross Ex. 7 (SICAT model) at 2-3)

Ameritech Indiana asserted that without a usage-sensitive rate element for ULS it will be unable to recover its usage-related switching costs and will be forced to subsidize the switch usage of the CLECs and their customers. Ameritech Indiana explained that CLEC customers, in general, are business and institutional customers who use the switch much more during peak times than do residential customers, who are primarily the customers of Ameritech Indiana. Therefore, Ameritech Indiana argued that CLEC users contribute much more to the switch's CCS capacity investment (because that investment is driven by use at the peak time), and therefore, the switch's cost.

Ameritech Indiana stated it is only fair to require those customers whose use plays a larger role in driving the CCS capacity of a switch to pay more. Ameritech Indiana argued that the usage-sensitive rate element is the only way to accurately ensure that each customer pays its fair share of the usage-related costs it causes. Ameritech Indiana asserted that under the CLECs' proposed flat rate, all customers pay the same regardless of how much or how [*98] little they use the switch, and that Ameritech Indiana and its generally low-use customers will therefore subsidize the switching costs of the CLECs and their generally high-use customers.

2. Type of Lines. Dr. Currie stated that under the DND contracts, Ameritech Indiana pays for switching on a per-line (or per-trunk port) basis. Dr. Currie explained that Ameritech Indiana buys switching capacity and equipment on a per-line basis from its switch vendors in three basic formats: "replacement" lines, "new" lines, and "growth" lines, and the contracts contain different prices depending on which kind of line is bought. (Currie Reply at 31) The "*replacement line*" price applies when SBC buys a digital switch that replaces one of a limited number of existing analog switches. (*Id.*) The "*new line*" price applies when SBC buys an entirely new digital switch, one that is not replacing any existing switch. (*Id.*) The "*growth line*" price applies to lines added to existing digital switches or to "replacement" and "new" digital switches already placed under the contracts. (*Id.*) Dr. Currie emphasized that while the "replacement" and "new" line prices apply only to a limited [*99] number of individual switches, the "growth" prices apply to all lines installed on any digital switch. (*Id.*) Ameritech Indiana also adds that the replacement and new line prices are relatively low, while the growth line prices are much higher. (*See* Ameritech Ind. Cross Ex. 7 at 2-3)

Ameritech Indiana explained that, despite this three-tiered contractual structure, it is really only buying a single thing regardless of the particular price it pays -- namely, a functional line of switching. Ameritech Indiana argued that this contractual structure results from the competitive nature of the switch market. Vendors charge inexpensive (and often below-cost) replacement and new line prices to induce Ameritech to buy their digital switches. Once Ameritech

does so, Ameritech becomes "locked in" to that vendor, and can only add additional growth lines to that switch by going back to that same vendor. Ameritech Indiana explained that the vendors know this and charge high growth line prices to recover both the cost of the growth lines and any loss taken on the low replacement and new line prices (plus a reasonable profit).

Dr. Currie explained that it is SICAT's job to take these various [*100] contractual prices (and other charges), combine them with the quantities of each kind of line that are expected to be provided under the contracts, and generate the single price that the vendor would charge SBC if it replaced its three-tiered pricing structure with a single per-line price -- the price the vendors would charge for a line of switching if SBC went to them today and asked them to replace all of its switches. (Currie Reply at 31) Dr. Currie explained that this single price per line calculated by SICAT represents the best estimate of the average forward-looking market price the switch vendors would charge SBC/Ameritech for any quantity of new lines. (*Id.*) Therefore, it is the appropriate price estimate to use in a TELRIC analysis. (*Id.*) This price is then used as a cost input in the NUCAT model, which, consistent with TELRIC, applies that price to the whole of SBC's network to develop the forward-looking cost of replacing the whole network from scratch.

Dr. Currie explained that the unit price generated by SICAT is directly tied to the actual forward-looking line quantities and prices contemplated by the vendors and SBC at the time the contracts were negotiated. [*101] (Currie Reply at 33) Dr. Currie explained that vendors know they are earning less profit on replacement and new lines than on growth lines. (*Id.*) In fact, in some cases, the vendors are losing money on the lines they sell to Ameritech. For instance, one vendor essentially gives away lines on seven new switches, *i.e.*, such lines are almost free to Ameritech. This is obviously below the cost of installing a new digital switch. (*Id.*) Dr. Currie also explained that, under the previous contracts, one vendor gave away lines on replacement switches for free, but that now that vendor's lines are now significantly higher under the DND contracts. (*Id.*) The vendors do this, Dr. Currie explained, because they know they will only have to provide a relatively small and limited number of replacement and new lines at these low prices because those prices apply only to particular analog switches in particular wire centers being replaced or to a small number of newly installed digital switches. (*Id.*) On the other hand, the vendors will be able to provide the higher-priced growth lines on all of the digital switches in the network. (*Id.*)

Ameritech Indiana contended that since [*102] the vendors know how many of each kind of line they will have to provide, they can set and calibrate the prices for each type of line accordingly so that the total revenues derived from the growth and replacement lines together recover the total costs of providing the lines. Thus, the replacement and new line prices are tied directly to growth line price, and more specifically, to the number of each kind of line the vendor will be required (in the case of replacement and new lines) and will be able (in the case of growth lines) to provide. But adding additional line quantities to SICAT -- as Dr. Ankum does by including replacement lines placed under prior contracts and at different prices -- distorts the actual forward-looking price contemplated by the vendors and SBC under the current contracts. (Currie Reply at 33) This is because Dr. Ankum's approach expects the vendors to charge the lowest price on a vastly higher percentage of lines than contemplated by the contracts. (*Id.*) Dr. Currie explained that by using the lowest prices for all non-growth lines, Dr. Ankum's approach drives down the average price per line significantly and would result in vendors not recovering their [*103] total costs. (*Id.*)

Dr. Currie also noted that Dr. Ankum's analysis is methodologically outdated -- it is premised on the old bifurcated price structure that used to govern Ameritech's switch purchases. Under the old contracts, the vendors priced replacement lines and growth lines only; they did not separately price new lines. In his testimony in this proceeding, Dr. Ankum fails to explicitly discuss or account for the prices for new lines -- for those lines on brand new switches that are not replacing any existing switch. (Currie Reply at 40) Instead, Dr. Currie explained, Dr. Ankum simply applies the lowest price between new and replacement lines to the replacement line counts; when the replacement line price is lower, Dr. Ankum uses that price as the price to be applied to the replacement line counts, and when the new line price is lower, Dr. Ankum uses that price to be applied to the replacement line counts, even though the contracts expressly confine that price only to new line purchases. (Currie Reply at 40-41; Tr. at AA-399-403 Ankum Cross)

3. SICAT as a TELRIC Model. Dr. Currie also addressed Dr. Ankum's claim that SICAT is not a TELRIC study because it fails to account [*104] for all lines. Dr. Currie acknowledged that SICAT is not a TELRIC study. Instead, Dr. Currie explained, SICAT simply calculates unit investments that are then applied to the entire network in a TELRIC cost study. (Currie Reply at 43) SICAT simply calculates the average forward-looking price per line of switching equipment based on the contracts SBC has with its vendors. (*Id.*) After SICAT determines this price, the price is used in cost models that include all the lines in the network as if, consistent with TELRIC, SBC were rebuilding its entire network from scratch. (*Id.*) Dr. Currie explained that Dr. Ankum conflates these two steps. Dr. Ankum pollutes the first step -- the calculation of the average forward-looking price per line -- with the second step -- the determination of a

TELRIC price -- by including embedded network data in the first step. (*Id.* at 41) Dr. Ankum improperly assumes that all lines in the network that are not covered by the existing DND contracts were installed at the lowest line price as part of the first stage of the calculation. (*Id.* at 42) n46

n46 Ameritech also asserted that, in addition to his inappropriate adjustments to SICAT, Dr. Ankum's ULS proposals suffer from additional flaws. First, Dr. Ankum ignores Ameritech's cost support for the category of "Other Expenses" (*see* AT&T/WCom/McLeod Ex. 4C (Ankum Rebuttal) at 14) and erroneously claims that those expenses are significantly higher than those found in other Ameritech states. As Dr. Currie testified, the "Other Expenses" in the most comparable compliance cost study were slightly higher than those proposed here. (Currie Reply at 10) Second, Dr. Ankum erroneously presumes that the feature investment value found in SICAT is a complete replacement for the feature investment found in the Ameritech POTS port Compliance Study that he relies on. It is not. (*Id.*) Accordingly, Dr. Ankum understates Ameritech's feature investment for an unbundled basic port. (*Id.*)

[*105]

4. Switch Technology Mix. Ameritech Indiana explained that the switch technology mix assumed in its SICAT model is based on the current line mix across switch vendors in Indiana. Dr. Currie explained that the current mix is the best estimate of the forward-looking line mix. (Currie Reply at 52)

Ameritech Indiana argued that its current line mix reflects the fact that the decision to purchase switches from any given vendor is based on a variety of factors, not just the cost of the switches. This is why Ameritech does not buy 100% of its switches from the vendor with the cheapest "up-front" switch price. Rather, Ameritech Indiana explained that when deciding from whom to purchase a switch, it must also consider things such as power requirements, floor space requirements, feature availability, feature cost, HVAC requirements, equipment availability, contract terms, maintenance costs, future switch growth costs, technician training requirements, OSS compatibility, installation quality, and the revenue potential of the switch. (Jarmon Reply at 3) Ameritech Indiana argued that the CLECs fail to account for these other factors that influence the mix of switches in the network, and therefore, [*106] the Commission should reject the CLECs' position that Ameritech's switch technology mix does not reflect a least-cost network because the percentage of Lucent switches -- the most expensive switches -- is too high.

Ameritech Indiana next noted that Dr. Ankum's proposed mix simply swaps the percentages of Lucent and Siemens switches, without providing any reasoning or analysis justifying the percentages. Indeed, Dr. Ankum acknowledged that his proposed mix is not the result of any calculation but results only from what he feels TELRIC requires. (Tr. at AA-417-18 Ankum Cross) Moreover, Ameritech Indiana noted that the mix proposed by Dr. Ankum is fundamentally at odds with the expectations that Lucent and Siemens could have reasonably entertained while negotiating the DND contracts. As Dr. Currie explained, the actual contract prices would likely be substantially different for both Lucent and Siemens.

E. Findings. We agree with Ameritech Indiana that a primary issue in this subdocket is whether it incurs usage-sensitive costs for local switching, and whether it may recover those costs via a usage-sensitive rate element in its ULS-ST offerings, based on minutes of use. We were [*107] presented with numerous arguments about what is, and is not, contained in the current SBC DND contracts and whether older Ameritech-specific contracts should or could be used, instead. We were also presented with many theoretical arguments about whether or not Ameritech incurs usage costs, and even whether the vendors, themselves, incur usage costs. Dr. Currie presented evidence that Ameritech may, in fact, have incurred usage costs (so-called "CCS jobs") in the past and estimates of then-future CCS jobs and costs. He was much less clear about several critical, related issues. First of all, while Dr. Currie provided an estimate of projected CCS job amounts for Indiana for the year 2001 to support Ameritech's argument that there should be a usage-based switching element associated with ULS-ST, he has not updated this amount, so we do not know the precise amount he is using to illustrate the Company's position. Furthermore, we cannot determine whether, how, and when the switch vendors recovered, or would recover, those additional costs from Ameritech. In other words, it is impossible to determine from the evidence presented by both sides whether the **[Confidential $]** in CCS job [*108] amounts were included in the original purchase price of the switch, or were specifically covered under the contract terms at all. Most importantly, we could not determine whether Ameritech was (will be) actually required to pay an "extra" or additional rate or charge to the vendors, over and above the original purchase price or any other prices contemplated in the contract(s). n47 Ameri-

tech did not provide sufficient testimony or data directly linking the **[Confidential $]** in CCS job costs that Dr. Currie reported in his reply testimony with the actual rate it proposed to recover **[Confidential $].**

n47 Currie Reply [Confidential] at 16-17.

Ameritech Indiana's assertion that without a usage-sensitive rate element for ULS it will be unable to recover its usage-related switching costs and will be forced to subsidize the switch usage of the CLECs and their customers is misleading, at best. Ameritech Indiana's claim that "the CLECs' customers, in general, are business and institutional customers who use the switch [*109] much more during peak times than do residential customers, who are primarily the customers of Ameritech Indiana" may be true; however it does not come close to telling the whole story of who uses its switches and in what proportions. First of all, UNE rates do not distinguish between business and residential users. Ameritech proposed a single usage-sensitive rate for the local switching component of the ULS-ST offering; it did not propose two separate rates for business and residential customers; therefore, we do not understand the need to treat the costs of serving these two customer classes differently. This would be enough to render Ameritech's arguments meritless. However, those arguments rest on some critical assumptions that must be addressed. Putting aside the very difficult jurisdictional separations questions associated with determining costs for UNEs, Ameritech's comparison between CLEC and ILEC (in this case, Ameritech Indiana) retail customers is misplaced. This proceeding is not designed to determine costs or prices for the provision of retail services, whether by Ameritech Indiana to its own retail customers, or by CLECs to their retail customers. It is also not designed [*110] to compare usage of Ameritech's switches between customer classes or between carriers, or to allocate switching costs based upon that comparison. Even if this proceeding were designed to accomplish either of those objectives (which it is not), the level of detail in Ameritech's evidence is not remotely sufficient to allow us to resolve those issues. Ameritech has assumed numerous facts not in evidence; we need not, and we will not, base our decision on the rate structure or rate levels for the ULS-ST offering on Ameritech's highly speculative arguments about the relative usage of Ameritech's switches, cost causation and allocation, and subsidization.

Even without the many defects in Ameritech's arguments, we would still agree with Dr. Ankum that the charge for switching for the ULS-ST offering should be implemented on a flat-rate basis. A flat rate switching charge is consistent with retail markets in Indiana. In a climate where flat rate local service is important for many customers, allowing Ameritech to collect usage costs from its CLEC competitor-customers would place CLECs at a disadvantage. In many cases, they would be forced to charge their own retail customers on a usage sensitive [*111] basis in order to recover usage sensitive costs imposed by Ameritech, while Ameritech's own local retail customers do not pay a separate local switching rate. This could have profound consequences on the ability of Indiana consumers to take part in a competitive marketplace.

The burden is on Ameritech in this proceeding to support the inclusion of a usage-sensitive rate element in the rate structure for ULS-ST. For the reasons discussed in the previous paragraphs, Ameritech has not met that burden. Accordingly, we find that Ameritech's request to assess a usage-sensitive switching charge for ULS-ST should be denied and that the switching costs (including usage costs, if any) for the ULS-ST offering should be recovered from CLECs on a flat-rate basis.

Next, we turn to what that flat-rate charge should be. As with our resolution of Non-Recurring Costs above, we are again confronted with the peculiar position of Ameritech that our Orders in this Cause did not require the filing of cost studies upon which to base the charge for unbundled ports. To revisit that specific language again, we instructed the parties on August 29, 2001 that this Cause would address "the rate for unbundled local [*112] switching (ULS), including the port and usage **costs**, if any ... [emphasis added]." This directive in our August 29th Order was in response to a Motion for Clarification of AT&T/WorldCom which requested that this Commission recognize that Ameritech's new switch vendor contracts and the new ULS-ST cost studies impact both the line port charge and the switch investment costs, and as such both types of costs should be addressed in this Cause. We agreed and so ordered that both the port and usage costs, if any, would be addressed. In response, Ameritech filed no cost studies in support of its port charge. As Dr. Currie indicated on cross-examination, we are "not going to find something that isn't there." (Tr. 114, 1. 2-8)

Indeed, Ameritech only filed one cost study in this phase of the proceeding dealing with unbundled local switching-shared transport ("ULS-ST"). (Tr. 114, 1. 14-15) We find this curious, especially since pleadings filed by the Company earlier in this proceeding indicated that it would file "20 to 25 cost studies." n48 As we indicated with NRCs above, we will not allow Ameritech's failure to submit cost data to hinder our review of this issue. Our direction to file [*113]

cost studies was clear. Ameritech had the option to either file cost studies or not. It did not. Similarly, if Ameritech found our Order to be ambiguous in any way, it could have asked for clarification. It did not. We can only surmise that Ameritech has chosen to forego that opportunity and the opportunity to file cost studies. Therefore, we will proceed to decide this issue on the evidence before us. In so doing, we will fully consider Ameritech's position that the existing rate for unbundled ports should remain in effect.

n48 Ameritech Indiana's Suggested Process and Schedule, Cause No. 40611-S1, filed July 16, 2001.

In considering Ameritech's proposal to retain the current unbundled port charge of $ 5.34 per month, we must note the criticisms of that charge raised by Dr. Ankum. Particularly, the rate Ameritech proposes to retain in 2002 is based on switching contracts that are now two generations old. We cannot accept data this stale as a reliable basis for establishing costs, especially when much newer data are [*114] available. That concern is accentuated here, where we are charged with setting costs based on a forward-looking TELRIC methodology. We are aware that the Company itself does not operate under these old contracts, nor will it in the future. We similarly reject the assessment of the current port charge, which is the product of a cost model that has since been twice replaced by Ameritech. Again, by its own demonstration, Ameritech would not proceed to build or determine the cost of its network by utilizing the SCIS model today. Thus, the assessment of the $ 5.34 port charge is not appropriate or reasonable.

Also, we cannot ignore the fact that $ 5.34 rate was set at a time when it corresponded with the rates of other Ameritech states, nor that subsequent rate reviews have produced substantial reductions in these jurisdictions. While rate comparisons are not dispositive here, they are instructive in illustrating trends for common elements across similar or sister jurisdictions. As we observe SBC/Ameritech itself currently proposing to cut port charges by half or more in several of its other operating states, it strains credibility to accept the reliability of its comparatively high, six-year-old [*115] rate here.

For all these reasons, and based upon a thorough consideration of evidence put forward by Ameritech, we reject its proposal to assess the $ 5.34 rate for unbundled ports.

Next, we turn to the position put forth by various CLECs in this proceeding. Dr. Ford, on behalf of Z-TEL, indicated that the "TELRIC Compliant Upper Limit" for End Office Switching in Indiana is $ 4.21 (Ford Reply, Attachment: Z-TEL Public Policy Paper No. 2, Table 2) but that "Cost-based switching rates in Indiana should be about $ 4.17." (Ford Reply at 10) He calculated this $ 4.17 figure by multiplying $ 4.04 by 1.03 (According to Dr. Ford, the average monthly rate for end-office switching in Texas is $ 4.04, while switching costs are three percent higher). We note several things about these figures. First, the $ 4.21 figure (and, presumably, the $ 4.17 recommended rate) includes both a port charge and a usage component, measured by multiplying average End Office Switching minutes by an average local switching rate. We also note that Dr. Ford's data are state-specific, rather than company-specific. Thus, his comparisons between switching rates in Texas and Indiana take into account companies other [*116] than just SWBT-Texas and Ameritech Indiana. All things being equal, we would assume that Ameritech Indiana's switching costs would be lower than the statewide average. For example, we have previously set smaller wholesale discounts for GTE than for Ameritech Indiana because we assumed that GTE's costs for its Indiana operations were lower than Ameritech Indiana's corresponding costs. n49 Thus, using the data that Dr. Ford reported, we would expect a reasonable monthly recurring charge for unbundled local switching (including both the port charge and recovery of usage costs, if any) for Ameritech Indiana to be *less than* the $ 4.17, which also appears to be a statewide figure. Finally, as we have noted elsewhere, comparisons of rates between states cannot tell us what a particular rate or charge should be for Ameritech Indiana. However, knowledge of rates and charges in other states can help us to establish a zone of reasonableness for those rates and charges.

n49 *See* Cause No. 41117.

On behalf of AT&T, WorldCom, [*117] and McLeod, Dr. Ankum recommends the adoption of a flat rate monthly charge for unbundled switching of $ 2.75, which does not include any usage component. Dr. Ankum's proposal takes Ameritech's new cost model ("SICAT"), adjusts for certain alleged errors in the model's assumptions, adds various other cost components and marks up the cost for shared and common costs to arrive at $ 2.75.

Based upon our review of the evidence and our discussion below, we find that a monthly recurring charge for unbundled local switching must fall somewhere between the $ 2.75 that Dr. Ankum proposed and $ 4.00 (Dr. Ford's proposed rate of $ 4.17, adjusted to exclude the impact of switching costs for companies other than Ameritech Indiana). As discussed elsewhere, we are ordering Dr. Ankum to rerun his cost study(ies) or calculations with several changes to his assumptions. This will likely lead to a monthly recurring charge that is higher than his recommended $ 2.75 figure.

5. Unbundled Local Switching--Shared Transport

A. Ameritech Indiana. Dr. Currie presented Ameritech's recommendation for Unbundled Local Switching-Shared Transport ("ULS-ST") rates as follows:

ULS usage	****
ULS-ST Blended Transport Usage	****
ULS-ST Common Transport Usage	****
ULS-ST Tandem Switching Usage	****
ULS-ST Reciprocal Compensation	****
ULS-ST SS7 Signaling Transport	****

[*118]
(Currie Direct, Ex. KAC-1R)

This recommendation was tied to the testimony and supporting studies of Dr. Currie, who developed the TELRIC of ULS-ST. This analysis was based on commercially available, state-of-the-art technology that Ameritech deploys or plans to deploy in Indiana. (Currie Direct at 5-6) The primary model used in developing these costs was the Network Usage Cost Analysis Tool ("NUCAT"), which determined the per minute of use costs of numerous network functions and services. (*Id.* at 6)

Dr. Currie utilized four additional models in his analysis: (1) the Capital Cost System (CAPCS) for annual charge factors; (2) the Switching Information Cost Analysis Tool (SICAT) for switch investment; (3) the Signaling Cost Tool (SigCost) for calculation of SS7 investment; and (4) the SBC Program for Interoffice and Circuit Equipment model (SPICE) for interoffice and circuit equipment investments. (Currie Direct at 7-8)

Dr. Currie's analysis also calculated the cost of money, economic lives and utilization/fill factors related to ULS-ST. (Currie Direct at 8)

B. OUCC. Ralph W. Sorrell, Principal Utility Analyst in the Telecommunications Division of the Indiana Office of Utility [*119] Consumer Counselor ("OUCC"), testified on behalf of the Public. He opposed Ameritech's proposed use of different annual cost factors ("ACFs") in this sub-docket (Cause No. 40611-S1) than those established by the Commission in the main docket of this proceeding (Cause No. 40611). He explained that ACF values are inputs to the total element long run incremental cost ("TELRIC") model used to calculate monthly recurring charges. The ACFs at issue in this proceeding include cost of capital, economic life, and forward-looking fill factors. (See Commission Order in Cause No. 40611 dated June 30, 1998, as subsequently reaffirmed in Orders dated January 26 and August 16, 2000.) (Sorrell Direct at 2)

Mr. Sorrell testified that the Commission's June 30, 1998 Order established ACF inputs to be used in developing the TELRIC of unbundled network elements ("UNEs") under Section 251(c) of the Telecommunications Act of 1996 ("TA-96"). Mr. Sorrell testified that Ameritech should be required to continue using the same ACF inputs established in the main docket of this proceeding to set prices for any UNEs that were not previously finalized and, thus, were carried over into this sub-docket. On page 47 [*120] of the June 30, 1998 Order in the main docket of Cause No. 40611, the Indiana Utility Regulatory Commission ("IURC") ordered Ameritech "to rerun its cost studies ... utilizing (i) the fill factor assumptions contained in Ameritech's Cost Analysis Resource manual, (ii) the 9.74 percent cost of capital ... and (iii) the longest depreciation lives proposed by Ameritech Indiana for its plant and equipment." (Sorrell Direct at 2-3)

Mr. Sorrell argued that, since this Commission already established cost of capital, economic depreciation lives and fill factors for Ameritech's UNEs in the main docket of this proceeding, Ameritech's attempt to revisit those values in this sub-docket results in inefficient and repetitive litigation beyond the intended scope of this sub-docket. This Commission has said that it is "committed to issuing orders that encourage the development of local exchange competition in Indiana." This Commission has also stated that it is "very concerned" about the length of time that Cause No. 40611 has been open without all pertinent issues being resolved. (*See* p. 2 of January 18, 2001 Order in Cause No. 40611) Mr. Sorrell testified that attempting to revisit the calculation [*121] of ACFs in this sub-docket would result in piecemeal

rate making, with inconsistent ACFs being used to establish UNE rates for different types of UNEs that Ameritech is required to provide under Section 251(c) of TA-96. Therefore, Mr. Sorrell requested that Ameritech be required to re-calculate its proposed charges using the ACFs previously established by this Commission as inputs for the TELRIC models. (Sorrell Direct at 3)

Mr. Sorrell testified that the use of ACF values different from those previously established by the Commission would impact Ameritech's proposed monthly recurring charges ("MRCs") for collocation, interconnection and UNEs. The ACF values Ameritech attempted to use in this sub-docket were introduced by its witness Kent Currie. (*See* Confidential Exhibit KAC-7) Mr. Sorrell explained that Dr. Currie used Ameritech's new proposed cost of capital, fill factor, and economic depreciation life values in the cost model to convert Ameritech's total investment in facilities that are used to provide UNEs into annual or monthly costs. (Sorrell Direct at 3-4)

In its June 30, 1998 Order in the main docket of this proceeding, the Commission found that "Ameritech Indiana currently [*122] faces no competition in this line of business [the provision of UNEs], making such investments virtually risk free." (June 30, 1998 Order in Cause No. 40611, at p. 7, "Inputs to the Cost Studies") As Mr. Sorrell noted, the Commission reiterated that point in its August, 2001 Regulatory Flexibility Report, when it stated "incumbent market dominance remains an indisputable fact in Indiana." (*See* August 2001 Regulatory Flexibility Report at 8) Mr. Sorrell also pointed out that the Commission's Regulatory Flexibility Report linked the current disappointing level of competition in the provision of local exchange telecommunication services in Indiana to continued uncertainty regarding TELRIC-based rates for UNEs that are essential to the development of competition in this state. (*See* August 2001 Regulatory Flexibility Report at 4) Mr. Sorrell stated that fair and reasonable UNE rates must be established without further delay if local exchange competition is to develop successfully inside Ameritech Indiana's service territory. (Sorrell Direct at 4)

Mr. Sorrell testified that various factors influence the ease with which competitors are able to enter new markets (e.g., the amount [*123] of capital required for market entry, existing and anticipated economies of scale, switching costs, and brand value). Mr. Sorrell testified that, the easier it is for competitors to break into new markets, the more likely they are to do so. If the Commission does not set reasonable and fair wholesale rates in Indiana, the state's UNE rates will discourage competitive entry. Mr. Sorrell pointed out that, without comparable and competitive alternate service provider options, Indiana consumers will never realize the benefits of a competitive local exchange market that Congress envisioned when it adopted TA-96.

Mr. Sorrell cautioned that, since Ameritech faces no threat of competitive entry in the wholesale provision of UNEs in its incumbent local exchange carrier ("ILEC") service territory, any further delay in this proceeding would only serve to protect Ameritech's continuing market dominance at both the retail and wholesale levels. Mr. Sorrell urged the Commission not to revisit ACF values that were already approved in the main docket of this proceeding, since that would unnecessarily and inappropriately delay the setting of collocation and other UNE rates to be addressed in later Phases [*124] of this sub-docket, further delaying the development of a competitive market for local exchange telecommunications services in Ameritech's ILEC service territory.

Mr. Sorrell also testified that, if the Commission were to permit Ameritech to use different ACF values in this sub-docket than those previously established by the Commission in the main docket of this proceeding, it would thwart CLEC business planning efforts by injecting uncertainty and unpredictability into the UNE rate setting process. It would also constitute a piece-meal approach to rate making -- an approach this Commission has repeatedly rejected in traditional rate cases. To the extent that Ameritech's proposed changes in ACF values would increase the resulting UNE rates, it would be unfair to competitors not to reevaluate and, if indicated, to revise other cost model inputs carried over from the main docket. Mr. Sorrell testified that if, during the pendency of a single UNE rate proceeding, the Commission permits Ameritech to make mid-stream, piece-meal changes to ACF values, resulting in higher and less predictable UNE rates, that could discourage otherwise qualified and interested UNE-based CLECs from entering [*125] and competing in Indiana's local exchange telecommunications service market.

Mr. Sorrell testified that the Commission should establish rates for all services that Ameritech is required to provide under 251(c) of TA-96 in this proceeding. By using the same inputs in this sub-docket as the IURC previously ordered in the main docket, the IURC would reduce litigation costs and delays -- both of which constitute potential barriers to market entry.

Mr. Sorrell testified that Ameritech failed to present persuasive evidence or argument to justify changing ACF values in mid-stream. Mr. Sorrell also criticized Ameritech's claim that the ACF values it proposed using in this sub-docket were more current than the cost estimates the Commission established in the main docket. Mr. Sorrell testified that the

information Ameritech relied on in setting its proposed cost of capital was stale. The proxy group Ameritech used failed to give any weight to recent, significant mergers in the telecommunications industry (e.g., the SBC/Ameritech and Bell Atlantic/GTE mergers); and the data Ameritech used to project its capital structure for 2002 through 2004 was taken from a Value Line Investment Survey dated [*126] April 9, 1999. (Sorrell Direct at 12)

Mr. Sorrell also criticized the hypothetical capital structure Ameritech used to compute its proposed weighted cost of capital as too rich in equity. (*See* Exhibit KAC-7) Up to a certain percentage of total capital, long-term debt is generally a less expensive method of financing utility plant than common equity. Therefore, a capital structure comprised of a mixture of long-term debt and common equity usually produces a lower weighted average cost of capital than a capital structure comprised entirely of common equity. Ameritech's proposed hypothetical capital structure ignored the availability of low-cost debt financing. Mr. Sorrell testified that a more heavily leveraged capital structure should be assumed when computing TELRIC rates. (Sorrell Direct at 12)

In Mr. Sorrell's opinion, if the Commission decides to permit Ameritech Indiana to use a different cost of capital in this sub-docket than the Commission ordered in the main docket of this proceeding, the capital structure used in that computation should include at least 40% debt, allowing Ameritech to achieve a lower weighted cost of capital than it proposed in this sub-docket, further [*127] reducing proposed UNE rates under any cost model the Commission might ultimately approve.

Mr. Sorrell also noted that Ameritech relied on the Order in consolidated Cause Nos. 40785-S1, 40849, and 41058 ("OI-2000") to support its use of a different cost model in this sub-docket. However, Mr. Sorrell reminded the Commission that the OI-2000 case was settled, not litigated, that the Settlement Agreement was non-precedential and, by its very terms, was not to be offered into evidence or relied on in argument by any of the settling parties in any other proceeding, except as needed to enforce the terms of the Agreement. Mr. Sorrell noted that if the Commission decided to consider language in the Settlement Agreement or in the Commission's Order approving the settlement reached in OI-2000, that the Commission would recall that it did not expressly approve the cost studies Ameritech used in that case. (*See* discussion on p. 32 of the March 19, 2001, Order [in OI-2000] and on p. 14 of the May 24, 2001, Order on Petition for Reconsideration.) (Sorrell Direct at 11-12)

C. Intelenet Commission. The Intelenet Commission witness, Mr. Jerry Sullivan, testified that the Intelenet Commission [*128] views the resolution of the pricing issues in to be extremely important to its constituency and the future of competitive telecommunications entry in Indiana. He stated that the Intelenet Commission believes it is essential for potential competitors to have access to the interconnection services being investigated in this docket; and urged a swift determination of these pricing matters. Pointing to Ameritech witness Silver's testimony at page 8, Mr. Sullivan also testified that the purpose of this case is to determine ULS-ST costs, not establish terms & conditions that would apply, if a competitor purchases ULS-ST. The Intelenet Commission expressed the concern that an attempt to establish policy in this cost investigation could discourage some competitors from purchasing ULS-ST. Thus, according to Mr. Sullivan, it might delay competitive entry by CLECs and/or result in inefficient use of service or facilities by CLECs.

D. AT&T/WorldCom/McLeod. Dr. Ankum testified and proposed alternative rates based on his analysis of and adjustments to Dr. Currie's recommendation. For comparison purposes, the two proposals are displayed side-by-side below.

Element	CLEC	AIT
ULS Switch Usage per MOU	NA n50	**
ULS-ST SS7 Signaling Transport per msg	**	**
ULS-ST Blended Transport Usage per MOU	**	**
ULS-ST Common Transport per MOU	**	**
ULS-ST Tandem Switching per MOU	**	**

[*129]
(cf. Ankum Rebuttal at 73)

n50 Already calculated and included in Port Charge.

Thus, Ameritech proposes rates that are from two to twenty times greater than those proposed by Dr. Ankum on behalf of the CLECs. The difference stems from six main factors, according to Dr. Ankum.

First, since SICAT calculates the switch investments used in NUCAT, any flaws identified in the way in which Ameritech calculates the port charge also affect the ULS study. (cf. Ankum Rebuttal at 62-63.) Second, Ameritech's proposed Digital Switch Annual Cost Factor ("ACF") (which converts switch investment into recurring costs) of **[Confidential $]** is higher than what the Company proposed a few months ago in Illinois. (cf. Ankum Rebuttal at 64-65). Third, Ameritech's proposed SS7 rate of more than **[Confidential $]** also differs significantly from that proposed by the CLECs. As Dr. Ankum also notes, the number proposed by Ameritech is more than **[Confidential $]** than the **[Confidential $]** proposed by Ameritech itself recently [*130] in Illinois. (cf. Ankum Rebuttal at 65-66) Fourth, Ameritech and the CLECs also disagree on whether, and to what extent, Ameritech's billing inquiry expenses should be based on Ameritech's own end user inquiries. According to Dr. Ankum, Ameritech's billing inquiry study relies on "millions" of its end user inquiries and does not take into account CLECs' fielding questions from end-users themselves (cf. Ankum Rebuttal at 66-69) Fifth, Ameritech's proposed Blended and Common transport rates also differ significantly from those proposed by the CLECs. (According to Dr. Ankum, the proposed Blended and Common transport rates in Indiana are 4.7 and 6.2 times as high as those just recently proposed by Ameritech in Illinois.) Dr. Ankum claims this is because the facility termination investments, which are the main cost driver for these rates, are also significantly higher. (cf. Ankum Rebuttal at 69-70). Sixth, as part of the ULS-ST tariff, Ameritech also charges for a cost item called Daily Usage Feed ("DUF"), which records the type of calls that a particular customer makes and various characteristics of those calls (e.g., local vs. long-distance, time of day, customer class, etc.) This information [*131] is critical to ensuring that CLECs can bill their customers correctly. Dr. Ankum claims that, "Given that switch vendors do not appear to charge Ameritech separately for the investment necessary for this measurement capacity, there is likely a double count for this cost." Additionally, Ameritech's DUF charge is based on 1995 data. Dr. Ankum claims that call volumes have more than doubled since 1995, and that updated usage data alone would reduce this charge by more than 50%. (cf. Ankum Rebuttal at 70-72)

E. Ameritech Reply. In response, Ameritech Indiana argued that the inputs it used to determine ULS-ST costs are appropriate. They focus on the type of lines, SICAT as a TELRIC Model, fill factors, switch technology mix, Line-to-Trunk Ratio, Annual Charge Factors, Bill Inquiry Expenses, and Daily Usage Fees ("DUF"). We have previously summarized Ameritech's position on the type of lines, SICAT as a TELRIC model, and the switch technology mix. In this section, we will summarize Ameritech's position on the remaining items.

1. Fill Factors. Ameritech Indiana argued that its proposed switching fill factors are consistent with P 682 of the *First Report and Order*, "reasonably [*132] accurate" forward looking projections of actual future usage. Ameritech Indiana explained that its proposed fill factors are the current average fill levels observed across SBC's entire network. Ameritech Indiana argued that these current average fill factors are appropriate in a forward-looking cost study because, as Dr. Currie testified, they are reasonably accurate projections of what the actual fill factors will be in the future. (Currie Reply at 50) This is because the current average fill levels have been stable over recent years and will tend to remain so in the future. For example, Dr. Currie noted that the fill factor for analog line terminations has been virtually constant over the past few years. (*Id.* at 50) Moreover, the current average fill levels are easily measured -- SBC's network organization regularly monitors and measures actual network utilization. For example, the Ameritech Capacity Investment Management Switching ("ACIMS") system -- a system used to monitor and manage switching capacity and report system data -- was used to gather the data for Ameritech Indiana's line side fill factors. (*Id.*) Dr. Currie further explained that the other switching fills [*133] proposed by Ameritech Indiana were determined in a similar fashion, and are therefore reliable estimates of forward-looking fill levels. (*Id.* at 51)

Ameritech Indiana explained that its proposed fill factors do not represent the actual current usage of its actual, existing network. Rather, its fill factors represent the actual current usage experienced by the current components of the network (*i.e.*, the digital switches) as they would be redeployed and reconfigured in the forward-looking network required by TELRIC. Even though Ameritech Indiana's cost model is premised on a remodeled network (the TELRIC-mandated, least-cost, forward-looking network), that reconfigured network will employ the same digital switch technologies that Ameritech Indiana uses today in its existing network for each of the four switching technologies. That is why the current average fill levels observed in the network today are reasonable projections of actual usage in the future.

Ameritech Indiana next explained that while its proposed fill factor for digital lines is relatively low compared to its other fills, the low fill factor results from the fact that much of the capacity of each DS-1 digital [*134] line cannot be used to generate revenue. Ameritech Indiana explained that each DS-1 digital line contains 24 individual DS-0 chan-

nels, but that, on average, not all 24 channels can be used to generate revenue. Moreover, some of the capacity of the DS-1 cannot be used to generate revenue because the process of demultiplexing the DS-1 signal into the 24 DS-0 channels renders additional capacity unusable for service.

Finally, Ameritech Indiana rebutted the CLECs' argument that Ameritech's contracts with its switch vendors provide that the switches will be maintained at utilization levels near 100%. Ameritech Indiana noted that the only evidence the CLECs have submitted on this score is an attachment from an expired Lucent PIP contract (the PIP contracts preceded the current DND contracts). (*See* AT&T/WorldCom/McLeod Redirect Ex. 2) Ameritech Indiana argued that the attachment from the old Lucent PIP contract relied upon by the CLECs simply lists maximum fill levels. Ameritech Indiana asserted that, when read in its entirety, the expired Lucent PIP contract clearly states that the vendor will provide switches that "do not exceed" the utilization levels stated in Attachment 9 of the [*135] PIP contract. (Ameritech Ind. Cross Ex. 8) Ameritech Indiana argued these maximum fill levels are set because many states have call blocking standards over which a certain number of blocked calls on the switch are impermissible. In order to meet these standards, Ameritech Indiana makes sure that its switches do not exceed certain utilization levels so that there will be sufficient unused or spare capacity available to ameliorate call blocking during periods of high switch usage.

2. Line-to-Trunk Ratio. Ameritech Indiana explained that the CLECs' complaints about Ameritech Indiana's line-to-trunk ratio are irrelevant because Ameritech Indiana did not use a line-to-trunk ratio to develop forward-looking trunk quantities in SICAT (except for a specific line-to-trunk ratio stated in the contracts relating to replacement or new switches). (Currie Reply at 52) Ameritech Indiana explained that under its previous switch contract model -- the ARPSM model -- a line-to-trunk ratio was applied to project forward-looking trunk quantities, but that is no longer the case in SICAT. Rather, in SICAT, forward-looking trunk quantities are obtained simply by looking at how many trunks are contemplated [*136] by the contracts. Ameritech Indiana explained that the line-to-trunk ratio referred to by the CLECs is simply the ratio that *can be derived* by dividing the total number of lines provided in the contracts by the total number of trunks, but it is *not something that Ameritech derives independently* to project future trunk quantities from a given number of lines. (*Id.*)

Accordingly, Ameritech Indiana argued, the line-to-trunk ratio recently proposed by Ameritech Illinois (and cited by the CLECs here) in an Illinois proceeding is irrelevant here. For one thing, Ameritech Indiana noted that the cost study in that proceeding was based on the ARPSM model and the prior set of switch vendor contracts. Therefore, there was a need in Illinois to apply the line-to-trunk ratio to develop forward-looking trunk quantities. But that is not necessary here because the new DND contracts contemplate a given number of trunks will be provided over the term of the contracts. Moreover, Ameritech Indiana noted that the ARPSM model modeled only the five Ameritech states, while SICAT models all 13 SBC states. (Currie Reply at 53) Finally, Ameritech Indiana explained that a major part of its current [*137] switching expenditures is for trunks, given increases in usage of the network. (Currie Reply at 53) That is why there are more trunks per line under the DND contracts than was believed to be the case under the old PIP contracts.

3. Annual Charge Factors. Dr. Currie revised the ACF downward to correct an error, but suggests that recalculation of these cost factors is warranted in this case. (Currie Reply at 54-56)

Ameritech Indiana proposed that an updated annual charge factor ("ACF") be used in this proceeding to set UNE rates for ULS-ST. (Currie Reply at 69) Even though the Commission established an ACF in the main 40611 docket to be used in setting UNE rates, Ameritech Indiana argued that it is proposing a new ACF in this proceeding because the ACF established in 40611 is based on a record that is at least four years old. Ameritech Indiana contended that it has provided extensive work papers and testimony justifying updated values of cost of capital, economic lives, and fill factors, the three key assumptions underlying the ACF approved in 40611. Ameritech Indiana argued that without reexamining the assumptions underlying the ACF, the cost studies submitted in this proceeding [*138] cannot claim to be forward-looking.

Dr. Currie explained that many factors have changed since the main 40611 docket that make it unreasonable to use the old ACF in new TELRIC studies. (Currie Reply at 55) For example, Ameritech Indiana noted that the ACF established in 40611 does not capture the impact of the SBC-Ameritech merger and increases in labor rates (the latter of which affects maintenance expenses, which in turn are captured in the ACF). (*Id.*) As to cost of capital, Ameritech Indiana argued that the information used to support its current cost of capital is more recent than the comparable information underlying the cost of capital established in 40611. (*Id.* at 56) Ameritech Indiana explained that the debt ratio used in its current cost of capital is based on the market value capital structure of a comparable group of LECs followed by Standard & Poor's. (*Id.* at 57) Ameritech Indiana asserted that it used the market value capital structure of this sample

group because its own equity is held by SBC and therefore does not have an observable market value. (*Id.*) Dr. Currie further explained that it did not use the market value capital structure of SBC itself -- [*139] a structure that has a lower debt ratio than the debt ratio observed in the sample group -- because the average capital structure for a group is less affected by the observation errors or temporary distortions that may affect one company. (*Id.* at 57-58)

As to economic lives, Dr. Currie argued that most of the economic lives used in the current ULS-ST cost study are the same or longer than those decided in the main 40611 docket. (Currie Reply at 56)

Finally, as to fill factors, Ameritech Indiana argued that it did not present forward-looking fill factors in the main 40611 docket and that is has properly explained how the forward-looking fills presented in this proceeding are consistent with the FCC's requirements regarding forward-looking fill factors.

4. SS7 Costs. Dr. Currie further stated that the SigCost model results cannot be fairly compared to the SS7 costs produced by models in other states. (Currie Reply at 58-59)

5. Bill Inquiry Expenses. Ameritech Indiana explained that its proposed MOU rate for ULS-ST switch usage includes recovery of bill inquiry expenses -- *i.e.*, the costs caused by CLECs when they inquire about the bills they receive from Ameritech Indiana. [*140] (Currie Reply at 60) Ameritech Indiana explained that while the CLECs purchase a daily usage feed ("DUF") from Ameritech Indiana in order to bill their own end-user customers, Ameritech Indiana still incurs expenses in billing *its* customers, in this case, the CLECs. Ameritech Indiana argued that the expenses it incurs in responding to usage billing inquires by CLECs is an ordinary cost of business. (*Id.* at 61) Ameritech Indiana explained that the billing inquiry expenses included in the cost study do not include any expenses other than the time of its service representative responding to CLEC queries. (*Id.*) Ameritech Indiana further noted that the billing inquiry cost study uses conservative estimates of the bill inquiry expenses per message associated with ULS-ST usage. (*Id.*) In fact, as Dr. Currie explained, the bill inquiry expense per message for long-term shared transport is less than the bill inquiry expense per message for switched access (*i.e.*, from inquires from large carriers like AT&T and WorldCom). (*Id.*) Therefore, Ameritech Indiana asserted, any further reduction of the volume-sensitive billing expenses used in the ULS-ST cost study would be unreasonable. [*141]

Ameritech Indiana also argued that the retail bill inquiry study upon which its billing inquiry charges are based in this proceeding is reasonably used as a proxy for the costs of handling CLEC inquiries. Ameritech Indiana argued that while the CLECs contend that there is no way they could generate the volume of inquiries that Ameritech Indiana receives from all its retail customers, this is irrelevant. Rather, Ameritech Indiana explained, the retail study only uses the absolute volume of bill inquires to develop a cost per inquiry and the number of inquiries per message billed. Ameritech Indiana stated that the ULS-ST study merely assumes that the cost to handle a bill inquiry from a CLEC is similar to the cost of handling an inquiry from a retail customer.

6. Daily Usage Feed Costs. Finally, Dr. Currie stated that DUF costs were established in Cause No. 40611 and should not be revisited here. (Currie Reply at 63)

Ameritech Indiana explained that the daily usage feed ("DUF") provides CLECs with data on a per call basis necessary for the CLECs to be able to bill their end users. Ameritech Indiana asserted that charges for DUF have already been established in the main 40611 docket [*142] based on the compliance cost study undertaken in that proceeding, and therefore, DUF charges are not at issue in this subdocket.

Ameritech Indiana also argued that if the Commission is nonetheless inclined to revisit DUF charges, the Commission should reject Dr. Ankum's proposed adjustments. Ameritech Indiana explained that the vast majority of costs included as DUF costs in the compliance cost study are volume sensitive -- that is, they depend on the number of message records processed and stored. (Currie Reply at 63) However, Ameritech Indiana explained that because DUF costs are derived by dividing the total costs by the total number of messages to develop the cost per message, it is critical to examine the new volume sensitive costs associated with new calling volumes. (*Id.* at 63-64) Ameritech Indiana asserted that while Dr. Ankum proposes updating the current DUF cost study to reflect the current volume of messages on the network (because he believes the study understates the current volume of messages on the network), he does not also update current costs to reflect the increase in costs caused by the increase in messages. (*Id.* at 64) Ameritech Indiana argued that Dr. [*143] Ankum would have the Commission believe that the number of messages has more than doubled since the 1996 DUF study, but that costs have not changed at all.

7. Blended and Common Transport. As for blended and common transport rates, Dr. Currie suggests that these rates are higher in Indiana because new, more accurate models were used here. (Currie Reply at 62-63)

F. Findings. This is the one area of Phase I in this proceeding where Ameritech has provided us with a cost study. In making our findings, we will separate the assumptions, costs, prices associated with the ULS-ST offering into three groups: (1) those associated with Unbundled Local Switching; (2) those associated with the Long-Term Shared Transport component of the ULS-ST offering; and (3) miscellaneous assumptions, costs, and prices.

Assumptions, Costs, and Prices for the Unbundled Local Switching Component of the ULS-ST Offering

Type of lines ("new", "replacement," and "growth"); and SICAT as a TELRIC Model

The parties' almost singular focus on the switch contracts and SICAT has shifted the debate from determining an appropriate switching price under the FCC's TELRIC methodology to determining how much [*144] Ameritech pays, or will pay, to its switch vendors. While the latter determination may be an input into the former, they are by no means identical. Ameritech has described how it uses the contracts and the SICAT model to determine a weighted average per-line price that it pays its three vendors during the life of the contracts (Lucent, NorTel, and Siemens), as if there were only one vendor. The duration of the current SBC DND contracts (five years) and the impact that short life cycle has on this proceeding is critical. Ameritech does not replace all of its existing switches every year, nor does it install all of the new switches it will ever install (e.g., to serve new subdivisions, new office parks or buildings, etc.) in a single year. Thus, during the life of the three contracts, SBC/Ameritech will only install a relatively small number of new switches and replace a relatively small number of existing switches. Each of these switch types (new and replacement) will have a certain number of line ports associated with it to enable each switch to serve a given number of lines. There is a third category of lines, "growth" lines. In any given year, Ameritech assumes that the number of [*145] growth lines added will exceed the number of new and replacement lines added. There is agreement that growth lines are the most expensive category of lines, although the amount of the difference varies for each of the three vendors. The higher average unit price for the growth lines, when multiplied by the higher percentage level for growth lines, significantly increases the average unit (per-line) investment for switching.

According to Dr. Ankum, SICAT models the number of new and replacement lines added in the five-state Ameritech region during the five-year life of the contracts but models the number of growth lines added in all 13 SBC states. (Ankum Rebuttal at 41, 42) Dr. Ankum asserts that the five-year time horizon used as an input to SICAT is also inappropriate; he argues that it would be more appropriate to consider the entire economic life of a given switch (12 to 18 years, under the FCC's deprecation rules) and the total number of lines that would be added at cutover. (Ankum Rebuttal at 44, 45)

SICAT is not a TELRIC Model. On this point, Ameritech and the CLECs agree. This is a critical point. SICAT models one very specialized type of short-run cost. SICAT is not used to [*146] calculate the TELRIC costs of unbundled local switching, nor is it used to calculate the final per-line price that a CLEC must pay for the ULS component of the ULS-ST offering. The "market price" for switching, based upon the five-year life of the vendor contracts or from SICAT models of those five-year contracts, is not the best predictor of the TELRIC of unbundled local switching. Over the long run, the majority of switches will be new or replacement switches, not existing switches. Therefore, over the long run, the majority of lines and trunks will be new or replacement lines, not growth lines.

All other things being equal, Ameritech's approach to calculating the per-line investment amounts will significantly, and inappropriately, increase the amount that Ameritech proposes to charge CLECs for the switching component of the ULS-ST offering. Dr. Ankum cites an order from the Michigan PSC that purports to require Ameritech to use an assumption of 30% growth lines, rather than 70% growth lines. (Ankum Rebuttal at 46) We agree that this assumption (30% growth lines) is appropriate, and we find that it should be used in calculating the monthly recurring line port charge.

Many of the [*147] disputes regarding the appropriate line port charge also affect the determination of the appropriate trunk port charge, as SICAT is the initial model used in setting both charges -- e.g., the parties disagree over the proper proportion of "growth" trunk ports. We find that the assumption of 30% growth should also be applied in determining costs and prices for trunk ports.

We agree with Dr. Ankum that a TELRIC-based price should consider the total demand for switching over the economic life of the switches (12 -- 18 years). In this case, total demand is defined as all lines in all 13 SBC states. (Ankum Reply at 44, 45)

Switching fill factors

We agree with OUCC witness Mr. Ralph Sorrell that switching fill factors should not be updated at this time.

Switch technology mix

SICAT assumes a particular technology mix from the three vendors: [**Confidential** % - Lucent; % - NorTel, and % - Siemens].]. Dr. Ankum urges us to require Ameritech to reverse the Lucent and Siemens percentages, because the Lucent switches are more expensive than the Siemens switches. Dr. Ankum's proposition, if accepted, would intrude too much into SBC/Ameritech's business practices. We are not comfortable [*148] ordering the Company to purchase (or not purchase) switches by particular vendors, even if it is merely for "cost study purposes." Hence, we find that Dr. Ankum should rerun his cost studies with the switch vendor mix advocated by Ameritech.

Line-to-Trunk Ratio

In summary, we find that Line-Trunk ratios are properly calculated on the basis of interoffice MOU, rather than on the number of lines. This assumption will directly affect both the number of trunk ports and the total trunk port investment that Ameritech seeks to recover. We find that Ameritech should use the Illinois line-to-trunk ratio of 6.25 for ULS-ST cost study purposes in this subdocket.

Costs, Prices, and Assumptions for the Long-Term Shared Transport Component of the ULS-ST Offering

Blended and Common Transport

Dr. Currie based his objections to Dr. Ankum's proposed rates for blended and common transport, in part, on Ameritech's proposal to update the fill factors to reflect "forward looking costs." As we discussed elsewhere, this would be inappropriate at this time. Dr. Currie also argued that, in the process of updating the SBC SPICE (SBC Program for Interoffice and Circuit Equipment) model, "it was discovered [*149] that the previous simpler model had significantly understated forward-looking investments." (Currie Reply at 62) There is insufficient information in Dr. Currie's Direct Testimony about the assumptions and constraints in the SPICE model for us to evaluate its use to develop costs in this phase of the instant subdocket -- for example, there is no definition of "least cost paths" or information on the assumptions or constraints that govern how the model selects nodes, routes, or circuits; how it calculates costs; etc. (Currie Direct, Exhibit KAC-6) Therefore, we will accept Dr. Ankum's recommendations regarding the facility termination investments at this time; we will also accept his proposed rates for blended and common transport.

SS7 Transport

Ameritech is proposing to increase the SS7 transport rates in Indiana. Dr. Currie opposes Dr. Ankum's proposal to use the SS7 rates from Illinois and provides three reasons in support of Ameritech's request. First, SigCost was not used for developing SS7 investments in any other Ameritech state until its introduction in this proceeding. Second, SigCost uses forward-looking fills in Indiana, whereas other Ameritech states such as Illinois [*150] did not use them in developing SS7 investments. Finally, SigCost relies on SPICE for interoffice investments, which also has not previously been used in any Ameritech state. We have previously rejected Ameritech's request to modify its fill factors in this proceeding. We have also indicated that there is insufficient information in Dr. Currie's Direct Testimony about the assumptions and constraints in the SPICE model for us to evaluate its use to develop costs in this phase of the instant subdocket. Accordingly, we reject Ameritech's SS7 charge of more than **[Confidential $]** per message as excessive. In the absence of specific evidence to the contrary, we find that the rate element proposed by Ameritech in Illinois of **[Confidential $]** (including mark-up), is appropriate.

Reciprocal Compensation

Dr. Currie identified TELRIC for ULS-ST Reciprocal Compensation of **[Confidential $]** and a figure for "TELRIC with Shared and Common Costs" of **[Confidential $].** (Currie Reply, Exhibit KAC-1R) Dr. Ankum did not identify any alternative reciprocal compensation costs or propose any rates; furthermore, it appears that he did not discuss the issue in his testimony. We find [*151] that, in the absence of any alternative rates for reciprocal compensation, Dr. Currie's "TELRIC with Shared and Common Costs" figure for ULS-ST reciprocal compensation of **[Confidential $]** should be approved as the applicable rate.

Tandem Switching

We find that Dr. Ankum's proposed rate of $ 0.000513 for ULS-ST tandem switching is appropriate, given the lack of persuasive evidence to the contrary from Ameritech.

Costs, Prices, and Assumptions for Miscellaneous Items Associated with the ULS-ST Offering

Annual Charge Factors, Bill Inquiry Expenses, and Daily Usage Fees ("DUF")

Dr. Currie has provided insufficient evidence to persuade us that the Annual Charge Factors we set previously should be changed. Therefore, we find that the ACF should remain at **[Confidential $]** as approved previously in Cause No. 40611.

Neither position is completely correct regarding billing inquiry and measurement expenses. We agree with Dr. Ankum that, "To the extent that Ameritech may be at fault in the billing disputes, it seems inappropriate that CLECs would have to pay for the inquiry." We also agree with Dr. Ankum that, "To the extent that Ameritech will receive billing inquiries from [*152] CLECs where Ameritech is not at fault, some cost recovery seems in order." (Ankum Reply at 66, 67) We disagree with Dr. Ankum, however, in his proposal to recover the billing inquiry on a per-port, per-month basis ($ 0.06). There is no logical relationship between the number of ports and the complexity of the billing inquiries, for example. A per-port, per-month charge also cannot account for repeat, or multiple inquiries per account or per telephone number. We find that, in those cases in which Ameritech is at fault in the billing inquiry dispute, it should not be able to charge the CLEC to correct the CLEC's bill. However, in those cases in which the CLEC is at fault, Ameritech should be able to charge the CLEC. In those cases where no manual intervention is needed, the costs and rates or charges for billing inquiries and measurement will be developed later, when we address OSS costs and prices. However, where manual intervention is needed, Ameritech may charge the CLEC at its (Ameritech's) then-current labor rates. In no case, however, may Ameritech begin charging CLECs a billing inquiry charge until after the Commission has determined that the OSS test currently being conducted [*153] by KPMG Consulting and the Test CLEC is complete for Indiana. It is impossible to predict how many billing inquiries CLECs will make or how contentious the disputes will be. By waiting until after the OSS test is complete to permit Ameritech to charge for billing inquiries (where the CLEC is at fault), we hope to drastically limit the number of billing-related disputes between SBC/Ameritech and CLECs. However, there may still be some disputes of this nature. We strongly urge SBC/Ameritech to begin negotiating a dispute resolution process with interested CLECs to include in CLEC interconnection agreements, to the extent that the dispute resolution language already contained in SBC/Ameritech's current interconnection agreements is not adequate to allow for timely and complete resolution of these types of disputes. Finally, because we are rejecting Dr. Ankum's fixed charge for billing inquiries and measurement, this charge will need to be deducted from the port charge. We find that Dr. Ankum should rerun the cost study for the flat-rated switch and switching costs to deduct the $ 0.06 per-port, per-month charge.

Finally, while we agree with Dr. Ankum that the DUF charge should be recalculated, [*154] we agree with Dr. Currie that any recalculation should include the underlying costs, and not just the message count. Accordingly, we find that the DUF charge should be recalculated using current call volumes (rather than 1995 call volumes) and current cost estimates. We do note that, according to a recent Hearing Examiner's Proposed Order from the Illinois Commerce Commission, the DUF charge is only calculated as a separate charge for NorTel switches, and not for Lucent or Siemens switches. We have no evidence in our record regarding this issue; regardless, the DUF charge should be recalculated by Ameritech Indiana, in the manner we have described, for all applicable switches. The recalculated DUF charge should be recovered through a monthly flat-rate charge (Illinois Commerce Commission -- Hearing Examiner's Proposed Order at 17, 18, 22.).

Summary of Findings

Those changes to the SICAT assumptions and/or outputs that we have approved in this Order above must flow-through to the ULS-ST model: assume 30% growth lines and trunks (and, hence, assume 30% "growth" line and trunk ports); consider total demand for all lines in all 13 states, over the entire economic life of the switches; [*155] use Ameritech's switch vendor mix for both line and trunk ports.

In conclusion, for all of the foregoing reasons, we find that certain of the ULS-ST rates and charges should be recalculated based upon these findings. The following rates and charges apply:

Element	How Recovered	Charge
ULS Switching _ Line Port Charge (Flat-Rate MRC)		
Line Port Trunk Charge		
MDF w/ Protector		
Telephone Number		
Intercept		
Directory		
Other Expenses		
DUF Charge		(TBD, based on current message count and current costs)

Element	How Recovered	Charge
TOTAL:		
Shared and Common Cost		(14.93%)
Monthly POTS Port Cost		TBD
ULS Switching -- Usage	(No separate charge) n51	NA
ULS-ST SS7 Signaling Transport	(per message)	$ 0.000202
ULS-ST Blended Transport Usage (per MOU)	$ 0.000823	
ULS-ST Common Transport	(per MOU)	$ 0.000513
ULS-ST Tandem Switching	(per MOU)	$ 0.000295
ULS-ST Recip. Comp.	(per MOU)	$ 0.000836
Billing Inquiry Charge		TBD *
*To be assessed only when the CLECs are at fault and only when manual intervention is required, and only after the 3rd party OSS test is complete for Indiana. (To the extent that electronic OSS are involved, the costs and prices will be developed concurrently with the development of the other OSS costs and prices, after the 3rd party OSS test is complete.)		
Daily Usage File/Feed [*156]	(Per message)	

n51 Already calculated and included in Port Charge.

6. Conclusion. Ameritech argued in its Reply Brief that the Commission lacks the legal authority to order it to file a tariff or even make the rates we establish herein effective, and that we are required to implement such rates through individual interconnection agreements. We disagree. It is without dispute that the UNE combination rates we adopt here all further the goal expressed in Indiana law to advance competition. Thus, Indiana and other states clearly can advance regulatory rules and laws that affirmatively promote valid state aims, including promulgating pro-competitive regulatory approaches such as the new UNE combination rates' implementation mechanism.

As a result, we find that Ameritech is ordered to file within thirty days of the date of this Order, a ULS-ST tariff containing usage-based rates for blended transport ($ 0.000823) and common transport ($ 0.000513), SS7 Signaling Transport ($ 0.000202), Reciprocal Compensation ($ 0.000836), and Tandem [*157] Switching ($ 0.000295). These rates should be effective on the date of this Order.

These rates and charges approved in this Order or in subsequent Orders in Cause No. 40611-S1 supercede any prior "TBD" or interim rates and charges for the UNE-P offerings and other combinations described in this Order that the Commission specifically identified should be replaced by the rates determined in this subdocket or in Cause No. 40611 or in other IURC proceedings.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The findings as set forth in this Order are hereby approved.

2. All reruns and recalculations provided for herein shall be filed with the Commission, including final costs and prices, within 15 days of the date of this Order.

3. Ameritech shall file a tariff within 30 days of the date of this Order containing all of the NRCs for UNE-P and EELS that we have required herein, all of the usage-based rates for the ULS-ST offering, and the flat-rate switching charge for ULS-ST. However, the rates approved herein shall be effective upon the issuance of this Order.

4. This Order shall be effective on and after the date of its approval.

CONCURBY: McCARTY; HADLEY; RIPLEY; [*158] SWANSON-HULL; AND ZIEGNER

TAB H

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Hamilton County Telephone Co-Op.	:	
LaHarpe Telephone Company, Inc.	:	05-0644
McDonough Telephone Cooperative, Inc.	:	05-0645
Mid-Century Telephone Cooperative, Inc.	:	05-0646
Metamora Telephone Company	:	05-0647
The Marseilles Telephone Company	:	05-0648
Grafton Telephone Company	:	05-0649
	:	05-0657
Petitions for Arbitration under the	:	
Telecommunications Act to Establish Terms	:	(Cons.)
and Conditions for Reciprocal Compensation	:	
with Verizon Wireless and its Constituent	:	
Companies.	:	

ARBITRATION DECISION

DATED: January 25, 2006

> recover costs it reasonably anticipates and proves it will incur in expanding CCS capacity by, for example, including reasonable CCS expansion cost projections in a cost study. Ameritech has not taken that path, however, relying instead on attempting to convince the Commission that it erred in reaching its prior determination.
>
> This decision squares with the position of the FCC, which, while recognizing that ILECs' forward-looking switching costs include the costs of switch usage, nonetheless concluded that one reasonable way of allowing cost recovery of these costs was through a combination of a flat-rated charge for line ports and a flat rate for the switching matrix. First Report and Order, 810; In the Matter of Implementation of the Local Competition, Provisions of the Telecommunications Act of 1996, Order on Reconsideration, CC Docket No. 96-98, FCC 96-394 (rel. Sept. 27, 1996), 2, 6.

Illinois Commerce Commission On Its Own Motion v. Illinois Bell Telephone Co., Docket 00-0700, Order, pp. 4-5 (Jul. 10, 2002).

Significantly, the Ace Telephone case from Minnesota relied on by the Petitioners in support of their argument that at least a portion of switching costs can be held to be traffic sensitive has been overruled by the 8th Circuit United States Court of Appeals on December 29, 2005 (2005 WL 3543671). The 8th Circuit notes in their Order, that "if a state commission decides that the switch should be leased on a fixed, per-line basis, paragraph 1057 precludes it from establishing a non-zero termination charge for that same switch." Order p.9.

The Commission is of the opinion that the record is lacking clear evidence that the switch costs at issue here are usage sensitive, sufficient to have us alter our view expressed in the SBC case that, in general, switching costs are not traffic sensitive. We agree with Verizon Wireless that the evidence presented, essentially the information from Nortel regarding switch costs, is insufficient to show that the cost of the switch is traffic sensitive.

That being the case, we see insufficient reason to depart from our reasoning in the SBC UNE case, 00-0700, and the analysis of the 8th Circuit Court of Appeals. Accordingly, we determine that this input should be set at 0%.

(14) Host-Remote Assignment

In their original testimony, Petitioners made no affirmative recommendation on the host-remote assignment, leaving it at default value. Subsequently, Verizon Wireless's witness Mr. Wood identified a problem with the batch run process (the process that ostensibly allowed an analyst to run the model for a number of companies at the same time) that caused the model to disregard the designation of certain switches as host and remote combinations. Petitioners and Staff corroborated this correction, which had the net effect of lowering the transport rate modeled for the four Petitioners