**BEFORE THE TENNESSEE REGULATORY AUTHORITY**
**NASHVILLE, TENNESSEE**

**February 1, 2001**

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| **IN RE:** | ) | |
| | ) | |
| **PETITION FOR ARBITRATION BY ITC^DELTACOM COMMUNICATIONS, INC. WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996** | ) | **DOCKET NO. 99-00430** |

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## RESPONSE OF ITC^DELTACOM COMMUNICATIONS, INC. TO BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY MEMORANDUM

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## I. INTRODUCTION

BellSouth disagrees with the *policies* adopted by the panel in this Docket. In its barrage of post-hearing repetitive pleadings BellSouth cites to no material changes in the law which are binding on the Authority, and thus BellSouth's plea for reconsideration should be denied. [1] Moreover, despite BellSouth's references to "evidence"[2] that BellSouth suggests support reconsideration, the evidentiary record in this case closed many months ago. At bottom, BellSouth bluntly refuses to accept the TRA's August 11, 2000 Order and seems to believe that, by repetition, its policy arguments might somehow gain traction with the panel resulting in

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[1] This latest pleading notwithstanding, BellSouth has filed two separate Motions for Reconsideration and has responded twice to ITC^DeltaCom's Responses to these Motions. Thus, the Reply Memorandum is a remarkable seventh post-hearing pleading filed by BellSouth in this Docket, including its two post-hearing briefs which were specifically requested by the TRA.

[2] *See Reply Memorandum* at footnote 1.

abandonment of its previous well-reasoned decision.[3] BellSouth's strategy should not be rewarded, and BellSouth should be directed to comply with the TRA's pro-competition directives.

## II. DISCUSSION

### A. Issue 1(a) – Performance Measurements and Guarantees

BellSouth continues to argue that the TRA has the authority to resolve only those issues "set forth in the [arbitration] petition and the response, if any . . ." *BellSouth's Reply Memorandum*, at 3. From this premise, BellSouth asks the TRA to conclude that it is greatly limited in its resolution of the issues in an arbitration to the precise solutions presented by the parties. According to BellSouth, the TRA cannot impose the modifications to BellSouth's Service Quality Measurements ("SQMs") adopted in the Order in this case because the parties did not request these specific modifications. But, BellSouth is forced to concede its reasoning is without legal support. In the *Reply Memorandum* BellSouth admits that arbitrators are empowered by the Act to impose "appropriate conditions as required to implement subsection (c) of this section ..." *BellSouth's Reply Memorandum*, at 4 n. 2. The Act does not require that arbitrators must correspond resolution of issues to the precise proposals of the parties. It is thus irrelevant that although the record was full of policy arguments and proposals related to performance measurements, neither ITC^DeltaCom nor BellSouth proposed the exact

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[3] Pursuant to the TRA's schedule, the evidence and law relevant to this case was extensively briefed by both parties shortly after the hearings concluded. After having its first Motion for Reconsideration dismissed BellSouth filed another Motion for Reconsideration on August 29, 2000. ITC^DeltaCom responded to the Motion on September 8, 2000. Without explanation, BellSouth waited over three months to file its Reply Memorandum. In its latest post-hearing pleading, BellSouth offers nothing new that would support reconsideration and reversal of the TRA's Order.

combination of and exact terms modifications to BellSouth's SQMs ordered by the panel. The panel was correct in its determination that it has discretion to fashion remedies and resolutions to unresolved issues consistent with the Act and the public interest.[4]

BellSouth's concession regarding the TRA's discretion is not the most remarkable weakness in its effort to re-litigate the arbitration. Rather, it is BellSouth's insistence that the TRA look outside the record in this case in support of the BellSouth contentions that should be most roundly rejected. In support of its plea, BellSouth asks the panel to rely on "evidence of statements made by DeltaCom after the hearing in this case. ..." *BellSouth's Reply Memorandum*, at 2 n. 1. By definition, such statements are not evidence in the record in this case and are argued by BellSouth to the TRA out of context. The suggestion that the panel should abandon its Order based on BellSouth's recitation of post-hearing hearsay that was not even offered as evidence in the record in this case must be firmly rejected.

Finally, although some time has passed since the hearings, the panel should not lose sight of the fact that BellSouth, not ITC^DeltaCom, offered its SQMs as a system of performance measurements that it would accept as part of the interconnection agreement resulting from this proceeding. Without any support in the law, BellSouth's post-hearing pleadings suggest that the law requires the TRA accept or reject BellSouth's policies *in toto*. The TRA certainly has the

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[4] ITC^DeltaCom will not repeat the detailed arguments it has presented several times to the TRA regarding this issue. *See e.g.* pp. 3-4 *Response of ITC^DeltaCom to BellSouth's Second Motion for Reconsideration* (Sept. 8, 2000) It must be noted however, that incredibly, without any citation to authority, in the *Reply Memorandum* BellSouth characterizes the TRA's broad discretion as a "novel theory." *Reply Memorandum* at p. 3. The courts have consistently deferred to state regulators. *See Powell Telephone Co. v. Tenn. Pub. Serv. Comm*, 660 S.W.2d 44; *C. F. Industries v. Tenn. Pub. Serv. Comm.*, 599 S.W.2d 536 (Tenn. 1980); *United Inter-Mountain Tel. v. Public Serv. Comm's.*, 555 S.W.2d 389; *Southern Bell T. & T. Co. v. Tenn. Pub. Serv. Comm's.*, 202 Tenn. 465, 304 S.W.2d 640 (1957). Indeed, it would be novel for the TRA to limit its discretion when considering competing evidence and policies.

authority to impose modifications on these SQMs offered by BellSouth so as to craft a "just, reasonable, and nondiscriminatory" plan. *See Transcript of the Proceedings*, at 17 (April 4, 2000). BellSouth's argument boils down to the fact that it finds these modifications burdensome and unnecessary. The TRA has already considered those protests and concluded that these modifications are necessary to ensure a fair interconnection agreement.[5]

### B. Issues 2(b)(ii) and 2(b)(iii) – Extended Loops and Loop/Port Combinations or "EELS"

FCC Rule 315(b) is the basis for the TRA's decision on this issue.[6] The U. S. Supreme Court has affirmed the FCC's rules relating to combinations. *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S.Ct. 721 (1999). In the *Reply Memorandum* BellSouth seems to have finally abandoned its argument based on the fact that Eighth Circuit Court of Appeals has reaffirmed its decision to vacate the FCC's Rules 315(c)-(f). The issue of whether BellSouth must provide elements that it currently combines is governed by Rule 315(b), which is in effect

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[5] BellSouth chastises ITC^DeltaCom for not "explain[ing] why BellSouth should be required to expend the resources to modify the SQMs only on a temporary basis." *See Reply Memorandum*, p. 2. ITC^DeltaCom has no obligation to "explain why" BellSouth must comply with the TRA's Order. The Order is based on evidence in the record and represents the reasoning of the TRA acting in the interest of Tennessee consumers under Federal and Tennessee law. Moreover, BellSouth's prescription that the measures are "temporary" are without merit. First, the measures are likely to cover the term of the interconnection agreement which was arbitrated in this case. Second, the measures represent the wisdom of the TRA. No party should assume the TRA will change the measures in a generic procedure. In fact, the TRA likely will build on these measures.

[6] FCC Rule 315(b) requires that "[e]xcept upon request, an incumbent LEC shall not separate requested network element that the incumbent LEC currently *combines*." (emphasis added). The FCC has provided guidelines as to the meaning of "currently combines." In its *Third Report and Order*, the FCC cited back to its intentions when drafting Rule 315(b), stating that in the *First Report and Order*, "the Commission [FCC] concluded that the proper reading of 'currently combines' in Rule 315(b) means 'ordinarily combined within their network, in the manner in which they are typically combined'." *Third Report and Order*, ¶ 479. The FCC went on to expressly decline to address arguments put forward by incumbent LECs like BellSouth urging a new, more restrictive interpretation of Rule 51.315(b).

and valid. *Iowa Utilities Bd. v. FCC*, 219 F.3d 744, 758 (8th Cir. 2000) ("the Supreme Court reversed our decision to vacate 47 C.F.R. 51.315(b)"). The TRA relied on Rule 315(b), not on Rules 315(c)-(f), in making its decision to require BellSouth to combine the loop and transport elements where BellSouth currently combines them in its network. *See Interim Order of Arbitration Award*, at 28. BellSouth also seems to have finally conceded that the elements which comprise an EEL as described by ITC^DeltaCom in this case are currently combined in BellSouth's network. Pursuant to the FCC's rules, those elements which are currently combined must be provided to would-be competitors in combined form.[7] Indeed, the United States Courts of Appeals for the Fifth and Ninth Circuits have determined that it is consistent with the Telecommunications Act of 1996 and the decision of the Supreme Court for state commissions to require ILECs to combine network elements. *US West Communications v. MFS Intelenet,* 193 F.3d 1112 (9th Cir. 1999); *Southwestern Bell Telephone Co. v. Waller Creek Communications, Inc., et. al.*, 221 F.3d 812 (5th Cir. 2000). These decisions have the practical effect that the ILEC must provide combinations to CLECs where the ILEC ordinarily combines such network elements to provide service.

Finally, BellSouth's characterization of the Alabama Public Service Commission's decision on the "currently combines" standard is confusing as that Commission also stated:

> We agree with the findings of the Georgia Commission that BellSouth should be required to provide the EEL anywhere in its network if BellSouth currently provides the EEL anywhere within its network. We believe that the interpretation to provide the EEL only where the EEL is currently combined unduly restricts competition.

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[7] Contrary to the statement in BellSouth's *Reply Memorandum* at page 9, the Georgia Public Service Commission has not altered its decision regarding UNE combinations in response to any of the litigation regarding this issue, nor should the TRA.

Also, the Public Staff of the North Carolina Public Utilities Commission very recently issued a proposed order on January 16, 2001 that clearly states an "ILEC is required to provide to CLPs, at cost-based rates, combinations of UNEs that are ordinarily combined in the ILEC's network.." Further the Public Staff stated that it is not practical to list all the UNE combinations that ILECs may be required to make available to CLPs but that the ILEC must provide any combination of UNEs that is ordinarily combined in its network.[8]

### C. Issue 6(d) – Rates and Charges for Collocation

Cageless collocation permits CLECs to place certain equipment in the BellSouth central office for the purpose of interconnecting with the BellSouth network. In contrast to "caged" or "walled" collocation, the equipment in a cageless collocation arrangement is not physically segregated from the ILEC's equipment with barriers and separate supporting facilities. Cageless collocation does not involve space identification, build-outs of enclosures, power and HVAC, all of which are necessary in a caged environment. As the TRA previously found, ITC^DeltaCom should not be required to pay for services that BellSouth need not perform. The functions in a caged collocation environment are starkly different from those as in a cageless one. Cageless collocation is akin to virtual collocation. As is the case regarding the issues discussed above, nothing has changed which calls for reconsideration of the panel's order on this issue. The TRA correctly decided that virtual collocation rates should apply to cageless collocation.

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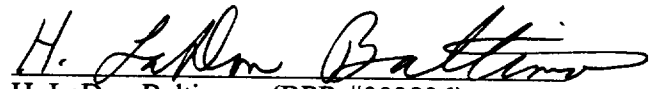
[8] The North Carolina Public Staff recommendation is in line with decisions from other state commissions. It is noteworthy that state commissions such as Pennsylvania and Michigan among others have issued orders requiring ILECs to provide those UNE configurations that the ILEC "ordinarily combines" because accepting a more restrictive definition would place CLECs at an unfair disadvantage. *See* relevant pages of such decisions attached hereto as Exhibit A.

## III. CONCLUSION

BellSouth's latest motion for reconsideration is simply a re-statement of its policy disagreements with the TRA. In addition to being a strain on the valuable resources of the TRA, it is improper for BellSouth to use a Motion for Reconsideration to simply reassert its policy positions and ask the panel to rethink what it has already decided. *See e.g. Glenor Energy Co. v. Borough of Glenda* 836 F Supp. 1109, 1122 (E.D. Pa. 1993). The TRA has correctly decided the issues addressed in BellSouth's original Motion and in its *Reply Memorandum*. BellSouth has provided no new law or evidence upon which the TRA should reverse itself. BellSouth's Motion should be denied.

Respectfully submitted this 1st day of February, 2001.



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of February, 2001, a true and correct copy of the foregoing was served by hand delivery, facsimile transmission, overnight delivery or U. S. Mail, first class postage prepaid, to the following:

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# NORTH CAROLINA
# PUBLIC STAFF
# UTILITIES COMMISSION

OFFICIAL COPY

January 16, 2001

Mrs. Geneva S. Thigpen, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

FILED
JAN 16 2001
Clerk's Office
N.C. Utilities Commission

Re: Docket No. P-100, Sub 133d

Dear Mrs. Thigpen:

Enclosed for filing, in the above-referenced docket, are twenty-one (21) copies of the Public Staff's Proposed Order. An electronic copy, file name "p100s133d.2nd", has been forwarded to you.

By copy of this letter, I am forwarding a copy to all parties of record.

Yours very truly,

Lucy E. Edmondson

Lucy E. Edmondson
Staff Attorney

LEE:cei
Enclosure
cc: Parties of Record

Executive Director 733-2435
Accounting 733-4279
Communications 733-2810
Consumer Services 733-9277
Economic Research 733-2902
Electric 733-2267
Legal 733-6110
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DOCKET NO. P-100, SUB 133d

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

OFFICIAL COPY

| | | |
|---|---|---|
| In the Matter of<br>General Proceeding to Determine<br>Permanent Pricing for Unbundled<br>Elements | )<br>)<br>) | PROPOSED ORDER<br>OF THE<br>PUBLIC STAFF |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, September 25-29, 2000, and October 23-24, 2000

BEFORE: Commissioner William R. Pittman, Presiding, Chair Jo Anne Sanford, and Commissioner J. Richard Conder

APPEARANCES:

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BY THE COMMISSION: This is one of a series of proceedings arising out of the federal Telecommunications Act of 1996 (TA96 or the Act) in which the Commission has considered the obligation of incumbent local exchange companies (ILECs) to provide competing local providers (CLPs) nondiscriminatory access to unbundled network elements (UNEs) at cost-based rates. In this case, the Commission must consider the effects of the UNE Remand[1] and Line Sharing[2] Orders of the Federal Telecommunications Commission (FCC), as well as issues raised in arbitration proceedings[3] and deferred to this docket.

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1 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, CC Docket No. 96-98, November 5, 1999.

2 In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dockets 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, December 9, 1999.

3 ICG Telecom Group, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-582, Sub 6; ITC^DeltaCom Communications, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-500, Sub 10; Intermedia Communications, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-55, Sub 1178; BlueStar Networks, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-847, Sub 1; MCImetro Access Transmission Service, LLC/BellSouth Telecommunications,

On November 4, 1999, the Commission issued an order scheduling a hearing on geographically deaveraged UNE rates for April 17, 2000. However, by order issued on January 11, 2000, the procedural schedule was held in abeyance pending the adoption of final UNE rates. On March 13, 2000, the Commission issued its order adopting final UNE rates.

On March 30, 2000, the Commission issued an Order Setting Procedural Schedules. This order established a new schedule for the hearing on geographically deaveraged rates, broadened the scope of the hearing, and divided it into two phases. The Commission stated that in addition to geographical deaveraging, it would also consider the effects of the UNE Remand Order and the Line Sharing Order. In Phase I of the hearing, originally scheduled to begin on July 31, 2000, the Commission would consider geographical deaveraging, the effects of the Line Sharing Order, and the impact of the UNE Remand Order on the original UNEs for which rates had already been established. In Phase II, scheduled to begin on August 28, 2000, the Commission would consider whether it was required by the UNE Remand Order to establish any new UNEs, and various UNE-related issues that had been deferred from individual arbitration proceedings to this docket.

In the UNE Remand Order, the FCC concluded that ILECs must continue to provide unbundled access to six of the seven UNEs identified in the 1996 Local Competition Order,[4] but are no longer required to provide access to operator services/directory assistance (OS/DA) if they provide customized routing. Under this Order, ILECs must also provide unbundled access to subloops, dark fiber optic loops, and transport, and also to combinations of loops, multiplexing/concentrating equipment, and dedicated transport, if they are currently combined. However, ILECs are not required to provide access to unbundled local circuit switching to customers who have four or more lines and are located in the densest parts of the top 50 Metropolitan Statistical Areas.

In the Line Sharing Order, the FCC concluded that ILECs should provide unbundled access to the high frequency spectrum of a local loop for voice compatible xDSL technologies so that CLPs can provide xDSL-based services through lines that the CLPs share with the ILECs. Pursuant to the Line Sharing Order, the Commission issued an Order on June 1, 2000, adopting interim line sharing rates, subject to true-up after it establishes permanent rates in this proceeding.

By Order issued on April 24, 2000, the Commission postponed the Phase I and Phase II hearings until September 25, 2000, and October 23, 2000, respectively;

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Inc. Arbitration, Docket No. P-474, Sub 10; and AT&T Communications of the Southern States, Inc. and TCG of the Carolinas, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket Nos. P-140, Sub 73 and P-646, Sub 7.

[4] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order in CC Docket No. 96-98, December 8, 1996.

transferred certain issues from Phase II to Phase I; and resolved other procedural issues.

Testimony for the Phase I hearing was filed beginning on June 9, 2000. On that day, BellSouth Telecommunications, Inc. (BellSouth) filed the testimony and exhibits of Cynthia K. Cox, D. Daonne Caldwell, W. Keith Milner, and Ronald M. Pate, and GTE South, Inc. (now Verizon South, or Verizon) filed the testimony and exhibits of John J. Boshier, Terry L. Bachman, Stephen L. Schroeder, Kevin C. Collins, Linda Casey, and Bert I. Steele. On June 13, 2000, Carolina Telephone & Telegraph Company, Central Telephone Company, and Sprint Communications Company L.P. (collectively Sprint) filed the testimony and exhibits of Kent W. Dickerson, Steven M. McMahon, and Michael R. Hunsucker. On July 14, 2000, BellSouth filed the supplemental testimony of D. Daonne Caldwell, and Sprint filed the supplemental testimony of Kent W. Dickerson and Steven M. McMahon.

On August 11, 2000, the New Entrants filed the testimony and exhibits of Michael Zulevic, Peter J. Gose, Warren R. Fischer, Thomas J. Mitchell, and a panel consisting of Michael Starkey and Eric W. McPeak; WorldCom, Inc. (WorldCom) filed the testimony and exhibits of Greg Darnell; AT&T Communications of the Southern States, Inc. (AT&T) filed the testimony and exhibits of Gregory J. Beveridge and Jeffrey King; the North Carolina Cable Telecommunications Association (NCCTA) filed the testimony and exhibits of William J. Barta; and the Public Staff filed the testimony and exhibits of John T. Garrison, Jr. Sprint, in its capacity as intervenor, filed the testimony and exhibits of Kent W. Dickerson, Steven M. McMahon, and Michael R. Hunsucker.

On September 15, 2000, BellSouth filed the rebuttal testimony and exhibits of Cynthia K. Cox, D. Daonne Caldwell, William H. B. Greer, Wiley Gerald Latham, Jr., W. Keith Milner, and Ronald M. Pate. Verizon filed the rebuttal testimony and exhibits of R. Kirk Lee, who adopted the direct testimony of John J. Boshier; Terry L. Bachman; Russell A. Bykerk, who adopted the direct testimony of Stephen L. Schroeder; Kevin C. Collins; Linda Casey; and Bert I. Steele. Sprint filed the rebuttal testimony and exhibits of Kent W. Dickerson, Steven M. McMahon and Michael R. Hunsucker.

The testimony for the Phase II hearing was filed beginning September 12, 2000. On that day, the New Entrants filed the testimony of Michael Starkey; WorldCom filed the testimony of Greg Darnell; Sprint filed the testimony of Michael R. Hunsucker; AT&T filed the testimony of Jeff King; Verizon filed the testimony of Bert I. Steele; and BellSouth filed the testimony and exhibits of Cindy Cox and D. Daonne Caldwell. On September 14, 2000, AT&T filed the testimony of Gregory Follensbee.

On October 13, 2000, Verizon filed a revised version of the September 12, 2000 testimony of Bert I. Steele. On October 18, 2000, AT&T filed the rebuttal testimony of Gregory Follensbee and Jeffrey King; Verizon filed the rebuttal testimony of Bert I. Steele; WorldCom filed the rebuttal testimony of Greg Darnell; BellSouth filed the rebuttal testimony of Cynthia Cox, W. Keith Milner, Wiley Gerald Latham, Jr., D. Daonne

Caldwell, and William H. B. Greer; Sprint filed the rebuttal testimony of Steven M. McMahon; and the New Entrants filed the rebuttal testimony of Michael Starkey.

The Phases I and II hearings were held as scheduled. At the Phase I hearing, New Entrants witness Goss adopted the prefiled direct testimony of Warren R. Fischer.

On November 8, 2000, the Commission issued an Order directing the parties to file proposed orders on the geographic deaveraging issue by December 1, 2000, and to file proposed orders on all other issues raised at the Phase I and Phase II hearings by December 15, 2000. On December 6, 2000, the Commission granted the Public Staff's motion that the filing date of proposed orders on all issues but geographic deaveraging be extended to January 8, 2001. On January 5, 2001, the Commission granted the New Entrants' request that the time for submission of proposed orders be extended to January 16, 2001.

This Order will address only those issues on which evidence was presented at either the Phase I or the Phase II hearing. Issues deferred from the various arbitrations on which no evidence was presented will not be addressed.

Based on the foregoing, the evidence adduced at the hearings, and the entire record in this proceeding, the Commission makes the following

## FINDINGS OF FACT

### I. UNE REMAND ORDER

#### A. Loops

1. It is not appropriate to distinguish between loops extending less than or more than 18,000 feet from the central office for the purpose of deriving recurring rates for BellSouth's unbundled copper loop.

2. The rates proposed by the ILECs are the appropriate rates for xDSL loops, subject to the changes and modifications required herein.

3. CLPs should be able to reserve Service Level 1 (SL1) loops using an analysis of loop qualification information provided by BellSouth.

4. The appropriate fallout rate for use in calculating nonrecurring costs is 10%.

5. The rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for high capacity loops.

## B. Subloops

6. CLPs should access the ILEC's Feeder-Distribution Interface (FDI) by means of a tie cable furnished by the CLP.

7. Where the CLP chooses to access subloop facilities via access terminals, the ILEC should provide the access terminal and the CLP should pay for the costs associated with the access terminal.

8. The costs associated with providing access terminals should be recovered through nonrecurring charges.

9. The rates proposed by BellSouth and Sprint for access to intrabuilding cable and network terminating wire are appropriate. Rates should not be determined on a case-by-case basis.

## C. Loop Conditioning

10. Upon request, ILECs should remove all devices from copper loops to provide a basic copper loop for CLPs seeking to provide xDSL service.

11. ILECs should be allowed to impose a nonrecurring charge for conditioning loops.

12. Line conditioning costs for service provided to the CLPs are not recovered by existing UNE rates.

13. The rates proposed by the ILECs are appropriate for loop conditioning, subject to the changes and modifications required herein.

## D. Loop Qualification

14. ILECs must provide information which identifies the physical attributes of the loop plant, including loop lengths, the presence of analog load coils and bridge taps, and the presence and type of digital loop carrier (DLC).

15. Verizon and Sprint are providing nondiscriminatory access to the loop qualification information. BellSouth will be providing nondiscriminatory access when it is providing a fully functional electronic interface and continued access to the Loop Qualification System (LQS).

16. ILECs should be permitted to charge CLPs for access to loop qualification information at the rates proposed, with the adjustments and changes ordered herein.

## E. OS/DA

17. BellSouth and Sprint should be allowed to remove operator services/directory assistance (OS/DA) from their UNE price lists, based on their current offerings of customized routing.

18. Verizon should not be allowed to remove OS/DA from its UNE price list.

## F. UNE Combinations

19. An ILEC is required to provide to CLPs, at cost-based rates, combinations of UNEs that are ordinarily combined in the ILEC's network.

20. An ILEC is generally required to provide access to the unbundled loop and unbundled transport that compose an Enhanced Extended Link (EEL).

21. An ILEC is required to permit a CLP to convert special access circuits to EELs at UNE rates when the CLP provides significant local exchange service to the end user served by the circuit.

22. It is not practical to list all the UNE combinations that ILECs may be required to make available to CLPs. An ILEC must provide any combination of UNEs that is ordinarily combined in its network.

## G. OSS

23. ILECs should recover one-time development costs for new operational support systems (OSS) and improvements to existing systems that they propose to recover through nonrecurring charges through recurring rates applicable to users of OSS. Further expenses incurred in the development of the OSS should be amortized over five years at the overall cost of capital found reasonable.

24. BellSouth's OSS UNE rate should be a "per order" charge.

## H. Miscellaneous

25. The UNE Remand Order does not affect the rates previously set by the Commission for vertical features, and thus such rates should remain unchanged.

26. As determined in the Commission's Order in the geographic deaveraging phase of this proceeding, rates for interoffice transport, including dark fiber, need not be deaveraged.

27. BellSouth should be permitted to charge CLPs for the provision of access to daily usage files.

28. An ILEC is not required to provide CLPs with unbundled access to packet switching capabilities (including frame relay) except when the conditions in FCC Rule 51.319(c)(5) have been met.

29. When the nonrecurring charges for a UNE are designed to recover an ILEC's costs of disconnection, the ILEC may collect these charges even if there is a possibility that the ILEC can disconnect UNEs in certain circumstances without incurring any costs.

30. An ILEC is not required to provide volume and term discounts for the monthly recurring charges of UNEs. The existing nonrecurring charges for UNEs reflect volume and term discounts to the extent applicable.

31. It is inappropriate to set interim rates in the parties' interconnection agreements for UNEs for which the Commission has not yet set permanent prices.

32. The rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for dark fiber UNEs.

## II. LINE SHARING ORDER

### A. Provisioning

33. ILECs should provide unbundled access to the high frequency portion of the loop only to CLPs seeking to provide xDSL-based services that will not interfere with analog voice frequencies.

34. ILECs should provide unbundled access to the high frequency portion of the loop to requesting CLPs when the ILECs' voice customers are served by digital loop carrier facilities.

35. ILECs should implement the same provisioning and ordering intervals for line sharing to the CLPs that they provide for their own use.

36. ILECs must either provide splitters themselves or allow CLPs to purchase comparable splitters and collocate them.

37. ILECs should not be required to place or allow placement of splitters on the main distribution frame (MDF).

38. ILECs should not be required to make splitter capacity available to CLPs on a port-by-port basis.

39. An ILEC should be allowed to disconnect a splitter when an end user chooses a CLP instead of the ILEC to provide voice grade service.

40. MCI's proposed revisions to the BellSouth-Covad interconnection agreement regarding line sharing should not be adopted for inclusion in the parties' interconnection agreement.

**B. Rates**

41. No portion of the cost of the loop should be attributed to the high frequency portion of the loop.

42. The rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for the high frequency portion of the loop.

43. The rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for OSS costs required to allow CLPs access to the high frequency portion of the loop.

## DISCUSSIONS OF EVIDENCE AND CONCLUSIONS

### FINDING OF FACT NO. 1

BellSouth witness Caldwell proposed to separate the unbundled copper loop (UCL) into two separate classifications, with one rate for a loop over 18,000 feet and another rate for 18,000 feet or less. New Entrants witnesses Starkey and McPeak indicate that this would complicate the ordering process for these loops. The Commission also notes that having different rates for the same UNE within an exchange would discriminate against end users located more than 18,000 feet from the central office, and could lead to the reestablishment of distance-sensitive end user rates, which the Commission discontinued long ago. Based on the foregoing, the Commission finds and concludes that it is not appropriate to distinguish between loops less than and greater than 18,000 feet from the central office for the purpose of deriving recurring rates for BellSouth's unbundled copper loop.

### FINDING OF FACT NO. 2

Most of the testimony concerning the issue of nonrecurring rates for xDSL loops involved the New Entrants' concerns about the BellSouth UCL service offering. It is important to note that these nonrecurring charges are for loop conditioning associated with loops, as opposed to loop conditioning costs associated with line sharing. Witnesses Starkey and McPeak stated that the BellSouth UCL nonrecurring charges (NRCs) were the highest of any jurisdiction they had reviewed. They also testified that CLPs did not need or desire that BellSouth provide a designed circuit for the provision of xDSL service.

The Commission is concerned that the NRCs proposed by BellSouth for loops are so much higher than those proposed by Verizon and Sprint, and so much higher than those approved in other states. However, we are unwilling to disallow rates solely

on the ground that lower rates have been approved in other states or proposed by other companies. While BellSouth's NRCs for loops are high, no party has presented adequate justification for modifying them, except as provided in Findings of Fact Nos. 4 and 10-13. Consequently, the Commission finds and concludes that with these modifications, the recurring rates proposed by each of the ILECs are the appropriate rates for xDSL loops.

Several parties contended that the assumptions made by BellSouth in its study of the nonrecurring charges for xDSL-capable loops are inappropriate. The study was performed essentially in the same manner as the other studies in this docket. The Commission concluded in its March 13, 2000, Order setting permanent UNE prices that BellSouth's studies complied with the FCC's TELRIC methodology. The Commission therefore believes that the basic methodology used by BellSouth to produce the nonrecurring charges for its xDSL-capable loops is sound.

While the Commission believes most of the assumptions made by BellSouth in its cost studies are reasonable, it cannot agree with all of them. First, there was much discussion regarding BellSouth's assumption that 90% of its load coils would be in underground environments. The substantial cost difference between unloading coils in an underground environment and in a buried or aerial environment makes this an important factor in the resulting cost calculation. According to BellSouth, this assumption was based only upon its subject matter experts' opinions. However, Sprint witness McMahon testified that a study of Sprint's outside plant facilities indicated that 61.8% of load coils at the first load point and 51.1% of the load coils at the second load point were located in an underground environment.

While the Commission doubts that BellSouth's outside plant facilities match Sprint's facilities exactly, the wide variation between BellSouth's 90% assumption and the results of Sprint's study casts serious doubt on the credibility of BellSouth's assumption. The Commission concludes that the most reasonable approach is for BellSouth to adopt Sprint's factors for purposes of its study. BellSouth may, if it chooses, conduct a study of the location of load coils in its outside plant facilities and submit it to the Commission for review in order to support an adjustment to the load coil removal factors approved herein.

Another disputed assumption in BellSouth's study was that only 10 loops would be conditioned at a time. Sprint proposed that BellSouth's study be revised to reflect the removal of 25 pairs at a time. However, the Commission finds BellSouth's assumption to be in line with reasonable telecommunications practice. Although the removal of 25 pairs at a time is undoubtedly more efficient if the goal is to condition the most pairs in the least amount of time, it is questionable whether all of those pairs will ever need to be unloaded, and whether some of the unloaded pairs will need to be reloaded at a later date. Consequently, the Commission is reluctant to endorse the practice of unloading pairs on a wholesale basis as recommended by Sprint and the New Entrants. Indeed, should Sprint wish to recalculate the nonrecurring rates in its study to reflect removal of only 10 pairs at a time, the Commission would not object.

BellSouth also proposed an additive rate to apply to all xDSL loops to recover its estimated unrecoverable costs associated with unloading 10 pairs of load coils at a time. Essentially, BellSouth estimates it will utilize four of the pairs that are unloaded and CLPs will utilize two, which will leave the cost associated with unloading the remaining four pairs unrecovered. Again, this assumption was based upon the opinions of BellSouth's subject matter experts. The Commission is not convinced that the additive proposed by BellSouth is appropriate for inclusion in a forward-looking cost study. In such a study, the assumption must be that eventually either BellSouth or its competitors will utilize all of the unloaded pairs, in which case there will be no pairs that are unloaded and unutilized. Thus, the Commission finds and concludes that BellSouth should eliminate this additive.

## FINDING OF FACT NO. 3

BellSouth's policy is to require that loops ordered by CLPs for the purpose of providing xDSL service be ordered as UCLs rather than as SL1 loops. BellSouth contends that the provision of xDSL service requires certain loop attributes that the UCL is designed to provide. The New Entrants maintain that a CLP should be able to use the loop qualification process to identify a loop that meets its requirements, and then reserve that loop as an SL1 loop instead of a UCL. BellSouth's witnesses outlined the technical attributes of the UCL and discussed the reasons for its design and provisioning. In particular, witness Latham described the UCL as a 2-wire or 4-wire loop, equipped with a test point and a design layout record, which must meet specific technical requirements.

The Commission has concluded that BellSouth's proposed rates for the UCL are appropriate and should be approved. This conclusion is based on the assumption that a CLP may be willing to pay BellSouth to guarantee the loop attributes BellSouth has determined are necessary to provide xDSL service. However, the Commission does not believe that a CLP should be constrained to using only the specifications proposed by BellSouth.

Witness Pate testified that a CLP could request loop makeup information for a specific location, and determine based on its own criteria that the loop was capable of providing xDSL service, but it would nevertheless be required to reserve that loop in the LFACS system as a UCL, rather than as an SL1. Witness Caldwell testified that in a situation where a CLP was providing xDSL service through line sharing over a SL1 loop, and BellSouth lost the voice portion of the line, the CLP would have to purchase the loop as a UCL instead of an SL1 to maintain its service.

The Commission believes that CLPs that wish for BellSouth to guarantee the specific attributes listed in the UCL specification should pay the higher UCL rate for that service. However, the Commission also believes that a CLP should be able to determine for itself, based on loop information provided by the ILEC and its own testing, whether an SL1 loop meets its needs, without having to pay for a designed loop. In these cases, the CLP should be permitted to reserve the loop as an SL1, without any

minimum service guarantees from the ILEC. Therefore, the Commission finds and concludes that CLPs should be able to identify and reserve loops as SL1 loops.

The New Entrants panel also contended that in calculating nonrecurring charges for UCLs, BellSouth had incorrectly assumed that 90% or more of all UCLs would be new, rather than existing facilities. This issue is rendered moot by our holding that CLPs should be permitted to reserve loops as SL1 loops rather than UCLs. In almost every case, where a CLP acquires an existing loop from BellSouth, the loop will be ordered as an SL1. Consequently, almost all of the UCLs provided to CLPs will be new facilities.

## FINDING OF FACT NO. 4

The New Entrants argued that the fallout rates used by BellSouth in calculating its nonrecurring charges exceed those found reasonable by the Commission in its December 10, 1998, Order (First UNE Order) in this docket. BellSouth witness Caldwell countered by stating that this Order only addressed the first step in processing an electronic order, not the downstream provisioning activities. Thus, the argument is whether the Commission intended for the fallout rate to apply to all provisioning activities or just to the initial step.

The Commission found in the First UNE Order that the reasonable and appropriate fallout rate for use by the ILECs in their calculations of nonrecurring costs is 10%. The Commission noted that Carolina/Central's (Sprint's) studies assumed differing percentages for flow-through (the inverse of fallout) for ordering, provisioning-facility assignment, provisioning-processor entry, and provisioning-outside plant. In addition, the Commission also mentioned that GTE (now Verizon) argued against the Nonrecurring Cost Model recommended by AT&T and MCI because it used an unrealistic assumption of a 2% fallout rate for all provisioning processes.

It is clear from the discussion in the UNE Order that the Commission understood that there was more than one step in the electronic ordering process and that fallout rates applied to more than one of these steps. Further, the finding in that Order does not limit the 10% fallout rate to the initial ordering process. It simply states that the fallout rate to use is 10%. Therefore, to the extent that a fallout rate is used in the calculation of costs for electronic ordering, the rate should be 10%. BellSouth, and the other ILECs to the extent necessary, should revise their nonrecurring cost studies to reflect a fallout rate of 10% for all phases of the ordering process.

## FINDING OF FACT NO. 5

The UNE Remand Order identified high capacity loops as one of the new UNEs. Sprint witness Dickerson testified that BellSouth's costs for high capacity loops appeared to use inputs that were not North Carolina-specific, to wit: a probability of occurrence table identical to a study filed in Florida. While the Commission understands that there might be many similarities in the way BellSouth's network is

constructed in the various states, the Commission believes that rates in North Carolina should be based on North Carolina-specific data. The Commission therefore concludes that BellSouth should refile its rates for high capacity loops after having determined, based on North Carolina-specific data, the appropriate factors to be used in the cost study.

Sprint witness Hunsucker testified that Verizon did not file rates for DS3, OC3, OC12 or OC48 loops. Verizon witness Steele testified that Verizon had not received a request for any loop above the DS1 level since the Commission approved permanent UNE rates in March 2000. The Commission is aware of the fast paced growth of data services. While Verizon may not have received any requests by a competing carrier for high capacity loops above the DS1 level, it should have expected and prepared for such a request.

The Commission concludes that Verizon should be directed to file rates, with supporting cost data, for DS3, OC3, OC12, and OC48 high capacity loops within 60 days of this Order.

All of the ILECs involved in this docket filed cost studies supporting their proposed rates. Based on these studies, the Commission finds and concludes that the rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for high capacity loops.

## FINDINGS OF FACT NOS. 6-9

The parties presented extensive evidence as to the manner in which CLPs and ILECs should interconnect when CLPs acquire subloops. Most of the concerns raised by the ILECs centered on security and administration, while the CLPs based their arguments on cost and efficiency considerations. The Commission believes that the issues raised by the ILECs are valid. Cost and efficiency considerations are certainly important, but the basic need to keep accurate records of which customers are using particular loops must take precedence. Unless this function is performed properly, both the ILECs and CLPs will be unable to provide local service.

The Commission therefore finds and concludes that the CLP should be responsible for providing a tie cable mounted on its feeder equipment and that the ILEC should mount the other end of the tie cable on a connector block in the FDI. When the CLP orders services that terminate on the FDI, the ILEC should connect such services to the CLP's designated tie cable assignment on the ILEC's FDI end of the tie cable. Alternatively, the CLP may elect to have the ILEC provide an access terminal in the manner BellSouth has proposed.

The UNE Remand Order provides that ILECs may recover the costs for providing an access terminal in accordance with the FCC's rules governing the costs of interconnection and unbundling. Because the access terminal cost is essentially an installation cost, it is appropriate to recover this cost through a nonrecurring charge.

However, if an ILEC wishes to recover this cost through a recurring charge and can provide adequate support for treating the charges in such a manner, the Commission will consider having the cost of access terminals recovered as a recurring charge.

The Commission notes that both BellSouth and Sprint filed rates for intrabuilding cable and network terminating wire. However, Verizon contended that the costs of these UNEs vary too much to permit rates to be calculated by a cost study. Instead, Verizon proposed to develop individual TELRIC-based costs once a request is made for a particular location. Verizon's proposal is not persuasive. The Commission does not believe that Verizon's situation differs significantly from that of BellSouth and Sprint, both of which were able to calculate costs and propose rates. The time lag inherent in setting rates on a case-by-case basis would make it difficult for CLPs to compete for customers who are served by these loops. Moreover, such a procedure would most likely give rise to claims of discriminatory treatment. Therefore, the Commission finds and concludes that Verizon should submit a study with proposed rates for intrabuilding cable and network terminating wire.

**FINDINGS OF FACT NOS. 10-13**

Paragraph 172 of the UNE Remand Order requires ILECs to condition loops by removing all devices from copper loops so a basic copper loop can be provided to a requesting CLP seeking to provide xDSL service. According to the testimony, Verizon is concerned that removing load coils and other voice-transmission enhancing devices may have an adverse effect on the provision of voice services on loops in excess of 18,000 feet. The Commission believes this concern is justified. However, the FCC did not impose any loop length limits in requiring that the ILECs remove these devices to return the loop to its basic form. Therefore, the Commission concludes that Verizon should be required to remove load coils and other similar devices upon request of a CLP, regardless of the length of the loop.

In Paragraph 193 of the UNE Remand Order, the FCC recognized that ILECs sometimes have load coils or other similar voice-transmission enhancing devices on loops, even on loops less than 18,000 feet. The FCC further recognized that the ILEC may incur costs in removing these devices and specifically concluded that the ILECs should be allowed to charge for conditioning such loops. The Commission finds no basis for barring the ILECs from charging for loop conditioning and therefore concludes that the ILECs should be allowed to charge for conditioning loops for xDSL services.

There was testimony indicating that BellSouth's plant factors included expenses associated with loop conditioning. However, BellSouth witness Caldwell stated that the loop conditioning expense does not affect BellSouth's plant factors. Based on this testimony, the Commission concludes that it is appropriate for BellSouth to impose a separate charge for loop conditioning.

We discuss issues concerning the assumptions that should be made in calculating the nonrecurring rates for loop conditioning under Finding of Fact No. 2 with

regard to the nonrecurring charges for BellSouth's xDSL-capable loops. For example, the Commission concluded that rates should be based on the assumption that 10 load coils, rather than 25, would be unloaded at a time. However, we have not addressed the issue of whether different assumptions should be used in calculating the conditioning costs for loops greater than 18,000 feet. For the same reasons found in Finding of Fact No. 1 for the recurring charges associated with UCL loops, the Commission believes it is inappropriate to distinguish between loops less than and greater than 18,000 feet from the central office.

Because loops greater than 18,000 feet (long loops) are generally unsuitable for xDSL services, the Commission believes that the assumptions regarding the number of pairs that will be unloaded at a time for long loops should differ from loops of 18,000 feet or less. The Commission believes that it is appropriate to assume that only the loop over which xDSL service has been requested will be unloaded. Due to the existing limitations of xDSL services, there is little likelihood that ILECs will receive many requests for line conditioning for loops exceeding 18,000 feet. In addition, the Commission notes that differentiating between long loops and other loops will result in a more precise measure of the cost of conditioning xDSL-capable loops less than 18,000 feet. The Commission can always revisit this question should the technology for xDSL services change in the future to enable xDSL services to be generally offered over loops exceeding 18,000 feet. The ILECs should revise their studies for loop conditioning, to the extent necessary, to comply with the conclusions under Finding of Fact No. 2 and this finding.

## FINDINGS OF FACT NOS. 14-15

The parties do not appear to be in dispute as to what information the ILECs must provide to comply with their obligation to provide nondiscriminatory access to loop makeup data. In Paragraph 426 of the UNE Remand Order, the FCC stated that the definition of OSS includes access to loop qualification information. This information will identify the physical attributes of the loop plant; these attributes include loop lengths, the presence of analog load coils and bridge taps, and the presence and type of digital loop carrier (DLC). With such information, CLPs should be able to determine whether the loop can support xDSL and other advanced technologies. Specifically, Paragraph 427 of the Order requires that ILECs provide the following information:

> (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may

> determine the suitability of the loop for various technologies. . . .[T]he incumbent LEC must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information to itself.

In Paragraph 429 of the UNE Remand Order, the FCC rejected a proposal that ILECs "catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself." However, the FCC found that an ILEC with access to this information for itself, or an affiliate, must also provide the same type of access to CLPs on a nondiscriminatory basis within the same period within which it provides such information to itself. In addition, the FCC foresees that ILECs "will be updating their electronic database for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface."

The controversy between the parties concerns whether the method by which BellSouth, Verizon, and Sprint propose to provide access to loop qualification data fulfills their obligation to provide nondiscriminatory access.

BellSouth

BellSouth provides CLPs with access to loop makeup data through both electronic and manual interfaces. The electronic process allows a CLP to access the Loop Facilities Assignment and Control System (LFACS) database and to perform searches to extract interactive loop data. However, it is not clear from the record whether the electronic interface is fully operational at this time. The manual procedure requires a CLP to make a service inquiry request for loop qualification information. BellSouth employees then manually develop the loop makeup and provide such in writing to the CLP. According to BellSouth witness Pate, approximately 80% of loops with detailed loop makeup information are contained in the LFACS database, and the remaining 20% require manual intervention. BellSouth contends that it provides the same interfaces to CLPs that it provides to its own employees and therefore is providing nondiscriminatory access.

BellSouth also has a Loop Qualification System (LQS) database that qualifies outside plant facilities for use by BellSouth's retail ADSL products. LQS utilizes the LFACS database, as well as the Loop Engineering System (LEIS), Loop Engineering Assignment Data (LEAD), Hands-Off Assignment Logic (HAL), and the Product/Services Inventory Management System (P/SIMS). Currently, BellSouth is allowing CLPs to access LQS, but only until BellSouth deploys its mechanized loop makeup interface. The New Entrants panel requested that BellSouth be required to give CLPs access to LQS and all the underlying databases.

The Commission believes that BellSouth must provide nondiscriminatory access to loop makeup data in the same manner and period in which it obtains this information. It appears that such access should include access to both the LFACS and LQS databases, on a permanent rather than interim basis. Further, as BellSouth's retail operations have had access to such data through electronic means and BellSouth was required to provide similar access to CLPs by May 17, 2000, CLPs should be allowed to pay only the nonrecurring charge for electronic processing, even when manual intervention is in fact required, until beta testing is complete and a final version of the electronic interface is available to all CLPs.

The New Entrants panel also pointed out that BellSouth attributes none of its NRC for the provision of its retail asymmetric digital subscriber line (ADSL) to the accessing of loop makeup data for qualification of a loop but rather wants to foist the entire cost of OSS and enhancements upon CLPs. BellSouth did not attempt to rebut this allegation. The Commission concludes that BellSouth should be required to indicate within 60 days whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data of the nonrecurring charge and, if so, what portion. Depending on the information received, the Commission may modify the nonrecurring charge for this UNE.

Verizon

Verizon provides an electronic method of obtaining loop data formatted pursuant to Ordering Billing Forum (OBF) guidelines. Verizon has pledged to update its Loop Qualification Program as the OBF standards are revised. Additionally, Verizon is working on further enhancements to provide additional data elements as well as an electronic data interchange (EDI) interface. Verizon contended that its Loop Qualification Program meets the FCC's standards and that these enhancements will go beyond the FCC's requirements. New Entrants witness Gose criticized Verizon's loop qualification process for having numerous points of failure as evidenced by the numerous failure codes. However, Verizon witness Bachman explained that both Verizon and CLP employees receive these failure codes and that such codes are useful because they provide more detailed information about the loop makeup. Witness Gose also questioned whether Verizon's planned enhancements are evidence that Verizon has not yet met the requirements of the FCC that ILECs have a loop qualification system in place. The Commission finds witness Gose's arguments unpersuasive. Based on the evidence presented, the Commission finds and concludes that Verizon is meeting its obligation to provide nondiscriminatory access to loop modification data at this time.

Sprint

Sprint has developed a nonrecurring charge for the provision of technical information that would enable the user to determine whether a loop can support digital xDSL services. Sprint provides CLPs with the same information regarding loop makeup, electrical parameters and disturbers that it obtains internally. New Entrants

witness Fischer disputed Sprint's proposed nonrecurring charge because it does not give CLPs direct access to Sprint's databases, but rather is a payment for Sprint employees to manually research whether a loop is xDSL capable. However, Sprint witness Dickerson testified that Sprint itself does not have automated access to the databases that contain loop qualification data. As such, the Commission finds and concludes that Sprint is meeting its obligation to provide nondiscriminatory access to loop modification data at this time.

## FINDING OF FACT NO. 16

Witnesses Starkey and McPeak testified that the BellSouth cost was based on an assumption of three hours of engineering time to complete one loop qualification. They suggested that the work function should require no more than forty minutes, and should be performed by personnel at a lower loaded labor rate. While the Commission agrees that three hours is an excessive amount of time to complete one loop qualification, the Commission is not convinced that forty minutes is adequate. The interest of the CLPs would appear to be served as much by accuracy as by speed. Based on the record evidence, the Commission believes that 75 minutes should be, on average, adequate time to complete a loop qualification with both speed and accuracy. The Commission finds no adequate reason to question which work group would be performing this assignment. Therefore, the Commission finds and concludes that BellSouth should be directed to refile this rate based on a time requirement of one hour and fifteen minutes using the loaded labor rate originally used by the ILECs. The Commission further finds and concludes that the ILECs should be permitted to charge CLPs for access to loop qualification information at the rates proposed, with the adjustments and changes ordered herein.

## FINDINGS OF FACT NOS. 17-18

This issue concerns the ILECs' obligation to unbundle operator services (OS) and directory assistance (DA). FCC Rule 51.319(f), which addresses this issue, states:

> An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications serviced only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol.

This rule was promulgated in connection with the UNE Remand Order, in which the FCC found that not having unbundled access to the ILECs' OS/DA would not materially diminish the ability of the CLPs to provide local service. The FCC reasoned that there are alternative sources of OS/DA available to the CLPs as long as the ILECs provided customized routing.

BellSouth offers both an Advanced Intelligent Network (AIN) and a Line Class Code (LCC) method of customized routing and has also made efforts to allow the use of Feature Group D signaling with its LCC customized routing option. BellSouth contended that this satisfies the FCC rule and allows it to withdraw its OS/DA UNE prices. Verizon and Sprint have agreed to offer customized routing. In addition, both BellSouth and Sprint have provided permanent UNE rates for customized routing. Sprint indicated that, although it believes it can offer customized routing throughout its territory, it would leave its OS/DA rates in place for instances where it cannot provide customized routing. Verizon, however, has not provided permanent UNE rates for customized routing, intending instead to establish customized routing prices on a case-by-case basis.

MCI and AT&T argued that the routing solutions offered by BellSouth are not effective. MCI maintained that BellSouth's methods do not allow it to use shared trunk groups and therefore would not be cost effective. AT&T maintained that BellSouth's AIN routing method adds additional time to a call, thereby increasing the cost, and that it lacks sufficient information about the LCC routing method to determine whether this would provide effective routing.

The Commission finds MCI's and AT&T's arguments, which focus primarily on cost, unconvincing. It appears that the customized routing offered by both BellSouth and Sprint would allow effective access to the CLPs' OS/DA carrier of choice. The Commission also finds that ILECs do not need to show that their customized routing method meets the specific requirements for each CLP in order to justify removing its OS/DA from their price lists.

Therefore, the Commission finds and concludes that BellSouth and Sprint should be allowed to remove OS/DA from their UNE price lists. However, Verizon's proposal to negotiate UNE rates for customized routing on a case-by-case basis does not satisfy the FCC's rules, and Verizon should not be allowed to remove UNE rates for OS/DA.

**FINDING OF FACT NO. 19**

The parties disagreed sharply as to the extent of an ILEC's obligation to provide combinations of UNEs to CLPs. BellSouth and Verizon contended that an ILEC is required to provide a combination of UNEs to a CLP only if those specific UNEs have already been physically combined on the ILEC's system. In other words, if two UNEs have not already been combined, an ILEC is not required to combine them at a CLP's request, even though it has combined similar UNEs at other locations on its system. Sprint and the CLPs contended that whenever an ILEC makes a UNE combination available to CLPs anywhere on its system, it must provide that combination to any CLP upon request, regardless of whether the specific UNEs that the CLP requests are already physically combined.

This issue requires the Commission to interpret FCC Rule 51.315(b), which provides: "Except upon request, an ILEC shall not separate requested network

elements that the ILEC currently combines." Rule 51.315 was promulgated with the issuance of the Interconnection Order. Subsections (c)-(f) of Rule 51.315 require ILECs, subject to certain limitations, to combine UNEs that are not ordinarily combined on their networks, as well as those they currently combine. Rule 51.315 was adopted pursuant to section 251(c)(3) of the Act, which imposes on each ILEC the duty "to provide . . . nondiscriminatory access to network elements on an unbundled basis," and requires that an ILEC "provide . . . unbundled network elements in a manner that allows requesting carriers to combine such elements."

In Iowa Utilities Board v. FCC, 120 F.3d 753 (1997), the Eighth Circuit invalidated subsections (b)-(f) of Rule 51.315. The court held that these provisions are inconsistent with section 251(c)(3) of the Act, which requires that UNEs be combined by the CLP requesting them rather than by the ILEC. However, in AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366, 394 (1999), the Supreme Court reinstated Rule 51.315(b), stating that section 251(c)(3) "does not say, or even remotely imply, that elements must be provided only in [discrete pieces] and never in combined form." The Court also noted that without Rule 51.315(b), "incumbents could impose wasteful costs" on CLPs by separating UNEs that had already been combined and requiring the CLPs to bear the costs of recombining them. Id. at 395. The Court remanded the case for further proceedings; it did not rule on the validity of subsections (c)-(f).

In the UNE Remand Order, the FCC noted that the Iowa Utilities Board litigation was still pending before the Eighth Circuit. Consequently, it declined requests from various parties to reinstate subsections (c)-(f), or to provide further explanation of the term "currently combines" in subsection (b). On July 18, 2000, in Iowa Utilities Board v. FCC, 219 F.3d 744, 759 (2000), the Eighth Circuit held that notwithstanding the Supreme Court's decision reinstating Rule 51.315(b), subsections (c)-(f) (which require ILECs to combine UNEs at a CLP's request even if they are not ordinarily combined) remain invalid. The court stated: "Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall 'combine such elements.' It is not the duty of the ILECs. . . ."

Both BellSouth witness Cox and Verizon witness Steele contended that the phrase "currently combines" in FCC Rule 51.315(b) should be interpreted as meaning "already physically combines." An ILEC should not be required to provide a UNE combination at a CLP's request unless, at the time of the request, the specific UNEs requested by the CLP have already been combined by the ILEC. The fact that similar UNEs are combined elsewhere on the ILEC's system should not be considered.

In support of their position, BellSouth and Verizon relied on the Eighth Circuit's holding that under section 251(c)(3) of the Act, the responsibility for combining UNEs rests upon CLPs rather than ILECs. They also cited the following language from Paragraph 480 of the UNE Remand Order: "To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to carriers in combined form." This sentence, they contended, shows that UNEs are "currently combined" within the meaning of the

rule only if they are "in fact connected." Verizon witness Steele also pointed out that this Commission, in its Order Ruling on Motions for Reconsideration and Clarification and Comments in this docket, 89 N.C.U.C. 98, 194-95 (1999), stated: "The ILECs should not be required to combine unbundled elements for CLPs, but the ILECs should be prohibited, except upon request, from separating requested network elements that they currently combine themselves."

The BellSouth and Verizon witnesses also testified that as a matter of policy, it is unfair to require ILECs to combine UNEs that have not already been combined. Combining a set of network elements is a task that has an associated cost, and if a CLP wishes to have this task performed, it should bear the costs involved.

Sprint witness Hunsucker and the witnesses for the CLPs – New Entrants witness Starkey, WorldCom witness Darnell, and AT&T witness Follensbee – contended that "currently combines," as used in Rule 51.315(b), should be interpreted to mean "ordinarily combined within [the] network, in the manner in which they are typically combined." This language was used by the FCC in Paragraph 296 of the Interconnection Order to explain the meaning of "currently combines." It was quoted in Paragraph 479 of the UNE Remand Order, although the FCC declined to express an opinion on whether its earlier holding should be reaffirmed. Under this interpretation of the phrase "currently combines," an ILEC must combine a set of UNEs at a CLP's request if it "ordinarily" or "typically" combines the same elements elsewhere on its network.

The witnesses for Sprint and the CLPs contended that although the Eighth Circuit has refused to require ILECs to combine UNEs not already combined, its decision is not final; several parties have filed petitions for certiorari with the United States Supreme Court. Moreover, other courts have viewed the Act differently and have upheld state commission rulings requiring ILECs to combine UNEs that are ordinarily combined on their systems. These cases include Southwestern Bell Telephone Co. v. Waller Creek Communications, Inc., 221 F.3d 812 (5th Cir. 2000); MCI Telecommunications Corp. v. U.S. West Communications, 204 F.3d 1262 (9th Cir. 2000); and US West Communications v. MFS Intelenet, Inc., 193 F.3d 1112 (9th Cir. 1999).

Sprint and the CLPs further contended that the interpretation of Rule 51.315(b) proposed by BellSouth and Verizon will place CLPs that provides service through UNEs at a severe handicap in competing for customers in newly constructed buildings. The telephone facilities serving a new building obviously are not "already combined," and therefore, under the BellSouth-Verizon interpretation, an ILEC is not required to combine them. Consequently, the CLP can provide service to a customer in a new building only through a cumbersome and expensive process. It must first resell the ILEC's service to the customer; then, once the resale service is being provided, the CLP can convert its retail service to a UNE combination, because the UNEs serving the customer will now be "already combined." CLPs should not be required to go through this indirect procedure in order to serve a customer in a new building; instead, they

should be able to acquire the UNEs serving the customer immediately, so long as similar UNEs are ordinarily combined on the ILEC's system.

The Commission concludes that the most appropriate interpretation of FCC Rule 51.315(b) is that proposed by the CLPs and Sprint. We believe the best guide to what the FCC intended by the term "currently combines" is found in the Interconnection Order. In that Order, issued at the time the rule was promulgated, the FCC explained that the term means, "ordinarily combined within [the] network, in the manner in which they are typically combined." We do not believe that the language cited by BellSouth and Verizon from Paragraph 480 of the UNE Remand Order reflects an intention by the FCC to modify its interpretation and restrict the scope of an ILEC's duty to combine UNEs. On the contrary, the FCC stated in the UNE Remand Order that it would not re-examine the meaning of "currently combines," because of the litigation pending in the Eighth Circuit. In Paragraph 480, the FCC was simply noting the undisputed fact that if network elements are in fact connected, they must be made available to a CLP in combined form. It was not suggesting that these are the only circumstances in which an ILEC is obligated to combine UNEs.

The Commission agrees with the CLPs and Sprint that the interpretation of "currently combines" proposed by BellSouth and Verizon would interfere with competition for customers in new buildings. These customers should have the opportunity to receive service from CLPs that provide service by UNEs, just as they can receive service from ILECs or from CLPs that build their own facilities or resell ILEC service. Under the BellSouth-Verizon proposal, they would not have that opportunity.

The Eighth Circuit's July 2000 opinion in Iowa Utilities Board does not require us to adopt the interpretation of Rule 51.315(b) proposed by BellSouth and Verizon. The issue was the validity of subsections (c)-(f) of Rule 51.315, which require ILECs to combine UNEs that are not ordinarily combined in their systems. The court held that these subsections are inconsistent with the Act and therefore invalid. The interpretation of subsection (b) was not before the Eighth Circuit. To be sure, the reasoning of the Eighth Circuit's opinion does provide some implicit support for the interpretation of subsection (b) advocated by BellSouth and Verizon; but Sprint and the CLPs have cited other cases that support their position. Neither side can validly contend that the federal courts have conclusively upheld its position.

Neither does the Commission believe that its Order Ruling on Motions for Reconsideration and Clarification and Comments, issued in this docket on August 18, 1999 and cited at the hearings by witness Steele, should control the decision of this issue. In August 1999 the UNE Remand Order, as well as several of the federal court decisions relied upon by the parties, had not yet been issued. In its Order Setting Procedural Schedules, issued in this docket on March 30, 2000, the Commission included the interpretation of the phrase "currently combines" among the issues to be considered at the Phase II hearings. The Commission would not have taken this step if it had believed that the issue had already been conclusively resolved.

Accordingly, the Commission finds and concludes that an ILEC must provide, upon a CLP's request, any UNE combination that it ordinarily combines on its system, even if the specific UNEs requested by the CLP are not already physically combined.

## FINDINGS OF FACT NOS. 20-21

ILECs routinely provide the functional equivalent of combinations of unbundled loops and transport network elements (also known as enhanced extended link [EEL]) through their special access tariff offerings. FCC Rule 51.315(b) states that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." Because ILECs are prohibited from unbundling loops and transport network elements that are currently combined, the FCC has determined that a requesting carrier can obtain these combinations, EELs, at UNE rates. In Paragraphs 428 and 480 of the UNE Remand Order, however, the FCC declined to define the EEL as a separate network element. Since the loop and dedicated transport are separate UNEs, it would appear that the ILEC should provide unbundled access to the network elements that make up the EEL. Thus, CLPs and IXCs can purchase EELs at UNE rates and bypass higher rates for similar services as offered in the special access tariff.

In response to the bypass concern and to preclude conversion of circuits which carry only a limited amount of local traffic, the FCC established a temporary constraint in its Supplemental Order, released on June 2, 2000, in CC Docket No. 96-98. Simply stated, requesting carriers may not convert special access services to EELs unless these EELs are used to provide the end user with a significant amount of local exchange service, in addition to exchange access service. The FCC instituted this temporary constraint until resolution of its Fourth Final Notice of Proposed Rulemaking. The Supplemental Order defines the phrase "significant amount of local service," and highlights the circumstances that would represent a safe harbor for determining the minimum amount of local exchange service that a requesting carrier must provide in order for that local exchange service to be deemed significant. The Supplemental Order contains detailed criteria for determining whether a requesting carrier is providing a "significant amount of local exchange service" to a particular customer.

The Commission notes that it has determined in other proceedings that ISP-bound traffic should be treated as local. Thus, CLPs may use ISP-bound traffic in their calculations to determine the amount of local traffic when seeking to convert special access circuits to EELs.

The other circumstance where ILECs are required to provide nondiscriminatory, cost-based access to EELs is when ILECs choose not to offer unbundled access to local circuit switching used to serve end users with four or more lines in Density Zone 1 in the top 50 Metropolitan Statistical Areas.

The Commission finds and concludes that CLPs should be able to obtain unbundled access to EELs by purchasing the elements that compose EELs. However,

special access services may not be converted to EELs unless these EELs are used to provide the end user with a significant amount of local exchange service, in addition to exchange access service, pursuant to the FCC's Supplemental Order.

## FINDING OF FACT NO. 22

Many of the parties elected not to address the issue of combinations of UNEs, other than those loop-port combinations previously ordered by the Commission on March 13, 2000, to which an ILEC is required to provide access to CLPs. WorldCom witness Darnell stated only that ILECs should be required to provide the UNE-P, which he defined to include a loop, a port, local circuit switching (including vertical features), shared transport, and OS/DA. AT&T witness King presented a list of UNE combinations that he believed ILECs should be required to provide. BellSouth witness Cox testified that BellSouth is willing to provide the combinations listed by witness King, but only when they are in fact combined and providing service to the customer the CLP wishes to serve. Witness Cox stated that aside from UNEs that are already physically combined, BellSouth is unwilling to provide any UNE combinations to CLPs, except for the unbundled loop and unbundled transport for customers with four or more lines in Density Zone 1 areas in Charlotte and Greensboro when BellSouth elects to be exempted from providing access to local switching. Verizon witness Steele testified that because there are so many potential UNE combinations that could be provided, it is not necessary or productive to set rates for each combination.

The Commission has already held that an ILEC must provide a CLP, upon request, with any combination of UNEs that is ordinarily combined in its network. We agree with witness Steele that there are an enormous number of UNE combinations that potentially could be combined in an ILEC's network and requested by a CLP. Any list of potential combinations would necessarily be incomplete, and the Commission does not believe that it would serve any useful purpose to prepare such a list.

## FINDINGS OF FACT NOS. 23-24

In its December 10, 1998, and August 18, 1999, Orders in this docket, the Commission concluded that one-time development costs for new OSS systems and improvements to existing systems that the ILECs propose to recover through nonrecurring charges should instead be recovered through recurring rates applicable to users of OSS. The Commission said that further expenses incurred in the development of the OSS should be amortized over five years at the overall cost of capital found reasonable. On March 13, 2000, the Commission issued an Order adopting the UNE rates produced from the cost studies filed on February 11, 2000. In that filing, BellSouth proposed a rate of $305 per CLP per month for access to BellSouth's OSS.

BellSouth witness Cox testified that it is more appropriate to charge for access on a "per order" basis rather than a "per CLP" basis because costs are incurred on a "per order" basis. She contended that CLPs sending more orders per month are paying less per order than CLPs sending fewer orders. According to Ms. Cox, BellSouth's proposed

OSS "per CLP" access UNE rate is significantly understated. The OSS costs BellSouth originally proposed were developed using the anticipated numbers of CLPs, resellers, and all orders, but the amortized amount was developed using only the anticipated number of CLPs and their orders over five years.

MCI witness Darnell contended that OSS is not a product and, therefore, should not have a UNE rate associated with it. Mr. Darnell further stated that OSS cost is a shared or common cost which should be recovered over the expected life of the OSS through recurring rates, similar to the recovery of other shared and common costs.

Verizon stated only that it intended to update its OSS costs and related charges consistent with the Commission's implementation of this Phase II issue.

The Commission reaffirms its previous decision that one-time development costs for new OSS systems and improvements to existing systems that the ILECs propose to recover through nonrecurring charges should instead be recovered through recurring rates applicable to users of OSS. Further expenses incurred in the development of the OSS should be amortized over five years at the overall cost of capital found reasonable. Finally, the Commission finds that BellSouth's "per CLP" rate, as adopted on March 13, 2000, should be revised as witness Caldwell proposed because it better reflects the manner in which the service is provided and the costs are incurred.

**FINDING OF FACT NO. 25**

In its December 10, 1998, Order on UNE pricing, the Commission determined that "vertical features should be unbundled and priced separately from the local switch." Subsequently, AT&T filed a motion requesting the Commission to find that vertical features are included in the switch price. By Order issued on August 18, 1999, the Commission affirmed its finding on this issue. We stated:

> Vertical features increase both the initial cost of a switch and traffic on a switch compared to a switch without such features. Many vertical features require specialized hardware and the payment of right-to-use fees. AT&T would have the Commission ignore the fact that if the legitimate costs of the switch are not recovered through vertical features they must be recovered through rates for other traffic-sensitive functions, such as local and/or interoffice switching. In other words, denying recovery through vertical feature rates would require recovery through other rates.

89 N.C.U.C. 98, 150 (1999).

In requesting the Commission to find that CLPs receive access to vertical features when they pay only the basic port charge, AT&T repeated the arguments it made in earlier proceedings in this docket. AT&T witness King conceded on cross-examination that the purpose of his testimony on this issue is to request that the Commission reconsider its decision on the pricing of vertical services once again. He

also conceded that the UNE Remand Order, which was issued after the completion of the earlier hearings, did not specifically address the issue of pricing of vertical features, although it did (in Paragraph 244, at footnote 475) define local switching as including all vertical features which the switch can provide. Nonetheless, as BellSouth pointed out, the FCC did not require ILECs to combine all vertical features into any one of the switching elements.

The Commission believes its previous reasoning on this issue is still valid. The Commission agrees with BellSouth witness Cox that the UNE Remand Order did not modify any prior FCC orders or rules on the unbundling of vertical features. Consequently, the Commission finds and concludes that the rates for vertical services should not be changed.

**FINDING OF FACT NO. 26**

The dispute between the ILECs and CLPs with respect to interoffice transport does not center on unbundling, but on deaveraging the nonrecurring and recurring rates for transport. The Commission has already made a determination on this issue in the geographic deaveraging portion of this docket.

**FINDING OF FACT NO. 27**

The FCC has determined that access to call-related databases is technically feasible, and it has concluded that ILECs must provide nondiscriminatory access to their call-related databases on an unbundled basis. In Paragraph 403 of the UNE Remand Order, the FCC defined call-related databases as "databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service."

The Access Daily Usage File (ADUF) and the Enhanced Optional Daily Usage File (EODUF) provide call detail information on calls made by CLP customers. These databases meet the criteria of call-related databases as defined by the FCC. CLPs must have access to these databases, since they provide call detail records associated with their customers' usage of ILEC switches, and track the CLPs' customers' usage and document billing. BellSouth was the only ILEC to address this issue. AT&T witness King contended that BellSouth is discriminating against CLPs by developing a CLP-only database at the CLPs' expense. He also contended that CLPs have already contributed to BellSouth's "existing legacy operational support system" and that it is financially burdensome for CLPs to pay for the ADUF and EODUF.

The Commission disagrees with witness King's assertion that contributions made by CLPs to the operation support system should also cover costs associated with the CLPs' access to the ADUF and EODUF. As pointed out by BellSouth witness Caldwell, ADUF and EODUF have been developed to provide unique information requested by CLPs that is not normally obtained by BellSouth for its own customers. Thus, the cost of providing this information is an incremental cost.

As with other UNEs, there is a quantifiable cost associated with the provision of unbundled access to the ADUF and EODUF, and this cost should be paid by the CLPs that utilize this access. Therefore, the Commission finds and concludes that BellSouth should be permitted to charge CLPs for the provision of access to daily usage files. The provision of unbundled access to ADUF and EODUF by Sprint or Verizon was not addressed in this case.

**FINDING OF FACT NO. 28**

In the UNE Remand Order, the FCC rejected the requirement that ILECs provide packet switching as an unbundled network element. However, the FCC was clearly concerned about situations in which the CLP would be effectively precluded from providing xDSL services because of the lack of access to unbundled packet switching. In Paragraph 313 of the Order, the FCC concluded that a CLP would be "effectively impaired without access to unbundled packet switching . . . if [it] is unable to install its Digital Subscriber Line Access Multiplexer (DSLAM) at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services. . . ." Therefore, the FCC adopted Rule 51.319(c)(5) to address the limited circumstances when ILECs must provide packet switching on an unbundled basis. According to this rule, unbundled packet switching must be provided by ILECs only if:

> (I) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
>
> (ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;
>
> (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and
>
> (iv) The incumbent LEC has deployed packet switching capability for its own use.

The Commission believes that the CLPs have not presented adequate justification for unbundling packet switching. As the FCC concluded in the UNE Remand Order, the ILEC does not retain a monopoly position in the advanced services market for which packet switching is a necessary component. In other words, CLPs would not be impaired without access to unbundled packet switching.

The primary witness on this issue was New Entrants witness Starkey. His main concern was the supposed high cost incurred by CLPs to install DSLAMs at remote terminals, but he offered no supporting documentation. Indeed, his testimony that installing a DSLAM at a remote terminal is likely to equal the costs of collocation at a central office seems inaccurate at best considering the additional expenses associated with central office collocation. The Commission therefore finds and concludes that unbundled packet switching need not be provided by ILECs unless the conditions in the FCC's Rule 51.319(c)(5) are met.

**FINDING OF FACT NO. 29**

Only a few of the parties addressed the issue of UNE disconnection charges. AT&T witness King testified that disconnection charges can properly be assessed when an ILEC actually incurs costs in disconnecting UNEs. In many cases, however, UNEs are not physically disconnected when a CLP ceases to use them, but are only deactivated by computer. In these instances, the costs incurred by the ILEC are negligible, and there should be no disconnection charges. BellSouth witness Cox testified that BellSouth does not collect UNE disconnection charges as such. Instead, some disconnection charges are recovered through the nonrecurring charges assessed when a CLP orders a UNE, and others are recovered through monthly recurring charges pursuant to the Commission's Order of December 10, 1998 in this docket. Verizon witness Steele testified that Verizon recovers UNE disconnection costs through its nonrecurring charges.

Utility rates are regularly based on average costs. Under the existing procedure, the nonrecurring charges and monthly recurring charges for UNEs are designed to recover the average costs of disconnection. In some specific instances, the amount recovered by the ILEC will exceed the actual cost of disconnecting a specific UNE, but in other cases, it will be lower. It would be administratively burdensome to require ILECs to collect individualized disconnection charges based on the actual cost incurred in disconnecting each UNE they provide. The Commission therefore finds and concludes that the existing procedure for recovery of disconnection costs should continue.

**FINDING OF FACT NO. 30**

No party offered any evidence to show that volume and term discounts for recurring monthly charges for UNEs were appropriate. Nor did any party show that the existing lower nonrecurring rates for installations of additional UNEs were inappropriate. Indeed, the only testimony regarding volume and term discounts was from BellSouth.

BellSouth witness Cox testified that the rates for UNEs are derived using least-cost, forward-looking technology consistent with FCC rules. Subject to certain modifications ordered by the Commission, that was the conclusion of the Commission in its March 13, 2000, Order in this docket. Further, the nonrecurring rates supported by BellSouth's cost studies already reflect any economies involved when multiple UNEs

are ordered and provisioned at the same time. For example, when costs are lower for additional elements requested on the same installation order, BellSouth's rate structure of "Nonrecurring First" and "Nonrecurring Additional" reflects the cost reductions. Thus, the lower nonrecurring rate for additional UNEs is, in effect, a volume discount reflecting the reduced costs occurring when multiple UNEs are ordered at the same time.

The Commission finds and concludes that, to the extent applicable, the nonrecurring charges for UNEs reflect volume discounts. There was no testimony as to any cost benefits related to the installation of a UNE and the length the UNE is in service. Therefore, nonrecurring charges for UNEs should not reflect any term discounts.

The Commission finds and concludes that term discounts need not apply to recurring or nonrecurring charges for UNEs. Further, volume discounts are not appropriate for recurring UNE charges and are already reflected, to the extent necessary, in nonrecurring charges.

**FINDING OF FACT NO. 31**

This issue was formerly Issue 2 in the MCImetro/BellSouth arbitration. In this proceeding, MCI witness Darnell proposed that the Commission set interim rates at zero for UNEs not yet reviewed by the Commission, with a subsequent true-up after the Commission sets permanent rates. Witness Darnell contended that BellSouth will not be detrimentally affected by a zero rate because it will be paid when the rates are trued up, and that the demand for such UNEs will be low. He also contended that the Commission would further competition by allowing CLPs to retain their money until the rates are set and then developing a true-up mechanism favorable to CLPs.

As an alternative, MCI proposed that the interim rates be set at 50% of the rates proposed by BellSouth. MCI argued that such an approach would be attractive because neither of the parties to the interconnection agreement would be content with the arrangement and the amount of the true-up would be lessened.

Not surprisingly, BellSouth opposed both of these proposals. BellSouth witness Cox questioned MCI's contention that the volume of UNEs purchased will be low if the price is set at zero until the Commission sets permanent rates. She also pointed out that neither the Act nor the FCC rules require ILECs to bankroll the CLPs' business plans by giving them UNEs for free, even on a temporary basis.

The Commission agrees with BellSouth that interim rates are unnecessary; the Commission is setting permanent rates in this Order. Moreover, MCI's proposal that interim rates be set at zero is wholly indefensible. The assumption that demand will be low for free UNEs is unrealistic, and BellSouth would be assuming the entire risk that it might never be paid. To require BellSouth to provide UNEs without compensation, even during an interim period, clearly is contrary to the Act. The Commission declines to set

interim rates in the parties' interconnection agreement for UNEs for which the Commission has not yet set permanent prices.

## FINDING OF FACT NO. 32

The UNE Remand Order identified dark fiber as one of the new UNEs. Witness Dickerson testified that Sprint had filed deaveraged rates for the dark fiber interoffice and feeder elements. Since the Commission has concluded that the only UNE rates that should be geographically deaveraged are loop rates, Sprint should be directed to refile its rates to provide statewide average rates for dark fiber interoffice and dark fiber feeder.

Witness Gose testified that Verizon's disconnection costs for dark fiber should be recovered through a monthly rate instead of an NRC. Witness Casey stated that Verizon was willing to recover nonrecurring costs through monthly rates if the Commission requested it. The Commission believes it is appropriate to recover disconnection costs through the monthly recurring charge. Thus, Verizon should be directed to refile its dark fiber rates to reflect disconnection costs being recovered in the monthly recurring rate with recovery over a five-year period.

All of the ILECs involved in this docket filed cost studies supporting their proposed rates for the dark fiber UNEs. Based on these studies, the Commission finds and concludes that the rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for the dark fiber UNEs.

## FINDINGS OF FACT NOS. 33-35

In the Line Sharing Order, the FCC sought to ensure that line sharing not be limited to any particular technology, and that the analog voice channel be preserved from significant degradation. The New Entrants presented testimony indicating that the Commission should not attempt to limit the types of technologies used to provide xDSL services. The Commission concurs with the position of the New Entrants and FCC. Any xDSL-capable service that does not degrade the analog voice channel should be permitted, regardless of the technology used. CLPs seeking to share lines are not limited to a particular technology for deploying xDSL-based services, but the CLPs must conform to industry specifications to ensure that these services will not interfere with analog voice frequencies.

The New Entrants argued that the ILECs should be required to allow CLPs to insert line cards into remote terminals that include packet switching capability, and would allow the provision of xDSL service over the loop connected to the card. The Commission declines to take this step. The Commission determines that the ILECs' obligations in this instance are satisfied by offering access to the ILECs' DSLAMs on an unbundled basis.

As stated in Paragraph 91 of the FCC's Line Sharing Order, ILECs are required to provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office. Even where the ILEC's voice customer is served by DLC, the ILEC has an obligation to provide access to the high frequency portion of the loop. The UNE Remand Order further explains in Paragraph 313 that if a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the ILEC can effectively deny competitors entry into the packet switching market. Thus, the FCC's clear concern is that advanced services be widely available on a timely basis.

The Commission believes that making advanced services such as xDSL service available to as many people as possible is a laudable goal. Indeed, no one has suggested otherwise in this proceeding. The FCC even considers the provision of advanced services to be important enough to make an exception to its decision not to require unbundled packet switching in situations in which the ILEC has a DSLAM in a remote terminal.

The Commission notes that there may be cases in which the CLP wishes to install a DSLAM at a remote terminal, but the ILEC has not yet installed one and contends that there is insufficient room for the CLP's DSLAM at the remote terminal. In these cases, the Commission believes that the same process should be used as when an ILEC alleges insufficient central office space for collocation. The Commission believes that requiring ILECs to obtain a waiver when there is insufficient space at remote terminals will advance the goal of providing advanced services. This policy will help to ensure that CLPs have the opportunity to offer advanced services regardless of whether the ILEC is also offering advanced services at a particular location.

The Commission expects that ILECs will work with CLPs on an ongoing basis to design, implement, and maintain efficient and effective OSS interfaces that will support ongoing line sharing requirements. Specifically, we expect ILECs to implement ordering and provisioning mechanisms and interfaces that provide CLPs with the ability to obtain access to the high frequency portion of the loop in the same ordering and provisioning time intervals that the ILEC provides for its own xDSL-based service.

## FINDING OF FACT NO. 36

A splitter is a passive device that separates and combines the low and high frequency signals on the local loop. XDSL can be added to the local loop by deploying a splitter at the customer's premises and another splitter at the central office or the remote terminal. There are three splitter options or configurations in the central office: ILEC owned, installed, and maintained; CLP owned and ILEC installed and maintained; and CLP owned, installed, and maintained.

The New Entrants witnesses contended that CLPs need all three options for splitter ownership, as flexibility is the key to CLP deployment of line sharing. Witness Zulevic stated that it is important for CLPs that have equipment with splitter

functionalities such as DSLAMs to be able to purchase and maintain the splitter in their own collocation space. On the other hand, requiring ILECs to offer splitter space on an ILEC-owned splitter enables them to maximize limited central office space and to place equipment there to meet demand.

Witnesses Starkey and McPeak also contended that ILECs should be required to purchase and maintain a splitter to support line sharing. First, they argued that the Line Sharing Order requires ILECs to provide access to the high frequency portion of the loop as a UNE, and the only way to do that without the voice portion is to install a splitter. Second, the splitter is used jointly by the ILEC and the CLP, and both benefit from its capability. It is important that the splitter be purchased, maintained, and managed as efficiently as possible, and it is likely that the ILECs will have certain splitter management efficiencies the CLPs do not have. Third, an ILEC's buying power is likely to be superior to a CLP's. Fourth, this is the only way to employ the most efficient splitter arrangement, i.e., placing it on the MDF.

BellSouth witness Milner testified that BellSouth is offering the first and second options and is working with the CLPs on offering the third, which should be available soon. Sprint witness Hunsucker, on the other hand, testified that ILECs are not required to provide splitters and that Sprint would not make a Sprint-owned splitter available to the CLPs. Witness Hunsucker cited Paragraph 146 of the Line Sharing Order and FCC Rule 51.319(h)(4) in support of Sprint's position. Similarly, as witness Lee testified, Verizon proposed to discontinue its splitter offering as of December 15, 2000. According to witness Lee, Verizon had preferred to install and maintain the splitters but then reached a compromise with the CLPs in which it identified offices where collocation activity indicated a need for line sharing and committed to having 50% of those offices configured with Verizon-owned splitters by June 6, 2000 and the remaining 50% by June 30. This configuration was to be available until CLPs were able to acquire their own splitters and place them in either virtual or physical collocation arrangements. According to witness Lee, Verizon deployed its own splitters in 11 central offices that had been identified by CLPs as target markets, but had received no orders for line sharing as of September 6, 2000. Witness Lee stated that splitters ordered and provided to CLPs as of December 15, 2000, would be grandfathered as long as the customer continued to receive DSL service from the CLP.

The Commission agrees with Sprint and Verizon that the Line Sharing Order does not require the provision of ILEC-owned splitters. That Order indicates that both the ILECs and the CLPs expressed concerns regarding service degradation depending on ownership and control of the splitter. After weighing those concerns, the FCC concluded in Paragraphs 76 and 77 that the ILEC may maintain control of the splitter as long as it accommodates the CLP's preferred technology that complies with the FCC's deployment standards. It is the failure to make this accommodation reasonably and promptly, rather than the failure to provide the splitter, that would constitute a violation of the ILEC's obligations under section 251 of the Act. In Paragraph 146, the FCC stated that "incumbent LECs must either provide splitters or allow competitive LECs to purchase comparable splitters as part of this new unbundled network element." Rule

51.319(h)(4) provides that "the incumbent LEC may maintain control of the loop and splitter equipment and functions, and shall provide to requesting carriers loop and splitter functionality that is compatible with any transmission technology that the requesting carrier seeks to deploy using the high frequency portion of the loop . . . provided that such transmission technology is presumed to be deployable pursuant to section 51.230." Thus, as witness Hunsucker pointed out, the FCC's language regarding splitter ownership is permissive; it gives the ILECs a choice.

The Commission therefore finds and concludes that none of the ILECs is required to provide splitters to the CLPs. It is sufficient that they agree to install and maintain CLP-owned splitters or allow the CLPs to install and maintain their own splitters. Moreover, if a CLP can provide the splitter more efficiently and economically, it must be allowed to do so.

**FINDING OF FACT NO. 37**

The placement of the splitter was also an issue. New Entrants witness Zulevic contended that the splitter should be placed on or near the MDF to minimize the length of tie cable and number of cross connects and thus the cost to the CLPs. According to New Entrants witnesses Starkey and McPeak, the ILEC's placement of the splitter is critical to maximizing the use of central office space and for decreasing costs for CLPs. The farther the splitter is from the MDF, the more cabling the CLPs are required to pay for and the greater the distance the data must travel from the CLPs' collocation space to the customer.

BellSouth witness Milner testified that BellSouth recognizes that locating splitters on the MDF is technically possible but believes that splitters are better located in a relay rack in the CLP common area. He stated that this provides better utilization of MDF space. He also stated that frame-mounted splitters cannot be mounted on COSMIC frames, of which BellSouth has many, so BellSouth chose a uniform solution for its nine-state region. BellSouth also found during a line sharing project in Atlanta that MDF-mounted splitters could not accommodate the manual test jacks (bantam jacks) with which BellSouth provides each CLP direct access to the outside plant cable.

Regarding the costs of frame-mounted splitters as opposed to rack-mounted splitters discussed by witness Zulevic, witness Milner testified that the cost is the same: 16 circuits at a total cost of $450 or $28.13 per circuit for the frame-mounted splitter and 96 circuits at a total cost of $2700 or $28.13 per circuit for a rack-mounted splitter. He further testified that incremental changes in cable length are not significant when compared to the cost of the splitter shelf, and that the primary focus of BellSouth's splitter placement was to accommodate the CLPs' need for test access to the cable pair. Witness Milner disagreed with witness Zulevic's estimate that there could be as much as 1,000 feet of tie cable, saying that the worst case found so far has been 250 feet because of floor space limitations in the Marietta Main central office in Georgia. He also disagreed with witness Zulevic's testimony regarding the number of tie cables and cross connects required when the splitter is placed on a relay rack instead of the MDF.

Witness Milner conceded that the issue of where BellSouth should place its splitters is still an open issue in Georgia, but he contended that there was near consensus among the CLPs that the splitters should be near their collocation spaces.

Witness Milner testified that paragraph 2.4 of the BellSouth-Covad agreement says BellSouth will install the splitter in (1) the common area close to the Covad collocation area, if possible, or (2) in a BellSouth relay rack as close to the Covad DS0 termination point as possible. He stated that the DS0 is terminated on either the toll MDF or the MDF, depending on the central office, and that the CLP can access its own equipment if it is terminated to those places but it cannot place and remove cross connections on those MDFs. He further stated that BellSouth does not know of a way to mount the bantam jack, which it thinks is the right way to test the splitter, on the MDF.

Verizon witness Bykerk disputed witness Zulevic's suggestion that efficient network configuration would place the splitter on the MDF, asserting that this approach does not consider the network as a whole. Witness Bykerk stated that inside the central office are various types of equipment used to provide many different services, only one of which is line sharing. He further stated the MDF is the cross-connect device for the central office. While there are many equipment frames in the central office, there is only one MDF. Witness Bykerk contended that the MDF is a limited and critical resource that must be managed carefully and efficiently. He stated, however, that Verizon-owned splitters are placed as close as practical to the MDF given the requirements and demands of the office.

With regard to access for testing, witness Lee testified that Verizon considered placing the splitter in a common area of the office, where both it and CLPs would have access to the splitters, but excluded this configuration for several reasons. He stated that cageless collocation enables the CLP to place its own splitters in an open arrangement and accessible bay; that Verizon proposes to provide CLPs access to its loop testing system, 4-TEL, through its wholesale internet service engine (WISE); and that Verizon does not configure central offices with open areas providing community access to equipment.

Witness Bykerk also testified that access to 4-TEL provides the capability to test the voice band frequency of the loop path from Verizon's switch through the splitter, to the end user's premises. He stated that testing of the high frequency portion of the loop can be performed from the CLP's point of collocation with the equipment of its choice.

The Commission recognizes, as did the FCC in Paragraph 78 of the Line Sharing Order, that splitters are generally located at or near the MDF. We find nothing in that Order, however, that compels us to require the placement of splitters on the MDF itself. We believe the proposals of BellSouth and Verizon to place splitters on racks or bays is reasonable in light of the limited ability of the MDF to accommodate splitters and the inability of the COSMIC frame to accommodate them at all. We also believe the CLPs will have sufficient access for testing under the ILECs' proposals so to satisfy the FCC's requirements in Rule 51.319(h)(7). We nevertheless expect the ILECs to locate the

splitters in such a way as to minimize the cost to the CLPs, insofar as practical and consistent with the other demands on the central office.

Therefore, the Commission finds and concludes that the ILECs should not be required to place or allow placement of splitters on the MDF.

**FINDING OF FACT NO. 38**

New Entrants witness Zulevic contended that splitters should be made available to CLPs either one port at a time or one shelf at a time to maintain flexibility and manage splitter capacity. BellSouth witness Milner testified that with BellSouth-owned splitters, CLPs would have the option of ordering 24 or 96 ports at a time. He stated, however, that BellSouth's inventory system cannot handle port-by-port assignment; 24 ports is the minimum. Witness Milner also stated that port-by-port assignment places the burden of capacity management on the ILEC rather than the CLPs, and unless the CLPs submitted binding forecasts, BellSouth could not guarantee that capacity would always be available.

The Commission does not believe that the obligation to provide nondiscriminatory access to the high frequency portion of the local loop includes the duty to provide splitter capacity in any increment, as requested by the CLPs. If a CLP owns the splitter, it can manage its own capacity. If the ILEC owns the splitter, it should not be required to anticipate and accommodate the CLP's capacity needs below a certain level. The ability to obtain ports in 24-port increments appears to represent a reasonable balance between CLP and ILEC interests regarding port assignment.

Therefore, the Commission finds and concludes that an ILEC should not be required to make splitter capacity available to CLPs on a port-by-port basis.

**FINDINGS OF FACT NOS. 39-40**

Both AT&T and MCI contended that BellSouth should be required to deploy the splitter for CLPs that are providing voice service. The issue concerns line sharing when a CLP has purchased the loop-port combination known as the UNE platform or UNE-P.

BellSouth's witnesses testified that if BellSouth is providing the splitter to accommodate the provision of advanced services by a CLP and the customer chooses MCI or another CLP to provide voice service, BellSouth will disconnect the splitter. However, BellSouth will first offer the CLP that is providing the advanced services the option of purchasing the entire loop. Otherwise, one of the two CLPs can provide the splitter from its collocation arrangement.

MCI witness Darnell testified that WorldCom had submitted proposed language to BellSouth, based on BellSouth's interconnection agreement with Covad and certain other terms and conditions, for inclusion in the parties' interconnection agreement. The record indicates that BellSouth offered MCI the same agreement it has with Covad and

that MCI marked up that agreement and returned it to BellSouth as a counterproposal. See BellSouth Darnell Cross Examination Exhibit No. 1. BellSouth witness Cox testified that this language is unacceptable for three reasons: it seeks to obligate BellSouth to offer line sharing when MCI has bought the UNE-P; it seeks to obligate BellSouth to unbundle the voice portion of the loop, convert it to MCI's UNE-P and connect the high-frequency portion to MCI's designated point of interconnection; and it deletes all of the rates for line sharing to which BellSouth and another CLP had agreed.

MCI witness Darnell contended, however, that the Commission should wait until the FCC completes its evaluation of this issue before considering the issue in this docket. He stated that if the Commission adopts BellSouth's position with respect to line sharing when the CLP orders the UNE-P, a voice customer would be precluded from choosing MCI service because BellSouth would turn off the data portion or not allow MCI to buy the voice portion.

The Commission recognizes the consequences of not requiring an ILEC to continue to provide a splitter when a customer chooses a CLP to provide voice service. However, the Line Sharing Order makes it perfectly clear that its line sharing requirements apply only when an ILEC is providing analog voice service. In Paragraph 72, the FCC states (footnote omitted):

> [w]e conclude that incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on which the incumbent LEC is also providing analog voice service . . . . We note that in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue to provide xDSL service. Similarly, incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent is no longer the voice provider to the customer.

Rule 51. 319(h)(3) is equally unambiguous:

> An incumbent LEC shall only provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting carrier seeks access.

If the Commission adopted the CLPs' position, it would be requiring the ILECs to provide splitters on an unbundled basis, when access to the high frequency portion of the loop is the UNE under the Line Sharing Order, and then only when the ILEC is providing voice service on the same loop. There are, as the FCC noted, other ways for CLPs to obtain access to the high frequency spectrum, such as purchasing the entire loop, in which case they are free to install their own splitters if they wish to enter into a

line sharing arrangement with other CLPs. The unbundling requirement of the Line Sharing Order arose out of the perceived impairment of the CLPs' ability to deploy advanced services if they must obtain a new loop from the ILEC, while the ILEC can deploy the same services using the existing local service line. Although the FCC has been asked to reconsider its conclusions with regard to the UNE-P, the Commission finds nothing in the Line Sharing Order that would cause us to prejudge the FCC's decision by requiring the ILECs to continue to provide the splitter.

Therefore, the Commission finds and concludes that an ILEC should be allowed to disconnect a splitter when an end user chooses a CLP instead of the ILEC to provide voice grade service. The Commission further finds and concludes that MCI's proposed revisions to the BellSouth-Covad interconnection agreement regarding line sharing should not be adopted for inclusion in the parties' interconnection agreement.

## FINDINGS OF FACT NOS. 41-42

In Paragraph 136 of its Line Sharing Order, the FCC concluded that there are five types of direct costs that could potentially be incurred by an ILEC in providing access to line sharing: (1) loops, (2) OSS, (3) cross connects, (4) splitters, and (5) line conditioning.

### Loops

Although a strict view of cost allocation would certainly require attributing some loop costs to the high frequency portion of the loop, none of the witnesses proposed such an allocation. Moreover, any costs assigned to the high frequency portion would need to be removed from the voice grade portion of the loop, since line sharing does not cause an increase in loop costs. This would increase the specific cost of line sharing to the end user, without having any effect on the total revenues received by the ILEC. There would also be additional administrative costs to the ILEC associated with maintaining a database and billing system to impose different charges on loops depending upon whether the high frequency portion of the loop is shared. Thus, the Commission does not believe that any portion of the loop costs should be attributed to the high frequency portion of the loop in a line sharing arrangement. While there are certainly disadvantages in requiring such an allocation, the Commission can perceive no benefits.

### Operation Support Systems (OSS)

BellSouth and Sprint included costs attributable to OSS in their proposed rates for line sharing. These rates are discussed under Findings of Fact Nos. 23-24.

Cross-Connects

The FCC's Line Sharing Order indicates that the costs of installing cross-connects for xDSL services in general would be the same as for cross connecting loops to the CLPs' collocated facilities. The Commission agrees with this reasoning and finds nothing in the testimony in this proceeding that calls it into question. Therefore, the Commission believes that the rates for cross-connects for collocation and xDSL services should be the same. The Commission finds and concludes that the ILECs should be required to submit cross-connect rates for line sharing which equal their proposed rates for cross-connects in the collocation docket, Docket No. P-100, Sub 133j. Once the UNE rates proposed in the collocation docket have become final and effective, the ILECs should modify their cross-connect rates for line sharing to conform to the final cross-connect rates for collocation.

Splitters and Line Conditioning

Inasmuch as the Commission has concluded that ILECs are not required to provide splitters, the Commission believes it is unnecessary to establish rates for splitters that the ILECs may choose to provide. Instead, the Commission believes the parties should be free to negotiate who will provide, install, and maintain the splitter, as well as the price. The Commission has addressed loop conditioning in Findings of Fact Nos. 10-13. The ILECs' rates for line conditioning when providing line sharing should conform to those findings and conclusions.

**FINDING OF FACT NO. 43**

According to Paragraph 94 of the Line Sharing Order, the ILECs contend that they will need to undertake modification of their OSS systems that deal with pre-ordering, ordering, service provisioning, billing, and repair and maintenance functions. The FCC also concluded in Paragraph 99 that the OSS capabilities required to provide line sharing to CLPs are substantially the same as the OSS capabilities required for an ILEC to provide its own customers access to the high frequency portion of the loop. BellSouth has proposed a monthly rate of $7.93 for OSS modifications due to line sharing. The rate proposed by Sprint for OSS modifications is $0.71 per line per month.

Even if the ILECs had filed rates that were almost identical, the Commission would be forced to focus attention on this rate element because of the impact such a rate could have on the CLPs' ability to compete with the ILECs for services using the high frequency portion of the loop bandwidth. However, the difference between the rates proposed by BellSouth and Sprint for modifications to OSS for line sharing is striking. In Paragraph 127 of the Line Sharing Order, the FCC concluded its discussion of operational issues by stating that ILECs could perform the incremental modifications to the ordering processes to allow CLPs access to the high frequency portion of the loop at a "modest expense." This Commission cannot conclude that the proposed monthly rate of $7.93 is modest.

The Commission takes notice of testimony before the Tennessee Regulatory Authority (TRA) in which BellSouth witness Caldwell indicates that the amounts included in the North Carolina study were projected expenses, not costs actually incurred. Further testimony by BellSouth witness Pate before the TRA indicates that BellSouth's witnesses may have been unaware that the amounts included for OSS upgrades were simply projections or estimates. See letter of Henry C. Campen, Jr., filed on December 14, 2000.

The Commission notes that the proposed monthly expenses included in the Tennessee study amount to only 72% of the proposed North Carolina expenses. This is a considerable difference and one the Commission cannot overlook. However, the rates BellSouth has proposed in the Tennessee case are not in evidence in the instant docket. Further, it is unclear whether the expense amounts testified to in the Tennessee case reflect BellSouth's final numbers. As the New Entrants pointed out in this docket, BellSouth filed numerous revisions and changes to its studies.

Given the magnitude of the expense amounts proposed by BellSouth for OSS upgrades in this docket, and the uncertainty surrounding them, the Commission cannot adopt the results of BellSouth's cost study regarding OSS upgrades. The Commission therefore finds and concludes that, unless and until BellSouth submits a revised study that reflects only the incremental costs associated with OSS upgrades to provide line sharing, BellSouth should include OSS costs of $0.71 per line per month in its line sharing rates. Any further study on the cost of OSS upgrades submitted by BellSouth should provide sufficient support for any costs that are included. The support data should be in sufficient detail to allow the Commission to accurately determine the nature of the modifications undertaken and the appropriateness of BellSouth's allocation to line sharing requirements. Although the New Entrants complained of Sprint's lack of support for its OSS upgrade costs, the Commission believes that sufficient support has been provided and finds those costs reasonable. Verizon has proposed no costs for OSS modifications due to line sharing.

The Commission finds and concludes that the rates proposed by BellSouth and Sprint, with the adjustments and changes ordered herein, are the appropriate rates for OSS costs required to allow CLPs access to the high frequency portion of the loop.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth, Verizon, and Sprint shall file rates, cost studies and supporting documentation not later than 60 days from the date of this Order. Such rates, cost studies, and supporting documentation shall fully incorporate the findings and conclusions set forth in this Order. All other parties, not later than 30 days from the date of the ILECs' filings, may file comments setting forth any areas of disagreement therewith. Within 30 days from the date of the other parties' filings, any party may file reply comments.

2. That Verizon shall file a study, along with proposed rates, for intrabuilding cable and network terminating wire.

3. That Sprint shall file a study, along with proposed rates, reflecting statewide average rates for dark fiber interoffice and dark fiber feeder.

4. That Verizon shall file a study, along with proposed rates, reflecting the disconnect costs associated with dark fiber being recovered in monthly recurring rates using a recovery period of five years.

5. That BellSouth shall submit a filing with supporting documentation indicating whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data and, if so, what portion is attributable.

6. That BellSouth shall file a study, along with proposed rates, for access to loop makeup information reflecting one hour and fifteen minutes of engineering time.

7. That BellSouth and Sprint may remove OS/DA from their UNE price lists.

8. That the ILECs shall review their proposed rates for cross-connects and ensure that they match the rates proposed for cross-connects in Docket No. P-100, Sub 133j. Any changes to the rates proposed in the instant docket shall be subject to change pursuant to the Commission's final order in Docket No. P-100, Sub 133j.

9. That BellSouth shall file rates for line sharing that reflect OSS costs of $0.71 per month.

10. That BellSouth, and the other ILECs to the extent necessary, shall file studies, along with proposed rates, reflecting a 10% fallout rate for each step of the electronic ordering process.

11. That the cost studies and supporting documentation shall be filed by the ILECs in electronic form and shall, upon request, be provided to all parties subject to previous restrictions on disclosure of information for which proprietary treatment has been requested.

12. That, after approval by the Commission, the rates filed pursuant to this order shall be deemed permanent prices pursuant to Section 252(d) of the Telecommunications Act of 1996.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2001.

NORTH CAROLINA UTILITIES COMMISSION

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Geneva S. Thigpen, Chief Clerk

| Issue | Public Staff Position |
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| 1. In calculating monthly recurring charges for BellSouth's unbundled copper loop (UCL), is it appropriate to distinguish between loops less than 18,000 feet from the central office and those greater than 18,000 feet from the central office? | It is not appropriate to distinguish between loops extending less than or more than 18,000 feet from the central office for the purpose of deriving recurring rates for BellSouth's UCL. |
| 2. What are the proper rates for xDSL loops? | The rates proposed by the incumbent local exchange companies (ILECs) are the appropriate rates for xDSL loops, subject to the changes and modifications required herein. |
| 3. Should competing local providers (CLPs) be allowed to reserve Service Level 1 (SL1) loops from BellSouth for the purpose of providing xDSL service? | CLPs should be able to reserve SL1 loops using an analysis of loop qualification information provided by BellSouth. |
| 4. What is the appropriate fallout rate for use in calculating nonrecurring costs? | The appropriate fallout rate for use in calculating nonrecurring costs is 10%. |
| 5. What are the appropriate rates for high capacity loops? | The rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for high capacity loops. |
| 6. Should CLPs have direct access to ILECs' subloop facilities, including network terminating wire and intrabuilding cable? | CLPs should access an ILEC's Feeder-Distribution Interface (FDI) by means of a tie cable furnished by the CLP. |
| 7. Who should bear the cost of building and maintaining access terminals? | Where the CLP agrees to access subloop facilities via access terminals, the ILEC should provide the access terminal and the CLP should pay for the costs associated with the access terminal. |
| 8. Should the costs of access terminals be recovered in recurring or nonrecurring charges? | The costs associated with providing access terminals should be recovered through nonrecurring charges. |
| 9. What are the proper rates for access to intrabuilding cable and network terminating wire? | The rates proposed by BellSouth and Sprint for access to intrabuilding cable and network terminating wire are appropriate. Rates should not be determined on a case-by-case |

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| | basis. |
| 10. Are ILECs required to remove repeaters and other disturbers from copper loops when requested to do so by CLPs seeking to provide xDSL service over such loops? | Upon request, ILECs should remove all devices from copper loops to provide a basic copper loop for CLPs seeking to provide xDSL service. |
| 11. Should ILECs be permitted to impose impose a nonrecurring charge for conditioning loops? | ILECs should be allowed to impose a nonrecurring charge for conditioning loops. |
| 12. Are ILECs recovering conditioning costs in their existing loop rates? | Line conditioning costs for service provided to the CLPs are not recovered by existing unbundled network element (UNE) rates. |
| 13. What are the proper rates for loop conditioning? | The rates proposed by the ILECs are appropriate for loop conditioning, subject to the changes and modifications required herein. |
| 14. What is required of ILECs to comply with their obligation to provide nondiscriminatory access to loop qualification information? | To comply with their obligations to provide nondiscriminatory access to loop qualification information, ILECs must provide information which identifies the physical attributes of the loop plant, including loop lengths, the presence of analog load coils and bridge taps, and the presence and type of digital loop carrier (DLC). |
| 15. Are ILECs providing CLPs the nondiscriminatory access to loop qualification information required by law? | Verizon and Sprint are providing nondiscriminatory access to loop qualification information as required by law. BellSouth will be providing nondiscriminatory access when it is providing a fully functional electronic interface and continued access to LQS. |
| 16. What are the proper rates for access to loop qualification information? | ILECs should be permitted to charge CLPs for access to loop qualification information at the rates proposed, with the adjustments and changes ordered herein. |
| 17. Should BellSouth and Sprint be allowed to remove operator services/directory assistance (OS/DA) from their UNE price lists? | BellSouth and Sprint should be allowed to remove OS/DA from their UNE price lists, based on their current offerings of customized routing. |

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| 18. Should Verizon be allowed to remove OS/DA from its UNE price list? | Verizon should not be allowed to remove OS/DA from its UNE price list. |
| 19. Is an ILEC required to provide to CLPs, at cost-based rates, combinations of UNEs that are ordinarily combined in the ILEC's network? | An ILEC is required to provide to CLPs, at cost-based rates, combinations of UNEs that are ordinarily combined in the ILEC's network. |
| 20. Is an ILEC required to provide unbundled access to the Enhanced Extended Link (EEL) which is a combination of the unbundled loop and unbundled transport? | An ILEC is generally required to provide access to the unbundled loop and unbundled transport that compose an Enhanced Extended Link (EEL). |
| 21. Under what circumstances is an ILEC required to permit CLPs to convert special access circuits to EELs at UNE rates? | An ILEC is required to permit a CLP to convert special access circuits to EELs at UNE rates when the CLP provides significant local exchange service to the end user served by the circuit. |
| 22. To what additional combinations of UNEs, other than those loop-port combinations previously ordered by the Commission on March 13, 2000, is an ILEC required to provide access to CLPs? | It is not practical to list all the UNE combinations that ILECs may be required to make available to CLPs. An ILEC must provide any combination of UNEs that is ordinarily combined in its network. |
| 23. How should the ILECs recover the costs of new operational support systems (OSS) and improvements to existing systems? | ILECs should recover one-time development costs for new OSS and improvements to existing systems through recurring rates applicable to users of OSS. Further expenses incurred in the development of the OSS should be amortized over five years at the overall cost of capital found reasonable. |
| 24. How should BellSouth's OSS UNE rate be structured? | BellSouth's OSS UNE rate should be a "per order" charge. |
| 25. Does the UNE Remand Order affect the rates previously set by the Commission for vertical features? | The UNE Remand Order does not affect the rates previously set by the Commission for vertical features, and thus such rates should remain unchanged. |
| 26. Are rates for interoffice transport, including dark fiber, required to be | As determined in the Commission's Order in the geographic deaveraging phase of this |

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| deaveraged? | proceeding, rates for interoffice transport, including dark fiber, need not be deaveraged. |
| 27. Should BellSouth be permitted to charge CLPs for the provision of access to daily usage files? | BellSouth should be permitted to charge CLPs for the provision of access to daily usage files. |
| 28. Is an ILEC required to provide to CLPs unbundled access to packet switching capabilities (including frame relay) and appropriate support mechanisms? | An ILEC is not required to provide CLPs with unbundled access to packet switching capabilities (including frame relay) except when the conditions in FCC Rule 51.319(c)(5) have been met. |
| 29. Should an ILEC be permitted to charge a CLP a disconnection charge when the ILEC does not incur any costs associated with such disconnection? | When the non-recurring charges for a UNE are designed to recover an ILEC's costs of disconnection, the ILEC may collect these charges even if there is a possibility that the ILEC can disconnect UNEs in certain circumstances without incurring any costs. |
| 30. Should an ILEC be required to provide volume and term discounts for UNEs? | An ILEC is not required to provide volume and term discounts for the monthly recurring charges of UNEs. The existing nonrecurring charges of UNEs reflect volume and term discounts to the extent applicable. |
| 31. Should the Commission set interim rates in the parties' interconnection agreements for UNEs for which the Commission has not yet set permanent prices? | It is inappropriate to set interim rates in the parties' interconnection agreements for UNEs for which the Commission has not yet set permanent prices. |
| 32. What are the proper rates for dark fiber UNEs? | The rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for dark fiber UNEs. |
| 33. May ILECs place any restriction on the provision of unbundled access to the high frequency portion of the loop? | ILECs should provide unbundled access to the high frequency portion of the loop only to CLPs seeking to provide xDSL-based services that will not interfere with analog voice frequencies. |
| 34. When are ILECs required to provide unbundled access to the high frequency portion of the loop? | ILECs should provide unbundled access to the high frequency portion of the loop to requesting CLPs when the ILECs' voice customers are served by digital loop carrier |

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| | facilities. |
| 35. What are the proper provisioning intervals for line sharing? | ILECs should implement the same ordering and provisioning intervals for line sharing to the CLPs that they provide for their own use. |
| 36. What splitter ownership, access and provisioning options should ILECs provide to CLPs? | ILECs must either provide splitters themselves or allow CLPs to purchase comparable splitters and collocate them. |
| 37. Should ILECs be required to place or allow placement of splitters on the main distribution frame (MDF)? | ILECs should not be required to place or allow placement of splitters on the MDF. |
| 38. Should ILECs be required to make splitter capacity available to CLPs on a port-by-port basis? | ILECS should not be required to make splitter capacity available to CLPs on a port-by-port basis. |
| 39. Should an ILEC be allowed to disconnect a splitter when an end user chooses a CLP instead of the ILEC to provide voice grade service? | An ILEC should be allowed to disconnect a splitter when an end user chooses a CLP instead of the ILEC to provide voice grade service. |
| 40. Should MCI's proposed revisions to the BellSouth-Covad interconnection agreement be adopted for inclusion in the agreement? | MCI's proposed revisions to the BellSouth-Covad interconnection agreement should not be adopted for inclusion in the agreement. |
| 41. Should any portion of the cost of the loop be attributed to the cost of the high frequency portion of the loop? | No portion of the cost of the loop should be attributed to the high frequency portion of the loop. |
| 42. What are the appropriate rates for the high frequency portion of the loop? | The rates proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for the high frequency portion of the loop. |
| 43. What are the appropriate rates for OSS costs required to allow CLPs access to the high frequency portion of the loop? | The proposed by the ILECs, with the adjustments and changes ordered herein, are the appropriate rates for OSS costs required to allow CLPs access to the high frequency portion of the loop. |

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter, on the Commission's own motion, to consider **AMERITECH MICHIGAN's** compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996. | ) ) ) ) ) | Case No. U-12320 |

At the January 4, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

History of Proceedings

On February 9, 2000, the Commission issued an order commencing a collaborative process and establishing a procedural framework for determining Ameritech Michigan's compliance with the competitive checklist set forth in Section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (FTA), 47 USC 271.[1] Included among the checklist requirements is that Ameritech Michigan provide or generally offer "[n]ondiscriminatory access to

[1]As explained in the February 9, 2000 order, Section 271 sets forth the conditions that a Bell operating company (in this case, Ameritech Michigan) must meet to obtain authorization from the Federal Communications Commission (FCC) to provide in-region interLATA services. These conditions include the competitive checklist in Section 271(c)(2)(B), which enumerates requirements for offering or providing to competing providers access and interconnection to the Bell operating company's network facilities. Section 271(d)(2)(B) requires the FCC to consult with state commissions with respect to compliance with the competitive checklist.

network elements in accordance with the requirements of" 47 USC 251(c)(3) and 252(d)(1). 47 USC 271(c)(2)(B)(ii). With regard to unbundled network elements (UNEs), the Commission's February 9, 2000 order required Ameritech Michigan to file tariffs that demonstrate compliance with prior Commission orders as well as other pertinent federal and state statutes and rules. In setting forth this requirement, the Commission specifically referenced the February 9, 2000 order in Cases Nos. U-11104 and U-12143, which held that Ameritech Michigan was obligated to provide an unrestricted UNE platform (UNE-P). (A platform is a standardized combination of UNEs that typically includes the loop, local switching, and transport elements used to provide telephone service to an end-use customer.)

The parties now find themselves in substantial disagreement over the subset of collaborative issues that relates to the terms upon which Ameritech Michigan will make its UNE-P available to competitive local exchange carriers (CLECs). The parties agreed to submit disputed UNE combination issues to the Commission in three rounds of comments. On September 13, 2000, the Commission Staff (Staff) issued a notice that framed the issues for comment.

On September 25, 2000, Ameritech Michigan; AT&T Communications of Michigan, Inc., and TCG Detroit (collectively, AT&T); Long Distance of Michigan, Inc., CoreComm Michigan, Inc., and BRE Communications, LLC, d/b/a McLeodUSA (collectively, LDMI); XO Michigan, Inc., f/k/a NEXTLINK Michigan, Inc. (XO); Sprint Communications Company, L.P. (Sprint); and MCImetro Access Transmission Services, Inc. (WorldCom) filed initial comments, including, in some cases, written testimony. The second round of reply comments were due October 23, 2000. AT&T, Ameritech Michigan, LDMI,[2] the Staff, and WorldCom filed reply comments on that date.

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[2]LDMI's reply comments indicate that they are also on behalf of the Association of Communications Enterprises.

With respect to the final round, due November 13, 2000, AT&T, Ameritech Michigan, LDMI, XO, WorldCom, and the Association of Communications Enterprises filed response comments.

Ameritech Michigan's proposal, as presented in its initial comments, draws a distinction between existing and new platforms. As defined in the proposal, an existing UNE-P refers to a platform of elements that are currently combined in Ameritech Michigan's network, and a new platform requires installation work or other manual intervention to provide physical connections for the UNEs that provide service to a given customer. According to Ameritech Michigan, it already provides existing UNE-P combinations for CLECs pursuant to tariff, and those combinations are not in dispute. However, Ameritech Michigan says, new combinations are a different matter, in that it claims to have no obligation under federal or state law to make them available, particularly in light of the recent decision in Iowa Utilities Board v FCC, 219 F3d 744 (CA 8, 2000).

Ameritech Michigan proposes to offer, on an entirely voluntary basis, new UNE-Ps in the form of a standard contractual amendment to its existing interconnection agreements with CLECs. It refers to its proposal as the Michigan 271 Amendment (or M2A). As a starting point for the M2A proposal, Ameritech Michigan used the UNE-P provisions of an interconnection agreement that SBC Communications Inc. (SBC) had previously adopted in the course of its successful application to the Federal Communications Commission (FCC) for Section 271 authorization in Texas.[3]

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[3]Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance, pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-region, InterLATA Services in Texas, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 00-238 (June 30, 2000).

Ameritech Michigan then accepted some modifications to the draft agreement during the collaborative discussions.

In addition to UNE-Ps, the M2A proposal would permit a CLEC to purchase another UNE combination known as the enhanced extended loop (EEL). An EEL combines an unbundled local loop and dedicated transport facilities, with multiplexing, at Ameritech Michigan's serving central office. The transport facilities terminate at the CLEC's collocation cage located in another central office. The advantage to the CLEC is that it avoids the necessity of collocating with Ameritech Michigan's facilities at every central office, so that it can provide service in multiple central offices with fewer collocation arrangements.

Ameritech Michigan's proposal makes two alternative forms of the M2A amendment available to CLECs, one that covers both existing and new UNE-Ps and EELs (Exhibit A of Ameritech Michigan's initial comments) and a second alternative that deals only with new UNE-Ps and EELs (Exhibit B of the same comments). By choosing Exhibit A, a CLEC would agree to purchase both existing and new combinations at the rates and terms established in the M2A amendment; the Exhibit B version would free the CLEC to continue to use the tariff provisions to acquire existing UNE-Ps. Because the M2A amendment sets the pricing for combinations, a CLEC opting for the first version would not be subject to changes in tariff prices for existing UNE-Ps for the duration of the amendment.

The M2A's recurring charges incorporate the results of the total service long run incremental cost (TSLRIC) studies approved by the Commission in Case No. U-11831, although the pricing for nonrecurring charges exceeds the TSLRICs established in those studies. Alexander Aff. dated Sept. 25, 2000, at 28-29, 35-36. The M2A proposal guarantees the pricing for two years for the UNE-Ps and EELs used by CLECs to serve business retail customers and three years for UNE-Ps

and EELs used to serve residential customers. Thereafter, if standards applicable to UNE pricing change as a result of action taken by the FCC or the courts, the prices could be reopened.

The proposed M2A amendment would become available to CLECs requesting it after the Commission approves the proposal. The term of the amendment would end 18 months after the date of the Commission's approval, unless the FCC grants a request by Ameritech Michigan for Section 271 authorization. If the FCC were to grant the Section 271 authorization within 15 months of the date of the Commission's approval, the expiration date of the amendment would be extended from 18 months to 4 years.

The proposed M2A amendment contains provisions that would enable Ameritech Michigan, under specified conditions, to modify the arrangements for connecting the UNE-Ps used to serve business end-users after two years. After the second year of the M2A, Ameritech Michigan could choose not to provide CLECs with combined platforms in central offices at which at least four CLECs have collocation arrangements. If Ameritech Michigan selects this option, it would assign each CLEC a secured frame room in the central office or, if space is unavailable, it would provide an external cross connect cabinet for that purpose. It would also perform the necessary cross-connections. There will be no additional charge for providing the secured frame or cabinet or making the cross-connections.

The M2A agreement secures a CLEC's waiver of its right to challenge the agreement on the grounds of inconsistency with Ameritech Michigan's obligations to provide UNE combinations under Section 271 in any judicial or regulatory proceeding. It further provides that, by accepting it, the CLEC agrees to purchase new combinations exclusively under the agreement and waives the right to pick and choose UNE provisions from other interconnection agreements, as it would otherwise be permitted to do under Section 252(i) of the FTA, 47 USC 252(i).

The parties' comments in this proceeding reveal widely divergent views regarding the rates, terms, and conditions that they believe should control UNE combinations. Disputed matters relate to pricing, unregulated services, the substitution of arrangements using secured frames for UNE-P combinations, the waiver of rights, and the duration of the M2A amendment. Although the comments discuss most of the issues in terms of whether Ameritech Michigan has a legal duty to offer the UNE-P (and, if so, under what conditions), the Commission is not persuaded that it is necessary or appropriate at this time to decide whether it has the authority to require new UNE combinations over Ameritech Michigan's objections.[4] Nor does it find it necessary to resolve in detail each of the 13 issues framed by the Staff, most of which ask the Commission to prescribe various terms and conditions that would control the availability of UNE combinations. Competition is a dynamic process, and attempting to resolve seemingly interminable disputes could produce further interpretational disputes, litigation, and delay. That outcome could undermine the potential value of Ameritech Michigan's proposal, which carries a promise of making new UNE combinations immediately available to the CLECs that have asserted that those platforms are essential for local competition to take hold.

Therefore, the Commission has reviewed Ameritech Michigan's proposal as a whole and has determined that its immediate benefits favor accepting it largely as it is (except as noted below) and outweigh a more time-consuming effort to resolve each disputed issue. Although the M2A

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[4]In Verizon North Inc v Strand, opinion of the United States District Court for the Western District of Michigan, decided Dec. 5, 2000 (File No. 5:98-CV-38), the Court stated that federal law, as interpreted in Iowa Utilities, preempted a Commission order requiring Verizon North Inc. to provide new UNE combinations. The decision did not explain how the Court reached its conclusion regarding preemption. Moreover, some of its reasoning is inconsistent with Michigan Bell Telephone Co v Strand, 26 F Supp 2d 993, 1000-01 (WD Mich, 1998). The Commission has appealed the Verizon North decision to the United States Court of Appeals for the Sixth Circuit.

proposal is not perfectly suited to advance all of the CLECs' goals, the Commission is concerned that rejecting a proposal that is less than perfect by finding it to be wholly inadequate would forgo the present opportunity to make Michigan a more competitive market for local exchange service.

The rates provided in the M2A proposal are largely, although not entirely, in line with the TSLRICs approved in Case No. U-11831. Based upon a review of the pricing and other provisions of the M2A proposal, the Commission reaches the conclusion that immediate implementation will advance the cause of local competition by making new UNE-Ps and EELs available for the first time in Michigan. That availability comes with rates, terms, and conditions that are, on the whole, acceptable. The fact that the M2A proposal used a previously approved Texas interconnection agreement as a starting point is significant.

This order need not, and does not, express an opinion regarding how Iowa Utilities or other decisions of the federal courts and the FCC affect this Commission's authority with respect to UNEs and interconnection arrangements. Moreover, the holding in Iowa Utilities upon which Ameritech Michigan relies is itself subject to possible appellate review. The Commission defers those matters for another day. It does not foreclose a future decision on whether Ameritech Michigan can be lawfully required to offer UNE-Ps and EELs at different rates or on different terms or whether Ameritech Michigan must file tariffs on new combinations. It only decides for now that Ameritech Michigan should proceed to implement the M2A proposal along with its tariffed offering of the existing UNE-P.

Although the Commission has reviewed and accepted the M2A provisions, it does not agree that it should at this time grant Ameritech Michigan's request for a finding that the M2A meets the UNE checklist requirement in Section 271(c)(2)(B)(ii) of the FTA. Ameritech Michigan's initial comments, Exs. A at 14 & B at 13-14. It would be difficult to make this finding on the basis of an

amendment to an interconnection agreement that has yet to be implemented in Michigan. Moreover, Ameritech Michigan has not offered to file tariffs for new combinations. Conceivably, the finding called for by Section 271(c)(2)(B)(ii) could require an inquiry that is broader than the issues explored in this order. When the time comes for the Commission to address compliance with the checklist, the Commission will assess whether Ameritech Michigan has in fact met its obligations to provide or offer nondiscriminatory access to UNEs. The Commission further notes that a prospective failure to make new combinations freely available to potential competitors may impede or preclude a favorable Section 271 recommendation.

One other issue requires discussion. The parties have disputed how to define and differentiate between new and existing combinations. The definition is important, in that Ameritech Michigan will continue to make existing combinations available to CLECs under the less restrictive terms of its tariff, but it will (at least for now) offer new combinations only under the M2A.

Ameritech Michigan uses the words "existing" or "currently combined" in the M2A to refer to a platform of installed UNEs that does not require manual work on the part of Ameritech Michigan personnel to provide physical connections at the central office, an outside plant location, or the customer's premises. The M2A defines a new combination as a platform that requires manual intervention to make the physical connections. Ameritech Michigan's initial comments, Exs. A at 3-4 & B at 3-4. Ameritech Michigan says that this definition allows a CLEC to use the existing UNE-P tariff to serve a new customer moving into a residence vacated by a previous Ameritech Michigan customer, notwithstanding any activation and feature installation required to be performed by Ameritech Michigan. Alexander Aff. dated Sept. 25, 2000, at 19-21. However, it would not enable the CLEC to use the existing UNE-P tariff to provide service to a new residence or to install a second line to an existing residence.

AT&T and WorldCom propose that Ameritech Michigan treat as existing any UNEs that it "ordinarily combines" in providing service to its own retail customers. Under this definition, Ameritech Michigan would treat a CLEC's request for UNEs to provide service to a customer ordering an additional line to his or her premises as an existing UNE-P. WorldCom says that a CLEC customer moving into the premises of a former Ameritech Michigan customer may not qualify as an existing UNE-P under Ameritech Michigan's restrictive definition, given that the demand for new and additional services often requires Ameritech Michigan to disconnect the existing line so that the circuit can be used elsewhere. The CLECs argue that their inability to obtain this type of combination as an existing UNE-P places them at an unfair disadvantage in competing with Ameritech Michigan for new customers.

Ameritech Michigan argues that its definitions of "new" and "existing" are consistent with Iowa Utilities, in which the Court stated that the FTA "does not require the incumbent LECs to do all the work." 219 F3d at 759 (quoting Iowa Utilities Bd v FCC, 120 F3d 753, 813 [CA 8, 1997]). It says that the CLECs' "ordinarily combined" standard cannot be squared with the FCC's rule prohibiting an incumbent from separating UNEs that it "currently combines." 47 CFR 51.315(b). Ameritech Michigan criticizes the "ordinarily combined" standard as vague and unworkable in practice. Ameritech Michigan claims that redefining existing UNE-Ps would also require repricing them.

The Commission determines that defining existing UNE-P and EEL combinations to include those configurations that Ameritech Michigan "ordinarily combines" is more persuasive than Ameritech Michigan's definition. Ameritech Michigan's position would permit it to withhold from CLECs the types of UNE combinations that it routinely assembles to provide service to its own retail customers. To accept a definition as restrictive as this would confer an unfair advantage on

Ameritech Michigan by allowing it to leverage its control of telephone network facilities in competing with CLECs to fulfill routine requests for retail service. As a matter of policy, the objective of promoting local competition in Michigan would not be well served by this definition. The Commission finds that Ameritech Michigan should define and provide for existing combinations in both its tariff and the M2A to include the types of situations encompassed by the CLECs' "ordinarily combined" standard.

In its reply comments, Ameritech Michigan says that, in keeping with the objective of compromise that underlies the collaborative, it will file tariffs covering the conversion of an existing special access arrangement to an existing EEL and its operator services and directory assistance (OS/DA) service for CLECs (although it does not agree that OS/DA pricing will be TSLRIC-based). Finally, Ameritech Michigan says that it will comply with the November 5, 1998 order in Case No. U-11525 as it affects a CLEC's request for a UNE-P to provide service to an existing Ameritech Michigan customer with a ValueLink contract. The Commission accepts these commitments on Ameritech Michigan's part.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. Ameritech Michigan should proceed to implement its proposed M2A and provide new and existing combinations in accordance with the provisions of this order.

THEREFORE, IT IS ORDERED that Ameritech Michigan shall proceed to implement its proposed Michigan 271 Amendment and provide new and existing combinations in accordance with the provisions of this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(SEAL)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of January 4, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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| In the matter, on the Commission's own motion, to consider **AMERITECH MICHIGAN's** compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996. | ) ) ) ) ) | Case No. U-12320 |

Suggested Minute:

"Adopt and issue order dated January 4, 2001 directing Ameritech Michigan to implement its proposal for providing combinations of unbundled network elements, as set forth in the order."

[redacted]

**PENNSYLVANIA**
**PUBLIC UTILITY COMMISSION**
**Harrisburg, PA 17105-3265**

Public Meeting held August 26, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman , Dissenting Opinion attached
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

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| Joint Petition of Nextlink Pennsylvania, Inc.; Senator Vincent J. Fumo; Senator Roger Madigan; Senator Mary Jo White; the city of Philadelphia; The Pennsylvania Cable & Telecommunications Association; RCN Telecommunications Services of Pennsylvania, Inc.; Hyperion telecommunications, Inc.; ATX Telecommunications; CTSI, Inc.; MCI Worldcom; and AT&T Communications of Pennsylvania, Inc. for Adoption of Partial Settlement Resolving Pending Telecommunications Issues | Docket No. P-00991648 |
| Joint Petition of Bell Atlantic Pennsylvania, Inc., Conectiv Communications, Inc.; Network Access Solutions; and the Rural Telephone Company Coalition for Resolution of Global Telecommunications Proceedings | P-00991649 |

## OPINION AND ORDER

We hereby direct that BA-PA has the obligation to combine elements (and, as a corollary, keep elements combined that are already combined) in a nondiscriminatory manner. Whatever means BA-PA uses to combine elements for itself, whether manual or electronic, should be made available to CLECs. Only in circumstances involving a request that BA-PA manually combine uncombined elements would it be appropriate for this commission to consider the application of a fee for such a service. We are persuaded that there is no forward looking cost basis for a charge to combine elements, also known as a "glue charge," that would be applicable to the provision of already combined UNEs.

Based upon the evidence of record, we hereby direct BA-PA to file, within 30 days of the entry date of this Order, a tariff supplement, effective on one day's notice, offering UNE-P for POTs, BRI-ISDN, and PRI-ISDN, including vertical services, and a tariff supplement, effective on one day's notice, offering EELs. These UNE-P and EEL offerings will be available for any CLEC residential customers as well as for business customers with total billed revenue from local services and intraLATA toll services at or below $80,000 annually from the effective date of the Tariff Supplement through December 31, 2003.

Thereafter, UNE-P and EELs will continue to be offered to CLECs, except where BA-PA can demonstrate to the Commission, by a preponderance of the evidence, that collocation space is available that it can be provisioned in a timely manner, and that considerations of the number of customers and revenues from the customers served by the CLEC from a collocation in that central office represents a valid reasonable economic alternative to the provision of UNE-P and/or EELs to that CLEC. By meeting this evidentiary burden, BA-PA will establish that UNE-P or EELs would not be necessary at that office and the provision of service is not impaired under this circumstance.