

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Ameritech)
Ohio's Economic Costs for Interconnection,)
Unbundled Network Elements, and Reciprocal) Case No. 96-922-TP-UNC
Compensation for Transport and Termination of Local Telecommunications Traffic.)

In the Matter of the Application of Ameritech) Case No. 00-1368-TP-ATA
Ohio for Approval of Carrier to Carrier Tariff.)

OPINION AND ORDER

The Commission, considering the application, exhibits, the comments of record, the applicable law and evidence of record, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

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OPINION:

I. Background

On April 27, 2000, the Commission issued an opinion and order in Case No. 93-487-TP-ALT, *In the Matter of the Application of Ameritech Ohio (Formerly known as The Ohio Bell Telephone Company) for Approval of an Alternative Form of Regulation*, that, among other things, approved a stipulation and recommendation (Stipulation) extending and modifying the alternative regulation plan of Ameritech Ohio (Ameritech). Pursuant to the Stipulation, Ameritech agreed to file, within 30 days of the Stipulation, either a tariff or model interconnection agreement amendment, at the company's election, setting forth the proposed rates, terms, and conditions for the offering of an unbundled network element platform (UNE-P). On April 26, 2000, Ameritech filed a model interconnection agreement to offer UNE-P with interim shared transport. On July 26, 2000, Ameritech filed a carrier-to-carrier tariff to offer permanent shared transport and existing combinations of UNE-P in Case No. 00-1368-TP-ATA. The UNE-P and permanent shared transport portions of the carrier-to-carrier tariff were separated out for consideration in the current phase of Case Nos. 00-1368-TP-ATA and 96-922-TP-UNC.

Twelve days of hearing were held between November 6, 2000 and February 7, 2001. On March 2, 2001, initial briefs addressed to the UNE-P issue were filed by Ameritech and by AT&T Communications of Ohio, Inc. (AT&T), Worldcom, Inc. (Worldcom), and Corecomm Newco, Inc. (Corecomm) (filing jointly as CLECs). Reply briefs were filed on March 16, 2001. The Ohio Consumers' Counsel (OCC) also filed an initial brief on March 2, 2001 and a reply brief on March 19, 2001.

II. Scope of UNE-P Tariff Offering

A. Overview

With respect to the scope of the UNE-P offering, Ameritech has proposed an offering that consists of the combination of an unbundled loop with unbundled local switching and shared transport elements that are "currently combined" in Ameritech's network. Ameritech's tariff defines "currently combined" as follows:

"Currently combined" includes the situation when a telecommunications carrier orders all the Ameritech Unbundled Network Elements required either:

- (1) to convert a Company end-user customer, another telecommunications carrier's pre-existing Unbundled Network Element Platform (UNE-P) end-user customer, or a telecommunications carrier's resale end-user customer to a pre-existing UNE-P; or
- (2) to activate a pre-existing combination of Unbundled Network Elements to provision a UNE-P for such requesting telecommunications carrier;
 - (a) without any change in features or functionality that was being provided by the Company (or by telecommunications carrier on a resale basis) at the time of the order; or
 - (b) with the only change needed to route the end user customer's operator service and directory assistance (OS/DA) calls to the telecommunications carrier's OS/DA platform via customized routing where such customized routing has already been established to the telecommunications carrier's OS/DA platform from the relevant Company local switch; and/or
 - (c) with only changes needed in order to change a local switching feature, e.g., call waiting; and/or
 - (d) with only the work and/or changes needed to activate the pre-existing combination of Unbundled Network Elements to provision UNE-P.

Ameritech Tariff, PUCO No. 20, Part 19, Section 15, Original Sheet No. 1.

Accordingly, what Ameritech is offering to provide under the tariff is the currently combined Unbundled Loop and Unbundled Local Switching with Shared Transport (ULS-ST) network elements (Ameritech Tariff, PUCO No. 20, Part 19, Sections 20 and 21). The loop component consists of a transmission path furnished between Ameritech's network interface located at the telecommunications carrier's end user's premises and the main

distributing frame in a company central office (*Id.* at Section 2, Original Sheet No. 7). The ULS-ST component provides both unbundled local switching capability as well as shared transport functionality (*Id.* at Section 21, Original Sheet No. 3). The ULS capability is the unbundled network element offering that provides unbundled access to local switching capability (*Id.*). This capability is provided through a line-side and/or trunk side port and provides access to all the features, functions, and capabilities of the switch (*Id.*). The ST component of the ULS-ST portion of the UNE-P product offering provides interoffice trunking and includes all local transmission facilities that connect Ameritech's tandem and local switches (Ameritech Ex. 18, at 5-6). The transmission facilities include end office and tandem trunk ports, tandem switching, interoffice facilities between switches, and access to central office routing tables (*Id.* at 5.). Under the tariff, ULS-ST is offered for delivery of local, switched voice traffic (*Id.*). This portion of the ULS-ST offering utilizes an Advanced Intelligent Network (AIN) solution which allows CLECs to bill access charges to interexchange carriers who terminate their calls to customers served through the UNE-P platform subscribed to by the CLEC (*Id.* at 5, 8). As a result, local calling handled through existing UNE-P utilizes Ameritech's switch routing tables and includes carrying originating access traffic from and terminating access traffic to end-users to whom carriers are providing local exchange service (*Id.* at 5).

B. Ameritech's Position

According to Ameritech, its proposed tariff offering applies to the extent that the requested elements serving a location are already combined. That is, Ameritech will not separate requested elements that are currently combined, "previously combined," "previously connected," or "already combined" (Ameritech Brief at 12 citing to tariff definition of "currently combined").¹ Further, the tariff offering applies to those existing combinations where the elements are connected through but not currently activated (i.e., there is no dial tone on the line) (Tr. Vol. VII at 59-60).² The tariff does not provide CLECs with new combinations of elements that are not already connected when ordered by a CLEC although Ameritech will provide network elements in a manner in which a CLEC can combine the requested elements on its own (*Id.* at 74).

From Ameritech's perspective, the issue for the Commission is whether its proposed tariff offering of "currently combined" network elements satisfies the requirements of the Telecommunications Act of 1996,³ (1996 Act) that an ILEC provide CLECs with nondiscriminatory access to network elements on an unbundled basis in a manner that allows CLECs to combine such elements in order to provide telecommunications service to end users.⁴ Ameritech contends that the Federal Communications Commission (FCC) rules implementing the 1996 Act impose two

¹ Ameritech witness David S. Borders testified in rebuttal that circumstances under which Ameritech would disconnect "connected through" facilities included (1) when demand for service out-paces the spare cable facilities in the area, facilities are disconnected to and reused to provide service to end users; and (2) to assist in repair functions (Ameritech Ex. 36, at 36-37).

² This portion of the offering is made in response to CLEC requests during the OSS collaborative.

³ Codified at 47 U.S.C. Section 151 et seq.

⁴ 47 U.S.C. Section 251(c)(3).

obligations on an ILEC: (1) to provide UNEs in a manner that allows CLECs to combine those UNEs in order to provide a telecommunications service; and (2) not to separate requested UNEs that the ILEC currently combines, except upon request by a CLEC.⁵

Ameritech asserts that its tariff offering satisfies its obligations under the 1996 Act and the corresponding FCC rules. Moreover, Ameritech maintains, any order directing Ameritech to expand its proposed service to provide "new UNE-P" as the CLECs request would run contrary to federal law. Specifically, Ameritech contends that its obligations with respect to UNE-P have been well established by the Eighth Circuit Court of Appeals and the United States Supreme Court in the *Iowa Utilities Board*⁶ string of cases interpreting the relevant FCC rules. In fact, Ameritech argues that this Commission is bound by the Eighth Circuit's decision in *Iowa Utilities Board v. FCC*⁷ by virtue of the Hobbs Act, 28 U.S.C. Section 2342(1). Ameritech also notes that this Commission has recognized that any order directing Ameritech to provide "new UNE-P" would run contrary to the 1996 Act.⁸

Additionally, Ameritech contends that the CLEC request for new combinations is beyond the scope of this tariff proceeding. According to Ameritech, the Commission cannot address matters that were not put in issue by the applicant and not related to the rates which are the subject of the application. Ameritech maintains that it has not put "new" UNE-P in issue in this proceeding and that the pricing methodology it endorses does not account for additional activities that would be required to provide "new" UNE-P.

Finally, Ameritech contends, based on the testimony of Kent Currie, Ph.D., that requiring it to combine elements to provide new UNE-P combinations would delay facilities-based competition and would not make good economic sense (Ameritech Ex. 43, at 46). On the other hand, Ameritech asserts that approval of its UNE-P offering as proposed would encourage CLECs to compete, to further invest in Ohio, and to react freely and innovatively to market forces (*Id.*).

C. CLECs' Position

The CLECs contend that Ameritech's definition of "currently combined" has discriminatory results. Consequently, the CLECs urge the Commission to order Ameritech to combine UNEs that are not "currently combined" under Ameritech's definition, if Ameritech "ordinarily" combines such elements to provide service to its retail end user customers. The CLECs offer a number of reasons as to why Ameritech should be ordered to provide combinations of network elements it ordinarily combines in its network. For example, failure to require Ameritech to provide new combinations will

⁵ 47 CFR 51.315 (a) and (b).

⁶ See *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded*, *AT&T v. Iowa Util. Bd.*, 525 U.S. 366 (1999).

⁷ 219 F.3d 744 (8th Cir. 2000), *cert. granted in part*, 148 L.Ed. 2d 788, 121 S.Ct. 877 (Jan. 22, 2001).

⁸ *In the Matter of ICG Telecom Group, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Case No. 99-1153-TP-ARB.

result in inefficiencies and the delay of competition in the local market (AT&T Ex.6, at 17-19). Further, Ameritech's interpretation of "currently combined" will lead to arbitrary connections and disconnections of elements (Joint Brief at 6 citing Tr. Vol. VII at 62, 63). Additionally, Ameritech makes no provision for enabling CLECs to order elements that are "connected through" (Joint Brief at 7 citing Tr. Vol. VII at 70). In essence, the CLECs contend that Ameritech's UNE-P service offering is useless for any situations except migration orders.

The CLECs also look to the 1996 Act and the coordinating FCC rules in support of their position that an ILEC must combine elements that it currently combines, even if such elements are not yet specifically connected. According to the CLECs' interpretation of the relevant FCC rules, the FCC intended for the term "currently" to mean "ordinarily." The CLECs note decisions from the Fifth Circuit and Ninth Circuit Court of Appeals to support their decision. Further, the CLECs note recent arbitration decisions in Michigan, Indiana, and Wisconsin requiring Ameritech to furnish the elements for new combinations.⁹

Finally, the CLECs assert that good public policy requires Ameritech to provide UNE combinations which it ordinarily combines in its network to enable CLECs to provide service for new customers and customers seeking additional lines. According to the testimony of CLEC witness Sherry Lichtenberg, the market for new customers and second lines is significant and critical to the CLECs' ability to compete (Worldcom Ex. 1, at 4-5). From the CLECs' perspective, protecting this market segment from competition would provide Ameritech an unfair advantage in the local market.

D. Conclusion on the Scope of the Tariff Offering

The Eighth Circuit Court of Appeals and the United States Supreme Court have established the parameters by which ILECs must offer UNE-P. Based on the record before us, we are satisfied that Ameritech's proposal provides CLECs with a simple method of purchasing existing combinations of UNEs in Ameritech's network even if a particular UNE combination requires activation or changes in local switching features. Moreover, based on the current record, Ameritech may not take any action to physically separate network elements that it currently combines in its network unless requested to do so by a CLEC. Additionally, we note that nowhere in the proposed tariff does Ameritech limit a CLEC's opportunity to combine UNEs that are not currently physically combined in Ameritech's network to be able to provide service to new customers. Rather, the CLECs remain free to combine UNEs themselves or to negotiate terms with Ameritech under

⁹ See Opinion and Order, *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 (Jan. 4, 2001); Order on UNE Tariff, *In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection Service, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes*, Cause No. 40611 (Jan. 18, 2001); Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, Docket No. 05-MA-120 (October 12, 2000).

which it will combine elements for CLECs. Consequently, we approve of the scope of the UNE-P offering as proposed by Ameritech.

III. Non-Recurring Charges

A. Overview

Non-recurring charges (NRCs) are the up-front, one-time charges that CLECs pay to Ameritech for the purchase of UNE products. The standard to be applied when calculating these charges is set forth at Section 252(d)(1) of the 1996 Act. According to Section 252(d)(1) of the 1996 Act, these costs should be based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the interconnection or network element. This requirement has been interpreted to mean that the basis of these costs must be the TELRIC elements as defined in the Commission's Local Service Guidelines, Section V.B.

B. Ameritech's Position

1. Ameritech's Proposal

Ameritech proposes non-recurring charges in the amount of \$80.86. As explained by Ameritech witness Scott Alexander, these charges are comprised of the UNE loop service order charge of \$16.10, the switch port service order charge of \$16.23, and the switch port activation charge of \$48.53 (Tr. Vol. VII, at 88-89). According to Mr. Alexander, these charges were previously approved by the Commission in the earlier phase of this proceeding (96-922 case) and are required to be applied under the terms of the Stipulation (Ameritech Ex. 21, at 5-6). However, Mr. Alexander indicated that the previously approved line connection charge would not apply because the elements are already combined such that line connection charges would not be incurred (*Id.*)

According to Mr. Alexander's testimony, the tariff provides for the non-recurring charges to be applied in a "sum of the parts" manner (Ameritech Ex.21, at 7). Accordingly, the sum of the non-recurring charges, including service order charges, for the combination of network elements, is the total of the non-recurring charges that are applicable for each element (*Id.*). The tariff applies the sum of the parts pricing to UNE-P because when a CLEC orders UNE-P, Ameritech must generate and process separate orders to provision the UNE-P combination (*Id.* at 8).

Ameritech contends, based on Mr. Alexander's testimony, that separate service order charges for loop and switch port order activities are appropriate. According to Mr. Alexander's testimony, Ameritech must internally create a separate loop service order and a switch port service order because loops and ports must be ordered, provisioned, and billed through separate downstream systems within Ameritech (Tr. Vol. VII, at 97). Two separate orders must be created to provide the instructions to Ameritech's separate systems which assign loop facilities and features and those that assign switching ports and phone numbers (*Id.* at 98). These systems need to be updated when a UNE-P order is

received in order to recognize the loop and port as UNEs for billing and inventory purposes (*Id.* at 129). These systems are no different than those used for separate unbundled loop and port orders (*Id.* at 100). Ameritech contends that because it incurs costs as a result of the need to process separate loop and switch port UNE orders, it is entitled to recover those costs through two service order charges. According to Ameritech, recovering only one service order charge would not allow it to fully recover all of the costs incurred in processing UNE-P orders.

With respect to the port non-recurring charge, Mr. Alexander testified that such a charge is appropriate to recover the costs associated with providing unbundled local switching with shared transport (Ameritech Ex. 21, at 5). This charge is designed to recover the costs associated with disconnection, assignment, coordinating, assign OE, problem resolution, checking errors and resubmitting, translations and contacting AEC on order errors (Ameritech Brief at 22 citing Staff Ex. 6, Tab 12, Sheet 12). According to Mr. Alexander, the work activities associated with the port non-recurring charge are not identical to those identified in the compliance study for a stand-alone switch port (Tr. Vol. VII, at 120). However, in provisioning ULS-ST there are other work activities which were not included in the development of the port non-recurring charge in the local switching TELRIC study (*Id.* at 120-121). Additionally, there will be occasions where the technician will have to physically confirm that the loop and port are combined (*Id.* at 58). These activities are not performed today for stand-alone UNE orders and are not recovered in any of the TELRIC compliance studies (*Id.* at 125-126). Rather, these new activities directly result from the expansion of the proposed UNE-P offering to include more than only working service "migrations" (*Id.* at 94-95). According to Mr. Alexander, given these work activities, the port non-recurring charge is reasonable (Ameritech Ex. 21, at 6).

2. Ameritech's Response to NRCM

Ameritech also takes issue with the Non-Recurring Cost Model (NRCM) sponsored by AT&T witness Steven Turner. Ameritech contends that the cost model contains a number of flaws. First, the cost model does not employ any values related to Ameritech's network, Operational Support Services (OSS) practices nor does it estimate Ameritech's forward-looking costs. Further, the cost study treats future disconnection costs as a separate rate element and excludes all future disconnection costs from recurring costs. Essentially, the NRCM is designed to develop costs for a hypothetical ILEC (Tr. Vol. VIII, at 147-148).

Additionally, Ameritech takes issue with many of the assumptions used in the CLECs' model. For example, the cost output included "default" values, which represent estimates, for virtually all of the critical inputs which develop the nonrecurring costs (Tr. Vol. VIII, at 146-147). Default values were used for the costs associated with OSS technology and systems, order fallout rates, Dedicated Inside Plant/Dedicated Outside Plant (DIP/DOP) ratios, copper to fiber ratios, shared and common cost values, manual entries, travel times to unmanned offices, supervisor to craft ratios, and the number of tasks performed on a trip by a technician (Ameritech Brief at 25 citing AT&T Ex. 5, Appx.

SET-2 at 10 and Appx. SET-3 at 17-18). Each of these values was derived without regard to Ameritech's actual network or procedures (Tr. Vol. VIII, at 146-147).

Ameritech notes that the NRCM assumes a 100 percent DIP/DOP relationship but the CLECs' witness could not identify any ILEC with such a relationship nor was he aware of the DIP/DOP relationship for Ameritech (Tr. Vol. VIII, at 178-179). According to the rebuttal testimony of Ameritech witness Dave S. Borders, a 100 percent DIP/DOP relationship assumes that for every service request received all the necessary facilities are already in place to serve the customer when in reality technicians are required in approximately 40 percent of loop provisioning orders (Ameritech Ex. 36, at 34). According to Mr. Borders, a 100 percent DIP/DOP ratio is unreasonable because it assumes that there are no spare loops because every loop would already be connected to a switch port and could not be disconnected or else the DIP/DOP ratio assumption of 100 percent could not be maintained (*Id.*). It also assumes that no spare loops are ever disconnected for repair purposes or disconnected from one customer location to serve another new customer order (Ameritech Ex. 36, at 36-37). Based on Mr. Borders' rebuttal testimony, Ameritech asserts that the CLECs' DIP/DOP assumption is inconsistent with their demand for new UNE-P combinations because if the assumption were realistic, there would be no need for "new combinations" as all of Ameritech's network would be currently combined.

Ameritech also disputes the CLECs' assumption of a two percent non-flow through fallout rate (i.e., orders requiring manual intervention) for all unbundled network element orders noting that no facts supporting such a fallout rate were presented (Tr. Vol. VIII, at 162-165). Ameritech asserts that the evidence demonstrates that 35 percent of CLEC orders for UNEs currently require manual intervention and 15-30 percent of UNE-P orders are expected to require such intervention (Ameritech Ex. 39, at 21-22). The NRCM also assumes that the most efficient OSS technology is in place to handle all orders, including complex orders, through complete provisioning on an electronic basis (AT&T Ex. 5 at 27 and Appx. SET-2 at 30,31). It also assumes that the multiple back-end databases that are needed to provision an unbundled network element order will work perfectly together without fallout or manual intervention (Tr. Vol. VIII, at 195). Ameritech asserts that these assumptions are not based on Ameritech's current OSS technology or a forecast of the capabilities of Ameritech's OSS over any reasonable time frame.

The NRCM also assumes that the percentage of lines served by Integrated Digital Line Carrier (IDLC), as opposed to copper wires, is 60 percent. In reality, only 2.5 percent of Ameritech's total cable pairs are served by IDLC (Ameritech Ex. 36, at 39). The percentage of IDLC in Ameritech's network may increase but certainly not to the levels assumed by the NRCM (*Id.*).

According to Ameritech, the NRCM also contains a number of default inputs for work activities related to the provisioning of the unbundled network elements used in providing UNE-P which do not apply to Ameritech generally or specifically. For example, the NRCM assumes that a cross connection will always be in existence at the Feeder Distribution Interface (FDI) so that no field dispatch would ever be required to provide service (AT&T Ex. 5 at 32). However, according to Mr. Borders, field dispatches are

required 40 percent of the time in order to provide service (Ameritech Ex. 36, at 35, 42). The NRCM also assumes that the Circuit Provisioning Center (CPC) is not involved in the provisioning of unbundled 2-wire loops when in reality it is involved in the provisioning process for all 2-wire unbundled loops (AT&T Ex. 5, at 30; Ameritech Ex. 36, at 43). The NRCM also contains unreasonable estimates for travel time to unmanned central offices as well as the unrealistic assumption that every time a technician travels to an unmanned central office to perform work three unrelated tasks will be performed as well (Ameritech Ex. 36, at 43). According to Mr. Borders, unbundled loop orders cannot be held until there are three other scheduled activities to be performed in the same unmanned central office (*Id.* at 40). The NRCM also assumes cross connections can be installed in one minute and disconnected in 30 seconds (AT&T Ex. 5, Appx. SET-3, Attachment B at page 14). According to Mr. Borders, the only type of frame in which this assumption could be met is a non-congested Cosmic frame and Ameritech only has 47 Cosmic frames out of 276 central offices (Ameritech Ex. 36, at 41).

In conclusion, Ameritech notes that the use of hypothetical values in the NRCM has led to its rejection by several state commissions. Accordingly, Ameritech asserts that it should be rejected here as well.

C. CLECs' Position

The CLECs propose a non-recurring charge of less than one dollar. Based upon the testimony of Mr. Turner, AT&T proposes a non-recurring charge of \$0.23 plus shared and common costs. Worldcom, based on the testimony of Mr. Earle, proposes a rate of \$0.76

In rejecting the non-recurring rate proposed by Ameritech, the CLECs raise a number of points. First, the CLECs contend that Ameritech has not even attempted to conduct an analysis to determine the non-recurring costs of UNE-P but has simply relied on its four-year old TELRIC studies. Further, the CLECs note that OSS advances have greatly reduced the reliance on manual intervention thereby reducing the incremental non-recurring costs associated with preordering, ordering, provisioning, maintenance, and billing (AT&T Ex. 5, at 11-14). Additionally, the CLECs contend that Ameritech's proposed non-recurring charges are based on activities associated with ordering and provisioning discrete unbundled loop and ports as opposed to a preassembled UNE-P offering. The CLECs also assert that the "sum of the parts" approach applied by Ameritech is not endorsed by the Stipulation.

According to the CLECs, the only costs appropriately included in non-recurring costs for new entrants are those caused by the processing of customer-specific service transactions, i.e., preordering, ordering, and provisioning (AT&T Ex. 5, at 5). The CLECs state that, to estimate these transaction costs, the steps necessary to accomplish each function must be identified and the appropriate non-recurring cost is the sum of these steps. For ordering, the only source of non-recurring costs occurs in the few orders containing errors requiring manual correction (*Id.* at 15-22). For provisioning, the only source of non-recurring costs arise from correcting conditions that prevented completion with no manual activity (i.e., flow-through) (*Id.*).

The CLECs contend that high flow-through capability is achievable when an ILEC makes an effort to control fallout. The CLECs note that Ameritech affiliates in other states have systems capable of maintaining very high flow-through rates and that Ameritech has indicated that it intends to move toward a uniform ordering system for UNE-P throughout its 13-state region by November 2001 (AT&T Ex. 5, at 21-22; 37-38). Additionally, the CLECs point out that Ameritech's own OSS witness in this case testified that Ameritech's resale flow-through rate is 99 percent, a significant improvement over four years ago (Ameritech Ex. 39, at 21). With respect to billing, the CLECs point out that Ameritech has failed to incorporate the efficiencies that will result from OSS enhancements and its commitment in Case No. 00-942-TP-COI (271 proceeding) to utilize the "CABS" billing system by 2001. In summary, the CLECs urge the Commission to consider the age of the cost studies relied upon by Ameritech, the improvements that Ameritech has made in the past four years, and the improvements Ameritech has committed to make in the future in evaluating the non-recurring cost proposals made in this docket.

In addition to rejecting Ameritech's proposal, the CLECs have offered the recommendations of Mr. Turner and Mr. Jenkins. According to the CLECs, they have utilized the NRCM introduced by Mr. Turner in this proceeding because it complies with the Commission's goal of establishing non-recurring costs that are least-cost, forward-looking, and in compliance with the TELRIC principles. In reaching its results, the NRCM relies on a number of assumptions. For example, it assumes that all interactions between CLECs and ILECs will use electronic interfaces as required by the FCC (AT&T Ex.5, at 23). Further, it assumes that the CLEC's service order personnel have access to the ILEC's OSS so that accurate preordering information is available to them to the same extent it is available to the ILEC's service order personnel thereby eliminating any pre-ordering activity on the ILEC's behalf and the need for the ILEC to retype or manually review the CLEC's order (*Id.*). The NRCM also assumes that the electronic interfaces permit the CLEC to identify and correct errors before the order is submitted and that once submitted, the orders will flow electronically into the ordering systems of the ILEC and from there on for provisioning (*Id.*). Additionally, the NRCM assumes that the ILEC is using modern OSS with accurate and synchronized databases, thereby reflecting a much lower and realistic fallout assumption of 2 percent or, that is, a 98 percent flow-through rate (*Id.* at 26). The NRCM assumes that network elements are provided using forward-looking technology rather than actual existing network technology (*Id.* at 23). Consequently, the CLECs assert that adoption of the NRCM would produce better results than correcting the results of Ameritech's outdated cost studies from 1997.

In contrast to Mr. Turner's approach, Mr. Jenkins attempted to revise Ameritech's TELRIC studies to comport with the forward-looking costs associated with provisioning UNE-P to a CLEC (Worldcom Ex. 4). According to Mr. Jenkins, Ameritech has not provided an adequate amount of current information at a level detailed enough to support a reasonable analysis of the appropriateness of each cost item because the rates are based on cost studies developed over four years ago (*Id.* at 4). Further, the methodology used by Ameritech to develop the underlying costs associated with the non-recurring tariff charges is inappropriate (*Id.*).

Additionally, according to Mr. Jenkins, the UNE-P non-recurring tariff charges are substantially overstated (Worldcom Ex. 4, at 4). Further, a sum of the parts approach misrepresents the process steps and inflates the costs associated with provisioning existing UNE-P requests (*Id.* at 6-7). From a process perspective, no manual work, such as wiring, beyond order processing is required to complete a UNE-P order but Ameritech assumes that manual work would be done for a UNE-P migration (*Id.* at 10). Ameritech's approach does not address the redundant or overlapping activities that are present when two stand-alone processes are combined (*Id.*). Based on his analysis, Mr. Jenkins concludes that Ameritech's proposed rates are overstated because Ameritech has utilized outdated cost information and an inappropriate pricing methodology (*Id.* at 13). Further, Ameritech did not develop the underlying costs by analyzing the actual process steps required to provide the service (*Id.*).

D. Conclusion on Non-recurring Charges

At the outset, we agree with the CLEC's position that Ameritech failed to re-examine its costs from prior studies. Accordingly, we have reviewed the Commission-approved TELRIC rates from 1997 and applied several adjustments and assumptions. First, we considered costs on a forward-looking basis rather than relying on Ameritech's four-year-old cost studies from 1997. This approach is consistent with our commitment in the original 922 order to re-evaluate Ameritech's service order processing (Opinion and Order, June 19, 1997, at 56). Consequently, the NRC rate we are setting accounts for the OSS improvements over the past four years, the current OSS performance levels reflected in the record, and the expected OSS improvements as a result of Ameritech's commitments in Case No. 00-942-TP-COI (271 proceeding) to provide a uniform 13 state ordering system and upgrading its electronic data interface (EDI) system by November 2001.

Additionally, since the rate is for existing UNE-P, no costs associated with physical activity for installation or manual labor costs are included except for the non-flow through orders as discussed below. Further, we assumed that UNE-P orders will go through one billing system ("CABS billing") by October 2001 as Ameritech committed in the 271 proceeding. As a result, only one service order cost will apply.

Additionally, we have assumed that the OSS costs associated with the use of Ameritech's OSS systems to process the UNE-P service order will be recovered through a separate OSS rate element as recommended by the CLECs. Such OSS rates will be determined through a separate TELRIC study for OSS to be reviewed and approved by the Commission.

At the same time, however, we reject the NRCM cost model proposed by AT&T and the associated results because of the assumptions used in running the model. That is, we agree with Ameritech's position discussed at length in Section III B. 2. that assumptions in the NRCM do not in any way provide an accurate reflection of costs Ameritech could be expected to incur.

Based on the record before us, we believe the NRC for existing combinations is comprised of three cost components: 1) the cost of manual intervention associated with the non-flow-through orders which represent two percent of the orders on a forward-looking basis; 2) the cost of disconnection orders that requires manual intervention associated with the non-flow-through disconnection orders which represent two percent of the orders on a forward-looking basis; 3) the cost for dial tone activation where facilities are physically connected through but no dial tone is available (according to Ameritech's proposed tariffs for UNE-P reflected in the record) which should not be more than 10 percent of the total UNE-P service orders.

As a result, the Commission concludes that a nonrecurring charge in the amount of \$0.74 for the provision of Ameritech's UNE-P is appropriate. As discussed above, this rate will apply to simple migrations and to the provision of UNE-P in circumstances where the facilities remain connected through but may require dial tone activation or electronic activation of existing cross connect scenarios. Additionally, the NRC for existing UNE-P will be \$0.74 regardless of whether it is for a business or residential line. Any feature change requested at the time of ordering existing UNE-P will be treated as a separate activity and its associated NRC for feature change shall apply.

IV. ULS-ST

A. Overview

According to Ameritech, the shared transport UNE cannot be provided separately from local switching such that the ULS-ST portion of the UNE-P product consists of two components—unbundled local switching (ULS) capability and shared transport (ST) capability. (Ameritech Ex. 18, at 5). The ULS portion of Ameritech's ULS-ST product offering provides unbundled access to local switching capability through a line-side and/or trunk-side port, which provides access to all features, functions, and capabilities of the switch (*Id.*). This ULS capability is provided separate from the local loop or other services on a per line basis (*Id.*). The shared transport component of the ULS-ST product offering provides the interoffice trunk network portion of the ULS-ST product, including end office and tandem trunk ports, tandem switching, interoffice facilities between Ameritech's switches, and central office routing tables (*Id.*).

B. Ameritech's position

Ameritech proposes a two-tiered ULS-ST monthly recurring charge consisting of a \$4.63 basic line port and a ULS usage charge of \$0.000842 per minute of use. (Ameritech Ex. 19, at Original Sheet No. 47).

Ameritech contends that the proposed structure for its UNE-P offering follows a cost-causer approach and charges the carrier taking the UNE-P service for the costs of the network capacity used by them. Ameritech's proposed rates for the unbundled port in the ULS portion of the ULS-ST were derived using TELRIC cost studies previously approved by the Commission in the earlier phase of this proceeding (Ameritech Ex. 21, at 4).

Ameritech contends that its reliance on these previously approved rates is consistent with Paragraph C.18 of the Stipulation in Case No. 93-487-TP-ALT and eliminates the need to recreate TELRIC cost studies each time a service or product is offered (Stipulation at 19, Paragraph C.18). According to Ameritech, the concept of usage sensitive charges for ULS, which apply on a minutes of use basis, were approved by the Commission in the prior proceedings and the ULS portion of the ULS-ST component of Ameritech's UNE-P product offering employs that same usage sensitive minutes of use pricing concept (Ameritech Ex. 18, at 16).

Central to Ameritech's proposed usage sensitive pricing for the ULS portion of the ULS-ST component is Ameritech's belief that customer usage drives switching costs. According to Dr. Currie, increases in customer usage cause switch investments to be made by Ameritech (Ameritech Ex. 43, at 18). Under Ameritech's switch vendor contracts, additional components must be purchased to handle increased traffic volume (*Id.*). Further, by way of example, as switch traffic volumes increase, additional equipment such as umbilicals must be added (*Id.*). Additionally, under the vendor contracts, additional investment is required for capacity additions or centum call seconds (CCS) jobs (*Id.*). Dr. Currie presented specific examples of recent Ohio CCS jobs where switches required capacity additions as a result of growth in usage and noted that the number of such CCS jobs in Ameritech's service area has grown in recent years (*Id.* at 21, 22). Finally, Dr. Currie testified regarding the negative economic consequences of the CLECs' flat-rate proposal. Essentially, through a number of examples, Dr. Currie testified that flat-rate pricing of ULS would result in cross subsidies where the true cost-causer is not paying for the switching capacity it uses (*Id.* at 23). Stated another way, flat-rate pricing would allow the CLECs to develop new applications resulting in increased network usage while not incurring any additional costs (*Id.*). Based on Dr. Currie's testimony, Ameritech contends that, under the CLECs' approach, there is little incentive for CLEC network investment and facilities-based competition in Ohio. In other words, flat-rate pricing sends incorrect market signals that would result in inefficiencies and reduced investment in Ohio.

In addition to its reliance on a previously approved cost study, Ameritech undertook a new cost study to arrive at rates for the usage sensitive component of the ULS associated with the shared transport as well as the shared transport component of its UNE-P offering because no previously approved TELRICs were available for that portion of the rate element (Ameritech Ex. 28, at 3). Further, the new cost study was performed to address the SS7 signaling transport charges as requested by the CLECs. Consequently, Ameritech's monthly recurring rate proposal for ULS-ST is comprised of a combination of prices from a previously approved cost study and a new cost study.

In calculating these additional cost-based TELRIC rates, Ameritech used two new calculators: Ameritech Regional Partners in Provisioning Switching Model (ARPSM) and Network Usage Cost Analysis Tool (NUCAT) (Ameritech Ex. 28, at 5-6). The ARPSM model calculated a forward-looking price and switch investment from the actual Partners in Provisioning (PIP) and analog switch replacement contracts entered into between Ameritech and its switch vendors (Tr. Vol. XII, at 21-22, 58). According to Ameritech, ARPSM provides more auditable inputs into NUCAT's cost computations than were

previously available through models used to develop the compliance TELRIC costs (Ameritech Brief, at 37). NUCAT was used to generate the cost of end office trunk investments per message and per minute using as inputs investments calculated under the ARPSM model (*Id.*).

Dr. Currie testified that use of ARPSM and NUCAT models was consistent with both economic theory and the economic assumptions followed in the earlier phase of this proceeding (Ameritech Ex. 28, at 6-7). According to Dr. Currie, the models permit costs to be determined based on actual switch vendors' contract prices and the investment costs reflect a commercially available, state-of-the-art network (*Id.* at 4; Tr. Vol. XII, at 107-108). Reliance on these models allowed Dr. Currie to determine the forward-looking cost of the network functions used to provide the ULS-ST portion of the UNE-P product (*Id.*).

Further, with respect to switch prices, Dr. Currie testified that the appropriate weighting and weighted average price to use in TELRIC studies is one that reflects the most likely estimate of what Ameritech could expect to pay if it were to replace all of its switching equipment today (Ameritech Ex. 43, at 4). Accordingly, in determining its weighted average price, Ameritech weighted the Analog Contract prices by the specific quantities provided for in those agreements and it weighted the PIP contracts (or growth contracts) prices by the number of growth lines contained in those agreements (Tr. Vol. XII, at 21-22). In essence, the analog contracts and the prices for the limited number of switches identified therein were loss leaders and by their very terms part of the consideration for entering into the Growth Contracts. According to Ameritech, the ARPSM correctly reflected these contractual realities in its price weightings. The ARPSM combined these two prices with the expected quantities of lines at each price in each year of the contracts to generate the best estimate of the single price that the vendor would charge if it were to replace its two-tiered pricing structure with a single per line price (Ameritech Ex. 43, at 4). The best estimate of what a vendor would charge under a two-tiered pricing structure agreement would be a weighted average of the prices and quantities it has actually agreed to provide. That price, when applied to the entire Ohio network Ameritech posits, provides the best estimate of the investment Ameritech would incur if it were to replace all of its switches.

Turning to fill factors in the ARPSM, Ameritech used a Commission approved digital line factor that identified the usable capacity of DS1 terminations (Ameritech Ex. 43, at 4, 9). According to Ameritech, the application of the fill factor makes the CCS calculation consistent with the fill adjusted per line cost calculation (*Id.*). As Dr. Currie testified, if the total line cost is fill adjusted but the CCS cost per line is not, the calculation would incorrectly overweigh the non-usage sensitive component (*Id.* at 13). The ARPSM appropriately splits the fill adjusted (total) line count into usage sensitive and nonusage sensitive components by subtracting the CCS cost per line from the total line cost (*Id.* at 31). While total line costs were fill adjusted, before applying the fill factor, the CCS cost per line was not (*Id.*). Further, Ameritech contends that the use of the fill factor was consistent with and required by the Stipulation (*Id.* at 29-30).

With respect to the digital/analog line ratio, Ameritech contends that the ratio it used in determining the switch investment included within the ULS-ST rate element is consistent with the switch vendor contracts. According to Ameritech, if the pricing for switching capacity is to be based on vendor contracts, then the digital to analog mixes that underlie the contract prices must be utilized to arrive at a consistent and reasonable estimate of the switch investment to be included in the TELRIC ULS-ST cost (Ameritech Brief, at 49). According to Dr. Currie, any ratios other than the actual ratios based on the agreements are hypothetical and inconsistent with those agreements (Ameritech Ex. 43, at 29-30).

With respect to CCS costs, Ameritech used prices provided for in the PIP contracts because, as it contends, use of those prices is consistent with reality. As for switch ordering intervals, Ameritech presented testimony that its agreements with switch vendors contain provisioning intervals with corresponding costs (Tr. Vol. VIII, at 109). The shorter the provisioning interval, the greater the cost to Ameritech. Ameritech purchases its switches in all of the ordering intervals reflected in its agreements (*Id.* at 111). However, Ameritech did not undertake a study to determine the actual percentages ordered in each interval to determine an average price (*Id.*). Rather, Ameritech used the price of the second shortest provisioning interval in its cost study (*Id.* at 110).

With respect to switch ordering intervals, the record reflects that the price ameritech is charged by the switch vendor is dependent on the "provisioning intervals." Provisioning intervals were described by Dr. Currie as the time from the order placement to the time it is provisioned (Tr. VIII, 109). The contract reflects that the longer the provisioning interval, the lower the per line charge. Ameritech presented testimony that it purchases switches in all of the ordering intervals reflected in its agreements. Consequently, ameritech attempted to use a mid-point of the ordering intervals to provide an estimate of the investment cost of switching capacity.

As for NUCAT conversation times, Ameritech assumed a 22.5 percent non-conversation time (NCT) factor (Ameritech Ex. 43, at 34-35). The NCT factor recognizes that not all usage of the network is connect time (*Id.*). The factor takes into account that busy signals, partial and mis-dials, reception of dial tone and acceptance, dialed digits, and other nonconnect usage makes use of the network (*Id.*). Because connect time only begins when the called party picks up the receiver, usage must reflect the other times during which the network is being used.

Turning to NUCAT distance assumptions, Ameritech utilized an eight-mile assumption. This assumption was arrived at using actual CLLI Code and VH coordinate data. According to Ameritech, this assumption is dictated by TELRIC principles that require the calculation of such distances to be on an average network-wide basis and not on specific distances in any particular portion of Ameritech's serving area.

With respect to the trunk investment calculation, Ameritech asserts that there is a positive correlation between the number of lines and trunks on a switch but not necessarily the investment. As usage and the number of lines on a switch increase, the

number of trunks increase in a linear relationship (Ameritech Ex. 43, at 32). According to Dr. Currie, interoffice usage and line counts on end-office switches are positively correlated; the more lines that are installed on a switch, the more interoffice usage the switch will generate (*Id.*). Dr. Currie testified that a switch with 25,000 lines will require approximately half the number of trunk ports that a switch with 50,000 lines with the same CCS utilization, all else being equal (*Id.*). Accordingly, while the number of trunks is not impacted by an increase in intra-switch usage, inter-switch usage does affect the number of trunks and because the amount of inter-switch usage increases as the number of lines increase, the number of trunks does indeed increase linearly with the number of lines (*Id.*). Dr. Currie also explained that ARPSM calculated the trunk investment per line under the PIP contracts which was then used by NUCAT to generate end office trunk investment per message and per minute (*Id.*). The trunk investment per line is thus calculated using a forward looking trunk-to-line ratio that reflects the average number of trunks that would be installed per line in a forward-looking network (*Id.*).

C. CLECs' Position

The CLECs have offered two proposals based on the testimony of witnesses Joseph Gillan and Dr. August Ankum. First, the CLECs have proposed a flat-rated switch charge of \$3.52 to recover all of the costs associated with unbundled local switching in one flat monthly charge. Alternatively, the CLECs have proposed that, if the Commission agreed with Ameritech's bifurcated rate structure, a revised line port charge of \$2.13 be used with a usage charge of \$0.00035 per minute of use.

The CLECs' \$3.52 flat-rated switching proposal is based on the concept that the pricing of unbundled network elements should be consistent with the manner in which the costs of providing the elements are incurred. The CLECs contend that because Ameritech pays its vendors on a per-line basis for switching equipment, the CLECs should pay Ameritech in the same manner. According to the CLECs, Ameritech's switches generally are installed with a certain maximum usage capacity based on CCS and Ameritech's switches are engineered and installed with sufficient CCS capacity to service all lines without blockage (AT&T Ex. 6, at 9-10, AT&T/MCI Ex. 1, at 19). The CLECs argue that, while Ameritech may have incurred some charges for CCS jobs, that cannot be used to justify an entire pricing schedule pursuant to which the CLECs could pay Ameritech many times over for their use of its switching equipment. Ameritech's two-tiered pricing scheme permits Ameritech to charge the CLECs more for high volume lines while paying the same amount for both high and low volume lines. The CCS jobs noted by Dr. Currie are miniscule when compared to Ameritech's total regionwide switch investment that has been incurred on a flat, per-line basis. The CLECs explain that while they will be offering their services to the same customers now being served by Ameritech and while usage patterns may be affected by CLEC service offerings that are different than Ameritech service offerings, it is unlikely that the same customers will cause the level of increased switch usage necessary to justify a usage-based charge for the switch. Ameritech's proposal to recover switching costs through a usage charge not only is inconsistent with the manner in which Ameritech incurs these costs but is also discriminatory. That is, requiring CLECs to pay usage-based charges will force CLECs to charge their end-user

customers local service rates that are usage sensitive while Ameritech offers its retail customers a flat rate for local usage.

Additionally, the CLECs contend that even if the Commission adopts a two-tiered pricing structure, the line port charge must be revised. According to the CLECs, the earlier cost studies relied upon by Ameritech produced a relatively high monthly port charge because it disguised the level of vendor discounts associated with cutover lines placed upon switch installation.

With respect to the CCS charges developed by the ARPSM, the CLECs contend that these inputs are based entirely on PIP contracts and do not recognize CCS investments placed at cutover. Looking at the fill factor adjustment for CCS, Dr. Ankum testified that because the vendor contracts do not price switch investment on a CCS basis, there is no cost justification for the switching usage charge. Given that there are no CCS costs, it simply makes no sense to include a CCS fill factor as an ARPSM input (AT&T/MCI Ex. 1, at 29-30). Based upon Dr. Ankum's testimony, the CLECs contend the application of a fill factor to CCS results in increased costs to CLECs which are not reflective of the price paid by Ameritech for switching. Moreover, it is inconsistent for Ameritech to claim a large amount of spare capacity on a switch while claiming that it purchases facilities under an expedited schedule.

With respect to Ameritech's trunk investment, Dr. Ankum testified that an adjustment should be made to the ULS-ST study to reflect that trunk port investments are driven by interoffice usage and not the number of lines (AT&T Ex. 1, at 31). By calculating a per line trunk investment figure and then multiplying that figure by the total number of lines, Ameritech overstates the true trunk investments (*Id.*). Any effect that an increase in line side usage would have on trunk port investment is not significant enough to use as an assumption in a cost model (*Id.*).

With respect to the average distance between end offices, Dr. Ankum recommends that NUCAT be adjusted for the erroneous distance assumptions between end offices (AT&T/MCI Ex. 1, at 31-32). Specifically, Dr. Ankum contends that this average must be adjusted to reflect a proper mix of end-office and tandem traffic producing distances to reflect this mix (*Id.*).

D. Conclusion on ULS-ST

Based on all of the above, the Commission adopts a bifurcated rate structure consisting of a port charge and a usage sensitive per minute of use charge. This rate structure is consistent with the ULS rate structure we approved in the first phase of this proceeding. Additionally, the record indicates that usage is a driver of switching costs. We find that, while Ameritech pays vendors on a set rate per-line basis, it cannot be inferred that Ameritech's forward-looking cost of providing switching service is independent of customer usage. As explained by Dr. Currie, as customer usage increases incrementally, switch investments have to be made in the form of CCS jobs. Further, as switching usage levels increase, additional equipment is needed in order to handle

increased capacity. Accordingly, this rate structure is consistent with the way costs are incurred in Ameritech's network as required by Sections V.B.2.a.1. and V.B.2.b.2. of the Commission's Local Service Guidelines.

The ULS port rate will be \$4.63 with a usage charge which shall be adjusted as discussed below. As demonstrated by Ameritech, this rate is based on the actual contracts entered into between Ameritech and its switch vendors. Moreover, these vendor contracts used in the ULS-ST study were in effect during the first phase of this proceeding when we initially examined this rate. Additionally, the CLECs failed to present any evidence to support their claim that the port charge previously approved by the Commission did not include the appropriate vendor contract discounts. Finally, this rate is consistent with the Stipulation adopted in Case No. 93-487-TP-ALT.

The Commission adopts Ameritech's proposed weighting for replacement lines versus growth lines. Ameritech's access lines included in the ARPSM are a representative sample of replacement/growth line mix in Ameritech's network on a forward-looking basis. There is no evidence in the record as to the actual mix for all lines in the entire network or whether any were characterized and billed as replacement/growth lines in prior contracts. Again, the analysis should be limited by the terms and conditions of the vendor contract as to the replacement lines used in determining the contract prices which are the basis of the cost calculations.

However, the Commission concludes that Ameritech should use the lowest contract price associated with the longest provisioning interval. While Ameritech admitted that actual jobs do occur in all four intervals, the company failed to conduct an analysis of how many lines were actually ordered in each interval. Instead, it appears that Ameritech simply chose to use the second highest price as discussed above.

The Commission will adopt Ameritech's proposed analog/digital lines mix because it is based on the actual line mix that underlies the contract prices which is interrelated with the terms and conditions of the vendor contract.

The Commission will adopt Ameritech's proposed CCS prices and associated fill factors with no adjustments. Ameritech used CCS prices to identify usage sensitive costs versus non-usage sensitive costs again based on the actual PIP contracts. As discussed above, because we are basing the analysis on the actual vendor contracts no further adjustment is required. As to the fill factor, it is appropriate for Ameritech to apply the Commission-approved digital line factor to identify the usable capacity of DS1 termination and to be consistent with the fill-adjusted per line cost to avoid overweighing the non-usage sensitive component (port) of the ULS cost.

The Commission will adopt Ameritech's calculation of the trunk investment. Ameritech correctly identified a positive correlation between the number of lines and trunks on a switch.

The Commission will adopt Ameritech's positions regarding distance between end offices and minutes of use terminating at non-Ameritech end offices. The record demonstrates that Ameritech based its assumption on actual traffic studies. Consequently, we find it to be reasonable and note that the CLECs presented no evidence to rebut it. Additionally, we find Dr. Ankum's argument that UNEs will most likely be used in densely populated urban areas to be inconsistent with the TELRIC requirement to study the total demand for a specific UNE, not merely what the CLECs may expect to use.

The Commission adopts Ameritech's proposals regarding the non-conversation time. We are satisfied with Ameritech's explanation of how the NCT was developed. Moreover, contrary to CLECs' concerns, the reality is that the higher the NCT factor, the higher the call set-up investment and the lower the corresponding per MOU investment.

V. Proposed Restrictions on UNE-P and ULS-ST

A. Overview

Under the transit product offering, telecommunications carriers can transport calls on shared facilities to non-Ameritech central office switches providing local, wireless, and interexchange services. CLECs may use the proposed ULS-ST offering to route interexchange intraLATA toll calls. Additionally, custom routing may be used with the proposed ULS-ST offering to route local Operator Services/Directory Assistance (OS/DA) calls but not toll OS/DA calls to a CLECs' OS/DA provider of choice.

B. Ameritech's Position

1. Shared Transport-Transit

Ameritech's proposed ULS-ST Transit product offering is a voluntary offering which provides that CLECs subscribing to ULS-ST can use shared facilities rather than dedicated transport or custom routing in order to route traffic through Ameritech's network to other local exchange company switches. According to the testimony of Jerry L. Hampton, Associate Director of Wholesale Marketing for SBC's Industry Markets, under the transit product offering, telecommunications carriers can transport calls on shared facilities to non-Ameritech central office switches providing local, wireless, and interexchange services (Ameritech Ex. 18, at 12). However, as Mr. Hampton explained, while Ameritech provides the transiting capability, carriers purchasing ULS-ST must establish compensation arrangements with the carriers to which its traffic is delivered and/or from which it is received using the shared transport-transit capability (*Id.* at 12-13). Ameritech contends that provision of this transiting function is not required under the 1996 Act nor has the FCC ever required ILECs to provide this functionality to CLECs.¹⁰

¹⁰ Third Order on Reconsideration and Further Notice of Proposed Rulemaking, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, FCC 97-295, 12 FCC Rcd 12460 (rel. Aug. 18, 1997) (Third Report and Order).

2. IntraLATA Toll Calls

Ameritech's ULS-ST offering may be used by CLECs to route interexchange intraLATA toll calls (Ameritech Ex. 18, at 13). Ameritech's routing tables that define shared transport route local, intraLATA toll, and interLATA toll calls in the same manner for Ameritech's retail customers as for CLEC end user customers regardless of whether the customer is served via a UNE combination that utilizes shared transport, resale of Ameritech retail services, or Ameritech retail services (*Id.* at 14). IntraLATA toll traffic is routed to the Feature Group D trunks of the end user's presubscribed intraLATA Carrier (LPIC) as indicated by the LPIC on the ULS port for delivery to the customer's chosen carrier (*Id.* at 13-14). Similarly, interLATA toll traffic is routed to the end user's presubscribed interLATA carrier's (PIC) Feature Group D trunks (*Id.*). Transport of intraLATA toll calls is "shared" in the sense that a CLECs' local traffic shares Ameritech's transport facilities with Ameritech's local traffic using the same routing tables (Ameritech Ex. 41, at 8-9). While ULS-ST can be used to transport CLEC traffic to an end user's presubscribed intraLATA carrier (toll provider), it cannot be used by a CLEC to transport that CLEC's intraLATA toll service traffic using the Ameritech ULS-ST UNE (*Id.* at 13). Rather, because ULS-ST routes all intraLATA toll traffic using Ameritech's existing routing tables as required by FCC rule, all intraLATA toll calls are routed to the Feature Group D trunks of the presubscribed intraLATA carrier selected by the customer, and not over the shared transport UNE. To route intraLATA toll traffic at the request of a CLEC in any other manner would require modifications to, as opposed to sharing of, the existing standard routing tables. In the case of ULS-ST, any routing that does not use Ameritech's existing routing table constitutes custom routing (*Id.* at 8).

3. OS/DA

With respect to the OS/DA issue, Ameritech explains that custom routing may be used with ULS-ST to route local OS/DA calls, but not toll OS/DA calls to a CLEC's OS/DA provider of choice (Ameritech Ex. 18, at 14). Custom routing cannot be used to route toll OS/DA traffic because toll traffic is routed to the PIC (interLATA) or LPIC (intraLATA) interexchange carrier indicated on the ULS port (*Id.*). According to Ameritech, this OS/DA offering satisfies FCC requirements for the withdrawal of OS/DA as a UNE. Further, if a CLEC desires a different form of custom routing than that provided in the tariff, Ameritech is willing to explore other possibilities pursuant to a bona fide request process (Ameritech Ex. 41, at 16).

C. CLECs' Position

1. Shared Transport-Transit

The CLECs assert that Ameritech's commitment to provide the transit function on a voluntary basis is insufficient (AT&T Ex. 6, at 23). Rather, the CLECs contend, Ameritech's obligations regarding UNE-P must be clear regulatory obligations to prevent Ameritech's manipulation of terms and prices to its advantage (*Id.*). According to Mr. Gillan, the purpose of shared transport is to provide CLECs access to the economies of

scale of the interoffice network such that failure to provide transit functionality in the context of shared transport would result in costs to Ameritech (*Id.*). Consequently, to assure that UNE-P is a viable and nondiscriminatory offering, transit must be provided at TELRIC-based rates (*Id.*). Additionally, the CLECs assert that there are no additional usage costs associated with the ULS element such that bill-and-keep is the appropriate compensation mechanism (*Id.* at 24-25).

2. Interexchange IntraLATA Toll Calls

The CLECs, through the testimony of Mr. Gillan, recommend that Ameritech be ordered to perform customized routing by modifying its existing standard routing tables to enable CLECs to bypass the routing of intraLATA toll calls to the customer's presubscribed intraLATA carrier's Feature Group D trunks as defined by Ameritech's standard routing tables (AT&T Ex. 6, at 19). The CLECs contend that Ameritech illegally restricts the use of its shared transport offering by prohibiting CLECs from routing intraLATA toll traffic on an end-to-end basis (*Id.*). Specifically, the CLECs argue that Ameritech's ULS-ST tariff does not comply with the FCC's rules defining shared transport UNE and it violates Condition 56 of the FCC's Merger Order.¹¹ According to the CLECs, by forcing all CLEC intraLATA toll traffic to a separate network, Ameritech is denying the full functionality of its shared transport network to CLECs. The CLECs assert that the net result is to inflate the cost to a CLEC to route such traffic to the terminating end office because CLECs are forced to self-provision intraLATA toll services or purchase such services from a long distance provider instead of using the entirety of SBC/Ameritech's network elements.

3. OS/DA

According to the CLECs, there are two issues with respect to OS/DA--how Ameritech will provide OS/DA and how OS/DA should be priced. Mr. Gillan testified that, because Ameritech has not fully explained how it will support the necessary optional OS/DA routing, the Commission should require that OS/DA will be available as a UNE until such time as Ameritech can demonstrate that it can route OS/DA traffic as required by the CLECs (AT&T Ex. 6, at 25). Further, the OS/DA UNE should be branded for CLECs at their request consistent with FCC requirements set forth in the Third Report and Order. Finally, based on the testimony of Ms. Lichtenberg, the CLECs contend that, in order to promote competition, Ameritech must be required to provide OS/DA at TELRIC-based rates (Worldcom Ex. 1, at 8).

¹¹ Memorandum Opinion and Order, *In re Applications of Ameritech Corp and SBC Communications, Inc. For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5,22,24,25,63,90,95, and 101 of the Commission's Rules*, CC Docket 98-141, FCC 99-279 (rel. October 8, 1999).

D. Conclusion on Shared Transport

1. Transit

With respect to the provision of transit traffic over the ULS-ST, Ameritech is already offering a transit function as an integrated component of its ULS-ST offering under its proposed tariff. Accordingly, the CLECs subscribing to ULS-ST can use shared facilities to route its traffic through Ameritech's network to other LECs' switches. Consequently, no additional Commission ordered requirement is necessary. Further, Ameritech is required to offer only dedicated (not shared) transport between its switches and other carrier's switches (Third Report and Order, Paragraphs 27 and 28).

Additionally, the record reflects that there are additional costs associated with offering transit over the ULS-ST. Consequently, Ameritech's proposed rate element is justified and the Commission disagrees with the CLECs' argument that no additional usage cost for the transiting function are associated with the ULS-ST element.

With respect to the CLECs' contention that the Commission should order bill and keep as the appropriate compensation scheme where UNE-P is involved, the Commission cannot agree. Compensation between UNE-P based carriers and other LECs should be established through negotiations between such carriers via interconnection agreements. Such a compensation scheme has nothing to do with the establishment of the ULS-ST or UNE-P rates in this proceeding.

2. IntraLATA Toll Traffic

With respect to the use of shared transport to route intraLATA toll traffic, the Commission recently addressed this issue in its arbitration award in Ameritech/AT&T, Case No. 00-1188-TP-ARB. In the arbitration case, we concluded that Ameritech must offer shared transport for intraLATA toll.

3. OS/DA

The Commission will approve Ameritech's OS/DA offering. Despite the CLECs' contentions to the contrary, we are satisfied on the basis of the record before us that Ameritech has sufficiently explained how custom routing of OS/DA traffic will be done. With regard to the CLECs' request that Ameritech be required to offer OS/DA as a UNE until Ameritech demonstrates that it will actually provide custom routing, it remains to be seen until CLECs order such service. Before Ameritech actually receives orders for custom routing, the Commission cannot judge Ameritech's commitment. We wish to be clear that, at this time, we are not requiring Ameritech to offer OS/DA as a UNE because it has proposed to offer custom routing for OS/DA traffic. However, if we become aware of any failure on Ameritech's part to offer custom routing for OS/DA traffic, we will revisit this issue. Finally, because we have concluded that Ameritech is not required to offer OS/DA as a UNE, it follows that we will not require Ameritech to price its offering at TELRIC rates.

VI. Non-Telecommunications Services in Conjunction With UNE-P

The CLECs assert that Ameritech's tariff indicates that it will not make available certain specific non-telecommunications services in conjunction with UNE-P. According to the CLECs, this means, among other things, that a customer wishing to change from Ameritech to a CLEC providing service via UNE-P may be prevented from obtaining a service (e.g., voice mail or inside wiring) that the customer may already have. If the CLEC is unable to provide the non-telecommunications service because the CLEC is providing service via UNE-P, then the customers may not want to switch from Ameritech's service (Lichtenberg, Direct at 10-11). The CLECs request that the Commission order Ameritech to provide such non-telecommunications services in conjunction with UNEs to prevent monopoly leveraging.

In response, Ameritech notes that neither voice mail nor inside wire services are UNEs and neither is a telecommunications service. Non-telecommunications services such as these have nothing to do with Ameritech's obligations under the 1996 Act nor the UNE-P offering in this case according to Ameritech (Ameritech Reply Brief at 80-81).

With respect to the provision of non-telecommunications services over the UNE-P, voice mail and inside wiring are deregulated activities. Consequently, the decision as to whether Ameritech should offer these services with UNE-P is not a matter of Commission jurisdiction.

VII. Other Procedural Matters

Rebuttal Testimony

On January 29, 2001, an Attorney Examiner entry was issued granting Ameritech's motion to strike rebuttal testimony filed by a number of CLECs. On February 5, 2001, the CLECs filed a joint application for review pursuant to Rule 4901-1-15(B), Ohio Administrative Code (O.A.C.), requesting that the Attorney Examiner certify the interlocutory appeal to the Commission for review. Because the interlocutory appeal was never certified, the CLECs request that the Commission review the proffered CLEC rebuttal testimony to determine that the portions identified in the interlocutory appeal constitute proper rebuttal testimony improperly excluded by the Attorney Examiner.

The Commission agrees with the Attorney Examiner's decision to strike the rebuttal testimony and, therefore, will not consider the testimony as proffered.

Proffered Evidence of Texas UNE-P NRCs

The CLECs note that at hearing, counsel for AT&T attempted to enter into the record an agreement signed by AT&T, Worldcom, and SWBT in Texas concerning the nonrecurring charges that would apply to UNE-P. According to the CLECs, this document was filed by SWBT in Texas and is a matter of public record. The document

was not admitted into evidence by the Attorney Examiner and the CLECs are requesting that the Commission enter the document into the record in this proceeding and consider it in its deliberations in this case. We find no reason to overrule the determination of the Attorney Examiner who presided over the hearing in this matter and, therefore, we will not enter the document into the record of this proceeding.

Supplemental Information

On July 1, 2001, AT&T, Corecomm Newco, Worldcom, TCG Ohio, and Long Distance of Michigan, Inc. filed a motion for leave to file supplemental information and a memorandum in support. Ameritech filed a motion to strike on July 17, 2001, and a memorandum contra on July 27, 2001. A reply brief in support of the motion for leave to file and a memorandum contra the motion to strike was filed by AT&T, et al. on August 6, 2001.

Through the motion for leave to file, AT&T, et al. seek to introduce rate information and cost summary sheets from an Ameritech-Illinois ULS-ST cost study submitted in Illinois Commerce Commission Docket No. 00-700, the rebuttal testimony of Ameritech-Illinois witness William C. Palmer filed in Illinois Commerce Commission Docket No. 00-0700, the Hearing Examiner's Proposed Order (HEPO) issued in Illinois Commerce Commission Docket No. 98-0396, and the June 21, 2001 Arbitration Award in Case No. 00-1188-TP-ARB before this Commission. Through the cost study and rebuttal testimony, AT&T, et al. seek to demonstrate that Ameritech cannot justify state-to-state inconsistencies in the ARPSM which is a regionwide model. In providing the HEPO, Ameritech seeks to demonstrate that a non-recurring cost proposal offered by Mr. Jenkins has been adopted in Michigan and one is under consideration for adoption in Illinois. Finally, this Commission's arbitration award is offered in an attempt to demonstrate that we have already resolved the question of Ameritech's obligation to provide UNE-P for combinations that it provides its own retail end-users in the ordinary course.

Ameritech contends that the motion for leave must be stricken because the record in this proceeding is closed and AT&T, et al. have had full and sufficient opportunity to present evidence on the issues as to which this supplemental testimony allegedly relates. Moreover, Ameritech asserts, a Commission decision in this proceeding should be premised on Ohio record data, not data from Illinois. In its memorandum contra the motion for leave, Ameritech asserts that the motion for leave must be denied because the relevance of Illinois data is questionable at best given that operating costs vary by state.

Further, the HEPO is simply a proposed order not a final order and, therefore, does not represent the views of the Illinois Commerce Commission. With respect to the arbitration award issued by this Commission, Ameritech contends that the award is fully consistent with Ameritech's position in this case. Finally, Ameritech maintains that the CLECs have effectively waived the filing of any supplemental information in this case by virtue of a letter to Chairman Schriber urging a decision in this matter filed in this docket on July 23, 2001. Ameritech also notes that if the CLECs are permitted to supplement the record, fairness would dictate that Ameritech also be afforded such an opportunity.

The Commission agrees with Ameritech that AT&T, et al. had sufficient opportunity to address the issues at hearing in this matter. Moreover, if we were to allow any supplementation of the record by the CLECs, as Ameritech noted, fairness would dictate that Ameritech be granted a similar opportunity. Certainly, this would run counter to the CLECs' request that this matter be decided. Consequently, the motion for leave to file will be denied. Because we are denying the motion for leave to file we find no need to address Ameritech's motion to strike.

Motion to Intervene of Long Distance of Michigan, Inc.

On March 2, 2001, Long Distance of Michigan, Inc. (LDMI) filed a motion to intervene in this proceeding. In support of its motion, LDMI asserts that it currently provides competitive local exchange service in Ameritech's service territory and desires to serve its customers via Ameritech's UNE-P. Accordingly, LDMI contends that it is profoundly affected by the decision in this proceedings. LDMI requests participation in this proceeding on a going forward basis only and moves to intervene for the purpose of filing briefs in this matter and in order to participate in future events in this proceeding.

In addition to its motion to intervene, LDMI also filed a post-hearing brief on March 2, 2001. LDMI filed a post-hearing reply brief on March 16, 2001. In these filings, LDMI supports and adopts the position taken by AT&T. Further, LDMI refers to an internal study it recently conducted directed to the economics of UNE-P service in Ameritech Michigan territory versus Ameritech Ohio territory. Based on this study, LDMI concluded that the non-recurring cost of doing business in Ohio was significantly greater than the non-recurring cost of doing business in Michigan.

On March 19, 2001, Ameritech filed a combined memorandum contra LDMI's motion to intervene and a motion to strike LDMI's post-hearing brief. In support of its position, Ameritech contends that LDMI's motion is not timely and does not set forth "extraordinary circumstances" as required by the Commission rules to justify granting intervention at such a late date. Additionally, Ameritech maintains, LDMI has failed to demonstrate that its interest in this proceeding is not adequately represented by numerous existing parties. With respect to LDMI's brief, Ameritech contends that it is an attempt to interject information into the record of this proceeding that was not part of the hearing process and, therefore, not subject to cross-examination or rebuttal. Accordingly, Ameritech asserts that it will be prejudiced by LDMI's intervention.

To the extent that LDMI seeks intervention in this proceeding on a going forward basis from this point on, its motion to intervene will be granted. However, we agree with Ameritech that LDMI should not be permitted to file a brief in this matter that seeks, among other things, to introduce information not subject to the hearing process, as well as to merely reiterate the positions already set forth at great length by the CLECs. Accordingly, Ameritech's motion to strike will be granted and both LDMI's post-hearing brief and post-hearing reply brief will be stricken from the record in this case.

Motions for Protective Orders

On March 2, 2001 and March 16, 2001, the CLECs filed motions for protective orders relating to confidential/proprietary information contained in their Initial Joint Post-Hearing Brief and their Joint Reply Brief. Through these motions, the CLECs request protection of information which Ameritech has designated as confidential. These motions are unopposed. Given the nature of the confidential information, the motions for protective orders will be granted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On April 27, 2000, the Commission issued an opinion and order in Case No. 93-487-TP-ALT that, among other things, approved a stipulation and recommendation extending and modifying Ameritech's alternative regulation plan.
- (2) Pursuant to the stipulation, Ameritech filed a carrier-to-carrier tariff to offer permanent shared transport and existing combinations of UNE-P in Case No. 00-1368-TP-ATA.
- (3) A hearing was held as scheduled. Initial and reply briefs addressing the UNE-P issue were filed by Ameritech and by AT&T Communications of Ohio, Inc., Worldcom, Inc., and Corecomm Newco, Inc. filing jointly as the CLECs. An initial and reply brief was also filed by the Ohio Consumers' Counsel.
- (4) Based upon the evidence of record submitted in this proceeding, the Commission has made rulings on the issues contested in this matter.
- (5) In accordance with Rule 4901-1-24(F), O.A.C., any protective order prohibiting disclosure of confidential information previously filed in this docket shall automatically expire 18 months after the date of this Opinion and Order. Any party wishing to extend this confidential treatment should file an appropriate motion 45 days in advance of the expiration date of the protective order. The Docketing Division of the Commission should maintain that information under seal for 18 months from the date of this Opinion and Order.

It is, therefore,

ORDERED, That the Docketing Division of the Commission maintain, under seal, any materials deemed to be confidential, for a period of 18 months from the date of this Opinion and Order. It is, further,

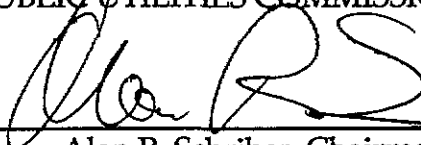
ORDERED, That Ameritech comply with the directives set forth herein and file a compliance study within 40 days of this Opinion and Order or within ten days after an Order on Rehearing is issued, whichever is later. It is, further,

ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

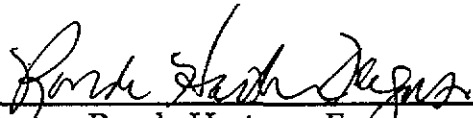
ORDERED, That the Commission's actions in this proceeding do not constitute state action for the purposes of the antitrust laws. It is not our intent to insulate Ameritech from any provisions of state or federal law which prohibit the restraint of trade. It is, further,

ORDERED, That a copy of this Opinion and Order be served on all parties and interested persons of record in this proceeding.

THE PUBLIC UTILITIES COMMISSION OF OHIO



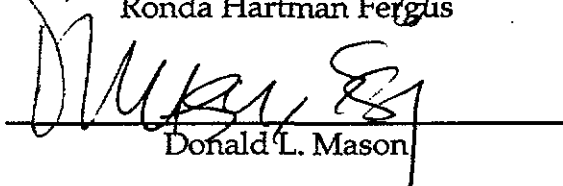
Alan R. Schriber, Chairman



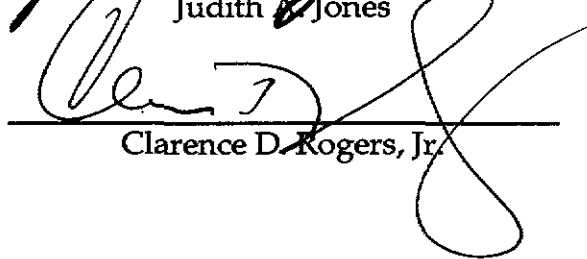
Ronda Hartman Fergus



Judith G. Jones



Donald L. Mason



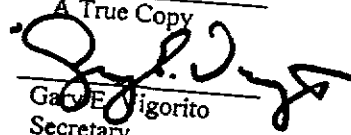
Clarence D. Rogers, Jr.

JDV/JRJ/vrm

Entered in the Journal

OCT 4 2001

A True Copy



Gary E. Vigorito
Secretary