

ORIGINAL



0000020807

RECEIVED

2001 JUL 26 P 4: 13

AZ CORP COMMISSION
DOCUMENT CONTROL

1 **LEWIS**
2 **AND**
3 **ROCA**
4 **LLP**
5 **LAWYERS**

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7 **WILLIAM A. MUNDELL**
8 **Chairman**

9 **JAMES M. IRVIN**
10 **Commissioner**

11 **MARC SPITZER**
12 **Commissioner**

Arizona Corporation Commission

DOCKETED

JUL 26 2001

DOCKETED BY 

13)
14 **IN THE MATTER OF U S WEST**)
15 **COMMUNICATIONS, INC.'S**)
16 **COMPLIANCE WITH § 271 OF THE**)
17 **TELECOMMUNICATIONS ACT OF**)
18 **1996**)

Docket No. T-00000A-97-0238

19 **RESPONSE OF WORLDCOM, INC. TO QWEST'S REVISED**
20 **PERFORMANCE ASSURANCE PLAN**

21 WorldCom, Inc., on behalf of its regulated subsidiaries, ("WorldCom") submits this
22 response to Qwest's revised Performance Assurance Plan ("PAP") filed with the Commission
23 on July 3, 2001. Like Qwest, WorldCom also agrees to most of the changes that occurred in the
24 Regional Oversight Committee Workshops addressing Qwest's Post Entry Performance Plan
25 ("PEPP"), except where noted below. WorldCom will address the subjects where Qwest has
26 revised its PAP using the same titles Qwest used in its revised PAP comments.

1 Finally, WorldCom notes that Qwest recently filed a proposed PAP for the multi-state
2 process that is essentially the same as what has been proposed here, but is better organized, and
3 incorporates material found in footnotes in the revised Arizona PAP, that is in the body of the
4 proposed multi-state PAP. WorldCom recommends that the multi-state format be used rather
5 than the format filed July 3, 2001, in Arizona.

6 **1. PAP -4: Statistical Agreement:** Qwest has eliminated the K-Table from the
7 Qwest PAP. In its place, a 1.04 critical value will be used for statistical testing of specified parity
8 sub-measurements when CLEC volumes are 10 or less. Additionally, the 1.04 critical value will
9 not be used to determine consecutive month misses (i.e., escalation of per occurrence payment
10 amounts for consecutive month misses). In its place, a 1.645 critical value would be used. And,
11 where the specified performance measurements disaggregate into zone 1 and zone 2, the zones
12 shall be combined for purposes of statistical testing. All other statistical testing of parity
13 performance measurements would use a 1.645 or higher critical value, depending upon the
14 magnitude of the CLEC volume for the performance measurement being tested.

15 **WorldCom Response:** As noted by Qwest, WorldCom did not support this limited
16 agreement outlined above. Although it is a step in the right direction by eliminating the K-table,
17 WorldCom is unable to support this proposal. WorldCom prefers to use a set critical value of -
18 1.645 (95% confidence level) for determining parity compliance for all sample sizes, without any
19 further mitigation such as the excessive K-table, which can forgive even repeated failures and
20 extremely poor z scores where the possibility of a cause due to a random process are minute. The
21 Illinois Commerce Commission staff recently filed direct testimony proposing elimination of the
22 K-table because the time Ameritech pays penalties for "near misses" likely will be evened out for
23 the times when discriminatory performance went undetected (Type II error) for small sample
24
25
26

1 sizes.¹ (The California Commission selected a set critical value with a 90% confidence level for
2 Type I errors.)

3 WorldCom would accept the limited agreement between Qwest and other CLECs, if the
4 critical value went down for smaller sample sizes just as it goes up for large ones under the
5 compromise. At the very least, WorldCom requests that the 1.04 critical value for sample sizes of
6 1-10 be applied to all services. WorldCom has and continues to stress the need to balance both
7 Type I and Type II errors. Given that the proposed critical values for the larger sample sizes are
8 quite large, reducing the critical value to 1.04 for smaller sample sizes is reasonable. This
9 adjustment is needed to deal with the high probability of Type II error (Qwest mistakenly found
10 not to be discriminating) that exists at lower sample sizes. For WorldCom to consider supporting
11 larger critical values at higher sample sizes, at a minimum the 1.04 critical value for sample sizes
12 of 1-10 should apply to all services and not limited to only few as in the above proposal.
13 Therefore, PAP-4 is still at impasse.

14 **2. PAP-9: Tier 1 and Tier 2 Classification of Performance Measurements:** State
15 commission staff members participating in the ROC PEPP collaborative stated that they would
16 prefer higher Tier 1 payments and lower Tier 2 payments. Accordingly, Qwest agreed to increase
17 payment levels to CLECs by increasing the classification of the Tier 1 measurements OP-8, OP-
18 13a, MR-3, MR-5, and MR-6a, 6b, 6c from "medium" to "high" and decreasing the classification
19

20
21 ¹ Illinois Commerce Commission Policy Analyst Melanie K. Patrick, Ph.D, in proposing
22 elimination of the K-table in SBC-Ameritech's Texas-clone plan, explained in July 11 Direct
23 Testimony in ICC Docket No. 01-0120: "Ameritech has indicated that it is willing to accept a 5%
24 probability of a Type I error, which is equivalent to accepting a 5% alpha level. Ameritech should
25 be held to that alpha level for determining non-compliance, as well as for calculating the resulting
26 penalties. An additional fact that mitigates Ameritech's need for relief from paying penalties
when it is, in fact, in compliance is as follows. In applying the statistical hypothesis testing. Type
II errors will also occur. That is, Ameritech will occasionally provide poor service that will go
undetected, for which it will pay no penalties whenever it fails a test will provide some relief to
the CLECs, who receive no compensation for poor performance when Ameritech mistakenly
passes its own performance tests when it should fail its performance tests.' P. 52, L. 1128 through
P. 53 L. 1142. A complete copy of this testimony is attached as Exhibit 2.0.

1 of the Tier 2 measurements OP-3, OP-4, OP-5, OP-6, MR-7, and MR-8 from “high” to “medium.”
2 Qwest proposes that its proposal be adopted in the Arizona PAP as resolution of issues PAP-9.

3 **WorldCom Response:** WorldCom opposes the ranking and weighting of measures. The
4 process, or lack thereof, for ranking or weighting the PID measures is very subjective and
5 arbitrary. No objective criteria or standards have been proposed to rationally rank measures.
6 Weighting only creates areas where ILECs can target poor performance at bargain prices. Any
7 attempt at ranking or weighting measurements will result in CLECs’ entry strategies competing
8 against each other in an effort to ensure that a particular CLEC’s “important measures” are
9 categorized and weighted properly for its needs. Ranking measures forces parties to minimize the
10 importance of some measures when all measures established in Qwest PIDS are important and
11 impact consumers. It also allows Qwest to allocate its resources to those measures carrying the
12 greatest penalties; ensuring failures of measures with lower penalties are corrected last. It is also
13 difficult to rank measures since the priority may actually lie at the sub-measure level. Moreover,
14 the importance of particular measures will likely change over time.

15 Given WorldCom’s position on ranking and weighting measures it is difficult to comment
16 upon the measurement proposals. While Qwest’s proposal to move Tier 1 measurements OP-8,
17 OP-13a, MR-3, MR-5, and MR-6a, 6b, 6c from “medium” to “high” is positive move, WorldCom
18 does not support decreasing such key Tier 2 measurements OP-3, OP-4, OP-5, OP-6, MR-7, and
19 MR-8 from “high” to “medium”. WorldCom does not agree to decreasing Tier 2 measurements
20 OP-3, OP-4, OP-5, OP-6, MR-7, and MR-8 from “high” to “medium” at the ROC workshop.

21 Finally, in Michigan, the Michigan Public Service Commission’s April 17, 2001, decision
22 in Case U-11830 decided that all metrics should have a “medium” ranking as described in the
23 Texas plan.² Then the Michigan Commission doubled the Tier I amounts approved in Texas as an
24 appropriate penalty amount.³ (This resulted in per occurrence amounts for all the per occurrence

25 ² In the matter of AMERITECH MICHIGAN’s submission on performance measures, reporting, and
26 benchmarks, pursuant to the October 2, 1998 order in Case No. U-11654, Case No. U-11830, at p. 7.

³ *Id.* at p. 17.

1 remedies being equal to--first month--or higher--subsequent duration months-- than the Texas
2 plan and Qwest proposed plan and the per measure remedies being slightly less for most
3 measures.) In a July 25, 2001, reconsideration order⁴ responding to SBC-Ameritech's concern
4 that the Michigan order did not consider duration increases, the Michigan Commission has
5 decided to monitor whether the current remedy levels result in improvements over the next three
6 months. At the end of that period, the Commission will issue a follow-up order, after a hearing if
7 necessary, imposing a multiplier (which may be two or another number) if it finds that necessary
8 to achieve the purposes of the remedy plan. Ameritech Michigan thus has an opportunity in the
9 next three months to demonstrate that a further escalation of the remedies is not necessary to
10 achieve the purposes of the plan and is not warranted in light of its improved performance.

11 The Illinois Commerce Commission staff recently filed comments recommending treating
12 all metrics equally at the higher levels in the SBC-Texas plan. In her July 11 Direct Testimony
13 in Docket No. 01-0120, ICC Policy Analyst Melanie K. Patrick, Ph.D said:

14 A more coherent strategy that would provide better incentive for Ameritech Illinois
15 to provide good performance overall would be to make all measurements of equal
16 importance. I recommend making all performance measurements of 'high'
17 importance, for two reasons. First, using the 'high' designation emphasizes to
18 Ameritech that these measurements represent services provided to CLECs that will
19 have a critical impact on the service provided, in turn, by CLECs to their own
20 customers. The provision of good service is important to the ability of individual
21 CLECs to develop their own market share. In addition, as Staff Witness (Samuel
22 McClerren points out in his testimony, good wholesale service quality provision is
23 essential to the overall development of a competitive telecommunications
24 environment. These performance measurements are important, and their
25 measurement designation should be a reflection of that importance. Second, in the
26 Ameritech proposed remedy plan the measurements designated as having 'high'
importance also have the largest penalties associated with them. Applying the
highest penalty amounts to all performance measures will reinforce the incentive
nature of the performance remedy plan used by Ameritech. (Exhibit A, P. 56,
L.1204 through 1218).⁵

25 ⁴ See, <http://cis.state.mi.us/mpsc/orders/comm/2001/u-11830g.pdf>

26 ⁵ Mr. McClerren's testimony is attached as Exhibit 1.0.

1 On Pages 59-62 of her testimony, Dr. Patrick reviewed Ameritech's performance
2 describing how little was paid under Ameritech's Texas "clone" plan in the last four quarters of
3 2000 for significant misses—missing 1,200 measures on average for Tier I and 450-500 for Tier II
4 three months in a row during that period.

5 Dr. Patrick's proposal to make all measurements of equal importance is a simple solution
6 to ranking measures and the inherent problems caused by ranking measures. Therefore, PAP-9 is
7 still at impasse.

8 **3. PAP-13: Step Down Function:** CLECs in the ROC PEPP collaborative expressed
9 concern that the escalation of the per occurrence payment for consecutive month misses reverted
10 immediately upon one month of conforming service performance to its starting amount. The
11 CLECs desired that the per occurrence payment amount decelerate in the same manner that it
12 accelerated, i.e., one month at a time. This concept was termed "sticky duration".

13 **WorldCom Response:** WorldCom has agreed to compromise on the above "step down
14 function" as a resolution of issue PAP 13. However, this applies to the "step down function"
15 only. WorldCom still has issues with the payment table itself as argued previously, including that
16 the payment amount should not be capped in month 6 and for each month thereafter as proposed
17 in Qwest's PAP. Under Qwest's Tier I payments, the remedy amounts do increase, but are
18 insignificant for repeated violations. The percentage increase in remedy amounts from month to
19 month drops dramatically in the fourth month and beyond. Also, Qwest reduces its exposure by
20 holding the payment steady at the sixth month and beyond. Moreover, under Qwest's Tier II
21 payment proposal, it pays the same amount of remedies each month even if it fails to correct a
22 severe problem for months on end. Certainly this provides no benefits to the CLECs that are
23 adversely affected by Qwest's poor performance.

24 **4. PAP -10: New Payment Structure for GA-1, GA-2, GA-3, GA-4, GA-6, PO-1,**
25 **MR-2, and OP-2:** CLECs at the ROC PEPP asked that a payment structure be developed for the
26

1 region wide performance measurements, GA-1, GA-2, GA-3, GA-4, GA-6, PO-1, MR-2 and OP-
2 2, in which payment was on a “per measure” basis and such that the payment amount increased
3 when performance deviated further from standard. Qwest agreed and proposed the following,
4 which the CLECs accepted.

5 **WorldCom Response:** WorldCom agrees to this revision. However, to be clear and as
6 noted above, Qwest will make a Tier-2 payment based upon monthly performance results rather
7 than after 3 months as originally proposed. With that caveat, WorldCom agrees PAP-10 is
8 resolved.

9 **5. PAP-1: Performance Measurements PO-6 and PO-7; PO-8 and PO-9:** In the
10 ROC PEPP collaborative, the CLECs agreed to include PO-6 and PO-7 as a “family” in which
11 PO-6a and PO-7a, PO-6b and PO-7b, and PO-6c and PO-7c are formed as three families. In the
12 ROC PEPP collaborative, Qwest agreed to include both PO-8 and PO-9 in the QPAP. Qwest
13 proposes that PO-8 and PO-9 also be included in the Arizona PAP, thereby resolving all
14 remaining issues in PAP-1.

15 **WorldCom Response:** WorldCom agrees to this revision and agrees PAP-1 is resolved.

16 **6. PAP-5: Per Measurement Caps:** In the ROC PEPP collaborative, Qwest agreed
17 to remove the per measurements caps from PO-1, PO-3, PO-7, and NI-1, retaining the caps on BI-
18 1, BI-3, and BI-4.

19 **WorldCom Response:** WorldCom agrees to this revision and agrees PAP-5 is resolved.

20 **7. Collocation:** In the ROC PEPP collaborative, the CLECs asked that the payment
21 amounts for missed collocation jobs be increased and include escalation for longer delays.

22 **WorldCom Response:** Since Qwest made no revision to its PAP, WorldCom has no
23 specific response to make. However, WorldCom agrees that there has been confusion over this
24 issue and what WorldCom proposed at the ROC. The payment amounts for collocation jobs that
25 were adopted by the Michigan PSC when it adopted Ameritech’s collocation proposal were part
26 of the Texas Plan. The payment provisions that WorldCom has proposed for collocation are

1 found at Attachment 17: Performance Remedy Plan-TX (T2A). Appendix Performance
2 Measurements Business Rules (Version 1.7) at 159-160, available at:

3 https://clec.sbc.com/1_common_docs/interconnection/t2a/agreement/17PMBusRulesVer16.pdf.

4 **8. PAP-15: Reporting Deadline:** In section 14.0, Qwest incorporated the agreement
5 reached in the Arizona PAP workshops related to due dates for filing results reports. This
6 provision had inadvertently been left out of the last PAP. Qwest also incorporated the \$500.00 fee
7 for late reporting which in its Opening Brief, Qwest stated its willingness to include in the PAP.
8 The latter provision should resolve PAP-15.

9 **WorldCom Response:** WorldCom disagrees that the \$500 payment for late reporting
10 resolves this impasse issue. A \$500.00 fee for late reporting is inconsistent with the Texas plan.
Attachment 17: Performance Remedy Plan-TX (T2A). Section 10.2 of Attachment 17 reads:

11 If no reports are filed, \$5,000 per day past due;
12 If incomplete reports are filed, \$1,000 per day for each missing performance results.

13 WorldCom continues to assert that if performance data and associated reports are not
14 available to the CLECs by the due dates, Qwest should be liable for payments of \$5,000 to a state
15 fund for every day past the due date for delivery of the reports and data. If performance data and
16 reports are incomplete, or if previously reported data are revised, then Qwest should be liable for
17 payments of \$1,000 to a state fund for every day past the due date for delivery of the original
18 reports. If a CLEC cannot access its detailed data underlying Qwest's performance reports due to
19 failures under the control of Qwest, then Qwest should pay the affected CLEC \$1,000 per day (or
20 portion thereof) until such data is made available. If Qwest fails to remit a consequence payment
21 by the due date, then it should be liable for accrued interest for every day that the payment is late.
22 Paying remedies for late or missing notices does not relieve Qwest of eventually reporting the
23 missing data and paying any associated remedies with interest to affected carriers and/or the state
24 fund.

25 In the Colorado Final PAP Report it was recommended that in the case of late payments,
26 Qwest must pay interest calculated at twice the one-year treasury rate on the amount in question.

1 As for inaccurate reporting, as revealed by any management performance audit, Commission audit
2 or mini-audit, Qwest shall be required to pay the applicable penalty to the CLEC(s) in question
3 and an additional penalty of 50% on the amount in question.

4 In summary, Qwest's proposal is limited and insufficient as outlined above. Therefore,
5 WorldCom rejects to Qwest's request to incorporate the \$500.00 fee for late reporting and that
6 Qwest proposal should resolve PAP-15. Therefore, PAP-15 is still at impasse.

7 **9. Clarifying Changes to sections 13 and 16:** Qwest has also provided slight
8 modifications to the Limitations, Reporting, and Review sections to conform to ROC proposed
9 language in those sections. In Section 13.3, Qwest added the force majeure language from the
10 definitions section of the SGAT. Qwest added language in section 13.6 to clarify the intent of the
11 PAP to operate as a whole. The change in the last sentence of section 16.0 reflects the fact that
12 changes to the SGAT in the six month review period should not require consent of all
13 participating CLECs. Changes as a result of the six-month review period must be voluntarily
14 incorporated into the SGAT by Qwest.

15 **WorldCom Response:**

16 Section 13.3 modification: The force majeure definition proposed by Qwest is found in
17 Section 5.7.1 of the most recent Arizona SGAT Lite filed July 20, 2001. However, Section 5.7.1
18 provides more that has not been incorporated into Section 13.3. In Qwest's most recent SGAT
19 Lite filed in Colorado for July 24-25, 2001 workshops, Section 5.7.1 provides as follows:

20 Neither Party shall be liable for any delay or failure in performance of any part of this
21 Agreement from any cause beyond its control and without its fault or negligence
22 including, without limitation, acts of nature, acts of civil or military authority,
23 government regulations, embargoes, epidemics, terrorist acts, riots, insurrections,
24 fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power
25 blackouts, volcanic action, other major environmental disturbances, or unusually
26 severe weather conditions (collectively, a Force Majeure Event). Inability to secure
products or services of other persons or transportation facilities or acts or omissions of
transportation carriers shall be considered Force Majeure Events to the extent any
delay or failure in performance caused by these circumstances is beyond the Party's
control and without that Party's fault or negligence. The Party affected by a Force

1 Majeure Event shall give prompt notice to the other Party, shall be excused from
2 performance of its obligations hereunder on a day to day basis to the extent those
3 obligations are prevented by the Force Majeure Event, and shall use reasonable
4 efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute
5 or strike the Parties agree to provide service to each other at a level equivalent to the
6 level they provide themselves.

7 Therefore, Section 13.3 should either include the language in Section 5.7.1 or cross-
8 reference the requirements of that section so there is no conflict or limitation on the Section 5.7.1
9 for the Arizona PAP.

10 Further, force majeure language in Section 13.3 must be limited to only benchmark
11 standards, not parity measures. Any such force majeure event must not allow Qwest to provide its
12 retail customers with better than parity service versus wholesale customers and then be excused
13 from making payments. Although Qwest does include language that Qwest will have the burden
14 to demonstrate the reason for any exclusion, it is too general and limited. More detailed and
15 appropriate language as in the Colorado final report would be more acceptable.

16 Therefore, WorldCom also requests that Qwest add to Section 13:

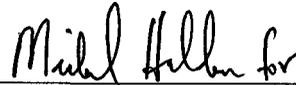
17 If Qwest desires a waiver of its obligation to pay any penalties it must file
18 an application with the Commission. Any waiver request must, by a preponderance
19 of the evidence, establish the circumstances that justify the waiver, stating any and
20 all relevant documentation to support the request. CLECs and other interested
21 parties would have a full opportunity to respond to any such waiver request prior to
22 the Commission ruling. Qwest shall be required to pay any disputed amounts or
23 place the disputed amount of money into an interest-bearing escrow account until
24 the matter is resolved. In addition, any such waiver should only apply to a narrow
25 period of time when the activity occurred, not months after the activity or has
26 ended.

27 Qwest's changes to Section 16.0 are unacceptable to WorldCom. WorldCom agrees that in
28 every case all parties may not agree to a change. However, there are other instances where Qwest
29 is required to make a change without "consent", including modifications required by changes in
30

1 the law or by commission order. WorldCom opposes any suggestion that Qwest has a "veto"
2 over any change to the PAP.

3 Respectfully submitted this 26th day of July, 2001.

4 LEWIS AND ROCA LLP

5
6 

7 Thomas H. Campbell
8 40 N. Central Avenue
9 Phoenix, Arizona 85007
10 (602) 262-5723

11 – AND –

12 Thomas F. Dixon
13 707 –17th Street, #3900
14 Denver, Colorado 80202
15 (303) 390-6206

16 Attorneys for WorldCom, Inc.

17 ORIGINAL and ten (10)
18 copies of the foregoing filed
19 this 26th day of July, 2001,
20 with:

21 Arizona Corporation Commission
22 Docket Control – Utilities Division
23 1200 W. Washington Street
24 Phoenix, Arizona 85007

25 COPY of the foregoing hand-
26 delivered this 26th day of July,
2001, to:

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

LEWIS
AND
ROCA
LLP
LAWYERS

1 Jane Rodda, Administrative Law Judge
2 Arizona Corporation Commission
3 1200 W. Washington Street
4 Phoenix, Arizona 85007

4 Deborah Scott, Director
5 Utilities Division
6 Arizona Corporation Commission
7 1200 W. Washington Street
8 Phoenix, Arizona 85007

7
8 COPY of the foregoing mailed
9 this 26th day of July, 2001, to:

9 Mark J. Trierweiler
10 Vice President – Government Affairs
11 AT&T Communications of the
12 Mountain States
13 111 West Monroe, Suite 1201
14 Phoenix, Arizona 85003

13 Scott Wakefield
14 Residential Utility Consumer Office
15 2828 N. Central Avenue
16 Phoenix, Arizona 85004

15 Maureen Arnold
16 US West Communications, Inc.
17 3033 N. Third Street
18 Room 1010
19 Phoenix, Arizona 85012

18 Mark Dioguardi
19 Tiffany and Bosco PA
20 500 Dial Tower
21 1850 N. Central Avenue
22 Phoenix, Arizona 85004

21 Thomas L. Mumaw
22 Snell & Wilmer
23 One Arizona Center
24 Phoenix, Arizona 85004-0001

24 Andrew O. Isar
25 TRI
26 4312 92nd Avenue N.W.
Gig Harbor, Washington 98335

LEWIS
AND
ROCA
LLP
LAWYERS

- 1 Darren S. Weingard
Stephen H. Kukta
- 2 Sprint Communications Co., L.P.
1850 Gateway Drive, 7th Floor
3 San Mateo, CA 94404-2467
- 4 Timothy Berg
Fennemore, Craig, P.C.
5 3003 N. Central Avenue
Suite 2600
6 Phoenix, Arizona 85012-3913
- 7 Charles Steese
US West, Inc.
8 1801 California Street, Ste. 5100
Denver, Colorado 80202
- 9 Joan S. Burke
10 Osborn & Maledon
2929 N. Central Avenue
11 21st Floor
Phoenix, Arizona 85067-6379
- 12 Richard S. Wolters
13 AT&T & TCG
1875 Lawrence Street
14 Suite 1575
Denver, Colorado 80202
- 15 Michael M. Grant
16 Todd C. Wiley
Gallagher & Kennedy
17 2575 E. Camelback Road
Phoenix, AZ 85016-4240
- 18 Raymond S. Heyman
19 Michael Patten
Roshka Heyman & DeWulf
20 Two Arizona Center
400 Fifth St., Ste. 1000
21 Phoenix, Arizona 85004
- 22 Richard M. Rindler
Morton J. Posner
23 Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
24 Washington, DC 20007-5116
- 25
- 26

LEWIS
AND
ROCA
LLP
LAWYERS

- 1 Diane Bacon, Legislative Director
Communications Workers of America
2 5818 North 7th Street
Suite 206
3 Phoenix, Arizona 85014-5811
- 4 Charles Kallenback
ACSI
5 131 National Business Parkway
Annapolis Junction, Maryland 20701
- 6 Bradley Carroll, Esq.
7 Cox Arizona Telcom, L.L.C.
1550 West Deer Valley Road
8 Phoenix, Arizona 85027
- 9 Joyce Hundley
United States Department of Justice Antitrust Division
10 1401 H Street, N.W.
Suite 8000
11 Washington, D.C. 20530
- 12 Daniel Waggoner
Davis Wright Tremaine
13 2600 Century Square
15011 Fourth Avenue
14 Seattle, Washington 98101-1688
- 15 Alaine Miller
NextLink Communications, Inc.
16 500 108th Avenue NE, Suite 2200
Bellevue, Washington 98004
- 17 Mark N. Rogers
18 Excell Agent Services, LLC
2175 W. 14th Street
19 Tempe, Arizona 85281
- 20 Traci Grundon
Davis Wright Tremaine LLP
21 1300 S.W. Fifth Avenue
Portland, Oregon 97201
- 22 Mark P. Trinchero
23 Davis Wright Tremaine LLP
1300 S.W. Fifth Avenue, Suite 2300
24 Portland, Oregon 97201
- 25
26

LEWIS
AND
ROCA
LLP
LAWYERS

1 Gena Doyscher
Global Crossing Local Services, Inc.
2 1221 Nicollet Mall
Minneapolis, Minnesota 55403-2420

3 Penny Bewick
4 New Edge Networks, Inc.
P.O. Box 5159
5 Vancouver, WA 98668

6 Jon Loehman
Managing Director-Regulatory
7 SBC Telecom, Inc.
5800 Northwest Parkway
8 Suite 135, Room I.S. 40
San Antonio, TX 78249

9 M. Andrew Andrade
10 5261 S. Quebec Street
Suite 150
11 Greenwood Village, CO 80111

12 Douglas Hsiao
Rhythms Links Inc.
13 9100 E. Mineral Circle
Englewood, CO 80112

14 Karen Clauson
15 Eschelon Telecom, Inc.
730 2nd Avenue South
16 Suite 1200
Minneapolis MN 55402

17 Andrea P. Harris
18 Senior Manager, Regulatory
Allegiance Telecom, Inc. of Arizona
19 2101 Webster, Suite 1580
Oakland, CA 94612

20
21
22
23
24 
25
26

DIRECT TESTIMONY
OF
MELANIE K. PATRICK, PH.D.
POLICY ANALYST

STAFF OF THE TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

RESOLUTION OF DISPUTED ISSUES
PURSUANT TO CONDITION 30 OF
THE SBC/AMERITECH MERGER ORDER

DOCKET NO. 01-0120

JULY 13, 2001

Table of Contents

<u>1</u>	<u>Purpose of Testimony</u>	4
<u>2</u>	<u>Fundamentals of a Remedy Plan</u>	6
<u>2.1</u>	<u>Goals and Structure of a Remedy plan</u>	6
<u>2.2</u>	<u>Standards for Remedy Plans</u>	10
<u>3</u>	<u>Establishing Compliance</u>	13
<u>4</u>	<u>Calculations for Performance Comparisons</u>	16
<u>4.1</u>	<u>Standard Statistical Parity Comparisons</u>	17
<u>4.2</u>	<u>Ameritech Remedy Plan</u>	29
<u>4.3</u>	<u>CLEC Proposed Remedy Plan</u>	36
<u>4.4</u>	<u>Benchmark comparisons</u>	40
<u>5</u>	<u>Staff Recommendations</u>	43
<u>5.1</u>	<u>Proposals regarding the test statistic</u>	46
<u>5.2</u>	<u>Proposals to determine if a test has been failed</u>	51
<u>5.3</u>	<u>Proposals relating to Calculating Penalties</u>	57

1 **Q. Please state your name and business address.**

2

3 A. My name is Melanie K. Patrick, and my business address is 527 East Capitol Ave.,
4 Springfield, Illinois 62701.

5

6 **Q. By whom are you employed and in what capacity?**

7

8 A. I am employed by the Illinois Commerce Commission as a Policy Analyst in the Policy
9 Department of the Telecommunications Division.

10

11 **Q. Please describe your educational background.**

12

13 A. I graduated from Carnegie Mellon University in Pittsburgh, PA, with a Bachelor of
14 Science degree in Public Policy and Management in 1986, and with a Master of Science
15 degree in Public Management and Policy in 1987. In 1999, I received the degree of
16 Doctor of Philosophy in Political Science from Brown University in Providence, RI,
17 earning an additional Master of Arts degree from Brown University, also in Political
18 Science, in 1993.

19

20 As an undergraduate at Carnegie Mellon, I completed 2 years of college-level
21 mathematics courses in calculus and optimization (also known as linear programming.)

22 As a junior concentrator in the Social Sciences department, I also completed a year-long

23 course in empirical research methods. In my graduate course work at the Heinz School at

24 Carnegie Mellon University, I completed the Public Finance concentration, which
25 included an additional year of quantitative methods coursework, a course in decision
26 analysis, and several accounting courses. I also completed four public finance courses,
27 including a general course, a course in state and local finance, a course in business
28 taxation, and a course in the economic incidence of taxation. At Brown University, I
29 completed an additional graduate course in evaluation design for public policy programs.

30
31 At Brown University, I taught a year-long Honors Colloquium in Public Policy, whose
32 first semester was devoted to a review of research design, emphasizing both quantitative
33 and qualitative research methodologies. I was also a teaching assistant for a course in the
34 Foundations of Political Analysis, which emphasized the evaluation of claims to
35 knowledge in political science study (aka the epistemology of the social sciences).

36

37 **Q. Please describe your work experience.**

38

39 A. During the 1987-1988 legislative year (FY1988) in New York, I worked as a Legislative
40 Fiscal Analyst for the NYS Assembly Ways and Means Committee. As a fiscal analyst, I
41 was responsible for estimating the expected revenue streams for a set of taxes and user
42 fees imposed by the state, and for reviewing legislative proposals related to those taxes
43 and user fees. One of my areas of responsibility was modeling the expected revenue
44 collections for the gross receipts taxes on regulated utilities in New York.

45

46 I also worked as a staff economist in Arthur Andersen's Office of Federal Tax Services,
47 in Washington, DC. At Arthur Andersen, my principal focus was in transfer pricing
48 studies for multinational firms, which applied economic analysis to the earnings of large
49 companies with operating entities in foreign countries to determine if the level of
50 earnings in each country was defensible in the face of IRS scrutiny for tax evasion. I am
51 a co-author of 2 published articles related to my work at Arthur Andersen. The first
52 article was in the National Tax Journal on potential revenues and likely state response to
53 the introduction of value-added taxation, and the second was in Tax Notes on quantitative
54 methodologies in transfer pricing studies.

55
56 Before beginning my doctoral studies at Brown, I worked for the Joint Center for
57 Housing Studies, a research institute at Harvard University. While at the Joint Center, I
58 worked on creating a nationwide, city-based rental housing index, by applying a
59 regression methodology developed by another researcher at the center to Annual (now
60 American) Housing Survey data. When the resulting index was published in the 1990
61 State of the Nation's Housing report, it was the first historical, comparative, cross-
62 metropolitan rental index of its kind. I also worked on a project evaluating real estate
63 investment reports for the economic impact of the Low Income Housing Tax Credit
64 program.

65 **1 Purpose of Testimony**

66
67 **Q. What is the purpose of your testimony in this proceeding?**

68

69 A. The purpose of my testimony is to assess the relative merits of the Performance Remedy
70 Plans submitted by the various parties in this proceeding, and to make recommendations
71 regarding their adoption.

72

73 **Q. How is your testimony structured?**

74

75 A. First, I will provide a brief overview of the fundamental elements of a remedy plan. I
76 will then review the requirements for establishing compliance with a remedy plan. The
77 following section includes a technical description of the calculations of the remedy plans
78 proposed in this docket. Finally, I will set forth my recommendations. My testimony
79 will also include a number of supportive tables & charts.

80

81 **Q. Who submitted remedy plans in this proceeding?**

82

83 A. Ameritech Illinois, AT&T, and Z-Tel.

84

85 **Q. Do you provide a review of the plan submitted by Z-Tel?**

86

87 A. No, I do not. The document submitted by Z-Tel provides suggestions and guidelines, but
88 does not contain definitive proposals for constructing a remedy plan. It is possible that
89 Z-Tel will provide more definitive guidelines for a remedy plan in their direct testimony.
90 I will comment on their plan in rebuttal testimony, if appropriate.

91 **2 Fundamentals of a Remedy Plan**

92

93 **2.1 Goals and Structure of a Remedy plan**

94

95 **Q. What is the overall goal of any performance remedy plan?**

96

97 A. The overall goal is to ensure that CLECs receive wholesale services from Ameritech that
98 are of a high level of quality. That is, that the services purchased by CLECs from
99 Ameritech are delivered at a level of quality that provides the CLECs with a meaningful
100 opportunity to compete in the market for customers. To determine the level of quality of
101 service provided, performance remedy plans compare the quality of wholesale services
102 provided by Ameritech to the CLECs to one of three standards: the quality of wholesale
103 services provided by Ameritech to its own data affiliate, the quality of wholesale services
104 provided by Ameritech to its own retail customers, or to benchmarks determined
105 collaboratively in Illinois. To achieve this overall goal, remedy plans include remedies,
106 in the form of negative incentives (penalties).

107

108 **Q. Please describe the basic components of a “remedy plan.”**

109

110 A. Remedy plans have two basic components. The first component is the assessment of
111 performance, answering the question: how good is the wholesale service provided by
112 Ameritech to its competitors? The second component is the determination of penalties, if
113 that performance is assessed to be, to some degree, inferior.

114

115 **Q. How does a performance remedy plan assess performance?**

116

117 A. A remedy plan assesses performance against a specific set of measurements. The remedy
118 plans proposed in this docket are all based on a set of performance measurements derived
119 from a collaborative effort in response to Condition 30 of the ICC's order in Docket 98-
120 0555, which are also contained in an Ameritech tariff. This collaborative effort was
121 carried out in a series of meetings which are described in more detail in the testimony of
122 staff witness McClarren. These meetings allowed interested parties to identify which
123 business operations were of interest to the CLECs in order to assess the performance
124 level of Ameritech in regard to providing acceptable service.

125

126 **Q. What characteristics of these performance measurements are important?**

127

128 A. These measurements should adequately meet the following criteria: validity and
129 reliability.

130

131 First, measurement plans should have high standards regarding their validity. The
132 validity of a measurement refers to the degree to which the measurement, as defined,
133 actually measures the underlying phenomena or activity that you are interested in
134 assessing.

135

136 Second, measurement plans should exhibit reliability. A measurement's reliability refers
137 to whether a measurement system will predictably report an accurate result. That is, if

138 the underlying phenomena being measured is unchanged over a period of time, a reliable
139 measurement will report the same result when the measurement is applied, and similarly,
140 if the underlying phenomena has changed, the measurement will accurately report the
141 differing results over time.

142
143 **Q. How have the validity and reliability of these measurements been addressed?**

144
145 A. The development of these measurements was the responsibility of the performance
146 measurement collaborative. The validity of these measures will be assumed for purposes
147 of my testimony. Further, staff, in collaboration with the parties to this proceeding, will
148 oversee periodic reviews of these measurements, and their results, in an effort to maintain
149 high standards regarding the validity of these measurements. Staff Witness McClerren
150 provides more information in his direct testimony about the activities of the collaborative
151 process currently underway.

152
153 There are two ongoing efforts that support the reliability of these measurements. First,
154 Condition 29 of the approved merger between SBC & Ameritech (see ICC Docket #98-
155 055) called for a comprehensive test of the Operational Support Systems of Ameritech
156 Illinois, to be conducted by a third party. That test is currently underway, although the
157 test results are not expected to be available prior to the completion of this docket.

158 Second, the FCC periodically performs audits reviewing the reliability of the
159 performance measurements required in their approval order.

160

161 The performance remedy plan adopted by this Commission should also include audits to
162 be performed at regular intervals, at least in part to support the ongoing reliability of the
163 application of the metrics contained in the Ameritech tariff. Staff witness McClerren
164 addresses this issue in more detail.

165

166 **Q. How are penalties determined in a performance remedy plan?**

167

168 A. The “remedy” referred to in performance remedy plans are actually negative remedies, or
169 penalties. Performance remedy plans provide for financial penalties to be assessed
170 against the service provider, in this case Ameritech, if it provides measurably “bad”
171 service to its competitors. Penalties are intended to provide an incentive for Ameritech to
172 provide measurably “good” service in its provision of wholesale service.

173

174 The remedy plans proposed in this docket include a two-part penalty structure,
175 designated as Tier 1 and Tier 2 penalties. Tier 1 remedies are directed at individual
176 competitors, whereby Ameritech provides relief, currently in the form of bill credits, to
177 specific CLECs in the event of poor wholesale service provision to those CLECs. Tier 2
178 penalties are responsive to industry-wide service provision, and are paid to the state when
179 poor service to the industry as a whole is detected. In the Ameritech remedy plan
180 currently in place, Tier 1 remedies are referred to as “liquidated damages,” and Tier 2
181 remedies are referred to as “assessments.” Currently, Tier 2 assessments are sent to the
182 ICC for deposit to the Illinois State Treasury.

183

184 **Q. What is the purpose of Tier 2 penalties, which are payable to the state?**

185

186 A. Tier 2 penalties are assessed on industry-wide performance of the wholesale services
187 provided by Ameritech to the CLECs. Tier 2 penalties are payable to the state. The
188 state's public interest in this matter is outlined in more detail below, but it can be
189 summarized as promoting the interests of competition, and ensuring that CLECs are
190 provided with good service. When Ameritech, or any ILEC, provides poor service, the
191 competitive industry as a whole is harmed. Tier 2 penalties recognize that industry-wide
192 harm, and provide a system by which the overall level of penalties can be kept at an
193 adequate, or competition-encouraging, level.

194

195 In the absence of Tier 2 penalties, overall penalty levels could only be maintained by
196 raising potential Tier 1 penalties. In setting penalty levels for competitors, there is a
197 tension between compensating competitors for poor service and providing so much
198 compensation for poor service that competitors would prefer to receive the penalties
199 instead of receiving good service (i.e., "gaming" the system). The presence of Tier 2
200 penalties mitigates that tension by requiring Ameritech to pay penalties for poor service
201 provision on a competitor-by-competitor basis as well as on an industry-wide basis.

202

203 **2.2 Standards for Remedy Plans**

204

205 **Q. What statutory authority forms the basis for the Illinois Commerce Commission's**
206 **activities in this matter?**

207

208 A. There are at least two relevant statutory passages. In the Illinois Public Utility Act
209 (PUA), Section 13-102 (d), the General Assembly finds that the state should establish
210 and enforce policies necessary to attain the goal of opening all telecommunications
211 service markets to competition. This goal was also established in the federal
212 Telecommunications Act of 1996. Staff witness McClerren will review this federal Act
213 in more detail in his testimony.

214
215 Further, Subsection (e) of Section 13-102 of the PUA establishes the state's interest in
216 ensuring that the economic benefits of competition in all telecommunications service
217 markets are realized as effectively as possible. The General Assembly finds that the state
218 should exercise its rights within the framework of federal telecommunications policy to
219 ensure that the economic benefits associated with telecommunications competition are
220 realized.

221

222 **Q. Has the FCC or the Illinois Commerce Commission addressed the need for a**
223 **performance remedy plan for Ameritech?**

224

225 A. Yes. In FCC Docket 98-141, released in the fall of 1999, the Federal Communications
226 Commission approved the merger of Ameritech Corp. (Ameritech) and SBC
227 Communications, Inc. (SBC), subject to a set of competition-enhancing conditions.¹ The
228 ICC's order in Docket 98-0555, adopted in September of 1999, specifically requires the
229 implementation of a performance remedy plan, modeled after the plan used in the State of

230 Texas. Staff witness McClerren will address the merger conditions set forth in both of
231 these orders related to the approval of the SBC-Ameritech merger.

232
233 The merger conditions imposed by the Illinois Commerce Commission and the Federal
234 Communications Commission require that Ameritech provide access to its network for
235 the purposes of allowing competitors to purchase, on a wholesale basis, a variety of
236 services. The services purchased by competitors are necessary for those competitors to
237 provide products to their own retail customers. Unless and until those competitors
238 construct an entirely duplicative network, competitors are dependent on Ameritech for
239 some wholesale services.

240
241 **Q. How does a performance remedy plan enhance the statutory and regulatory goals of**
242 **competition?**

243
244 A. A performance remedy plan assesses the quality of wholesale service provided by
245 Ameritech to its competitors, by requiring Ameritech to demonstrate that it is providing
246 service to its competitors at some “acceptable” or “good” level. By providing good
247 service to its competitors, Ameritech Illinois enables its competitors to provide good
248 service, in turn, to their own customers, thus fostering the growth of competition.
249
250 Ameritech Illinois may have some incentives to provide wholesale services at levels
251 which could be considered unacceptable, or bad. Providing poor service at the wholesale

¹ Source: FCC press release, see FCC CCB website on the merger announcement

252 level to its competitors could enable Ameritech Illinois to retain its own market share.
253 For example, Ameritech Illinois could consistently fail to meet the Firm Order
254 Commitment dates provided to CLECs, causing CLECs to be unreliable in meeting
255 promised service dates to their own customers. This strategy could impede CLEC efforts
256 to compete effectively, thus interfering with the goal of providing an environment in
257 which competition could grow.

258

259 **Q. Please summarize this sub-section of your testimony.**

260

261 **A.** Pursuant to applicable statute and regulatory authority, Ameritech has been ordered to
262 provide access to portions of its network to its competitors, in order to meet the goal of
263 establishing and enhancing competition in the markets for local telecommunications
264 services. Given the presence of certain adverse market incentives, performance remedy
265 plans that incorporate penalty provisions are needed to ensure that open access is
266 provided, and that the goal of competition in the provision of local telecommunications
267 services is achieved.

268

269 **3 Establishing Compliance**

270

271 **Q. What basic standard should be applied to ensure that the overall goal of a**
272 **performance remedy plan is achieved?**

273

(http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/1999/nrc9077a.html)

274 A. In determining whether Ameritech provides service to its competitors equivalent to the
275 service it provides to itself, I believe, in general, the proper standard is parity of service.

276

277 Parity is achieved if the wholesale services provided to Ameritech's competitors are of
278 equal or equivalent quality when compared to the service given by Ameritech to its
279 wholesale data affiliate or to its own retail customers. Parity of service can be
280 determined by comparing the level of service performance provided by Ameritech to
281 competitors (or, "wholesale performance") to the level of service provided by Ameritech
282 to its own customers.

283

284 **Q. Are there any exceptions to this basic standard?**

285

286 A. Yes. There are two exceptions to applying this standard. The first exception is in regard
287 to measurements that have associated benchmark standards. In Illinois, these benchmark
288 standards were developed in a collaborative process carried out pursuant to Condition 30,
289 as referenced above. Benchmark standards were created in the collaborative process
290 when parity measures were unavailable. The second exception is in regard to the "parity
291 with a floor" issue, which will be reviewed by staff witness McClerren. The parity with a
292 floor standard was introduced during those same collaborative sessions, but was not
293 accepted by all of the members of the collaboratives.

294

295 **Q. Can the performance measurements contained in the Ameritech tariff² (“business**
296 **rules”) be used to determine parity of service?**

297
298 A. Yes. The business rules call for three types of performance comparisons: parity
299 comparisons between Ameritech wholesale performance and Ameritech data affiliate
300 performance; parity comparisons between Ameritech wholesale performance and
301 Ameritech retail performance; and comparisons between wholesale performance and pre-
302 determined performance benchmarks. Throughout the rest of this testimony, these types
303 of performance comparisons will be referred to as wholesale parity, retail parity, or
304 benchmarks.

305
306 **Q. In general, how is compliance with these standards assessed?**

307
308 A. Information is collected each month about Ameritech’s performance in providing service
309 to a) CLECs, b) Ameritech’s data affiliate, and c) Ameritech’s retail customers. Using
310 the three basic types of comparisons (wholesale parity, retail parity, and benchmarks),
311 compliance is determined using this monthly performance data in statistical calculations.
312 These statistical calculations are used to determine if parity of service, measured and
313 detectable at a “meaningful” level, has been provided.

314
315 **Q. Do the remedy plans proposed by Ameritech and the CLECs take different**
316 **approaches to determining compliance with the parity standard?**

² Part 2, Section 10 (“Performance Measurements”) of IL C.C. #20. Current version effective date: Se 12, 2000

317

318 A. At a very high level, no, they do not differ. Both plans require the monthly collection of
319 data, in accordance with the business rules. Both plans require performance comparisons
320 using the standards of wholesale parity, retail parity, and benchmarks, using the monthly
321 performance data. Both plans require the use of statistical tests to determine if the parity
322 of service standard has been met.

323

324 The plans differ regarding which statistical tests should be used for the parity of service
325 standard. In addition, the Ameritech remedy plan recommends a statistical test for
326 benchmark measures, while the CLEC remedy plan advocates a strict comparison (pass
327 or fail) test for benchmark measures. As a result, the two plans have different approaches
328 to measuring whether parity of service has been provided, and determining if a
329 “meaningful” result has been achieved. The differing statistical aspects of these plans are
330 discussed in a later section of my testimony.

331 **4 Calculations for Performance Comparisons**

332

333 **Q. What is the purpose of this section of your testimony?**

334

335 A. In this section, I first review the basic statistical calculations necessary for comparing one
336 sample to another to determine “similarity,” or parity. Next, I review each of the remedy
337 plans proposed by Ameritech and by AT&T in regard to their requirements for testing the
338 parity of service provided. Next, the procedures to be followed under each plan for
339 completing benchmark comparisons are covered.

340
341 The upcoming pages contain a few technical formulas. My recommendations, which are
342 outlined in a later section, principally are for the Commission to modify the existing
343 remedy plan, which is contained in the Ameritech proposal.

344 4.1 Standard Statistical Parity Comparisons

345
346 **Q. What topics will you cover in this sub-section?**

347
348 A. I address the following: hypothesis testing, Type I and Type II errors, and the standard
349 parity statistic.

350
351 **Q. Please describe a step-by-step application of a remedy plan.**

352
353 A. A simple remedy plan could be administered in the following 5 steps.

354 **Step 1.** Provide service & collect data on performance

355 **Step 2.** Calculate test statistic

356 **Step 3.** Choose critical value

357 **Step 4.** Compare test statistic to critical value; determine if failure has occurred

358 **Step 5.** Calculate penalties & pay if failure has occurred

359
360 **Q. Please discuss the fundamentals of hypothesis testing.**

361

362 A. Hypothesis testing is the exercise of suggesting a proposition, and then testing the
363 truthfulness of that proposition against information that is both available and relevant.

364 The discipline of statistics provides a structure for carrying out these tests. First, the
365 research (or alternative) hypothesis is framed, and this proposition becomes the
366 "alternative hypothesis," or H_A . Then, the opposite of the research hypothesis is
367 proposed, which becomes known as the "null hypothesis," or H_0 . In statistical hypothesis
368 testing, statistical tests are usually applied next to the null hypothesis, to attempt to
369 disprove the null hypothesis. Given the results of the statistical test, the null hypothesis
370 is either affirmed or rejected. The aim of statistical testing in this manner is to accept or
371 reject the null hypothesis with some degree of certainty, or probability. Conclusions
372 about the research hypothesis are generated by applying tests to the null hypothesis.³

373

374 **Q. What elements are important in performing statistical hypothesis testing?**

375

376 A. There are two crucial elements: the selection of the hypothesis being tested, and the
377 appropriate use of statistical tests.⁴

378

379 **Q. What kinds of errors can occur when performing statistical hypothesis testing?**

380

381 A. If the two elements identified above, the formulation of the hypothesis and the selection
382 of the test, are addressed at the design stage, then any number of mistakes could still

³ Note, however, that the null hypothesis itself cannot be affirmed with absolute certainty.

383 result. In establishing the “believability” or validity of a test through statistical testing,
384 however, two categories of error are usually addressed. These categories are Type I and
385 Type II errors. Research designers typically establish the acceptable range of Type I and
386 Type II error levels in advance of performing tests.

387

388 **Q. What is Type I error?**

389

390 A. Type I error occurs when the test administrator accepts the alternative hypothesis when it
391 should be rejected. It can also be thought of as a “false positive.”

392

393 **Q. What is Type II error?**

394

395 A. Type II error occurs when the test administrator rejects the alternative hypothesis when it
396 should be accepted. It can also be thought of as a “false negative.”

397

398 Figure 1, below, demonstrates a comparison of Type I and Type II error.

399

400 **Figure 1. Type I and Type II Error**

		“True State of Nature”	
		H ₀ True	H _A True
Research	H ₀ “True”	Correct	Type II Error (<i>prob. β</i>)
	H _A “True”	Type I Error (<i>prob. α</i>)	Correct

⁴ see , McClave, J. T., Dietrich, F. H., 1982. Statistics. 2nd Ed. San Francisco, CA: Dellen Publishing Co.;
Chadwick, B.A., Bahr, H.M., Albrecht, S.L., 1984. Social Science Research Methods. Englewood Cliffs, NJ:
Prentice-Hall, Inc.

Conclusion	H_A True	Type I Error (<i>prob. α</i>)	Correct
------------	------------	--	---------

401

402

403 **Q. Is Type I error more important than Type II error?**

404

405 A. No. Neither type of error is, per se, more important than the other type. The importance
406 of either type of error depends on the specific circumstances of the application, and the
407 relative consequences of each type of error. In specific situations, minimizing the chance
408 of a false positive might be more important than minimizing the chance of a false
409 negative, while in other situations, the reverse outcome might be desirable. For example,
410 one might consider which would be better if receiving mistaken information regarding a
411 medical diagnosis. However, patients might have a low tolerance for “false negative”
412 diagnoses involving potentially fatal conditions, or a low tolerance for “false positive”
413 diagnoses involving less permanent or less threatening conditions.

414

415 Note that these types of errors, Type I and Type II, are considered to be mutually
416 exclusive. That is, Type I error can only occur when the alternative hypothesis (H_A) is
417 accepted, and Type II error can only occur when the alternative hypothesis is rejected.

418 Also note that, all else equal, Type I and Type II error are not independent of one
419 another; that is, the probability level of a Type II error decreases as the probability of a
420 Type I error increases.

421

422 **Q. How can one adjust for the possibility of Type I and Type II error?**

423

424 A. Most statistical tests account for Type I error using mathematical constructs that allow
425 the specification of Type I error, or "alpha" level. Type II error often cannot be
426 accounted for, in anything other than relative terms. For example, in designing a test of
427 the equivalence of means between two samples, it is generally accepted that increasing
428 the sample size of a test will reduce the level of Type II error. Therefore, research
429 designers consider the specification of the null and alternative hypotheses to be a crucial
430 element of test design.

431

432 **Q. Please discuss Type I and Type II error in respect to performance remedy plans.**

433

434 A. As with any other application, the specification of Type I and Type II error depends on
435 how the null and alternative hypotheses are defined. Consider the following scenario:
436 the null hypothesis is that Ameritech is providing equivalent or better service to its
437 competitors than it provides to itself (its data affiliate or retail customers), and the
438 alternative hypothesis is that Ameritech is providing inferior service to its competitors
439 than provided to itself. Under this scenario, Type I error would be concluding that
440 Ameritech is providing inferior service to its competitors, when in fact the company
441 provides at least equivalent service to its competitors. Type II error would occur if the
442 alternative hypothesis was rejected, indicating that Ameritech is providing equivalent
443 service, when in fact it is providing inferior service.

444

445 That is, Type I error is rejecting the null hypothesis that Ameritech is providing service at
446 least as good to their competitors, when this assessment is actually true. Put another way,
447 Type II error is rejecting the alternative hypothesis, that Ameritech is providing inferior
448 service, when in fact Ameritech is providing inferior service.

449

450 **Q. Above, you reviewed the general categories of Type I and Type II error. What**
451 **other types of mistakes can occur when performing statistical hypothesis testing?**

452

453 A. In implementing test of hypotheses, any number of mistakes can still result. Research
454 designers in the field of policy evaluation generally apply the "Threats to Validity"
455 framework, or TTV, in advance of performing a test to search for predictable pitfalls that
456 threaten the strength, or validity, of the conclusions their test will generate.⁵

457

458 To illustrate, the recent presidential election can provide examples of two threats to
459 validity, the reliability of treatment implementation and instrumentation error. The
460 reliability of treatment implementation occurs as a threat to validity when a test is applied
461 in a different manner in different settings. Instrumentation error threatens the validity of
462 a test when the test instrument actually changes from one application of a test to another.

463

464 An example of the reliability of treatment implementation can be found in the
465 communities of Palm Beach County, where what can arguably be called a faulty ballot
466 design led voters to mistakenly punch the ballot for their candidate's opponent. In the

⁵ see, esp., Cook, Thomas B., Campbell, Donald T. 1979. Quasi-Experimentation. Chicago, IL: Rand-McNally.

467 process of re-counting ballots, judges were later accused of tampering with ballots when
468 chads started falling like snow, an example of instrumentation error. In general, these
469 threats to validity can only be addressed in the research design phase.

470

471 **Q. What basic statistical terms are used in your review of the remedy plans in this**
472 **docket?**

473

474 A. There are three basic statistical terms used. The first is the mean, or average, often
475 depicted by the symbol X-bar, or \bar{X} . The second is the variance, usually depicted as σ^2 ,
476 or sigma-squared. The third is N, or the number of observations.

477

478 **Q. Please describe the formula for a sample average.**

479

480 A. The mean, or average, is simply the sum of the observations, divided by the number of
481 observations (N).

482

483 **Q. Please describe "variance."**

484

485 A. The variance of a population represents how "spread out" or "clustered" the observed
486 values are, as measured or observed around some central value, such as the mean. For a
487 particular data set, the variance represents a measure of dispersion, and is calculated as

488 the squared value of the sum of the deviations of the data points from the sample mean.⁶
489 The actual (often unknown) variance of a population is usually expressed as σ^2 , while the
490 variance of a sample drawn from that population is usually expressed as s^2 . In the
491 equations that follow, the variance is represented by the letters "var."

492
493 A larger variance indicates a very spread out sample, and a smaller variance represents a
494 narrower sample. A related statistic is the standard deviation, which is another measure
495 of the dispersion of a data set. The standard deviation is calculated as the square root of
496 the variance.

497

498 **Q. What is 'N'?**

499

500 A. In statistical calculations, the letter 'N' typically refers to the number of observations
501 found in the sample being reviewed. In a few instances in the plans being reviewed, N
502 refers to another number, such as the number of tests being performed. If N refers to
503 anything other than the number of observations, the use of the letter will be noted and
504 defined.

505

506 **Q. For the remedy plans in this docket, statistics are used to establish whether parity of**
507 **service has been provided. How is this task accomplished?**

508

⁶ See, e.g., Anderson, D.R., Sweeney, D.J., Williams, T.A., 1996. Statistics for Business and Economics. 6th Ed. Minneapolis, MN: West Publishing Co., p. 104.

509 A. The chief test statistic used in both remedy plans is a modification of a statistic used to
510 test for the similarity of the mean of two samples. What is at issue here is whether the
511 average service provided to the CLECs is comparable to the average service provided by
512 Ameritech to itself and its own customers. While other statistical tests could be used to
513 test the variance, or variability, of service, the proposed test statistics focus instead on the
514 average quality of service provided.

515
516 Consider the following example: a particular grade school has two classrooms of third-
517 graders, each composed of 30 students. The principal would like to have a comparison of
518 the math performance of the third graders in that school. In Classroom A, all of the
519 students receive C's in their math classwork, while in Classroom B, 15 students receive
520 A's and 15 students receive F's on their math classwork. If the principal focuses on a
521 simple comparison of the average grades in both classrooms, then the two groups of
522 third-graders have about the same level of achievement in math.

523
524 Whether the test used is an adequate test depends on what question is being asked. If the
525 principal wants to know anything more than whether the third-graders are, as a group,
526 passing their math classes, it would be advisable for her to choose another test.

527
528 **Q. Please describe the standard test for comparing the means of two different samples,**
529 **and determining their likeness or difference.**

530

531 A. The z-test, which relies on the z-value, is typically used to compare two samples to
532 determine their average equivalence, or parity. To calculate the standard z-value, 4
533 pieces of descriptive statistical information, aside from the number of observations in
534 each sample being compared, is required. That is, one needs 2 pieces of information
535 about each of 2 samples to calculate the standard z-value: the average, or mean, for each
536 sample, and the variance for each sample. These values are then “plugged into” the z-
537 value formula to create the z-statistic.

538
539 A **standard z-test** serves as a comparison of the average values between either a sample
540 and a population, or two samples. First, the standard deviation of the sampling
541 distribution is taken, using the respective variances and the sample sizes for the two
542 groups being compared. The following calculation shows the formula for the standard
543 deviation of the sampling distribution.

$$544 \quad \sqrt{(\text{var}_1/n_1 + \text{var}_2/n_2)} \quad (1)$$

545 Equation (1) becomes the denominator of the standard z-test calculation.

546
547 In calculating the standard z-test, the value of the second sample group average, (x-bar₂)
548 is subtracted from the first group average (x-bar₁), and the resulting value is divided by
549 the standard deviation of the sampling distribution, i.e.:

$$550 \quad Z = \frac{(\bar{X}_1 - \bar{X}_2)}{\sqrt{(\text{var}_1/n_1 + \text{var}_2/n_2)}} \quad (2)$$

551

552 **Q. What critical assumptions must be satisfied for the z-test to be statistically valid?**

553

554 A. There are two crucial assumptions required to apply a z-test statistic in settings like the
555 one at hand. First, the populations are assumed to be normally distributed. Second, the
556 samples are assumed to be independently drawn. Presuming these assumptions are valid
557 for the performance measurement tests, the recommendations contained in this testimony
558 will hold.

559

560 **Q. Once the z-statistic has been calculated, how is it used?**

561

562 A. The z-statistic can be thought of a standardized value that expresses information about
563 the two samples being compared. Once the z-statistic, or z-value, has been computed for
564 the relevant samples, the calculated value is compared to a critical value, taken from a
565 standard critical value table. The easiest method of choosing a critical value is to use a t-
566 table. The t-table arranges critical values based on alpha level, or the probability of a
567 Type I error, and sample size. For samples greater than 30, usually only the alpha level is
568 needed.⁷ Typically, the alpha level has been determined in advance of the test. The
569 tables are arranged as “lookup” tables, and indicate a single critical value for a given
570 alpha level. The critical value establishes a rejection region for assessing the calculated
571 z-statistic.

572

⁷ An alternative to the t-table is the z-table, which provides the calculated values for the area under a standard normal curve for specific points, which can represent various levels of alpha, or probability of Type I error.

573 The comparison of the z-statistic to the critical value in this manner provides a way of
574 determining a rejection region for the test statistic, and hence, the null hypothesis, by
575 using a standard set of values. The z-statistic translates the information about the
576 particular samples being compared into a standardized form that can be compared to the
577 critical values table. In that way, the researcher avoids re-calculating a particular
578 rejection region for each test.

579
580 For this simple description, I am hypothesizing a 1-tailed test with 5% alpha level. If the
581 calculated z-statistic is less than the critical value, then the comparison between the two
582 samples is believed, with a pretty high level of confidence, to reflect parity between the
583 two samples. If the calculated z-statistic is greater than the critical value, then the
584 opposite result is obtained: reject the null hypothesis of parity, and accept the alternative
585 hypothesis of disparity. The critical value, then, determines whether the null hypothesis
586 of parity should be rejected.

587

588 **Q. How is Type I error controlled in hypothesis testing?**

589

590 A. Type I error is controlled by specifying the level of alpha (α), or the probability of a
591 Type I error, in advance of performing the test. The alpha level represents the probability
592 of making a Type I error, which is rejecting the null hypothesis when it should be
593 accepted. In the current application, that means concluding that disparity exists when, in
594 fact, parity exists.

595

596 Continuing the previous example, in which I proposed an alpha level of 5%, if the null
597 hypothesis is true, then the test statistic (z-statistic) will appear in the rejection region
598 only 5% of the time, and outside of the rejection region 95% of the time. Therefore, the
599 probability of making a Type I error and rejecting the null hypothesis when the null
600 hypothesis is actually true is 5%, or the same as the pre-specified alpha level.

601

602 **Q. Please summarize the description you have provided in this sub-section.**

603

604 A. In this sub-section, I have reviewed a few basic terms used in standard statistical testing
605 for a comparison of parity between two samples. The description provided can be
606 thought of as a “plain vanilla” methodology for comparing the information provided in
607 two samples, and determining if, on average, the samples are similar. In addition, I have
608 reviewed some of the basic concepts of hypothesis testing, including the specification of
609 hypotheses, and the related consequences of making a Type I or Type II error.

610 4.2 Ameritech Remedy Plan

611
612 **Q. Please describe the basic statistical aspects of the Ameritech remedy plan, using the**
613 **terms defined in the previous section.**

614

615 A. The null hypothesis in the Ameritech plan is that Ameritech provides equivalent or better
616 service to its competitors as it provides to itself. The alternative hypothesis is that
617 Ameritech is providing inferior service to its competitors, relative to that provided to
618 itself (data affiliate or retail analogue). However, the remedy plan, as provided in this
619 docket so far, does not specifically address the null hypothesis.

620

621 **Q. Does the Ameritech plan control for Type I or Type II error?**

622

623 A. No. The Ameritech Remedy plan does not directly address Type I and Type II error.

624

625 **Q. What test statistic is used in the Ameritech remedy plan?**

626

627 A. The Ameritech Remedy plan uses a modified z-statistic. The **modified z-test** proposed
628 by Ameritech alters the calculation for the denominator of the test statistic, specifically
629 regarding the standard deviation of the sampling distribution. Rather than incorporating
630 a calculated variance for the CLEC data and the Ameritech data, the modified z-test uses
631 only the calculated variance for the Ameritech data. To calculate the denominator of the
632 modified z-statistic, the Ameritech variance is multiplied by the sum of the inverse of the
633 Ameritech sample size and the inverse of the CLEC sample size, i.e.:

634
$$\sqrt{\left\{ \text{var}_{\text{ameritech}} \left(\frac{1}{n_{\text{clec}}} + \frac{1}{n_{\text{ameritech}}} \right) \right\}} \quad (3)$$

635

636 The Ameritech modified z-test uses the same numerator calculation as the standard z-
637 value. The value of the second population average, (\bar{x}_2) is subtracted from the first
638 population average (\bar{x}_1) , and the resulting value is divided by the modified standard
639 deviation of the sampling distribution (shown in Equation (3)), i.e.:

$$\text{ModifiedZ} = \frac{(\bar{X}_1 - \bar{X}_2)}{\sqrt{\left\{ \text{var}_{\text{ameritech}} \left(\frac{1}{n_{\text{clec}}} + \frac{1}{n_{\text{ameritech}}} \right) \right\}}} \quad (4)$$

640

641

642

643

644

645

646

647

648

649

650

651

652

653

654

655

656

657

658

659

660

Eq. (4) displays the modified z-statistic used in the Ameritech proposed remedy plan applied to parity measures that are neither percentages nor rates. The proposed Ameritech remedy plan includes separate modifications to the standard equation displayed in Eq. (4) to adjust for the mathematical properties of performance measurements that are expressed as percentages or rates. These modifications applied to parity measurements are reasonable.

Q. What advantage is gained by modifying the standard deviation of the sampling distribution, as in the Ameritech remedy plan?

A. The modified standard deviation of the sampling distribution is shown in Eq. (3). The un-modified standard deviation, as shown in Eq. (1), relies on the calculated variance of both samples being compared. If the standard calculation was used, then Ameritech might have an incentive to increase the variance, or variability, of the service provided to its competitors. By doing so, Ameritech could, theoretically, increase the denominator of the z-statistic calculation, resulting in a (generally) smaller test statistic. In the remedy plans proposed in this docket, the proposed methodology involves comparing a test statistic to a critical value region. Any manipulation that might reduce the size of the test statistic would tend to minimize the possibility that the test statistic will appear in the

661 rejection region. By removing the variance calculation for the CLEC data, and relying
662 solely on the variance calculation for the Ameritech data, any statistical incentive to
663 provide widely varying service to its competitors is removed.

664

665 **Q. How many pieces of information are required to calculate the modified z-value**
666 **proposed in the Ameritech remedy plan?**

667

668 A. Three pieces of information are needed, aside from the number of observations in each
669 sample being compared: the average of the performance supplied by Ameritech to its
670 competitors, the average of the performance provided by Ameritech (to itself or retail
671 analog), and the variance, or variability, of Ameritech's own performance.

672

673 **Q. Please describe the operation of Ameritech's proposed plan, using a simple**
674 **hypothetical example.**

675

676 A. Consider the example of the 3rd grade classrooms again. Suppose that the 2 classrooms
677 share a math teacher, who delivers a math class 2 times each day, once per classroom. If
678 the principal was interested in determining if the teacher was providing the same
679 instruction to the two classes, an examination of average scores would provide an answer
680 to that question. Comparing average scores shows that the classes are achieving roughly
681 equivalent performance. That answer might be incomplete, however, since it does not
682 address potential variance of the scores in both classes. Using the hypothesized
683 information about the grades in the two classrooms provided earlier, the two classes seem

684 more dissimilar than similar. The principal will probably want to search for an
685 explanation for the differences across the two classrooms.

686
687 Our real interest, however, is analyzing the service performance provided by Ameritech
688 to its competitors, and not third-grade math scores. Comparing the variability of
689 Ameritech's service provided to competitors to the variability of service provided to its
690 own customers would be an interesting study. However, by testing only for the
691 comparability of average service, the test statistic proposed by Ameritech sets aside
692 differences in variability of service. The modified z-statistic provides an approximation
693 of determining whether the service provided to Ameritech's competitors is the same as
694 the service provided to its own customers.

695
696 The modified z-statistic provides Ameritech with an incentive to keep the average service
697 provided to its competitors at a high level, so it does not fail the test. Further, because
698 the calculation for the modified z-statistic omits the calculated variance for service
699 provided to CLECs, the test statistic avoids giving Ameritech a statistical incentive to
700 provide widely variable service to CLECs. Under the standard test statistic, Ameritech
701 could pass the test of average comparability by providing widely variable service, thus
702 creating a slightly larger denominator. Given the structure of the standard z-statistic, a
703 larger denominator will reduce the size of the calculated test statistic, all else being equal,
704 and a smaller test statistic will have a better chance of passing the critical value test,
705 resulting in affirmation of the alternative hypothesis of parity. Ameritech may still have

706 non-statistical reasons for increasing variance, such as an intention to retain market share
707 (see description above, and in the direct testimony filed by Staff Witness McClerren).

708

709 **Q. Please comment on the modified z-value proposed in the Ameritech remedy plan.**

710

711 A. Staff supports Ameritech's modification to the z-test. The purpose of the general
712 modification to the z-test is reasonable. By relying solely on the variance of Ameritech
713 data, the modified z-test minimizes the incentive for Ameritech to increase the variation
714 of service Ameritech provides to CLECs in order to (falsely) lower the calculated z-
715 statistic.

716

717 **Q. Where was this modification to the test statistic first proposed?**

718

719 A. In regard to parity testing for telecommunications services, this plan was first proposed
720 by Dr. Colin Mallows of AT&T, in ex-parte filing in FCC Docket No. 96-98.

721

722 **Q. Do any other jurisdictions rely on the modified z statistic, as it appears in the**
723 **Ameritech remedy plan, to establish parity for compliance purposes?**

724

725 A. Yes. 1) The FCC conditions governing the SBC/Ameritech merger (see FCC Docket No.
726 96-98); 2) the remedy plan in place in Texas; 3) other states in the Ameritech region.
727 This list is not intended to be exhaustive; the test statistic used in New York is also
728 similar to the modified z-statistic proposed in this docket by Ameritech Illinois.

729

730 **Q. Please comment on the critical values applied in the Ameritech remedy plan, or the**
731 **use of the critical values table.**

732

733 A. The critical value table has a somewhat unusual application. Instead of using a single
734 critical value, based on the relevant alpha level, the Ameritech remedy plan uses a table
735 of values. For Tier 1 tests, the relevant critical value is selected for each CLEC,
736 depending on the number of tests performed for that CLEC that month. For Tier 2 tests,
737 the relevant critical value is selected based on the number of tests performed throughout
738 the industry that month.⁸ The level of the critical value moves around, ranging from 1.65
739 to 2.44.

740

741 This application of critical values in assessing performance injects an unnecessary level
742 of complexity into the Ameritech performance remedy plan. However, I do not find the
743 additional complexity to be, on its face, objectionable. In reviewing the actual critical
744 values applied for Tier 1 calculations during October-December, 2000, the majority of
745 tests rely on critical values of less than 2.0. This outcome is roughly equivalent to what
746 would be available with a standard z-test, comparing the average values for two relatively
747 large samples, given a 1-tailed test and a 5 % alpha level.

748

749 I believe Ameritech should discuss the derivation of the critical values table fully in its
750 rebuttal testimony. The derivation of the critical values table is not apparent from

⁸ There are a few exceptions, such as performance measurements that had less than 10 observations.

751 reviewing the table, and the proposed remedy plan submitted by Ameritech in this docket
752 does not include a description of the derivation or the formulas used to create their
753 critical values table. As with many of the other facets of this remedy plan, the statistical
754 methodology is reportedly based on the ex-parte filing provided by Colin Mallows in
755 FCC 96-98. According to that filing, the differing critical values were calculated in an
756 attempt to hold the overall Type 1 error level of his proposed remedy plan to 5%. The
757 calculations were necessary, according to Mallows, for at least two reasons. First, the
758 critical values table calculated for the Mallows filing is necessary to control for the fact
759 that multiple tests are being performed by the ILEC each month. Second, the Mallows
760 plan had a feature for assessing the joint probability that the ILEC had failed in both the
761 previous three months and the current month, a feature that may not be in use in the
762 current Ameritech remedy plan, or proposed in the Ameritech remedy plan filed in this
763 docket.

764

765 4.3 CLEC Proposed Remedy Plan

766

767 **Q. Please describe the CLEC remedy plan, using the terms defined in the previous**
768 **section.**

769

770 A. The CLEC plan specifies a null hypothesis that parity exists between ILEC and CLEC
771 services. (see p. 2, Attachment 1 to CLEC Remedy Plan). The alternative hypothesis is
772 that Ameritech is providing better service to its own customers. The CLEC Remedy plan
773 attempts to balance Type I and Type II error, through the calculation of the test statistic.

774 That is, the CLEC Remedy Plan, through the specification of mathematical calculations,
775 attempts to equate Type I and Type II error.

776

777 **Q. What test statistic is used in the CLEC remedy plan?**

778

779 A. The CLEC Remedy plan uses what it terms a truncated Z test statistic to determine parity.
780 In their remedy plan filing in this docket, AT&T has provided two separate documents
781 describing the plan's test statistic. In their rebuttal testimony, AT&T should specify
782 which test statistic they propose for use in Illinois.

783

784 **Q. Please comment on the two statistics identified in the CLEC remedy plan.**

785

786 A. The test statistic outlined in Attachment 1 of their plan can be referred to as a truncated z
787 test statistic. According to the CLEC filing, this test statistic is designed for deeply
788 disaggregated submeasures (AT&T filing, around p. 13). In Attachment 2 of their filing,
789 AT&T proposes a modified z test statistic, which is more similar to the test statistic
790 currently in use in the Ameritech remedy plan. However, in both plans, the test statistic
791 is used only as a starting point for determining another calculation, that of the balanced
792 critical value.

793

794 **Q. What is the "balanced critical value" in the CLEC remedy plan?**

795

796 A. The statistical attachments provided with the CLEC remedy plan present calculations for
797 creating a balanced critical value. The balanced critical value introduces a formula for
798 determining the critical value, which is constantly updated depending on the performance
799 data for each CLEC, for each performance measure, each month.

800
801 Instead of using a previously determined critical value, which is the accepted standard
802 statistical methodology for hypothesis testing, or the published critical value provided in
803 the Ameritech remedy plan, the CLEC plan uses a critical value that is revised in an
804 ongoing manner, as an integral part of the performance measurements calculations done
805 each month.

806

807 **Q. Why do the CLECs advocate this approach?**

808

809 A. The CLECs apparently believe that any plan that focuses on adjustments solely for Type
810 I error is insufficient. Instead, the CLEC remedy plan attempts to incorporate
811 adjustments for both Type I and Type II error. The calculations for the balancing critical
812 value are intended to “balance” the Type I and Type II error.

813

814 **Q. What is your assessment of the balanced critical value?**

815

816 A. There are at least three identifiable problems with this approach. The principal one is
817 that the proposal represents an unproven, unpublished methodology. To my knowledge,
818 the methodology for the CLEC remedy plan has never appeared in peer-reviewed

819 research journal, and is not available for review in any standard statistical textbook. I
820 acknowledge that the formulas, in a mathematical sense, do work out; that is, they
821 contain no glaring errors of substitution or false steps.

822
823 A second problem is that the CLEC Remedy Plan contains a critical methodological
824 deficiency. In proposing to “balance” Type I and Type II error, the CLEC Remedy Plan
825 does not establish the acceptable level of Type I error in advance. The CLECs contend
826 that this approach provides protection for both the ILEC and the CLEC. However, the
827 proposed balancing process leaves open the potential for a very large Type I and Type II
828 error.

829
830 Finally, in trying to simultaneously control the probability of making a Type I and Type
831 II error, the plan incorporates what appears to be an error of logic. A Type I error is only
832 possible when the researcher accepts the null hypothesis. A Type II error is only possible
833 when one rejects the null hypothesis. A researcher cannot both accept and reject the null
834 hypothesis at the same time.

835

836 **Q. Describe the CLEC Remedy Plan standards for Tier 1 and Tier 2 penalties.**

837

838 A. In the CLEC remedy plan, for both parity and benchmark statistics, Tier 1 remedies are
839 due if the test statistic falls in a zone defined as “basic failure.” Tier 2 remedies are due
840 only if the test statistic falls in a zone similar to the Tier 1 zone labeled “intermediate
841 failure.” For example, for parity measures, Tier 1 remedies are due if the test statistic is

842 less than the calculated critical value, called z^* in the CLEC remedy plan. For Tier 2
843 remedies, payments are due to the state only if the calculated test statistic is less than an
844 amount equal to (approximately) 1.66 times z^* , or $5z^*/3$. As the CLEC remedy plan
845 notes, "a more lenient $5z^*/3$ critical value is used" in calculating Tier II remedies for
846 parity measures (see CLEC remedy plan, around p. 14).

847

848 **Q. Where has the CLEC Remedy Plan been adopted?**

849

850 A. The methodology recommended in the CLEC Remedy Plan is in use, in some form, only
851 in one jurisdiction, Georgia (established as of March, 2001). A similar plan is being
852 reviewed in 2 other Bell South states. The principal difference: in those states, the ILEC
853 was a participant in collaborative meetings to consider and work out the methodology for
854 applying the CLEC remedy plan.

855

856 Ameritech's willingness to review this plan aside, this plan is not currently employed in
857 the Ameritech region. It is unlike the one currently ordered in the FCC SBC-Ameritech
858 merger order. Adoption of the CLEC plan would leave open too many questions for
859 implementation, particularly in light of the fact that AT&T has provided little in the way
860 of guidance for determining the "delta" value.

861 4.4 Benchmark comparisons

862

863 **Q. Please describe the benchmark standards contained in the current Ameritech tariff**
864 **("business rules").**

865

866 A. Benchmark standards are used for measurements that do not have an Ameritech retail or
867 wholesale provision analog for the application of parity comparisons. As Staff Witness
868 McClerren notes in his testimony, Condition 30 of 98-0555 ordered that parity be the
869 appropriate standard where possible, and where not possible, benchmark standards were
870 to be adopted.

871

872 These benchmarks were identified and agreed on through the collaborative process in this
873 state. None of the benchmark standards are "100%" standards; that is, all benchmark
874 measurements included in the Business Rules have an error rate built into their definition.
875 This rate is expressed as either (i) a "close to 100%" benchmark, or (ii) a "close to
876 zero" benchmark. Benchmarks in the first group (close to 100%) for services provided to
877 CLECs in Illinois in the last quarter of 2000 ranged from 90% to 95%. Performance
878 Measure #5 (PM5), which measures the Percentage of Firm Order Commitments (FOCs)
879 returned within a specified number of hours, is an example of the first group of
880 benchmarks. All of the submeasures included in PM5 have benchmarks of either 94%
881 (for manual or complicated requests) or 95% (primarily, but not exclusively, for
882 electronic requests).⁹ Benchmarks in the second group (close to zero) for services
883 provided in Illinois in the last quarter of 2000 ranged from 0.01 to 0.07. Performance
884 Measure #114 (PM114), which measures the Percentage of Premature Disconnects for
885 Coordinated Cutovers, is an example of the second group of benchmarks described. The

⁹ See Attachment 1 to Ameritech Performance Remedy plan, as filed in this docket.

886 benchmark for the disaggregated submeasures included in PM114 have benchmarks of
887 2%.¹⁰

888

889 **Q. How does the Ameritech remedy plan treat these benchmark measures?**

890

891 A. The Ameritech remedy plan treats these benchmarks as performance “targets,” and
892 imposes statistical testing to allow itself a performance range for passage that varies from
893 less than the benchmark to greater than the benchmark. That is, because of this
894 application of statistical testing, Ameritech may pass the test even if it provides service
895 that does not meet the defined benchmark.

896

897 **Q. What statistical test does the Ameritech remedy plan propose for benchmark**
898 **measures?**

899

900 A. The Ameritech remedy plan calls for the following treatment of the test statistic for
901 benchmark measures:

902 For measurements where the applicable performance criterion is a benchmark
903 rather than parity performance, compliance will be determined by setting the
904 denominator of the Z-test formula as one in calculating the Z-statistic. For
905 measures expressed as percentages, this number will be multiplied by a factor
906 of 100. (see Ameritech remedy plan, Section 4.0, as filed in this docket).

907 The first part of this description is equivalent to setting the denominator of Eq. (4),
908 above, to 1, and comparing the average CLEC performance to the average Ameritech
909 performance, which is done in parity calculations. The second part of the modification,

¹⁰ ibid.

910 as described for percentage measures, would result in the same modification, only
911 multiplied by 100.

912
913 These modifications to the z-statistic makes little sense for benchmark measures, as it
914 proposes comparing CLEC performance to something other than the defined benchmarks.
915 Presumably, the resulting “z-statistic” would be a simple subtraction of average CLEC
916 performance from average Ameritech performance, which would then be compared to the
917 critical values table. In its rebuttal testimony, Ameritech should clarify what test statistic
918 it proposes for benchmark measurements, and provide support for the appropriateness of
919 using a test statistic for benchmarks.

920

921 **Q. How does the CLEC plan treat benchmark measures?**

922

923 **A.** The CLEC Proposed Remedy plan characterizes the benchmark performance
924 measurements as “bright-line” standards, which is a vivid and useful description. The
925 CLEC remedy plan also recommends that benchmark measurements be treated as strict
926 standards, with the following exception. The CLEC plan recommends applying a
927 modified benchmark table to small samples. This modification creates more generous
928 benchmarks for tests of small sample sizes, even though their plan advocates the
929 universal application of “bright-line” standards.

930

931 **5 Staff Recommendations**

932

933 **Q. Please summarize your recommendations in this docket.**

934

935 A. In reviewing the plans submitted in this docket, I have noted several problems with the
936 application of the Ameritech Remedy Plan. Below, I make several recommendations to
937 address these shortcomings. Assuming that my recommended changes are adopted, I
938 would then recommend that the Commission adopt the modified Ameritech remedy plan.
939 For several fundamental reasons, described below, I recommend that the Commission
940 reject the proposed CLEC remedy plan.

941

942 **Q. Why do you recommend that the CLEC plan be rejected?**

943

944 A. First, the plan filed in this docket by the CLECs specifies two vastly different test
945 statistics. While the CLECs are welcome to specify which test they prefer to be used in
946 their reply testimony, at this time the specific steps for applying their plan are unclear.
947 Second, the CLEC plan recommends an unwieldy critical value calculation that could
948 result in overly large probabilities of a Type I error occurring. Further, this critical value
949 calculation proposed by the CLECs is based on an unproven, unpublished methodology.
950 Finally, the CLEC plan has a built-in "hesitation" step before industry-affecting (Tier 2)
951 penalties are due, ensuring that Ameritech will be penalized for providing poor service to
952 individual CLECs, while avoiding penalties for providing poor service on an industry-
953 wide basis.

954

955 For the reasons stated above, I believe that the best course of action is to recommend
956 making adjustments to the Ameritech remedy plan, rather than adoption of the CLEC
957 remedy plan. The CLEC plan is not in place in any states in the Ameritech region. The
958 CLEC plan is only currently in place in one state, although it appears to be under serious
959 consideration in 2 other Bell South states. For Illinois, the Ameritech remedy plan is the
960 closest to the one prescribed by the FCC in their merger conditions for SBC-Ameritech.
961 Further, the current Ameritech remedy plan has been in place to satisfy conditions placed
962 by the Illinois Commerce Commission in its order governing the merger between SBC
963 and Ameritech. Finally, while not guiding on this Commission, the recent Michigan
964 PUC decision in a similar remedy plan docket ordered modifications to the existing
965 Ameritech remedy plan, rather than to remove the existing plan and order Ameritech to
966 re-engineer its system for calculating penalties.

967

968 **Q. Please review your step-by-step application of a remedy plan.**

969

970 **A.** A simple remedy plan consists of the following 5 basic steps.

971 **Step 1.** Provide service & collect data on performance

972 **Step 2.** Calculate test statistic

973 **Step 3.** Choose critical value

974 **Step 4.** Compare test statistic to critical value; determine if failure has occurred

975 **Step 5.** Calculate penalties & pay if failure has occurred

976

977 **Q. On what steps do your proposals focus?**

978

979 A. My proposals in this docket focus on Step 2, Calculating the test statistic, step 4,
980 Determination of failure, and step 5, Calculation of penalties.

981

982 5.1 Proposals regarding the test statistic

983

984 **Q. What is your first recommendation regarding the test statistic?**

985

986 A. My first recommendation to the Commission is that Ameritech should end its statistical
987 testing for benchmark measurements. Instead, Ameritech should be ordered to treat
988 benchmark measurements as "bright line" requirements, applying a strict test standard.

989

990 **Q. Why do you recommend this treatment of benchmarks?**

991

992 A. There are several reasons for this recommendation.

993

994 First, the test statistic proposed by Ameritech Illinois is poorly defined and ill-suited for
995 benchmark measurements. As noted above, the comparison of CLEC performance to
996 Ameritech performance is appropriate for parity standards, but not for benchmark
997 standards. In Illinois, the benchmark standards were imposed because Ameritech does
998 not provide a comparable service at either the retail or wholesale affiliate level. While
999 the proposed Ameritech remedy plan includes instructions regarding setting the
1000 denominator to 1, the plan does not specify information about the information used for

1001 the rest of the test statistic. If Ameritech is proposing an actual test statistic, its removal
1002 of the denominator calculation takes away the (assumed) test statistic's sensitivity to
1003 sample size and the variability of Ameritech performance, which could turn this test
1004 statistic into a simple comparison of CLEC and Ameritech performance. However,
1005 because these are benchmark standards, there is no Ameritech performance data available
1006 for such a comparison.

1007
1008 Second, the proposal for statistical testing for benchmark measurements requires the
1009 comparison of some test statistic to some critical value. The comparison of a test statistic
1010 to the critical values table in this way creates a "zone" or allowance for not reaching the
1011 benchmark standard. Ameritech can be allowed to pass a benchmark test even if the
1012 benchmark standard is not reached.

1013
1014 Third, none of the benchmark standards, as agreed to through the collaborative process in
1015 Illinois and as defined in the business rules, require 100% performance. Each benchmark
1016 standard has a built-in "cushion" for variable service which could occur due to, for
1017 example, random statistical error. Ameritech does not need another statistical allowance
1018 created by the process of comparing a test statistic to a critical for variable performance.

1019
1020 **Q. Do you have an estimate of the impact of this recommended change in treatment of**
1021 **benchmark measures in the Ameritech remedy plan?**

1022

1023 A. Yes. In the three months ending December, 2000, Ameritech provided services
1024 associated with benchmark standards to CLECs on 6,456 occasions. Each occasion
1025 represents a separate provision of service to a CLEC, without reference to the size or
1026 amount of the service. Under the existing Ameritech remedy plan, the company
1027 calculated that they failed the statistical benchmark test 1,561 times. Using the same
1028 performance measurements, but treating the benchmark standards as a strict test, the
1029 performance provided by Ameritech to CLECs failed to meet the performance
1030 benchmarks a total of 1,825 times.

1031
1032 By applying the methodology of statistical testing around the performance benchmarks,
1033 Ameritech avoided detection of 264 of its failures to provide benchmark-quality service.
1034 By ordering Ameritech to end its practice of statistical testing around benchmarks, the
1035 Commission can decrease the incidence of Type II error in the Ameritech remedy plan,
1036 (wherein Ameritech provides sub-standard service and avoids detection.)¹¹

1037
1038 **Q. Do you have an estimate of the dollar value that this change could represent?**

1039
1040 A. No. In applying this recommendation, the Commission would ensure that Ameritech no
1041 longer avoids detection for poor service on a subset of measures. As a result, Tier 1 and
1042 Tier 2 penalties would likely increase. This outcome would, of course, depend on
1043 Ameritech's actual performance in meeting these benchmark standards.

1044

¹¹ data taken from response to MKP14, for Tier 1 measurements for average benchmarks & percentage benchmarks

1045 **Q. What is your second recommendation regarding the test statistic?**

1046

1047 A. My second recommendation concerns the critical values table, or k-table, used by
1048 Ameritech. From several sources, I have become aware of a problem with this critical
1049 values table. It is my understanding from conversations with Ameritech that they are
1050 aware of a "missed-step" problem with their critical values table. As a result, Ameritech
1051 is applying the wrong critical value in some of its tests.

1052

1053 **Q. Can you comment on the origin of this error?**

1054

1055 A. According to informal conversations with personnel of Ameritech Illinois, the error
1056 existed in the Texas plan. Given the merger conditions in Docket 98-0555, Ameritech
1057 Illinois was ordered to adopt the Texas plan to fulfill the merger conditions imposed by
1058 the Illinois Commerce Commission. In the company's opinion, their obligation was to
1059 adopt the Texas plan exactly as it was at the time of the order, with changes as developed
1060 in the Condition 30 collaborative.

1061

1062 **Q. If Ameritech were ordered to implement this change, what would the potential**
1063 **impact be?**

1064

1065 A. In a data request submitted in March, I requested that Ameritech demonstrate the
1066 difference the corrected k-table would make. From reviewing the Tier 1 data, it appears
1067 that some tests "creep up" into the 1.69 or 1.70 critical value bracket, when they should

1068 remain in the 1.68 critical value bracket. That is, certain tests that should be evaluated
1069 using a critical value of 1.68 are instead evaluated with a critical value of 1.69 or 1.70.

1070
1071 While the error is small, it is noticeable and measurable. In applying the corrected K-
1072 table to Tier 1 data, covering the 3 months from October-December 2000, 2 additional
1073 tests were failed by Ameritech. This shortcoming represents an easily remedied form of
1074 Type II error, wherein Ameritech should be failing a test, and the company reports that it
1075 passes.

1076
1077 My recommendation is that the Commission should take the opportunity to correct this
1078 failure in the application of the Ameritech remedy plan.

1079

1080 **Q. Please summarize the potential impacts of such an order.**

1081

1082 A. There are three potential impacts that I see. The first is that the critical values table itself
1083 would be corrected. The second is that Ameritech might fail a few tests that it currently
1084 passes, which will minimize additional occurrences of Type II error in the future.

1085 Finally, Ameritech may pay slightly higher penalties, both Tier 1 and Tier 2, in the future
1086 than it might otherwise have owed.

1087

1088 From conversations with Ameritech representatives, it is my understanding that they
1089 agree with my assessment regarding the need for a change. However, the company will

1090 not voluntarily make this change. My recommendation is that the Commission should
1091 order Ameritech to adopt and employ an accurate critical values table.

1092 5.2 Proposals to determine if a test has been failed

1093

1094 **Q. What is your first recommendation regarding this topic?**

1095

1096 A. My single most important recommendation is to reject the use of the k-exclusions. The
1097 k-exclusions are contained on the same table as the critical values used for determining if
1098 Ameritech has provided parity service, in a column labeled "k-values." The k-exclusions
1099 indicate how many failed tests will be excluded from the penalty calculations.

1100

1101 I recommend a simple, direct application of the test statistic & critical value: if the
1102 critical value indicates that Ameritech has failed the test, then Ameritech should pay a
1103 penalty. This recommendation covers Tier 1 and Tier 2 penalties, and benchmark and
1104 parity measurement standards.

1105

1106 **Q. Please describe "k-exclusions."**

1107

1108 A. Essentially, the k-exclusions apply a 5 % "forgiveness" factor to the penalties that
1109 Ameritech owes to the state and to its competitors for poor service. Once Ameritech has
1110 calculated the penalties it owes each month, it goes through the list of missed
1111 measurements, first by CLEC and then for the industry as a whole, and begins an exercise

1112 of tossing out the measures for which Ameritech does not owe penalties, according to
1113 their remedy plan.

1114
1115 The k “factor” was included in the FCC ex-parte filing made by Colin Mallows of AT&T
1116 in FCC Docket No. 96-98. The intention of the k-factor is to provide a “threshold” for
1117 determining noncompliance.

1118
1119 **Q. Why do you oppose the use of the “k-exclusions”?**

1120
1121 The application of the k-exclusions for determining penalties is intended to “adjust” for
1122 the “certainty” that a 5% alpha (level of risk of a Type I error) will result in Ameritech
1123 being found to be noncompliant 5% of the time when it is, in fact, in compliance. While
1124 this is a seemingly accurate characterization of the underlying statistical comparison, I do
1125 not find this characterization to present a compelling argument for including a
1126 “forgiveness” factor in calculating penalties.

1127
1128 Setting the alpha level at a certain percent does not correspond to a belief that Type I
1129 errors will, in fact, happen with any amount of predictive certainty. In standard statistical
1130 hypothesis testing, the critical value table is intended to control the overall alpha
1131 probability at known level. Ameritech has indicated that it is willing to accept a 5%
1132 probability of a Type I error, which is equivalent to accepting a 5% alpha level.
1133 Ameritech should be held to that alpha level for determining non-compliance, as well as
1134 for calculating the resulting penalties.

1135

1136 An additional fact that mitigates Ameritech's need for relief from paying penalties when

1137 it is, in fact, in compliance is as follows. In applying the statistical hypothesis testing,

1138 Type II errors will also occur. That is, Ameritech will occasionally provide poor service

1139 that will go undetected, for which it will pay no penalties. Being required to pay

1140 penalties whenever it fails a test will provide some relief to the CLECs, who receive no

1141 compensation for poor performance when Ameritech mistakenly passes its own

1142 performance tests when it should fail its performance tests.

1143

1144 **Q. Please summarize your recommendation regarding the k-exclusions.**

1145

1146 **A.** The k-exclusions should be removed from the Ameritech remedy plan. If service is

1147 found to be non-compliant, using the statistical tests as outlined in the Ameritech remedy

1148 plan, and using their critical values table, then penalties should be paid.

1149

1150 As a technical matter, this change would require Ameritech to pay fines even when the

1151 difference between the calculated z-value and the critical value is very small, that is,

1152 Ameritech fails a test by "only a little bit." It is a matter of mathematical statistics that

1153 the probability of Type II error, or beta, increases in cases of small differences between

1154 test statistics and critical values.¹² That is, for those cases that Ameritech is paying fines

1155 for a "near miss," the CLECs and the state will be receiving compensation for inadequate

1156 service that nearly went undetected.

1157
1158 Even if this change alters the overall probability that Ameritech will be found to be out of
1159 compliance when it is not (probability alpha, or chance of Type I error), the company
1160 will be starting to compensate carriers for those occurrences when it provided inferior
1161 service and avoided detection.

1162
1163 **Q. What is your second recommendation regarding this topic?**

1164
1165 A. My second recommendation regarding determination of failure is to make all
1166 measurements of equal importance. The existing Ameritech remedy plan includes
1167 notations regarding whether measurements are of low, medium, or high importance.
1168 These designations are not agreed to collaboratively in Illinois, and should be removed
1169 from the Ameritech remedy plan and the definitions provided in the business rules.

1170
1171 The main reason for removing these designations is that they were not agreed to by the
1172 participants in the collaborative performance measurements process in Illinois. As a
1173 result, Ameritech would be unilaterally imposing its own value system to measurements
1174 by ranking them as to their relative importance. A secondary reason is that classifying
1175 measurements by the supposed importance of the service being measured will tend to
1176 weaken the incentive structure provided by the performance remedy plan.

1177
1178 **Q. Please comment on the development of those designations.**

¹² see, e.g., McClave, J. T., Dietrich, F. H., 1982. Statistics. 2nd Ed. San Francisco, CA: Dellen Publishing Co., pp.

1179

1180 A. The designations in the business rules filed by Ameritech Illinois, and used in the
1181 Ameritech remedy plan, are based on the designations developed for the Texas remedy
1182 plan, per Staff Witness McClerren. A feature of the existing Ameritech remedy plan is
1183 that the designations low, medium, and high are needed to create a decision rule
1184 regarding which measurement failures should be part of the k-exclusions each month.
1185 Ostensibly, the performance measurements referred to as low are of lesser importance,
1186 and the higher ones of greater importance. The k-exclusions consist, each month, of the
1187 failed tests for the low measurements, first, and then the medium measurements, etc.,
1188 according to the k-exclusions table.

1189

1190 The designations low, medium, and high, introduce an unnecessary level of complexity to
1191 measuring service performance. Since the performance measurement collaborative in
1192 Illinois has been unable to agree on which measurements are of greater or lesser
1193 importance, it is unlikely that the Commission could impose a well-reasoned decision
1194 regarding which measurements are most important. Certain measurements could be more
1195 important to different CLECs depending on the services they market, the geographic
1196 location, or their overall market penetration. Measurements could vary in importance
1197 over time and across geography, as well by development of CLEC business and the
1198 CLEC industry as a whole. Even if a coherent system of measurement designations were
1199 developed right now, the usefulness of that system might disintegrate within 6 months.

1200

262-265.

1201 **Q. What do you recommend regarding the importance level of the performance**
1202 **measurements used in the Ameritech performance remedy plan?**

1203
1204 A. A more coherent strategy that would provide better incentive for Ameritech Illinois to
1205 provide good performance overall would be to make all measurements of equal
1206 importance. I recommend making all performance measurements of “high” importance,
1207 for two reasons. First, using the “high” designation emphasizes to Ameritech that these
1208 measurements represent services provided to CLECs that will have a critical impact on
1209 the services provided, in turn, by CLECs to their own customers. The provision of good
1210 service is important to the ability of individual CLECs to develop their own market share.
1211 In addition, as Staff Witness McClerren points out in his testimony, good wholesale
1212 service quality provision is essential to the overall development of a competitive
1213 telecommunications environment. These performance measurements are important, and
1214 their measurement designation should be a reflection of that importance. Second, in the
1215 Ameritech proposed remedy plan, the measurements designated as having “high”
1216 importance also have the largest penalties associated with them. Applying the highest
1217 penalty amounts to all performance measures will reinforce the incentive nature of the
1218 performance remedy plan used by Ameritech Illinois.

1219

1220 **Q. Please summarize this section.**

1221

1222 A. Removing the k-exclusions will allow for the possibility that the total penalties paid each
1223 year can approach the total annual cap, and that Ameritech will, in fact, pay penalties for

1224 non-compliant service. Making all measurements of equal importance will bring more
1225 coherence and simplicity to the Ameritech remedy plan, and reinforce the incentive
1226 nature of that plan.

1227 5.3 Proposals relating to Calculating Penalties

1228

1229 **Q. What are your recommendations regarding the calculation of penalties?**

1230

1231 A. In general, my recommendations, described more fully below, are to increase the per-
1232 occurrence penalty, increase monthly caps, and, as discussed above, assign “high”
1233 penalty amounts to all performance measurements. In addition, I believe penalty
1234 amounts should be converted to a cash basis, instead of credit basis, for Tier 1 penalties.

1235

1236 **Q. Please describe a reasonable level of penalties to levy if the parity of service**
1237 **standard is not met.**

1238

1239 A. According to the FCC, a “meaningful” level of penalties would be 36% of net return (see
1240 1999 FCC Memorandum Opinion & Order in CC docket # 99-295; citation taken from
1241 Ameritech remedy plan, as filed). “Net return” is an accounting concept, and can be
1242 described generally as net income after operating expenses and taxes. Both the
1243 Ameritech remedy plan and the CLEC remedy plan endorse the 36% of net return figure.
1244 However, the CLEC remedy plan treats this figure as a minimally acceptable level of
1245 penalties. In its current proposed tariff, Ameritech sets a maximum annual cap on
1246 penalties set at \$361.45 million, for combined Tier 1 and Tier 2 penalties.

1247

1248 **Q. What issues relative to the overall level of penalties imposed need to be resolved in**
1249 **this docket?**

1250

1251 There are three. First, should the level be an absolute maximum, or could penalties in
1252 excess of the maximum level be imposed? Second, if the maximum level of penalties is
1253 reached in one year, should there be a procedural review of the operations of Ameritech
1254 Illinois with respect to its wholesale business? Third, how is the procedural cap
1255 determined each year?

1256

1257 With regard to the first issue, penalties in excess of the maximum cap should be
1258 allowable under the performance remedy plan. In other words, the annual cap for the
1259 Ameritech Illinois performance remedy plan should not be an absolute cap. Otherwise,
1260 Ameritech Illinois could embark on a market-impacting strategy of providing sub-
1261 standard performance for a short period of time, incurring penalties that accrue to the
1262 annual maximum within a few months. If the annual cap represents a maximum
1263 allowable penalty amount, then Ameritech Illinois can calculate, with some accuracy, the
1264 costs and benefits of engaging in such a market-impacting strategy. If the annual cap can
1265 be raised, then Ameritech Illinois would be discouraged from engaging in such a
1266 strategy.

1267

1268 With regard to the second issue, I recommend that an official Commission investigation
1269 be triggered if Ameritech reaches the annual cap within the first 9 months of any year.

1270 Incurring penalties of the magnitude proposed (36% of net return) represents a serious
1271 level of poor performance. This investigation would have the aim of uncovering the
1272 reason or cause for the continued poor performance.

1273
1274 Finally, in the remedy plan filed in this docket, Ameritech proposes to establish, on its
1275 own, the annual total penalty amounts, which it refers to as "the annual cap" (see
1276 Ameritech remedy plan, as filed, #7.3, p. 7). Regarding this issue, I recommend the
1277 following. The penalty cap for the performance remedy plan implemented by Ameritech
1278 Illinois should be resolved in this proceeding, appear in the tariff that governs this
1279 remedy plan, subject to Commission review, and should be revised annually, according to
1280 a schedule determined by the Commission in this docket.

1281

1282 **Q. In your opinion, is there a principal failing of the existing penalty structure?**

1283

1284 **A.** Yes. Under the current structure, the penalties paid by Ameritech are insufficient. This
1285 outcome represents the cumulative effect of several of the features of the current
1286 Ameritech remedy plan. Given the current structure, Ameritech faces a very low
1287 probability of ever reaching the maximum caps outlined in the previous section.

1288

1289 Table 1, attached, presents a comparison of penalty amounts for Ameritech performance
1290 in wholesale service provision to CLECs, focusing on Tier 1 penalties. Row 1 presents
1291 an estimate of the total amount of actual penalties paid by Ameritech Illinois to CLECs
1292 during October, November, and December 2000. The data for Row 1, Table 1, is taken

1293 from the response to a data request numbered MKP20, provided by Ameritech Illinois
1294 pursuant to instructions contained in data request MKP19. Ameritech notes, in its
1295 response MKP19, that not every CLEC purchasing services in those months were eligible
1296 to receive penalty credits in those months.

1297
1298 Row 2 of Table 1 presents the calculations performed by Ameritech to estimate the
1299 amount they would have paid in Tier 1 penalties if all CLECs had been eligible for
1300 penalties in those months. That is, Row 2 presents the re-calculated penalty amounts,
1301 estimating the effect of the Ameritech remedy plan given the actual service levels
1302 provided during those months. As such, the information presented in Row 2 can be seen
1303 as the most generous calculation of the penalties owed under the Ameritech remedy plan.
1304 Row 2 also includes the estimate of the impact of using the corrected k-table, described
1305 above.¹³

1306
1307 According to the information presented Row 2 of Table 1, Ameritech would have owed
1308 only \$3.4 million in aggregate penalties to CLECs in Tier 1 penalties during the final
1309 three months of 2000, using their remedy plan. At that level, it is doubtful if Ameritech
1310 would ever reach their proposed annual cap of approximately \$360 million. Further, the
1311 penalties as they currently stand do not seem to influence Ameritech's behavior, given
1312 that nearly half of the performance items for which Ameritech owed penalties, according
1313 to their calculations, persisted across those three months. That is, Ameritech showed
1314 such a consistent failure level in a number of the services provided to CLECs that they

1315 would have owed Tier 1 penalties for those failures each month during the last quarter of
1316 2000. (Figures taken from response provided by Ameritech Illinois to MKP20).

1317

1318 **Q. Please provide an example of the current penalties paid by Ameritech.**

1319

1320 For the final four months of 2000, Ameritech paid out approximately \$5 million in Tier 2
1321 payments to the state, and just over \$1.25 million in Tier 1 payments to CLECs. These
1322 figures include most of the re-statements for individual months made at later dates, and
1323 therefore do not represent the actual amounts paid out in those months. During the
1324 months of October-December of 2000, Ameritech Illinois failed, on average, more than
1325 1200 performance measures each month for services provided to individual CLECs, and
1326 between 450-500 industry-level measures during the comparable 3-month Tier 2
1327 measurement periods. (Figures taken from response provided by Ameritech Illinois to
1328 MKP12 and MKP37)

1329

1330 Each month during the last quarter of 2000, Ameritech did business with between 125
1331 and 150 CLECs each month. (Actual #'s: Oct 146, Nov 143, Dec 133) Each month, an
1332 average of 90 of those CLECs experienced measurably poor service from Ameritech.
1333 The total Tier 1 payments referred to above, given out as \$1.25 million in credits on
1334 future bills, were spread out over those approximately 90 CLECs each month. Taking an
1335 average of the aggregate, more than 60 % of Ameritech's wholesale customers in the last
1336 quarter of 2000 received poor service. Payments under the existing penalty structure of

¹³ The impact of the corrected k-table is expected to be slight, since its application results in only 2 additional

1337 \$5 million to the state and \$1.25 million in credits to the CLECs, spread across 3 months,
1338 seem wholly inadequate for the level of service provided.

1339

1340 **Q. Please describe the monthly cap structure, as described in the Ameritech remedy**
1341 **plan filed in this docket.**

1342

1343 A. The structure for the monthly caps is proposed in Section 7.0 of the Ameritech remedy
1344 plan filed in this docket. The following features apply to the monthly cap:

- 1345 ♦ Monthly cap of \$30.12 million (1/12 of \$361.45 million).
1346 ♦ If, within a single month the monthly cap is not reached, the following month's cap is
1347 increased by the remainder.
1348 ♦ If total annual Tier I & Tier II meet or exceed the cap, and the monthly cap has
1349 prevented the full payment of total per annum damages/assessments, Ameritech must
1350 pay the difference.
1351 ♦ If payments to an individual CLEC in any one month exceed \$3 million, or if Tier I
1352 payments alone exceed the cap, Ameritech may commence "show cause" proceedings
1353 to demonstrate why they shouldn't have to pay damages in excess of the monthly cap

1354

1355 **Q. Can you comment on the monthly cap structure?**

1356

1357 A. Even with the proposed features described above, the monthly caps set at 1/12 of the total
1358 annual cap can serve as a barrier to compliance. If service quality is poor, a monthly cap

failures in the performance data.

1359 provides no incentive for improving quality in a timely manner. That is, a monthly cap
1360 presents no immediate incentive for Ameritech to improve the quality of service provided
1361 to its competitors. Waiting an entire year before requiring Ameritech to pay penalties in
1362 excess of the monthly cap is a further disincentive to improve quality in a timely manner.

1363

1364 **Q. What recommendation do you have regarding the monthly cap structure?**

1365

1366 A. Increase the monthly caps so that Ameritech faces the possibility of paying up to at least
1367 1/6 of the annual amount of penalties within a single month. That is, the monthly caps
1368 should be twice as high as they currently are. Increasing the monthly caps will improve
1369 the incentive nature of the Ameritech performance remedy plan. In addition, a larger
1370 monthly cap will decrease the likelihood that total Tier 1 penalties owed will exceed the
1371 monthly cap.

1372

1373 **Q. What is your recommendation regarding the form of payment for Tier 1 penalties?**

1374

1375 A. I recommend that Tier 1 penalties, payable for poor service provision to individual
1376 CLECs, should be paid in cash, instead of provided in the form of bill credits. Currently,
1377 in order to realize the liquidated damages owed to them, CLECs are obligated to continue
1378 ordering services from Ameritech. My recommendation supports the CLEC remedy plan
1379 in this regard.

1380 **6 Conclusion**

1381

1382 **Q. What is included in this section?**

1383

1384 A. In this final section, I describe the total monetary impact of the recommendations
1385 contained in my testimony, and conclude my testimony.

1386

1387 **Q. Do you have comparable estimates of the total monetary impact of the CLEC plan?**

1388

1389 A. At this time, I do not. AT&T provided estimates of the effect of the CLEC proposed
1390 remedy plan, pursuant to a data request, in late June. The arrival of that information was
1391 too late for consideration for this round of testimony. I would like to comment on their
1392 results, and compare them to results using similar data for the Ameritech plan, in my
1393 rebuttal testimony.

1394

1395 **Q. Under existing service levels, how much as Ameritech paid in Tier 2 penalties?**

1396

1397 A. Table 3, attached, presents a comparison of penalty amounts for Ameritech performance
1398 in wholesale service provision to CLECs, focusing on Tier 2 penalties. Row 1 presents
1399 an estimate of the total amount of actual penalties paid by Ameritech Illinois to the State
1400 of Illinois during October, November, and December 2000. The data for Row 1, Table 3,
1401 is taken from the response to a data request numbered MKP20. As noted earlier, during
1402 those months, Ameritech paid approximately \$3.5 million to the state in Tier 2 penalties.

1403

1404 Row 2 of Table 3 is comparable to Row 2 of Table 1, and displays the estimates made by
1405 Ameritech Illinois of the penalties it would have owed, based on service performance
1406 during the months of September through December of 2000. Tier 2 penalties are
1407 assessed on three months of performance information, so the re-calculated amounts are
1408 only available for November and December, 2000. For comparison, the totals for
1409 November and December are included for all of the lines displayed in Table 3. Given
1410 actual performance levels, Ameritech Illinois calculates that Tier 2 remedies might have
1411 been slightly higher during November and December 2000.

1412

1413 **Q. Before applying your recommendations, what is the basic result of the Ameritech**
1414 **performance remedy plan, based on the calculations of Ameritech Illinois?**

1415

1416 A. The information contained in Row 2 of Table 1 and Row 2 of Table 3 display the basic
1417 calculations for Ameritech's remedy plan, given actual performance at the end of 2000.
1418 Tier 1 payments, given actual performance levels and assuming all CLECs were eligible
1419 for remedies would have been \$3.4 million for the last three months, and Tier 2 remedies
1420 would have been \$2.7 million for the last 2 months of 2000.

1421

1422 **Q. In the previous section, you recommended removing the k-exclusions from the**
1423 **Ameritech remedy plan. What impact does this recommendation have on penalty**
1424 **calculations in the Ameritech remedy plan?**

1425

1426 A. The impact of removing the k-exclusions is displayed in Table 2. The k-exclusions only
1427 apply to Tier 1 calculations, and the row labeled AS1 in Table 2 demonstrates the impact
1428 of removing the k-exclusions. Using Ameritech's estimates, provided in response to DR
1429 question MKP24, based on actual performance, Ameritech would have owed \$4.1 million
1430 to the CLECs in Tier 1 penalties during the final months of 2000. Removing the k-
1431 exclusions will result in Ameritech owing penalties whenever it fails its statistical tests,
1432 as described in the previous section.

1433

1434 **Q. In the previous section, you recommended assigning equal importance to all**
1435 **performance measurements. What impact does this recommendation have on**
1436 **penalty calculations in the Ameritech remedy plan?**

1437

1438 A. My recommendation is to make all penalties of equal and "high" importance. The
1439 attached table (Table 1) demonstrates the impact that this change would have. The first
1440 row of Table 1 contains the penalty amounts actually credited as Tier 1 penalties to
1441 CLECs during the months of October-December 2000. Row 2 of Table 1 contains the
1442 calculations, performed by Ameritech using all performance data, of the actual amounts
1443 owed if all CLECs doing business with Ameritech were eligible for remedies. (see
1444 disclaimers, provided by Ameritech, as notes to Table 1).

1445

1446 I asked Ameritech to estimate the impact if all remedies were "high" remedies for Tier 1
1447 penalties. The result is reflected in Row 3 of Table 1. While the overall difference for
1448 the three months is that Ameritech would have paid out just over twice as much as the

1449 modeled amount would indicate, notice in particular the results for October 2000 data. If
1450 all penalty amounts were "high" amounts, the difference for that month is notable,
1451 indicating that, possibly, many of the failures in that month were of "low" importance.
1452 For the final three months of 2000, Tier 1 penalties would have increased to \$7.2 million.
1453
1454 For Tier 2 remedies, the row in Table 3 labeled "AS2" demonstrates the impact of
1455 making all remedies of "high" importance. For the final two months of 2000, Tier 2
1456 penalties would have increased to \$3.1 million.

1457

1458 **Q. Please comment on these estimates.**

1459

1460 **A.** Taken alone, removing the k-exclusions will have an impact on the level of Tier 1
1461 penalties owed to CLECs. However, when combined with the recommendation to make
1462 all measurements and penalties of "high" importance, the impact of these
1463 recommendations are not expected to cause Ameritech Illinois to owe penalties in excess
1464 of the annual cap of approximately \$360 million.

1465

1466 The alternative scenarios, displayed in the lines labeled "AS#" in Tables 2 and 3, are
1467 intended to allow comparison of the recommendations given previously to existing
1468 penalty amounts, as shown in Tables 1 and 3. AS1 is the information for Tier 1 penalties
1469 calculated without the k-exclusions. AS2 combines the estimate for removing the k-
1470 exclusions with the estimates for increasing all measurements, and corresponding
1471 penalties, to "high" amounts. For the last few months of 2000, the resulting estimates

1472 under AS2 are for \$8.8 million in Tier 1 penalties and \$3.1 million in Tier 2 penalties.

1473 On an annualized basis, those amounts would result in just over \$50 million in total

1474 annual penalties, given existing service quality levels at the end of 2000.

1475

1476 **Q. Do you have a recommendation regarding how high to set the individual penalty**
1477 **amounts?**

1478

1479 A. Given the low penalties paid currently by Ameritech Illinois, I recommend that the
1480 penalty amounts, per measure, be increased.

1481

1482 **Q. If the Commission took your recommendations regarding altering the penalty**
1483 **structure, do you have an estimate of the impact of these changes?**

1484

1485 A. Yes, I do. Table 2 (attached) includes a series of scenarios, numbered 1-4, and Table 3
1486 includes scenarios labeled AS2-4. Each of the scenarios presents Ameritech's estimate,
1487 using their performance data from October-December 2000, of the impact of the changes
1488 I have recommended regarding the penalty structures. All 4 scenarios demonstrate the
1489 impact of removing the k-factor exclusions. AS1 and AS2 were reviewed, above.

1490 Alternative Scenarios 2 through 4 demonstrate the impact of making all penalty levels

1491 high. Alternative Scenarios 3 and 4 demonstrate the impact of increasing the penalty

1492 amounts per failure, with Scenario 3 indicating the impact of doubling the current

1493 penalties, and Scenario 4 showing the impact of tripling the current penalties.

1494

1495 **Q. Do you have a recommendation regarding how high to set penalty levels?**

1496

1497 A. Based on the numbers presented in Table 2, I recommend with removing the k-factor
1498 exclusions, and tripling the current penalty levels. These recommendations correspond to
1499 an annualized amount of just over \$160 million, which is still far short of the total annual
1500 cap recommended by the FCC. Tripling the current penalties will move the Ameritech
1501 remedy plan closer to providing an incentive for Ameritech to provide quality service to
1502 CLECs.

1503

1504 **Q. Does this conclude your testimony?**

1505

1506 A. Yes, it does.

1507

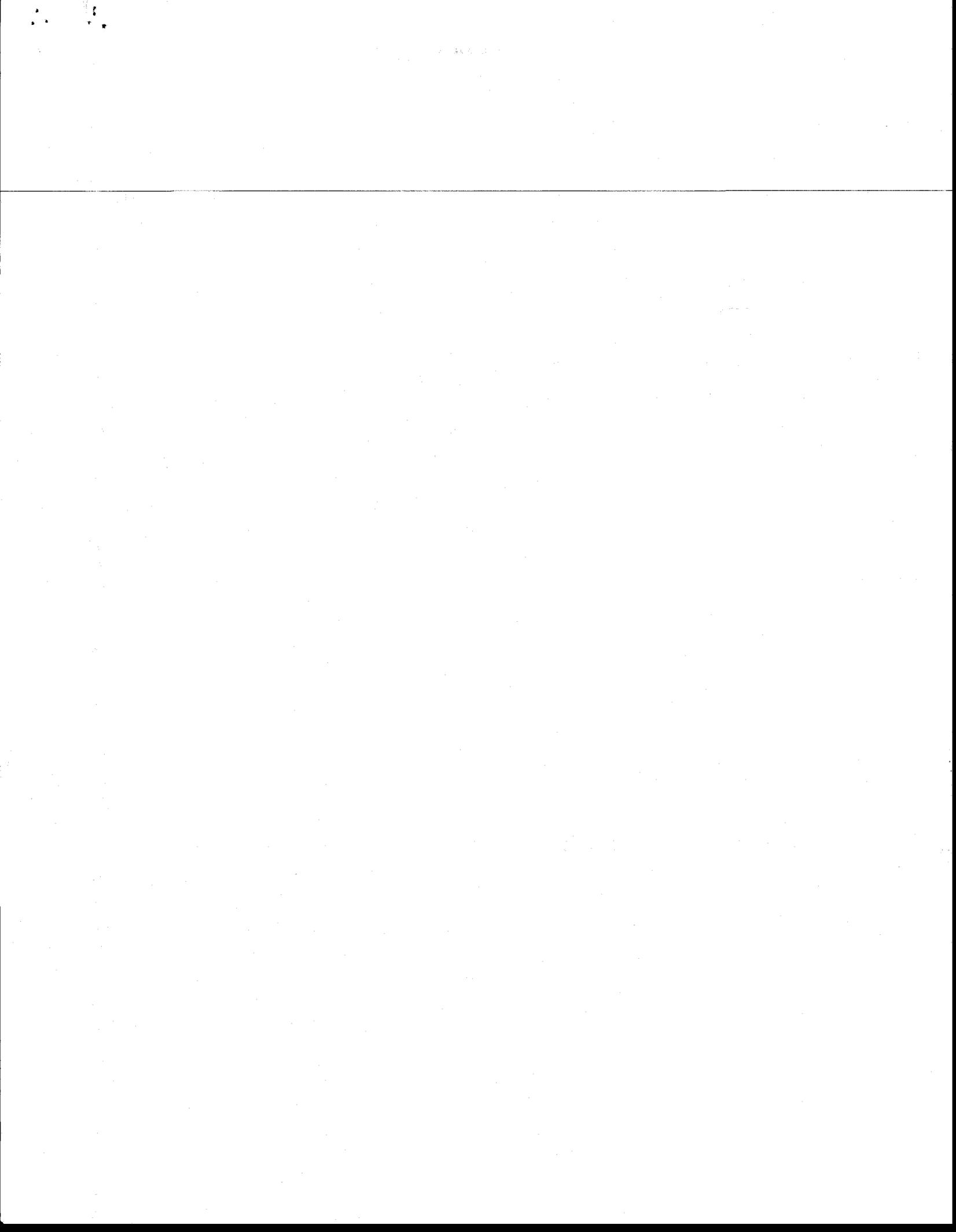


Table 1. Comparison of Penalty Amounts Owed to Modeled Calculations – Tier 1

Row #	Tier 1 recalculations			
	October	November	December	Total
1.	\$379,000	\$447,948	\$395,357	\$1,222,305
2.	\$886,500	\$1,119,175	\$1,396,400	\$3,402,075
3.	\$3,360,750	\$1,826,750	\$2,076,950	\$7,264,450

Notes:

Disclaimers provided by Ameritech in their response to DR MKP20:

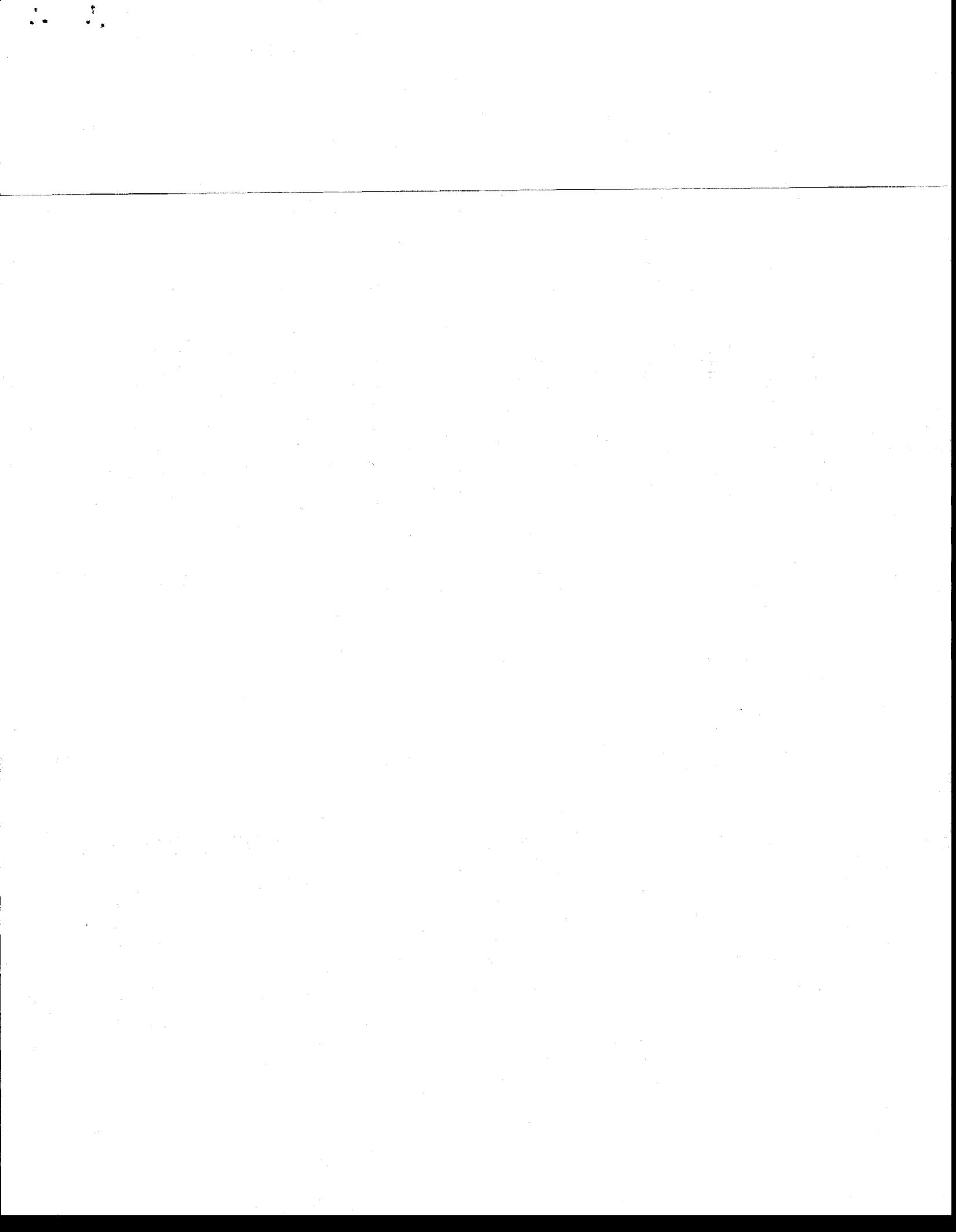
- 1) MKP 19 assumes all CLECs are eligible for remedies. Actual remedies are not paid to every single CLEC.
- 2) MKP 19 assumes the first month of data is in September. For actual remedies, the CLEC could have signed the remedy plan during any month. Therefore, the number of consecutive months in disparity may differ.

Table 2. Alternative Scenarios

Alternative Scenario #	Description	Penalty Estimates – Tier 1		
		October	November	December
AS1.	Remove k-factor Exclusions	\$1,249,100	\$1,298,225	\$1,577,600
AS2.	AS1, and All Penalties “High”	\$4,046,200	\$2,215,050	\$2,536,950
AS3.	AS2, and Penalties 2x “High”	\$8,092,400	\$4,430,100	\$5,073,900
AS4.	AS2, and Penalties 3x “High”	\$12,138,600	\$6,645,150	\$7,610,850
				\$26,394,600

Table 3. Comparison of Penalty Amounts Owed to Modeled Calculations – Tier 2

Row #		Tier 2 recalculations			(Oct-Dec) 3-month Total	(Nov-Dec) 2-month Total
		October	November	December		
1.	"Actual" Penalties owed, Oct-Dec 2000	\$1,355,300	\$991,000	\$1,181,300	\$3,527,600	\$2,172,300
2.	Re-calculated penalty amounts	---	\$1,215,400	\$1,460,800		\$2,676,200
AS2.	AS1, and All Penalties "High"	---	\$1,475,000	\$1,626,000		\$3,101,000
AS3.	AS2, and Penalties 2x "High"	---	\$2,950,000	\$3,252,000		\$6,202,000
AS4.	AS2, and Penalties 3x "High"	---	\$4,425,000	\$4,878,000		\$9,303,000



ICC Staff Ex. 1.00

DIRECT TESTIMONY
OF
SAMUEL S. MCCLERREN
TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

RESOLUTION OF DISPUTED ISSUES
PURSUANT TO CONDITION 30 OF
THE SBC/AMERITECH MERGER ORDER

DOCKET NO. 01-0120

JULY 13, 2001

1 **Q. Please state your name and business address.**

2 A. My name is Samuel S. McClerren and my business address is 527 East Capitol
3 Avenue, Springfield, Illinois 62794.

4

5 **Q. What is your occupation?**

6 A. I am an Economic Analyst in the Engineering Department of the
7 Telecommunications Division of the Illinois Commerce Commission ("Commission").

8

9 **Q. Please describe your educational and occupational background.**

10 A. I graduated from Eastern Illinois University with a Bachelor of Arts Degree in
11 Economics in 1976, and with a Master of Arts Degree in Economics in 1977. From 1978 to
12 1984 I worked in retail, supervising six outlets in the St. Louis area. In 1984, I joined the
13 Missouri Public Service Commission ("MPSC") as a Management Auditor. In 1987, I left
14 the MPSC to join the Illinois Commerce Commission ("Commission") as a Management
15 Analyst. In my role as a Management Analyst, I managed telecommunications projects of
16 Contel of Illinois, Inc., GTE North, Inc., and Illinois Bell Telephone Company. In April 1996,
17 I began working in the Telecommunications Division of the Commission.

18 I have testified before both the MPSC and the Commission. Before this
19 Commission, I testified in Docket 98-0555, the SBC/Ameritech Illinois merger proceeding,
20 regarding service quality matters, and in Dockets 98-0252 and 92-0448 regarding Illinois
21 Bell's alternative regulation plans. I led the implementation of Condition 30 from Docket

22 98-0555, which is the basis of this proceeding. I was case manager and provided
23 testimony in Dockets 98-0453 and 00-0596, the most recent Part 730 rulemaking
24 proceedings. Also, I have provided testimony in Dockets 96-0404, 96-0486, 96-0503, 97-
25 0171 and 97-0300 primarily related to telecommunications carriers' performance
26 measurement and/or operations support systems. Finally, I have provided verified
27 statements in several negotiated and arbitrated interconnection agreement proceedings.

28

29 **Q. What is the purpose of your testimony?**

30 A. The purpose of my testimony is to describe the background for this case, address
31 the "parity with a floor" proposal, describe an appropriate audit program, and recommend
32 extending the timeline for the performance remedy plan.

33

34 **Background of This Case**

35

36 **Q. Why is this case important to the Commission?**

37 A. This case will directly impact the competitive telecommunications environment in
38 Illinois. It will determine how quickly competition develops, and even whether or not
39 there will be a competitive telecommunications environment in some markets.
40 Competition depends, in no small part, on the successful provisioning of wholesale
41 service quality. Successful provisioning of wholesale service quality requires
42 appropriate and meaningful remedies in the event of non-performance.

43

44 **Q. Will you please describe wholesale service quality?**

45 A. Wholesale service quality can be defined as the quality of service SBC/Ameritech
46 Illinois (an incumbent local exchange carrier or "ILEC") provides to competitive local
47 exchange carriers ("CLECs"). For most CLECs, their ability to provide
48 telecommunications service requires that they purchase access to some or all of an
49 ILECs facilities. Accordingly, the quality of service an ILEC provides to a CLEC directly
50 impacts the quality of service a CLEC provides to its own end user customer.

51

52 **Q. What level of service should an ILEC provide to a CLEC?**

53 A. An ILEC should provide wholesale service to a CLEC in the same manner that it
54 would provide service to its own end user customers. In effect, wholesale service
55 should be provided on a nondiscriminatory basis, thereby providing a CLEC a
56 meaningful opportunity to compete.

57 The Telecommunications Act of 1996, in its list of obligations of incumbent local
58 exchange carriers, states that each incumbent local exchange carrier has to provide
59 interconnection:

60 "(C) that is at least equal in quality to that provided by the local exchange
61 carrier to itself or to any subsidiary, affiliate, or any other party to which the
62 carrier provides interconnection." Telecommunications Act of 1996,
63 Section 251(c)(2)(C).
64

65 **Q. What if parity of service is not possible, i.e., a measure is not performed by**
66 **an ILEC for itself?**

67 A. Then an appropriate benchmark measurement must be developed, again
68 providing CLECs a meaningful opportunity to compete.

69

70 **Q. Has anything been done in Illinois to implement a wholesale performance**
71 **measure program for CLEC customers of SBC/Ameritech Illinois?**

72 A. Yes. Condition 30 in Docket 98-0555, the SBC/Ameritech Illinois merger case,
73 ordered a process to develop and institute wholesale performance measures.

74

75 **Q. Will you please describe the process ordered in Condition 30?**

76 A. Condition 30 ordered a collaborative effort among SBC/Ameritech Illinois, CLECs
77 and Staff, which met from January 2000 through October 2000. The collaborative
78 process was ordered to give SBC/Ameritech Illinois, CLECs, and Staff the opportunity to
79 meet and discuss issues relative to performance measures. The Commission ordered
80 that the collaborative process take the 122 performance measures developed in the
81 Texas 271 review and make them applicable to Illinois. The Commission also ordered
82 that parity be the appropriate standard where possible, and where not possible, to adopt
83 benchmark measures as an alternative.

84

85 **Q. What is the status of the Condition 30 collaborative process?**

86 A. The collaborative meetings concluded in October 2000, and were very successful
87 in adapting the 122 performance measures into primarily parity-based measures.
88 Where it was impossible to develop parity-based measures, the collaborative effort did

89 successfully develop agreed-to benchmarks. The collaborative meetings failed to
90 resolve only one issue, the remedy plan issue, which is the basis for this formal
91 proceeding.

92 There is a six-month review of the performance measure plan currently underway
93 in the five state Ameritech region.

94

95 **Q. Have any payments for non-performance been paid by SBC/Ameritech**
96 **Illinois to either CLECs (Tier 1) or the State of Illinois (Tier 2)?**

97 A. Yes, Attachment 1 shows SBC/Ameritech Illinois' wholesale service quality non-
98 performance payments from September 2000 through June 2001. Please note that
99 there is a two-month delay between incurring the penalty and actually paying the
100 penalty to allow for administration, calculation and verification, so that the payment for
101 the month of July 2000, for example, was actually paid in September 2000.

102 As shown in Attachment 1, from September 2001 through June 2001,
103 SBC/Ameritech Illinois credited \$5,485,755 to CLECs (Tier 1) and paid \$14,959,500 to
104 the State of Illinois (Tier 2) for non-performance.

105

106 **Q. Does SBC/Ameritech Illinois pay any other penalty for non-performance**
107 **regarding wholesale service quality?**

108 A. Potentially. At the FCC, a subset of the Texas 122 wholesale performance
109 measures were developed as an SBC/Ameritech merger condition. These measures
110 have penalties associated with them, and it is known that SBC/Ameritech has been

111 paying fines relative to the FCC's merger order. It is also known that the amount paid to
112 the FCC is reduced by any amount SBC/Ameritech Illinois pays for wholesale service
113 quality non-performance in Illinois. However, the amount applicable to Illinois is
114 unknown to Staff, as SBC and the FCC consider it proprietary information.

115

116 **Parity With a Floor Proposal**

117

118 **Q. What is your understanding of the CLECs proposal regarding the "parity**
119 **with a floor" provision?**

120 A. This Commission ordered the "parity" concept in the merger order in Docket 98-
121 0555. In effect, as long as the ILEC is providing service to CLECs at the same level
122 that it provides to itself, parity has been attained and competition should proceed.

123 The primary problem with this approach has been that when an ILEC lets its
124 service level drop below the minimum service levels required to be maintained pursuant
125 to Part 730, it can provide the same substandard performance to CLECs and still be in
126 compliance with the parity requirement. Since the ILEC is in compliance with the parity
127 requirement, the ILEC avoids the remedies contained in the wholesale plan, yet the
128 CLECs are forced to provide the same substandard performance to their customers
129 because they rely on the ILEC for service.

130 This concern is not merely academic, as has been demonstrated by
131 SBC/Ameritech Illinois' historical performance on the "Out of Service > 24 Hours"
132 standard.

133

134 **Q. What is your position on the parity with a floor proposal made by the**
135 **CLECs?**

136 A. As a concept, I agree that there should be additional incentives for the ILEC to
137 meet minimum standards of service quality, as required by 83 Ill. Adm. Code Part 730.

138

139 **Describe an Appropriate Audit Program**

140

141 **Q. What are your thoughts about an audit program?**

142 A. There should be no legitimate doubts about the veracity of any numbers
143 developed as a result of the performance measure plan or remedies paid in response to
144 those numbers. Accordingly, I am fully supportive of auditing the performance plan and
145 remedies paid in response to the plan.

146 As a result of the merger orders, both at the ICC and FCC levels, an audit of the
147 wholesale performance numbers is performed by an independent firm annually, paid for
148 by SBC/Ameritech. Additionally, in Illinois, KPMG is currently testing the veracity of
149 wholesale service quality and remedy information as a result of Condition 29 of the
150 merger order in Docket 98-0555.

151 It is also my understanding that the current remedy plan in Illinois provides for
152 specific audits on SBC/Ameritech Illinois information as requested by any CLEC. While
153 the CLEC initially pays for the audit, if CLECs concerns are validated, SBC/Ameritech is
154 required to reimburse the CLEC for the cost of the audit.

155

156 **Extending the Timeline for the Performance Remedy Plan**

157

158 **Q. Are there any other issues you would like to address in this proceeding?**

159 A. Yes. I would like to address the timing of the wholesale performance measure
160 plan, or, more appropriately, when the plan will expire.

161

162 **Q. Why are you addressing the issue of timing in this proceeding?**

163 A. I recommend wholesale performance measures be included in this proceeding to
164 clearly survive the three year time limit of Condition 30 in Docket 98-0555. While the
165 issue of a remedy plan remains contentious, Condition 30 has been a successful
166 collaborative venture between SBC/Ameritech Illinois, CLECs, and Staff. The problem,
167 from my perspective, is that Condition 30 may arguably have a date after which it is no
168 longer in effect. In Docket 98-0555, the Order states:

169 Except where other termination dates are specifically established, all conditions
170 set out below shall cease to be effective and shall no longer be binding in any
171 respect three years after the Merger Closing Date. (Order, p. 237).

172

173 While there is other language in the Order that indicates that Condition 30 does not end
174 three years after the Merger Closing Date, I believe the Commission has an opportunity
175 in this proceeding to prevent any potential misunderstanding in the future.

176

177 **Q. What do you propose in this proceeding?**

178 A. I recommend that the Commission order that the wholesale service quality
179 remedy plan continue after October 2002, clearly surviving the "three years after Merger
180 Closing Date" limitation that may apply in Condition 30.

181

182 **Q. How long do you believe wholesale performance measures should be in**
183 **effect?**

184 A. They should be in effect as long as SBC/Ameritech Illinois has an alternative
185 regulation plan, and as long as it is necessary for this Commission to ascertain that
186 SBC/Ameritech Illinois is unable to provide discriminatory service to CLECs.

187

188 **Q. Does this conclude your testimony?**

189 A. Yes, it does.

Attachment 1

Ameritech - Illinois

Tier 1 and Tier 2 Liquidated Damages Payments

Month	Amount of Payments		
	Tier 1	Tier 2	Total
Jul-00	\$3,450	\$705,500	\$708,950
Aug-00	\$121,900	\$810,500	\$932,400
Sep-00	\$141,870	\$1,268,500	\$1,410,370
Oct-00	\$367,590	\$1,390,300	\$1,757,890
Nov-00	\$425,223	\$991,000	\$1,416,223
Dec-00	\$317,407	\$1,181,300	\$1,498,707
Jan-01	\$1,076,625	\$1,814,900	\$2,891,525
Feb-01	\$903,854	\$2,247,300	\$3,151,154
Mar-01	\$1,098,006	\$1,979,400	\$3,077,406
Apr-01	\$1,029,830	\$2,570,800	\$3,600,630
Totals	\$5,485,755	\$14,959,500	\$20,445,255

NOTE: Amounts reported in each of the above months reflect payments made for that month and any subsequent revisions.