

**DRAFT OF AUGUST 17, 2000, FOR DISCUSSION PURPOSES ONLY  
SUBJECT TO CHANGE PRIOR TO FINAL DISTRIBUTION**

**CLEC PROPOSED REMEDY PLAN  
FOR AMERITECH  
ILLINOIS COLLABORATIVE  
AUGUST 15, 2000**

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**Introduction**

The CLECs in Illinois participating in the Performance Measure Collaboratives have agreed to present the Illinois Commerce Commission with a compromise performance remedy plan. Although each CLEC has its own recommended plan, the parties have determined that the following compromise plan would incorporate those provisions the Illinois Commerce Commission has ordered, as well as provide the proper remedy for SBC/Ameritech to provide Illinois CLECs with adequate operational support services.

The CLECs intend to offer this plan in Indiana, Michigan, Ohio, and Wisconsin, as well as Illinois. The CLECs believe that a remedy plan must take effect prior to 271 application and approval to enforce Ameritech's market opening requirements under the Telecommunications Act of 1996, Section 251.

**Prerequisites for Performance Remedies**

In order for a Performance Remedy Plan to be effective, performance measures that establish the minimum acceptable performance reporting requirements must be in place. In Illinois, the CLECs agreed with SBC/Ameritech to use the SBC Texas performance measures as a starting point in the collaborative. The collaborative has been meeting for eight months, and in conjunction with progress in other state collaboratives, an agreement on the measures is close to conclusion, with the vast majority of issues successfully negotiated to closure. Some issues in disagreement remain, including many that rely on the outcome of the OSS collaborative and KPMG testing.

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## **General Principles**

The FCC highlighted in its first approval of a 271 application (Bell Atlantic-New York) general principles for a successful performance remedy plan. The CLEC's compromise plan embraces the FCC's pillars of an effective remedy. Such a plan must include:

- Potential liability that provides a meaningful and significant remedy to comply with the designated performance standards;
- Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal;
- And reasonable assurances that the reported data is accurate.
- In addition to the FCC's well articulated criteria, the CLECs' compromise plan also reflects the following attributes of an effective remedy plan:
  - Remedy payments increase with the severity of the substandard performance and the duration of substandard performance. Remedy amounts increase permanently for repeated, chronic failures.
  - Remedies dynamically adjust to market entry strategies better than static weighting plans that create bargain prices or free-zones for anticompetitive behavior. Relationship of remedies to pricing and volumes, with per measure additional remedies for chronic and severe failures, ensure that the remedies are right-sized to motivate the ILEC to fix rather than ignore the operational issues causing the disparity in performance.

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**Remedy Plan Structure**

Remedies should be based on the expected financial gain to Ameritech-Illinois from impeding competition by providing sub-standard service to CLECs. A review threshold for total remedies should be set no less than the FCC's recommendation of 36 percent of "Net Revenue," or \$361 Million for Ameritech-Illinois (see Table below for calculations).

In light of the post-271 remedial actions of the FCC and New York Public Service Commission that raised the penalties for which Bell Atlantic New York was subject to 44 percent of net revenue, the CLECs recommend an initial review threshold of 44 percent or \$441 million per year. If a remedy cap is established exceeding the review threshold, its value should be based on an economic and financial analysis of the expected financial gain to Ameritech-Illinois from deterring competition, adjusted for the probability of detection and punishment inherent in the performance plan. The CLEC plan does not propose a remedy cap because a cap can reduce the effectiveness of the remedy plan with no offsetting benefits.

<b>Data for Illinois from ARMIS 43-01 (1999)</b> (Downloaded from FCC Web Site: <a href="http://www.fcc.gov/ccb/armis/">http://www.fcc.gov/ccb/armis/</a> )						
Year	Company Name	Row_#	Row_Title	Total_b	State_g	Interstate_h
1999	Illinois Bell	1090	Total Operating Revenues	4,322,326	3,071,054	963,308
1999	Illinois Bell	1190	Total Operating Expenses	2,625,418	1,783,582	520,233
1999	Illinois Bell	1290	Other Operating Income/Losses	-1,560	-1,074	-339
1999	Illinois Bell	1390	Total Non-operating Items (Exp)	126,625	59,615	-60
1999	Illinois Bell	1490	Total Other Taxes	175,680	135,459	38,229
1999	Illinois Bell	1590	Federal Income Taxes (Exp)	493,559	359,726	132,130
1999	Illinois Bell	1915	Net Return	N/A	N/A	272,438

<b>FCC's Net Return Calculation*</b>					
			Net Return	36% Net Return	44% Net Return
Illinois Bell	"Net Return"		1,004,036	361,453	441,776
Illinois Bell	75% Probability Adjustment			481,937	589,034

\*Calculations in testimony based on FCC NY 271 Order at ft. 1332: "To arrive at a total "Net Return" figure that reflects both interstate and intrastate portions of revenue derived from local exchange service, we combined line 1915 (the interstate "Net Return" line) with a computed net intrastate return number (total intrastate operating revenues and other operating income, less operating expenses, non-operating items and all taxes)." Following the FCC's guidelines, the 'Net Return' is [272438+3071054+-1074 - (1783582+59615+135459+359726)]= \$1004036

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1. Tier I is paid to the CLECs for poor performance. Tier II is paid to the State of Illinois for poor performance delivered to the aggregate CLEC community. Tier I consequences ensure that harmed CLECs can remain viable in the market despite the inferior service; Tier II remedies redress systemic barriers to competition and ensure that remedies reach deterrent levels even though CLEC market efforts may not clearly warrant remedies of such magnitude.
2. While statistical tests are used to detect discrimination for parity measures (those where service levels provided to CLECs can be compared to the levels provided to retail customers or to Ameritech's affiliate), levels of remedies are based on percentage differences in performance. Any miss of a benchmark measure (those where there is no comparable retail or affiliate analogue for comparison) would invoke a remedy that likewise would increase by the percentage range by which the benchmark is missed. Those measures that require parity comparisons and those that require benchmarks have been determined in the Performance Measure Collaborative. (The 1996 Telecommunications Act ensures that ILEC treatment of CLECs is not only non-discriminatory, but also "just and reasonable." Service below the Commission's end user standards is not reasonable and the Commission may deem it appropriate to set benchmarks for services that have a substandard retail service as the parity analog. The benchmark could be gradually increased over time as an added remedy to improve end user service quality for ILEC and CLEC customers.)
3. **Parity Measure Remedies For Tier I-** Remedies for parity measurements are based upon statistical comparison of service performance levels provided to each CLEC, compared to service levels provided by Ameritech to retail customers and to Ameritech's affiliate. The CLECs believe that the intent of the Telecommunications Act of 1996 is clear – Ameritech must provide parity service to CLECs as compared to its treatment of affiliates as well as its retail customers.. Therefore, the CLECs propose that remedies would be due for parity measures that show either superior retail or affiliate treatment compared to wholesale performance.

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Performance levels are based upon evaluation of the modified z-score statistic. Because of the critical nature of provisioning intervals to competition, the CLECs propose that for interval and missed appointment metrics that the critical value balance the probability of Type I (ILEC found guilty when innocent) and Type II (ILEC found innocent when guilty) errors. The CLECs have agreed to use a 1.04 critical value, or 85% confidence level, to detect discrimination in average completion interval and missed due date measures.

For all other metrics, a 1.645 critical value, or 95% confidence level, would be used to detect disparity. For both parity and benchmark measures, Monthly Recurring Charges (MRC) and Non-Recurring Charges (NRC) for the affected service would be refunded for low level and first time misses. Additional per measure remedies would apply based on the range of performance difference and the duration of the poor performance. For metrics unrelated to service charges, such as OSS System Availability, surrogate per occurrence remedies could be established.

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**I. MAGNITUDE PAYMENTS FOR PARITY MEASURE MISSES**

<b>TIER I REMEDY PAYMENTS FOR MAGNITUDE - PARITY MEASURES</b>				
<b>Performance Level</b>	<b>Measures</b>	<b>Remedy Payment per Sub-measure per Month for 0.01-5% worse (Ordinary)*</b>	<b>Remedy Payment per Sub-measure per Month for 5.01-10% worse (Intermediate)</b>	<b>Remedy Payment per Sub-measure per Month for &gt; 10% worse (Severe)</b>
z-test value < 1.04	All	No remedies apply.		
z-test value >= 1.04	Completion Interval Missed Due Date	Refund of MRCs and NRCs	Refund of 2x MRCs and NRCs	Refund of 3x MRCs and NRCs
z-test value >= 1.65	All other measures without NRC/MRC	Per Occurrence Amount	\$3,000 + Per Occurrence Amount	\$9,000 + Per Occurrence
z-test value >= 1.65	All other measures with NRC/MRC	Refund of MRCs and NRCs	\$3,000 + refund of MRCs and NRCs	\$9,000 + refund of MRCs and NRCs

4. **Benchmark Measure Remedy for Tier I** - Remedies for benchmark measures are based upon a comparison of achieved service performance levels for CLECs to the established benchmarks. These benchmarks were established at the lower end of acceptable performance, and are less than 100%. Therefore, the benchmark should be considered a "bright line" that SBC/Ameritech must meet in order to provide the minimum acceptable level of service that would allow the CLECs to compete.

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Service performance levels that do not achieve the benchmarks are subject to remedy payments. In order to ensure parity with the treatment of Ameritech end users, in all cases of Ameritech failure to meet the benchmark for completion interval performance measurements, NRCs and MRCs shall be refunded in addition to any applicable intermediate or severe magnitude as well as duration remedies. No statistical evaluation is performed for these measures. The CLECs have compromised on the values in the chart below.

**II. MAGNITUDE PAYMENTS FOR BENCHMARK MEASURE MISSES**

<b>TIER I REMEDY PAYMENTS FOR MAGNITUDE – BENCHMARK MEASURES</b>				
<b>Performance Level</b>	<b>Measures</b>	<b>Remedy Payment per Sub-measure per Month for 0.01-5% worse (Ordinary)</b>	<b>Remedy Payment per Sub-measure per Month for 5.01-10% worse (Intermediate)</b>	<b>Remedy Payment per Sub-measure per Month for &gt; 10.01% worse (Severe)</b>
Meets Benchmark	All	No remedies apply.		
Worse than Benchmark	All measures without NRC/MRC	Per Occurrence Amount	\$3,000 + Per Occurrence Amount	\$9,000 + Per Occurrence
Worse than Benchmark	All measures with NRC/MRC	Refund of MRCs and NRCs	\$3,000 + refund of MRCs and NRCs	\$9,000 + refund of MRCs and NRCs

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5. **Parity Measure Remedies for Tier II** - The same rules apply under Tier II to the aggregate (or pooled) data of the individual CLECs as are employed for the individual CLEC data under Tier I, except that a 5% Type I error rate is used.

<b>TIER II REMEDY PAYMENTS - PARITY MEASURES</b>		
<b>Performance Level</b>	<b>Remedy Level</b>	<b>Remedy Payment per Submeasure per Month</b>
z-test value less than or equal to 1.65	Indeterminate	\$0
z-test value 1.65 to 3.0 (95% to 99.87% confidence)	Market Impacting	n\$9,000
z-test value > 3.0 (over 99.87% confidence)	Market Constraining	n\$39,000

The value for “n” should be determined based upon the most recent data for the state and relating to resold lines and UNE loops as reported in the most recent Report of Local Competition published by the FCC. The calculation would be based on the most current data reported to the FCC and be as follows: (resold lines + UNE loops)/(total switched lines).

<b>Lines provided to CLECs/Total Ameritech and CLEC Lines</b>	<b>Value of “n”</b>
more than 50%	0
more than 40% less than 50%	1
more than 30% less than 40%	2
more than 20% less than 30%	4
more than 10% less than 20%	6
more than 5% less than 10%	8
0% to less than 5%	10

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Thus, as competition becomes established, the size of the applicable Tier II consequence is reduced to zero if Ameritech no longer provides a majority of the local lines to the CLECs in its serving area. Based upon current data, the current value of “n” for Ameritech is 10.

6. **Benchmark Measure Remedies for Tier II** - The same rules apply under Tier II to the aggregate (or pooled) data of the individual CLECs as are employed for the individual CLEC data under Tier I, except that consequences do not apply until the pooled CLEC performance results degrades to a point that is equivalent to an intermediate failure designation.

**TIER II REMEDY PAYMENTS - BENCHMARK MEASURES**

<b>Performance Level</b>	<b>Remedy Payment per Sub-measure per Month for 0.01-5% worse (Ordinary)</b>	<b>Remedy Payment per Sub-measure per Month for 5.01-10% worse (Intermediate)</b>	<b>Remedy Payment per Sub-measure per Month for &gt; 10.01% worse (Severe)</b>
Meets Benchmark	No Remedies Apply		
Worse than Benchmark	No Remedies Apply	n\$9,000	n\$39,000

8. **Chronic Remedy Payments** - If either a parity measure or a benchmark measure is missed for two consecutive months, a chronic remedy payment shall apply to any subsequent month that is missed. A factor approach is used for chronic failures. The factors are in the table below. Upon three months of compliance with the performance standard, the remedy shall return to its original or base level. If the chronic payments are invoked a second time, the highest chronic remedy payment shall become the new "base" remedy regardless of subsequent compliance. Repeating chronic failures is good evidence that the base remedy payment is too low. The approach of this plan ensures that, over time, the effective remedy amounts automatically will be determined and levied for sub-standard performance.

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**DURATION PAYMENTS FOR PARITY AND BENCHMARK MEASURE  
CONSECUTIVE MONTH MISSES**

<b>DURATION REMEDY PAYMENTS – BOTH PARITY AND BENCHMARK MEASURES</b>		
<b>Consecutive Month Miss</b>	<b>Measures</b>	<b>Remedy Payment per Sub- measure</b>
Month 1	All	No additional duration remedies apply.
Month 2	All	1.5 x Magnitude payment
Month 3	All	3 x Magnitude payment
Month 4	All	4 x Magnitude payment
Month 5	All	5 x Magnitude payment
Month 6	All	6 x Magnitude payment

7. **Review Threshold** – In addition to establishing an overall review threshold at 36% net local return, regulatory review also would be triggered without withholding remedies in escrow for any month where Ameritech’s remedy payments exceed 1/6 of \$441M, or \$ 73.5M. The review would focus on discovering the source of Ameritech’s poor performance, and on how the Commission could incent compliant performance promptly, which may include additional remedies or other consequences such as a recommendation that the FCC suspend or not grant 271 authority..

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8. Remedies are applicable to non-regulatory approved late reports, incomplete reports (missing sub-metrics) and late corrective action reports where they are applicable. These payments will be made to the State of Illinois. These remedies are outlined below.

Late Reports Per Day	\$5,000
Incomplete Reports Per Submetric Per Day	\$1,000
Late Corrective Action Reports	\$5,000
Late Or Missing Change Management Notices for Metrics and/or Unauthorized* Noticed Changes	\$5,000

\*Unauthorized means change made unilaterally by Ameritech without agreement from CLEC collaborative participants.

9. Reporting Structure:

- SBC/Ameritech Illinois retail data shall be compared to individual CLEC data and, separately, to aggregate CLEC data that excludes the affiliate data. Additionally, SBC/Ameritech's affiliate data shall be compared to individual CLEC data and, separately, to aggregate CLEC data.
- CLECs shall have the right to review SBC/Ameritech data, and SBC/Ameritech affiliate data, subject to an appropriate protective agreement.

**Application and Payment of Performance Remedies**

1. The remedy plan supplements remedies already included in CLEC interconnection agreements. CLECs also may voluntarily negotiate additions, deletions or changes to the metrics adopted in this collaborative for inclusion in interconnection agreements. Upon completion of this proceeding, the metrics developed and remedies would be in force for all CLECs buying service through tariff or interconnection agreement from Ameritech.

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2. Performance remedy payments will be determined on a monthly basis and will be applied at a submeasure level for each CLEC for each failed submeasure.

Payments to the CLECs will be made by check by the end of the month following the data report (e.g. June data, reported in July, remedies paid by August 31). An invoice will accompany the payment explaining the calculation of each submetric missed (base and any magnitude or duration remedies should be specified). Payment by check is necessary in order to ensure certain payment and is easier for the CLECs to administer and track. Bill credits are inappropriate as they are not easily traceable back to a specific CLEC account for credit, are more visible to Ameritech executives, are hard to track when Ameritech billing is erratic or subject to numerous billing disputes. Remedies for prior periods also can potentially be greater than the bill for a given month. It is counterintuitive to require CLECs to buy additional services from a vendor to receive full compensation for past inferior performance.

### **Mitigation Measures and Dispute Resolution**

1. The use of statistical testing provides a reasonable level of deviation from the strict parity requirement and helps minimize the risk of random variation. In the SBC region, a score greater than 0 reflects that the CLEC received poorer performance than Ameritech, so even setting the modified z score at 1.04 provides some mitigation for disparity resulting from monthly sampling of process. At a 1.645 or higher critical value, the risk of discrimination going undetected is greater than the possibility of Type I error. No additional mitigation is required..
  - A limited root-cause analysis process will be performed at a CLECs request by SBC/Ameritech for chronic performance failures.

Either SBC/Ameritech or the CLEC may initiate a request for an expedited hearing process to resolve differences associated with performance parity and remedy payment issues; however, payments must continue to the CLECs pending the outcome of such proceeding.

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**Audits**

SBC/Ameritech will support an annual comprehensive audit of its reporting procedures and reportable data. SBC/Ameritech will include all systems, processes and procedures associated with the production and reporting of performance measurement results. This audit will be performed by a third party auditor. The third party auditor will be jointly selected by SBC/Ameritech and the CLECs. If the parties cannot agree on the auditor, the auditors selected by each party will jointly determine the auditor. Costs for these annual audits will be borne by SBC/Ameritech.

The comprehensive Annual Audits will be conducted every twelve (12) months, with the first such audit commencing twelve (12) months after the conclusion of the KPMG OSS Test's metric replication. (At its completion, SBC/Ameritech shall submit its annual comprehensive audit to the Commission and distribute copies to CLECs.

**Mini – Audits:**

In addition to an annual audit, SBC/Ameritech and CLECs agree that the CLECs would have the right to mini-audits of individual performance measures/submeasures during the year. When a CLEC has reason to believe the data collected for a measure is flawed or the reporting criteria for the measure is not being adhered to, it has the right to have a mini-audit performed on the specific measure/sub-measure upon written request (including e-mail), which will include the designation of a CLEC representative to engage in discussions with SBC/Ameritech about the requested mini-audit. If, 30 days after the CLEC's written request, the CLEC believes that the issue has not been resolved to its satisfaction, the CLEC will commence the mini-audit upon providing SBC/Ameritech with 5 business days advance written notice. Each CLEC would be limited to auditing three single measures/sub-measures or one domain area (preorder, ordering, provisioning, maintenance or billing). during the audit year. The audit year shall commence with the start of the KPMG OSS test (or an Annual Audit. Mini-Audits may be requested for months including and subsequent to the month in which the KPMG OSS or an Annual Audit was initiated. Mini-audits cannot be requested by a CLEC while the OSS third party test or an Annual Audit is being conducted (i.e. before completion).

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Mini-Audits will include all systems, processes and procedures associated with the production and reporting of performance measurement results for the audited measure/sub-measure. Mini-Audits will include two (2) months of data, and all parties agree that raw data supporting the performance measurement results will be available monthly to CLECs.

No more than three (3) Mini-Audits will be conducted simultaneously unless more than one CLEC wants the same measure/sub-measure audited at the same time, in which case, Mini-Audits of the same measure/sub-measure shall count as one Mini-Audit for the purposes of this paragraph only.

Mini-Audits will be conducted by a third party auditor, selected by the same method as described above. SBC/Ameritech will pay for fifty percent (50%) of the costs of the mini-audits. The other fifty percent (50%) of the costs will be divided among the CLEC(s) requesting the mini-audit unless SBC/Ameritech is found to be “materially” misreporting or misrepresenting data or to have non-compliant procedures, in which case, SBC/Ameritech would pay for the entire cost of the third party auditor. Parties agree that the issue of whether SBC/Ameritech is “materially” at fault will be based on the parameters of failure to perform: “materially” at fault means that a reported successful measure changes as a consequence of the audit to a missed measure, or there is a change from an ordinary missed measure to intermediate or severe. Each party to the Mini-Audit shall bear its own internal costs, regardless of which party ultimately bears the costs of the third party auditor.

If, during a Mini-Audit, it is found that for more than 30% of the measures in a major service category SBC/Ameritech is “materially” at fault (i.e., a reported successful measure changes as a consequence of the audit to a missed measure, or there is a change from an ordinary missed measure to intermediate or severe), the entire service category will be re-audited at the expense of SBC/Ameritech. The major service categories for this purpose are:

- Pre-Ordering/Ordering
- Billing
- Provisioning - POTS and UNE Loop and Port Combinations

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- Provisioning - Resale Specials and UNE Loop and Port Combinations
- Provisioning - Unbundled Network Elements
- Maintenance - POTS and UNE Loop and Port Combinations
- Maintenance - Resale Specials and UNE Loop and Port Combinations
- Maintenance - Unbundled Network Elements
- Interconnection Trunks
- Local Number Portability
- Database - 911
- Database - Directory Assistance
- Database - NXX
- Collocation
- Coordinated Conversions

Each Mini-Audit shall be submitted to the CLEC involved and to the Commission as a proprietary document. SBC/Ameritech will provide notification to all CLECs of any Mini-Audit requested when the request for the audit is made.