throughout Ameritech's network, the Commission will not require Ameritech to modify its TELRIC rates in this proceeding to reflect such because, as indicated above, this docket is not the appropriate forum in which to modify Ameritech's TELRIC rates and because the record contains no specific cost information regarding the four options.

This is not to suggest, however, that the Commission will never recognize one or more of these four options or other options for unbundling IDLCs and require Ameritech's cost studies to reflect such. The Commission is particularly interested in these possibilities since SBC's Project Pronto entails spending $6 billion upgrading its network, including the installation of GR-303 compatible NGIDLCs in Illinois. Ameritech's own witnesses appear to appreciate the impact of these upgrades on CLECs. At first Ameritech witness Florence testifies that Ameritech does not plan to deploy GR-303 compatible NGIDLCs in its region in the foreseeable future and that only UDLCs can be used to provision unbundled loops. Ameritech witness Suthers, however, indicates that Ameritech's new IDLC facilities do not present the same unbundling problems as some of its older facilities since current NGIDLC technology permits unbundled loops to be provisioned without installing new COTs or RTs. Mr. Florence later revises his earlier position by stating that IDLC systems can be unbundled but only with significant work. Under cross-examination, Mr. Florence further concedes that Ameritech is installing GR-303 compatible NGIDLCs as part of Project Pronto, but claims that it is doing so only for bundled loops. At the appropriate time and in the proper forum, the Commission will consider revisions to Ameritech's cost studies reflecting the unbundling of NGIDLCs. At present, however, the Commission will conduct its double recovery analysis of Ameritech's special construction policy without taking into account the limited instances where circumstances and technological advances make it feasible to provision UNEs from IDLCs.

All of the active parties presented extensive argument on the question of double recovery. For the most part the Commission concurs with the position of Staff. Double recovery will be addressed separately with regard to complex work, IDLC/RSU technology, loop conditioning, and placing and splicing additional cable.

Ameritech argues that its complex work activities are not relevant to this investigation because it no longer intends to collect special construction charges for these activities and instead intends to recover the alleged costs associated with these activities through its TELRIC rate for UNEs. The Commission disagrees with this argument and concludes that it is entirely within the Commission's authority to evaluate the propriety of Ameritech's complex work activities. When this docket was initiated, Ameritech assessed special construction charges for complex work; it may not avoid scrutiny of such charges by relabeling them and attempting to recover the alleged costs in a different manner.

The first type of complex work is line station transfers. Mr. Phipps states that a line station transfer involves converting an Ameritech end user from its non-integrated

facilities to its integrated facilities for the purpose of freeing up a copper loop for a CLEC's use. He states that Ameritech would attempt a line station transfer when a CLEC requests a loop in an integrated environment where no unused copper loops are available for the CLEC's use. The Commission first notes that it appears that Ameritech's current TELRIC rates do not expressly recover the specific costs associated with line station transfers. As discussed below, however, the Commission finds that Ameritech may not assess special construction charges on a CLEC when COT technology is not utilized in conjunction with IDLC and a loop is unbundled by building separate non-integrated facilities since to do so constitutes double recovery. The Commission concludes that it would not be a reasonable result for Ameritech to assess special construction charges on a CLEC when it incurs lower costs associated with a line station transfer but does not assess special construction charges to build separate non-integrated facilities. In other words, while Ameritech's TELRIC rates will allow it to recover the cost associated with building separate non-integrated facilities to provision an unbundled loop when COT technology is not utilized, in some circumstances Ameritech may have the ability to provision the unbundled loop, via line station transfer, at a cost lower than that reflected in its TELRIC rates. Thus, the Commission finds that Ameritech may not assess special construction charges in addition to its current TELRIC rates for performing a line station transfer because it would over-recover its costs.

Defective loop recovery follows line station transfers in the list of complex work activities. The Commission concurs with Staff and finds that Ameritech's costs associated with defective loop recovery are already recovered in the TELRIC rate. When a loop becomes unusable because it requires maintenance, paragraph 268 of the FCC's First Report and Order indicates that Ameritech is obligated to "maintain, repair, or replace" it. Ameritech's costs associated with repairing defective circuits are reflected in its maintenance expenses, which Ameritech defines as costs "incurred in order to keep telephone plant and equipment resources in usable condition." Since Ameritech may not provide unusable UNEs to CLECs, its costs for repairing defective loops has been included in the TELRIC rate. Accordingly, Ameritech may not collect additional revenue for defective loop recovery since such would constitute double recovery of costs already reflected in TELRIC studies. This is true whether Ameritech seeks to collect for defective loop recovery through special construction charges or additions to its present TELRIC rates.

The third type of complex work activity concerns installing plug-in cards. Ameritech charges for acquiring and installing plug-in cards in a RT and COT to unbundle a loop in an IDLC/RSU environment if it determines that there are not enough plug-in cards in the RT and COT for a CLEC to use. As Staff demonstrated, Ameritech's TELRIC rates include the cost of plug-in cards. Installation of the plug-in cards is included as well via the in-plant/investment factor. The Commission finds that Ameritech may not charge for additional plug-in cards either through special construction charges or additions to its present TELRIC rates. Ameritech's argument that its cost studies only reflect existing plant is unpersuasive. In addition, the

Commission notes that through the TELRIC rates that every CLEC pays, Ameritech is being compensated for plug-in cards whether they are needed or not.

Wire out of limits is the next type of complex work. Ameritech will perform wire out of limits when a CLEC requests a loop and the serving terminal lacks sufficient capacity. Performing a wire out of limits, Mr. Phipps states, entails connecting the requested loop to an adjacent terminal with spare facilities. Although Mr. Phipps indicates that wire out of limits is very similar to item C of Ameritech's tariff Ill. C. C. No. 20, Part 2, Section 5, Original Sheet No. 1, Staff nevertheless opposes charging for wire out of limits on the grounds that it is inappropriate to do so merely because the serving terminal has run out of capacity. Mr. Starkey further argues that charges in excess of present TELRIC rates for wire out of limits are inconsistent with Ameritech's tariff and constitute double recovery. In resolving this issue, the Commission first notes that it does not share Mr. Starkey's interpretation of Ameritech's tariff. Mr. Starkey's second basis for rejecting the charges, that such charges would constitute double recovery, is similar to Mr. Phipps' reasoning. Staff suggests that proper implementation and observance of fill factors should prevent Ameritech from running out of capacity in the serving terminals. In other words, Staff is suggesting that Ameritech would double recover its costs if allowed to collect for wire out of limits since the fill factors incorporated into the TELRIC rates allow Ameritech to maintain a certain amount of excess capacity. The Commission agrees and Ameritech may not assess additional charges for wire out of limits either through special construction charges or additions to its current TELRIC rates due to the circumstances under which it performs wire out of limits.

The fifth type of complex work, break and connect through, involves, according to Mr. Phipps, breaking a connected circuit at a terminal where no service is being provided at that customer location, and connecting that circuit to a different customer location. The Commission agrees with Staff that Ameritech has not sufficiently distinguished this activity from the other types of simple dispatch, the costs of which Ameritech admits are recovered through its TELRIC rates. As such, Ameritech may not assess additional charges for break and connect through either as nonrecurring special construction charges or as an addition to its existing TELRIC rates.

The final type of complex work activity consists of installing pair gain devices. When no spare copper loops are available, Mr. Phipps asserts that Ameritech can use a pair gain device to expand the capacity of single copper loop by six times by deriving six pairs from a single pair. This type of complex work activity presents a situation similar to that of line station transfer in that Ameritech's TELRIC rates do not appear to include the specific cost of the actual pair gain device. As with line station transfer, however, installing pair gain devices appear to present an opportunity for Ameritech to incur lower costs associated with providing an unbundled loop than building separate non-integrated facilities, the full cost of which is already included in TELRIC rates, as discussed below. The Commission concludes that Ameritech may not assess special construction charges on a CLEC when it incurs lower costs associated with installing

pair gain devices since it may not assess special construction charges for building more costly separate non-integrated facilities. Stated another way, Ameritech should not be able to assess additional charges simply because it has the option of a short-cut which is not reflected in its TELRIC rates when, had the short-cut not been available, Ameritech would have been obligated to provide a loop anyway without assessing additional charges. Accordingly, Ameritech may not assess additional charges for installing pair gain devices either as nonrecurring special construction charges or as an addition to its existing TELRIC rates.

The Commission, in addition, notes that Ameritech would gain, at a CLEC's expense, additional capacity on its copper lines if the CLEC uses less than the number of lines gained by installing the pair gain device. Not only would Ameritech charge the CLEC the TELRIC based rate for the loop provided as a result of installing a pair gain device, Ameritech would also receive revenues from other CLECs or retail customers using the loops "created" through the installation of the pair gain device. Such a windfall is not appropriate since Ameritech is still obligated to provide an additional loop without assessing additional charges in the event that installing pair gain devices is not possible. Accordingly, Ameritech may not assess special construction charges or add to its TELRIC rate for installing pair gain devices.

With regard to IDLC/RSU technology, in those instances where a CLEC requests an unbundled loop served via IDLC/RSU and no spare copper loops are available, Ameritech argues that it is entitled to assess special construction charges to provision the unbundled loop if it deems appropriate. In such situations, Staff identifies two possible scenarios: either the IDLC/RSU is utilized in conjunction with COT technology, or it is not. The key difference between these two scenarios is that if COT technology is utilized, loops can be provisioned by utilizing plug-in cards at the RT and COT. If COT technology is not utilized, however, loops may be unbundled only by a line station transfer or building separate non-integrated facilities.

If Ameritech determines that the requested unbundled loop can be provisioned by installing plug-in cards, additional charges for such plug-in cards, either through special construction assessments or additions to the TELRIC rate, are not appropriate since, as indicated above, Ameritech's current TELRIC rates already include the cost investment and installation expense associated with plug-in cards. If COT technology is not present, meaning that additional plug-in cards are of no use, and a line station transfer is possible, Ameritech may not assess additional charges for the line station transfer as explained above. If an available unbundled loop may only be provisioned via the construction of new non-integrated facilities, the Commission concurs with Staff that such may be done through the acquisition and installation of a COT/RT system. The technical distinctions between IDLC and RSU do not merit different treatment since the same analysis and principle apply to both. Loops served via RSU may still be unbundled and made available through the use of a COT/RT system. As Staff demonstrated, the average costs of acquiring, installing, and maintaining these facilities necessary to provision an unbundled loop are already included in Ameritech's

TELRIC rates. Given that TELRIC rates recover Ameritech's investment in a facility over the life of the facility, Ameritech's assessment of special construction charges for such a COT/RT system would constitute double recovery. Ameritech counters that it has no guarantee that a CLEC will use the new facility long enough to recover its costs. The Commission observes, however, that there is no evidence that the CLEC served by the facility will not use it for the facility's useful life. Even if the first CLEC to use the facility ceases to do so, there is insufficient evidence that other CLECs will not follow; or for that matter, that Ameritech will not use the facility for its own retail customers. Given that the capacity of such new facilities will likely exceed that requested by the CLEC, Ameritech is free to use the additional capacity to serve other CLECs or its own retail customers. In addition, whether constructing a COT/RT system qualifies as special construction under the list on Original Sheet Nos. 1 and 2 of Ill. C. C. No. 20, Part 2, Section 5 is irrelevant since it has been determined that Ameritech is already recovering the cost of such activity through existing TELRIC rates.

Also deserving comment is Ameritech's argument that charging a CLEC when a COT or RT must be placed is not an impediment to the development of local competition. Ameritech witness Suthers maintains that no impediment exists because Ameritech's policy provides it and CLECs with symmetrical investment incentives. Ameritech contends that under its policy, both it and CLECs are faced with the same investment decision: is it in the company's best business interest to serve a particular customer, and, if so, how should the cost of doing so be recovered. To support this position, Ameritech relies on paragraph 334 of the FCC's First Report and Order, which discusses the greater risk faced by CLECs providing service through UNEs rather than resale. Setting aside the fact that Ameritech's TELRIC rates already recover the cost of a new COT or RT system, the Commission finds this argument untenable. In defense of its position, what Ameritech fails to address is the important fact that Ameritech owns any facilities in which a CLEC decides to "invest." Therefore, the investment decisions are not symmetrical. Even though a CLEC may recoup some of the money paid for a new COT or RT through services provided over such, it will never own the facility as Ameritech does after it installs facilities to serve its customers. Moreover, the fact that a CLEC paid for a new facility does not instill within it the privilege of using any additional capacity within that facility. This ability is held by Ameritech as part of its right of ownership. Accordingly, Ameritech can not legitimately claim that its policy creates symmetrical investment incentives.

The Commission finds that the cost of loop conditioning is not recovered in Ameritech's current TELRIC rates and qualifies as special construction under Ameritech tariff Ill. C. C. No. 20, Part 2, Section 5. Accordingly, Ameritech may assess special construction charges under Ill. C. C. No. 20, Part 2, Section 5 of its tariff so long as it does so in a nondiscriminatory manner as described below.

Finally, the Commission agrees with Staff's position on placing and splicing additional cable. As demonstrated by Mr. Phipps, Ameritech's current TELRIC rates, including the relevant fill factors, already recover any costs associated with placing and

splicing cable to provision a CLEC with an unbundled loop. Accordingly, assessing additional charges for placing and splicing cable in excess of Ameritech's current TELRIC rates would constitute double recovery and is prohibited.

VII. DISCRIMINATION

The next issue to address is whether Ameritech's special construction policy discriminates against CLECs. Ameritech allegedly assesses special construction charges on CLECs for many activities for which it would not assess special construction charges on similarly situated retail customers, resulting in a situation where end users are arguably more apt to take service from Ameritech than a CLEC. In light of the Commission's conclusion that Ameritech may only collect special construction charges for loop conditioning, it need only be decided how Ameritech may assess charges for this activity. To resolve this issue, however, it is necessary to examine the comparability of the provisioning of UNEs to CLECs and retail service to retail end users; a matter which is heavily contested.

A. Ameritech's Position

Even though Ameritech treats CLECs and retail customers differently, Ameritech witness Suthers argues that Ameritech's special construction policy is not discriminatory. According to Mr. Suthers, section 251(c)(3) of the TA96 requires ILECs to provide "nondiscriminatory access" to UNEs. He relates that in paragraph 315 of its First Report and Order, the FCC interpreted this to mean that the terms and conditions on which UNEs are provided "must be equally offered to all requesting carriers, and where applicable, must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself." In the same paragraph, he states, the FCC concludes that UNEs also must be provided "under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete." Speaking more generally, Mr. Suthers contends that the key factors in addressing any claim of discrimination are whether the parties are similarly situated to one another and whether the services provided to the two customers are substantially similar. Ameritech also cites the Eighth Circuit's 1997 decision in Iowa Utilities Board v. FCC again for the proposition that nondiscrimination "merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others." (120 F.3d 753, 813)

In support of the assertion that retail services are dissimilar to UNEs, Mr. Suthers states that a UNE is not functionally comparable to either retail or wholesale/resale services; a UNE, according to Mr. Suthers, is a discrete physical facility that does not have any functionality on its own. Once a UNE is obtained, he reports that its use is determined by the CLEC, and it can be combined with other facilities in the CLEC's network. Local exchange service, by contrast, is a bundled end-to-end telecommunications service that includes the functionality of switching, and may include features, enhanced services, operator services, and directory assistance,