ILLINOIS COMMERCE COMMISSION

DOCKET NO. 03-0553

REVISED REBUTTAL TESTIMONY OF MATTHEW LOCH

1. Q. Please state your name, business address and present position.

A. My name is Matthew Loch and my business address is 525 Junction Road, Suite 6000, Madison, Wisconsin 53717. I am Vice President-Sales for TDS Metrocom, LLC.

2. Q. Have you previously submitted prepared testimony in this proceeding?

A. Yes, I previously submitted prepared direct testimony identified as TDS Metrocom Exhibit 1.0.

3. Q. What is the purpose of your rebuttal testimony?

A. I am responding to the position of Illinois Bell Telephone Company ("SBC Illinois" or "SBC") as expressed in the direct testimony and rebuttal (to Commission Staff) testimony of the SBC witnesses, Messrs. Gillespie, Frankel, Flitsch and Longua, and to the position of Commission Staff as presented in the direct testimony of the two Staff witnesses, Mr. Koch and Mr. Omoniyi.

4. Q. Do you have any overall comments on SBC's testimony and position?

A. Yes, I have several. First, SBC retained a Ph.D. economist to testify on its behalf, commissioned at least other one study by an external consulting firm, and in general has poured considerable resources into defending against TDS Metrocom's complaint. TDS Metrocom does not have the resources to devote to this case to hire its own economist to testify or to commission external studies. TDS Metrocom's objective in filing its complaint was simple, namely, to ask the

Commission to direct SBC to implement the type of early termination charge provisions in long-term contracts with business customers for usage, data and other services that the Commission ordered SBC to implement in the ASCENT case.

Second, SBC has not really attempted to defend the termination charge provisions that it had in place at the time that TDS Metrocom filed its complaint. Instead, SBC has developed a comprehensive new set of termination liability policies for those services that SBC asserts were not specifically covered by the ASCENT order, and has in its testimony attempted to defend the reasonableness of its new termination liability policies.

5. Q. Please summarize your understanding of SBC Illinois' new termination liability policies for Usage, Centrex and Data and other services for business customers.

A. As I indicated in Answer 28 of my direct testimony and as SBC witnesses discuss in their testimony, the revised SBC termination liability policies are to be as follows: (1) for Usage services, 35% of the customer's remaining obligation under the tariff plan or agreement; (2) for Centrex services, 25% of the customer's remaining obligation under the tariff plan or agreement; and (3) for Data and other services, 50% of the customer's remaining obligation under the tariff plan or agreement.

6. Q. Do SBC's new termination liability policies resolve the concerns that led TDS Metrocom to file its complaint?

A. No. TDS Metrocom's preference would still be for the Commission to require SBC to implement the form of termination charge provision that it ordered in the

ASCENT case (Docket 00-0024), which I described in my direct testimony. Having said that, I will acknowledge, as I did in Answer 29 of my direct testimony, that SBC's revised termination liability policies with the reduced percentages of remaining contract plan or tariff revenues are an improvement in that they produce a lower termination charge amount than did previous termination liability provisions that required the customer to pay 75% or 100% of remaining revenue under the contract or tariff plan as a termination charge. However, the termination charges produced by SBC's new termination liability provisions are still too high and will continue, in my judgment, to significantly if not completely limit any switching by business customers taking service from SBC under term contracts and multi-year tariff plans.

7. Q. Why do you believe that the termination charges produced by the new SBC termination liability provisions are still too high?

A. I say this for two reasons. First, the termination charges produced by the new policies are still large in the absolute. In Answer 29 of my direct testimony I listed the termination charge amounts per remaining year of the contract under SBC's new policies, for 12 Usage Service Agreements that SBC had provided to TDS Metrocom in discovery as representative. SBC provided a similar calculation in Mr. Gillespie's Schedule BGS-6 for the "Customer A" and "Customer B" contracts cited in TDS Metrocom's complaint. The revised termination charge amounts are still large and would, in my judgment and experience, still discourage customers from switching carriers.

Second, as I understand the basis for SBC's new termination liability percentages, they are intended to represent the annual revenue under the contract or tariff plan less SBC's saved costs if the contract is terminated and SBC no longer has to provide the service to the customer. By stating that the termination liability should be 35% of remaining revenues for Usage contracts or tariff plans, 25% of remaining revenues for Centrex, and 50% of remaining revenues for Data services, SBC is indicating that it has 35%, 25% and 50% profit margins, respectively, on long-term contracts and tariff plans for these service categories – even after providing discounted prices to the customer in the term contract or tariff plan. (In fact, as summarized on SBC witness Mr. Flitsch's Schedule RF-1, the studies that SBC performed to develop its new termination liability provisions actually show higher margins for these services than the actual percentages that SBC has adopted for its termination liability provisions.) Such high profit margins seem inconsistent with SBC's contention that the business telecommunications services market in SBC Illinois' serving area is highly competitive. Something does not make sense here. Either SBC's profit margins on long-term contracts and tariff plans for business customers are not as high as SBC has depicted, or the market is not very competitive.

8. Q. SBC contends that the business services market is quite competitive as evidenced by SBC's estimate that CLECs now serve approximately 35% of business access lines in SBC Illinois territory. Do you agree?

A. No. Even based on its own market share estimates, SBC Illinois still has 65% of the business access lines. A market share of 65% may seem like a small number only because SBC once had almost 100% of the market. While I am not a Ph.D. economist or an anti-trust expert, as a businessman I would view a 65% market share in any industry as giving the company that possessed that market share market power. Further, it is obvious that the business lines served by CLECs are divided up among numerous CLECs and that no single CLEC has a market share in any way approaching that of SBC.

9. Q. Although stating that TDS Metrocom should be free to use whatever termination charge policy it wishes, SBC witnesses comment that the form of termination liability provision that TDS Metrocom proposes may produce unusual or anticompetitive results in that it produces a lower termination charge in the early years of a term contract and a higher termination charge in the later years as the contract term approaches completion. They note that in contrast the "percent of remaining revenue" approach produces higher termination charges in the early years of a term contract and lower termination charges in the later years as the contract approaches expiration. Do you have any response?

A. Yes. The "return the discount" approach advocated by TDS Metrocom (and specified by the Commission in the ASCENT decision) is more pro-competitive because it produces lower termination charges in the earlier years of the contract. It is in the early months of a long-term contract when the potential anticompetitive impacts of a termination charge in terms of discouraging the customer from considering other suppliers may be most pronounced, because the large termination charge at that point effectively locks up the customer with SBC for two or more years into the future. In contrast, in the last few months of a customer's term contract, a potential new carrier may not be interested in trying to get the customer to terminate the contract and switch regardless of the termination charge – the new carrier can simply wait the relatively few remaining months until the existing contract expires, or even try to sign the customer to a new contract to go into effect when the customer's old contract expires.

SBC witnesses cite some example calculations in which, in the latter stages of a contract, the "return the discount approach" could produce a termination charge several times higher than the remaining revenue under the contract. This is obviously not a meaningful example since in the situation depicted, the customer (if interested in switching) or the new supplier could just pay the remaining contract revenue – or, as I described above, simply wait the remaining months until the current contract expires.

I would also observe that in the ASCENT decision, the Commission addressed the issue of the higher termination charge amount produced by the "return the discount" approach as the contract approached expiration by specifying that the termination liability provision could not require the customer to return the discount for years of the contract that were already completed. In other words, the return the discount calculation could only be applied with respect to approximately the 12 months preceding the customer's early termination of the contract. As noted in Mr. Gillespie's direct testimony, TDS Metrocom advised SBC in discovery that TDS Metrocom is not recommending that the Commission require SBC to adopt this limitation on the application of the "return the discount" approach. However, if the Commission is concerned about the fact that the "return the discount" approach produces higher termination charges as a contract approaches expiration, the testimony of SBC witnesses including Dr. Frankel effectively makes the case for requiring the limitation specified in the ASCENT case.

10. Q. Do you have any comments on the Commission Staff's testimony?

A. Yes. The Staff witnesses appear to be generally supportive of TDS Metrocom's concerns and recommendations. However, Staff witness Mr. Koch's primary recommendation is that the Commission order the adoption by SBC of its new termination liability provisions on an interim basis and then conduct a rulemaking on termination charge provisions to address the issues associated with termination charges on an industry-wide basis. While I appreciate Staff's interest in addressing these issues in a comprehensive manner through a process that can include all interested industry participants, TDS Metrocom does not believe that a rulemaking proceeding is necessary. It could also be a significant drain on the resources of those CLECs that choose (or are required) to participate. TDS Metrocom believes that there is enough factual content in the record of this case (and that enough legal content can be developed by the attorneys in their briefs) for the Commission to resolve the pertinent issues in its order in this case.

11. Q. What should the Commission do?

A. It continues to be TDS Metrocom's position that SBC should be required to adopt the form of termination charge provision for all of its multi-year tariff and contractual product and service offerings for business customers that I described in my answers to Question nos. 17 and 18 of my direct testimony. This is our primary recommendation.

However, if the Commission decides that it should allow SBC to use the "percent of remaining revenue" form of termination liability provision, then it would be TDS Metrocom's position that the percentages of 35%, 25% and 50% that SBC is applying for Usage, Centrex and Data services multi-year contracts and tariff plans are too high, for the reasons I discussed earlier. The Commission should direct SBC to implement lower, "not to exceed" percentages. While it will be necessary for the Commission to exercise judgment in this regard, it is TDS Metrocom's recommendation that the percent of remaining revenues percentages should not exceed 25% for any of these categories of services.

12. Q. Are there any other aspects of the ASCENT decision that are important to the issues in this case?

A. Yes. Finding (10) of the ASCENT order provided as follows:

> "[C]alculation of a termination charge, pursuant to the formula described in Finding (9), should be performed by Ameritech upon termination of service by the customer or upon oral or written request from a customer, whichever occurs first; when such calculation is requested by a customer, it should be performed, and the results communicated to the customer, within three business days; the customer should be permitted to designate a telecommunications services provider as an agent for the purpose of requesting and receiving such calculation; in the event of a dispute with respect to such calculation, the burden of proving the correctness of the calculation should lie with Ameritech."

Regardless of the form of termination penalty that the Commission orders in this case, or even if the Commission agrees with SBC and does not mandate any particular form of termination charge, it is important that SBC be required to continue to provide timely calculations of termination charges to customers and, with proper customer authorization, to other telecommunications carriers. A competitive local exchange carrier such as TDS Metrocom has absolutely no chance to compete with SBC Illinois for the business of a customer that SBC has signed to a long-term contract if we cannot obtain timely termination charge calculations from SBC. Again, TDS Metrocom is only requesting that SBC Illinois be required to provide termination charge calculations to competing suppliers if authorized to do so by the customer, as specified in Finding (10) of the ASCENT order.

13. Q. In its complaint and in your direct testimony, TDS Metrocom has requested that the Commission should order SBC Illinois to reimburse TDS Metrocom for its legal fees and related costs for bringing and prosecuting its complaint. Does TDS Metrocom continue to believe that the Commission should award this relief?

A. Yes. As I noted earlier, SBC has not really attempted to defend its previous termination charge policies, but rather has defended against the complaint primarily on the grounds that it is adopting new termination liability policies. (See, for example, Mr. Gillespie's direct testimony at lines 212-232, especially lines 230-232, where he states: "Since these new policies will be in effect in the near future, they should be the focus of this proceeding, not the old policies that are being replaced.") Further, it is clear that SBC Illinois did not really devote any significant attention and resources to comprehensively reviewing and revamping its termination liability provisions into a consistent set of policies, with lower percent of remaining revenue charges, until prodded to do so by TDS

Metrocom's complaint. For example, as SBC witness Mr. Gillespie stated in his direct testimony (lines 401-402), "I do not dispute that [sic; the] fact that the filing of the TDS' Complaint prompted SBC Illinois to take a hard look at its existing tariff and ICB practices." Therefore, even if the Commission does no more in this case than approve SBC's new, less onerous termination liability policies, it is clear that the filing of TDS Metrocom's complaint has resulted in a benefit to CLECs, consumers and the competitive telecommunications market in Illinois, which I understand provides appropriate justification for ordering SBC Illinois to reimburse TDS Metrocom for its legal fees and costs.

14. Q. How does TDS Metrocom envision the determination being made as to what costs it should be reimbursed for?

A. TDS Metrocom would only be seeking reimbursement for its legal fees and related out-of-pocket expenses, such as photocopying costs. We would envision that after entry of a Commission order directing SBC to reimburse TDS Metrocom for these costs, TDS Metrocom would submit a complete statement of the costs incurred to SBC with supporting documentation such as invoices. If SBC disputed any of the amounts or the documentation provided for the amounts and the parties were unable to resolve the dispute within a reasonable time period such as 30 days, the parties could bring the dispute before the Commission for resolution.

15. Q. Do you have any comments on lines 584-594 of Mr. Gillespie's direct testimony and his Schedules BG-4 and BG-5?

A. Yes. Schedule BG-4 is a copy of TDS Metrocom's response to SBC Illinois data request 2.5 which asked, "Does TDS currently have the same termination liability policies in all states in which it operates?" The "Definitions and Instructions" to SBC's Second Set of Data Requests, which included item 2.5, defined "TDS" as "TDS MetroCom". TDS Metrocom responded to data request 2.5 by stating that "TDS Metrocom states that its termination liability policy is the same in every state in which it operates." This statement is true. Schedule BG-5 is a copy of a tariff of TDS Telecom in effect in Wisconsin which includes an early termination provision of the "percent of remaining revenue" variety. TDS Telecom is a separate company from TDS Metrocom and TDS Metrocom has no control or influence over TDS Telecom's pricing or tariff policies. (Indeed, while Mr. Gillespie uses the term "TDS" in this answer and throughout his testimony, he defines "TDS" at lines 30-31 to mean "TDS Metrocom, LLC".)

16. Q. Does this conclude your prepared rebuttal testimony?

A. Yes, it does.