

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

TDS Metrocom, Inc.)
)
Petition for Arbitration of Interconnection Rates,)
Terms and Conditions and Related Arrangements) **Docket 01-0338**
With Illinois Bell Telephone Company d/b/a/)
Ameritech Illinois Pursuant to Section 252(b))
Of the Telecommunications Act of 1996)

DIRECT TESTIMONY OF NICHOLAS D. JACKSON

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

2 A. My name is Nicholas D. Jackson. I am Vice President of Business
3 Operations and Customer Care at TDS Metrocom, Inc. (“TDS Metrocom”).
4 My business address is 1212 Deming Way, Suite 350, Madison, WI 53717.

5 **Q. What is TDS Metrocom?**

6 A. TDS Metrocom is a facilities-based competitive local exchange carrier,
7 authorized to provide telecommunications services, including local access
8 services, basic access lines, analog and digital trunks for PBX and other
9 switching equipment as well as dedicated access and private line services.
10 In addition to these services, we provide enhanced products and services
11 including custom and advanced calling features, voice mail, calling cards,
12 and long distance. While TDS Metrocom’s primary strategy is to provide
13 service over our facilities, we currently provide services to customers

1 through the purchase of unbundled loops from Ameritech and also on a
2 resale basis in Ameritech's territory.

3 **Q. Please describe your responsibilities as Vice President of Business**
4 **Operations and Customer Care of TDS Metrocom.**

5 A. My responsibilities as Vice President of Business Operations and Customer
6 Care of TDS Metrocom include managing the development of TDS
7 Metrocom's local exchange service system and the provision of local
8 exchange service by TDS Metrocom in the states and territories which it
9 serves. These management responsibilities include identifying and
10 analyzing the types of local exchange services in demand or anticipated to
11 be in demand by customers in the territory, establishing the appropriate
12 pricing for such services, ordering and provisioning of services from
13 Ameritech, including unbundled loops, and overseeing the customer
14 support operations of TDS Metrocom for the territory.

15 **Q. Please describe your business experience and educational background.**

16 A. I received a Bachelor of Business Administration degree in Finance and a
17 Masters of Business Administration degree in Marketing from the
18 University of Wisconsin-Madison. Before coming to TDS Metrocom, I
19 was an employee of TDS Telecom for six years, working in a variety of
20 capacities, including regulatory and field operations. I have also had prior
21 experience as a credit analyst for a large commercial bank.

1 **Q. Have you previously testified before any regulatory body?**

2 A. Yes, I have. I have testified before the Public Service Commission of
3 Wisconsin in several proceedings.

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

5 A. The purpose of my testimony is to address the following unresolved issues
6 from the interconnection agreement arbitration between TDS Metrocom
7 and Illinois Bell, Inc., d/b/a Ameritech Illinois (“Ameritech”).

8 **Q. Please describe Issue TDS-1.**

9 A. Since the filing of the petition in this matter, the parties have agreed on
10 compromise language for Section 5.2 of the General Terms and Conditions,
11 and thus this issue is closed. The parties still have a dispute concerning
12 Section 17 of the General Terms and Conditions, but that is discussed under
13 Issue TDS-15 below.

14 **Q. Please describe Issue TDS-11.**

15 A. Issue TDS-11 states: "Should the parties be required to pay disputed
16 amounts into escrow?" This involves Sections 15.4 through 15.7, as well as
17 Section 16.3.1 of the General Terms and Conditions.

18 **Q. What is TDS Metrocom’s position on Issue TDS-11?**

19 A. TDS Metrocom proposes striking the Ameritech language which requires
20 any amount disputed on a bill to be placed into escrow pending resolution
21 of the dispute. Such a requirement is anti-competitive and discriminatory.

1 **Q. Why is the requirement anti-competitive?**

2 A. This requirement to place any disputed amounts in escrow is anti-
3 competitive in that it forces CLECs to tie up sums of money simply in order
4 to dispute billing by Ameritech and thus makes that money unavailable for
5 other purposes. First, it must be pointed out that the escrow requirement, as
6 put forth by Ameritech, is purely one-sided. Under the language proposed
7 by Ameritech, only amounts billed *for Resale Services or Network*
8 *Elements under this Agreement* are subject to escrow. TDS Metrocom is
9 the only party that will be purchasing resale services and network elements.
10 TDS Metrocom is the only party that will be disputing bills for resale
11 services and network elements, and thus TDS Metrocom is the only party
12 that will ever be required to pay money into escrow.

13 Ameritech has argued that not requiring the escrow would allow a CLEC to
14 dispute bills frivolously and thus try to avoid paying its bills. But the
15 reverse is also true. Ameritech could send (and in fact has regularly sent)
16 erroneous bills and unless the CLEC were able to deposit the frivolously
17 billed amounts into escrow, the CLEC would be forced with the prospect of
18 losing its opportunity to dispute the bills. The dispute resolution provisions
19 of the agreement provide for sufficiently prompt resolution of any disputes
20 such that Ameritech would not be without the funds for a long period of
21 time. In such an event, the equities clearly weigh in favor of allowing the

1 CLEC to dispute bills without having to place all the disputed funds into
2 escrow.

3 **Q. Has TDS Metrocom disputed any bills under its current**
4 **interconnection agreement that Ameritech alleged to be frivolous or**
5 **inappropriate?**

6 A. No. To date, all of our billing disputes with Ameritech have been
7 appropriately raised pursuant to our contract and we have never been told
8 by Ameritech that they felt these disputes were frivolous. In fact, the vast
9 majority of the disputes we have raised have resulted in Ameritech agreeing
10 there was an error on their part and accordingly making corrections. Many
11 of these disputes took months to resolve (some are still outstanding) and
12 requiring TDS Metrocom to escrow over all this time is clearly anti-
13 competitive and burdensome for TDS Metrocom.

14 **Q. Ameritech has argued that the escrow requirement is not**
15 **discriminatory because it applies to all CLECs. How would you**
16 **respond?**

17 A. The problem with the escrow requirement is that it discriminates between
18 the CLECs and Ameritech, not because it discriminates between two or
19 more CLECs. First, only CLECs will ever be required to escrow money
20 under this language. Ameritech will never be billed for resale services or
21 UNEs and so will never have a bill to dispute. Secondly, if Ameritech can
22 send out an erroneous bill, and know that the CLEC will have to put money

1 in escrow just to get the bill corrected, Ameritech will have no incentive to
2 take appropriate actions to expeditiously send correct bills. In fact, it is
3 easy to see Ameritech's incentive to not expeditiously correct its billing
4 errors as Ameritech is not entitled to the revenues from these billing errors
5 anyway, yet CLECs must tie up funds in an escrow account which could
6 otherwise be utilized in a more productive capacity.

7 **Q. What about Ameritech's contention that it needs an escrow**
8 **requirement to protect it from losses due to frivolous disputes?**

9 A. First of all, Ameritech has insisted on a deposit of up to four months
10 billings from CLECs who cannot show a credit history with Ameritech.
11 (Note that this does not apply to normal credit worthiness, only to credit
12 history with Ameritech. Presumably any new CLEC, no matter how
13 financially stable, would need to post the deposit if it had not done business
14 with Ameritech in the past. For example, Verizon, or even a company like
15 Microsoft or Berkshire Hathaway would need to post a deposit if they had
16 no history directly with Ameritech.) In any event, this is designed to
17 protect Ameritech if a CLEC cannot pay its bill. The escrow requirement is
18 also designed to protect Ameritech if a CLEC cannot pay its bill after
19 disputing the bill. Clearly Ameritech is already protected from this by the
20 deposit. If it is Ameritech's contention that the CLEC could hide assets
21 after disputing the bill, it should be noted that a CLEC who truly wished to
22 "stiff" Ameritech could just as easily hide assets before the bill is even

1 issued. The escrow does little to provide Ameritech with additional
2 protection from a true deadbeat, while inflicting a serious hardship on every
3 honest CLEC who has a good faith dispute over an Ameritech bill.
4 Additionally, Ameritech is entitled to late fees for any disputed amounts
5 that are found to be in fact correct.

6 **Q. Ameritech states that escrow provisions are common in**
7 **interconnection agreements and that therefore one should be included**
8 **here. How do you respond?**

9 A. The fact that Ameritech has been able to impose such a provision in some
10 agreements does not make it right. I do know that the interconnection
11 agreements for ATT, MCI-WorldCom, TDS, Sprint and several others in
12 Wisconsin contain no escrow provisions.

13 **Q. In the Level 3 arbitration, the Illinois Commerce Commission ordered**
14 **that escrow would be required if there were more than two disputes in**
15 **12 months. The Commission stated that this provides adequate**
16 **safeguards for the CLEC. Do you agree?**

17 A. I must respectfully disagree with that position. Given our past history with
18 Ameritech, we have had to dispute numerous bills every year. TDS
19 Metrocom would have been constantly under the escrow requirement.
20 Further, this does nothing to remove the improper incentives to Ameritech.
21 The heart of the problem is that if Ameritech sends out an erroneous bill,
22 whether intentionally or not, there is absolutely no negative consequence

1 for Ameritech. If the escrow requirement is in place, it gets even worse.
2 Not only is there no negative consequence to sending an erroneous bill,
3 Ameritech can be rewarded for doing so by the fact that one of Ameritech's
4 competitors will be required to tie up large sums of money, merely for the
5 privilege of proving to Ameritech that its bill is wrong. Stating that the
6 escrow will apply after two disputes merely provides an incentive for the
7 first two bills each year to contain errors.

8 **Q. Please describe Issue TDS-15.**

9 A. Under what conditions should Ameritech Illinois be allowed to
10 terminate service to TDS Metrocom? This involves Section 17 of the
11 General Terms and Conditions.

12 **Q. What is TDS Metrocom's position on this issue?**

13 A. Now that the parties have settled Issue TDS-1, it appears that Section
14 17 of the agreement is no longer needed at all. It covers, on a "one
15 way basis" termination of the agreement, but termination by
16 Ameritech only. Section 5 already covers the issue of termination,
17 and so this section is redundant and not really needed. At this point, I
18 would urge that the entire Section 17 be deleted. However, before
19 Section 5 was settled, we had proposed certain modifications to
20 Section 17, and I will discuss those below.

1 **Q. What is the language proposed by Ameritech that is objected to**
2 **by TDS Metrocom in Section 17?**

3 A. We have not agreed to proposed language in Sections 17.9 through
4 17.11.8. We have added language to Section 17.9 to refer to the
5 dispute resolution procedures of Section 16.3. There is no reason to
6 have a second set of dispute resolution procedures as set out in
7 Sections 17.9 through 17.11. For example, Sections 17.9.1 and
8 17.11.1 both concern notice of billing disputes. This issue is already
9 fully addressed by Sections 15.4 and 16.3 in portions of the language
10 that are largely undisputed between the parties. We cannot see any
11 good reason to have a second and third treatment of that issue in
12 Sections 17.9 and 17.11.

13 **Q. What other issues do you dispute about Section 17?**

14 A. As noted above, we continue to dispute the requirement to pay disputed
15 funds into an escrow account. For the same reasons, we are proposing
16 deletion of those portions of Section 17 such as 17.9.3 and 17.11.1 that
17 refer to the escrow requirement.

18 **Q. Please describe Issue TDS-19.**

19 A. Where the agreement incorporates by reference an Ameritech Illinois tariff,
20 should Ameritech Illinois be prohibited from revising that tariff? This
21 involves Article 38 of the General Terms and Conditions and Section 4.4 of

1 Appendix LIDB. Since the filing of the petition in this matter, the parties
2 have agreed on compromise language for Section 38.2, which leaves only
3 Section 38.3 of the General Terms and Conditions in dispute.

4 **Q. What is TDS Metrocom's position on Issue TDS-19?**

5 A. TDS Metrocom has added language which requires Ameritech to give TDS
6 Metrocom notice of tariff filings.

7 **Q. What is provided for in the language proposed by TDS Metrocom?**

8 A. The language proposed by TDS Metrocom requires Ameritech to give TDS
9 Metrocom specific notice of tariff filings which might affect the agreement
10 so that TDS Metrocom has an opportunity to participate in the tariff
11 process, and protect its rights under the agreement.

12 **Q. Why is the language proposed by TDS Metrocom fair to both parties?**

13 A. The language proposed by TDS Metrocom is fair in that if, rather than a
14 reference to an outside tariff, Ameritech and TDS Metrocom negotiated the
15 exact same language and placed it within the agreement, Ameritech would
16 not be allowed to make changes that affect the rights and obligations of
17 TDS Metrocom without negotiating an amendment to the agreement. If
18 Ameritech is allowed to change tariffs that are incorporated into the
19 agreement by reference without any notice, TDS Metrocom would be
20 penalized and lose rights by agreeing to the efficient method of referencing
21 tariffs rather than negotiating all language explicitly into the agreement.

1 **Q. What language does TDS Metrocom propose for Section 4.4 of**
2 **Appendix LIDB?**

3 A. TDS Metrocom does not accept language proposed by Ameritech in the
4 second sentence of that section which would make changes in prices
5 effective immediately upon changes in the tariff. TDS Metrocom proposes
6 that rates be set in the agreement, and not be changed at the whim of
7 Ameritech.

8 **Q. Please describe Issue TDS-27.**

9 A. How should the list of UNEs that Ameritech must provide be defined?
10 This involves Section 2.2.9 of the Appendix UNE, to which TDS
11 Metrocom objects and which TDS Metrocom proposed deleting.

12 **Q. Why does TDS Metrocom propose to delete this section?**

13 A. Ameritech has attempted to include language that states that it is only
14 required to provide a UNE after an affirmative order of the FCC or State
15 Commission that the UNE meets the “necessary” and “impair” standards of
16 the Act and FCC rules. While TDS Metrocom does not dispute that
17 Ameritech is required to provide those UNEs that are within the definitions
18 of the Act, there is nothing that requires that an affirmative order of the
19 FCC or Commission be issued prior to a UNE being made available. In
20 fact, this agreement contains a Bona Fide Request process that is " to
21 provide CLEC access to new, undefined UNE". If you follow Ameritech’s
22 proposal in Section 2.2.9 there would be no need for a BFR process as only

1 the FCC or Commission could effectively define and determine availability
2 of UNEs. The language proposed by Ameritech unnecessarily restricts the
3 provision of UNEs and should be deleted.

4 **Q. Please describe Issue TDS-28.**

5 A. Issue TDS-28 states: "Should Ameritech be required to provide UNEs
6 where facilities modifications are required?" This involves Section 2.9.1 of
7 Appendix UNE. TDS Metrocom has proposed deleting certain Ameritech
8 language which makes it appear that Ameritech has no obligation to
9 provide UNEs "where facilities and equipment are not available." Instead,
10 TDS Metrocom proposes language that refers to the agreed Facilities
11 Modification Process.

12 **Q. Why does TDS Metrocom make this change?**

13 A. Ameritech first introduced its facilitates modification process, which
14 includes a process for modifying facilities, and for new build facilities
15 where necessary to provision UNEs, in discussions related to the OSS
16 collaboratives. This process was made available to CLECs on a five state
17 basis by virtue of being posted on Ameritech's TCNET website. The
18 FMOD process was later issued in Ameritech's accessible letter no. CLEC
19 AM00-153. In the OSS Collaborative in Wisconsin (Docket Number 6720-
20 TI-160), Ameritech agreed to incorporate the facilities modification process
21 into a preliminary order in that docket. Subsequently in that docket,
22 Ameritech stipulated to certain changes and amendments to the FMOD

1 process that were then incorporated into a second preliminary order in that
2 docket. Ameritech agreed to make these changes to the accessible letter
3 through the CLEC forum, and thus implement them on a five state basis.
4 The language proposed by TDS Metrocom merely makes the agreed-to
5 process a part of this agreement. Even absent the Wisconsin OSS
6 proceeding, the facilities modification process was put forth in an
7 Ameritech accessible letter. As shown by Section 50.1 of the General
8 Terms and Conditions of the Agreement, Ameritech has no qualms about
9 introducing certain other, similar documents into the Agreement. There is
10 no principled basis for excluding this one document that the parties have
11 agreed would govern this portion of the process for provisioning UNEs
12 under this Agreement.

13 **Q. Has the Illinois Commerce Commission addressed this issue in the**
14 **past?**

15 A. In the arbitration between SCC Communications Corp. and Ameritech,
16 docket no. 00-0769, the Commission stated: "In situations requiring simple
17 or complex modifications, as opposed to new facilities, Ameritech's
18 Facilities Modification Process ("F-MOD") would apply." This is precisely
19 what is being requested by TDS Metrocom here. Since, as the Commission
20 pointed out in the SCC proceeding, the FMOD policy itself excludes the so
21 called "green field" construction scenario, an explicit reference to the
22 FMOD policy is more appropriate, and more accurately describes the

1 parties' obligations, than the blanket statement by Ameritech that it will not
2 provide UNEs "[w]here facilities and equipment are not available." As
3 noted by the Commission in the SCC matter, the FMOD applies where
4 "facilities exist, but there is not enough capacity." Unfortunately, the
5 Ameritech language would negate the obligation in that precise
6 circumstance.

7 **Q. What about Ameritech's language in Section 2.9.1.1?**

8 A. That language standing alone is not offensive, but it does produce a conflict
9 with the other Ameritech language in Section 2.9.1. The simple fact is that
10 either Ameritech has an obligation or it does not. This Commission has
11 ordered that Ameritech does have an obligation to provide UNEs under the
12 facilities modification process, and Ameritech apparently agrees. The
13 Commission has further found that the FMOD policy itself correctly
14 delineates the scope and limitations of that obligation. It just does not make
15 sense to leave in the agreement an overly broad statement that says
16 Ameritech has no obligation, and then try to spin that statement in another
17 paragraph. It makes more sense to reference the facilities modification
18 process explicitly, and be done with it.

19 **Q. Please describe Issue TDS-41.**

20 A. What is the appropriate scope of the Bona Fide Request process?
21

1 **Q. What is TDS Metrocom's position on Issue TDS-41?**

2 A. TDS Metrocom asserts that the Bona Fide Request process is limited to
3 new UNEs that are not currently defined, and does not apply to defined
4 UNEs that Ameritech asserts require non-standard provisioning. Currently
5 defined UNEs should be subject to the facilities modification process. Note
6 that TDS Metrocom has not deleted or changed any of the Ameritech
7 language in this section. The language TDS Metrocom has added is
8 entirely consistent with the language originally proposed by Ameritech
9 which states: "A Bona Fide Request ("BFR") is the process by which
10 CLEC may request SBC-AMERITECH to provide CLEC access to *new*,
11 *undefined UNE . . .*" (Emphasis Added). Further, the FMOD process
12 explicitly provides:

13 **SBC will make modifications and engage in construction to**
14 **provision UNEs according to the following categories.**

15 **1. Simple Modifications**

16 **2. Complex Modifications**

17 **3. Integrated Digital Loop Carrier (IDLC)/Remote Switching**
18 **Units(RSU)**

19 **4. New Build**

20 Ameritech has asserted that TDS Metrocom is trying to avoid the costs and
21 delays of the BFR process, and this is essentially correct, with one
22 clarification: TDS Metrocom is seeking to avoid *unnecessary* delays and
23 *unnecessary* costs that are incurred by invoking the BFR process
24
25
26
27
28

1 inappropriately. TDS Metrocom merely is clarifying that the FMOD policy
2 should be invoked in those instances where the FMOD policy was designed
3 to be applicable, including complex modifications and certain new build
4 situations.

5 **Q. Is TDS Metrocom attempting to use this language to gain shorter**
6 **provisioning intervals?**

7 A. Of course not. Ameritech raised this absurd argument in Wisconsin,
8 despite the fact that the language originally proposed by TDS Metrocom
9 did not bear such an interpretation. The factual background is that in many
10 instances, it was Ameritech that invoked the BFR process to try to obtain a
11 LONGER provisioning interval for what should have been a relatively
12 straight forward order. In any event, to remove any possible further
13 confusion on Ameritech's part, we have modified the language originally
14 proposed in Wisconsin to make it absolutely clear that this provision
15 applies only when Ameritech makes the assertion that the loop requires
16 some modification, and does not apply where TDS Metrocom requests a
17 shorter interval.

18 **Q. Please describe Issue TDS-100.**

19 A. Should Ameritech be proportionately liable for damage it jointly causes
20 with third parties? This involves Section 14.2 of Appendix Collocation.

1 **Q. What is TDS Metrocom’s position on Issue TDS-100?**

2 A. TDS Metrocom proposes that Ameritech be proportionately liable for
3 damage it may cause. In order to accomplish this, TDS Metrocom has
4 deleted language proposed by Ameritech which stated that SBC 13 STATE
5 will have “absolutely no liability with respect to any action or omission by
6 any other regardless of the degree of culpability of any such other or SBC
7 13 STATE.” Thus, under the Ameritech scenario if Ameritech were 99
8 percent at fault for damages, and a third party were 1 percent at fault,
9 Ameritech would disclaim any and all liability for the damage it primarily
10 caused. This is patently unfair. By deleting the offending Ameritech
11 language, and inserting the language requested by TDS Metrocom,
12 Ameritech would be liable, but only to the proportional extent that it caused
13 the damages. Contrary to the assertions of Ameritech, this does not require
14 Ameritech to indemnify any other party but merely makes Ameritech liable
15 for that proportion of the damages which Ameritech in fact causes.

16 **Q. Has the Illinois Commerce Commission addressed this issue in the**
17 **past?**

18 Q. Yes. In issue 34 of the arbitration between Ameritech and Level 3, Docket
19 00--332, the Commission stated:

20 AI's indemnity argument is flawed. The language seems to imply that level
21 3 should indemnify AI for all claims regardless of fault. There is not any
22 justification for that kind of language. As Level 3 points out in its brief, AI
23 has recourse based on the general provisions of the agreement.
24

1 **Q. Please describe Issue TDS-107.**

2 A. Is TDS Metrocom entitled to charge reciprocal compensation for
3 terminating FX calls? This involves Section 2.7 of Appendix Reciprocal
4 Compensation.

5 **Q. What is TDS Metrocom's position on Issue TDS-107?**

6 A. It is TDS Metrocom's position that when Ameritech sets up an FX
7 arrangement with its customer, TDS Metrocom should be entitled to charge
8 reciprocal terminating compensation for terminating the call.

9 **Q. Why is this the case?**

10 A. As a fundamental, operational matter, there is no way for TDS Metrocom to
11 know which calls are FX and which are not. The entire reason for having
12 FX service is that a call which might otherwise originate outside of a local
13 calling area should appear to be, for all intents and purposes, a local call.

14 **Q. Are you aware that the Illinois Commerce Commission ruled in the
15 Level 3 arbitration that FX calls should not be subject to reciprocal
16 compensation?**

17 A. Yes, and I believe that the decision may have been based on a
18 misapprehension of the facts. The Commission apparently relied to some
19 extent on the idea that FX calls appear local only to the caller. From the
20 standpoint of the network, these calls look exactly like local calls being
21 routed between Ameritech and TDS Metrocom local switches, and thus
22 they appear to be local calls to both carriers as well. When Ameritech has

1 made a business decision, and a business arrangement, with its customer to
2 provide the FX service, Ameritech charges its customers a premium for that
3 service. It would be an unfair windfall to Ameritech if it also was to force
4 TDS Metrocom to terminate these calls without any compensation.

5 **Q. Have other state commissions addressed this issue with Ameritech?**

6 **A.** The Michigan Public Service Commission recently ruled on this precise
7 issue In the Matter of Application of Ameritech Michigan to Revise its
8 Reciprocal Rate Structure and to Exempt Foreign Exchange Service from
9 Payment of Reciprocal Compensation, Case No. U-12696 (see Attachment
10 Number 3). The Commission found:

11 The Commission rejects the proposal to reclassify FX calls as non-
12 local for reciprocal compensation purposes. Ameritech Michigan has
13 not explained whether, or how, the means of routing a call placed by
14 one LEC's customer to another LEC's point of interconnection
15 affects the costs that the second LEC necessarily incurs to terminate
16 the call. *As a matter of historical convention, the routing of that*
17 *call, i.e., whether or not it crosses exchange boundaries, has not*
18 *been equated with its rating, i.e., whether local or toll.* Moreover,
19 the discretion that CLECs exercise in designing their local calling
20 areas is a competitive innovation that enables them to provide
21 valuable alternatives to an ILEC's traditional service. The
22 Commission finds no reason to change these standards, particularly
23 if the end result would be an unnecessary restriction on the services
24 that customers want and need. Moreover, the application does not
25 address how the carriers would make the necessary changes to their
26 billing systems or whether the changes would be technically feasible
27 at an affordable cost for both Ameritech Michigan and the CLECs.
28 (Emphasis added)

29
30 The reasoning of the Michigan Public Service Commission is persuasive,
31 and should be adopted in Illinois as well.

1 **Q. Please describe Issue TDS-123.**

2 A. What limitations and liabilities should attach to TDS Metrocom for use of
3 electronic interfaces? This involves Section 3.2.1 of Appendix OSS.

4 **Q. What is TDS Metrocom's position on Issue TDS-123?**

5 A. TDS Metrocom has objected to and deleted language proposed by
6 Ameritech which appears to allow Ameritech to summarily bar TDS
7 Metrocom from access to the electronic interfaces. Such denial of access
8 would have the practical effect of putting TDS Metrocom out of business
9 within Ameritech territory, and such a drastic remedy should not be
10 invoked outside of the dispute resolution process with its inherent
11 safeguards of Commission oversight. In TDS Metrocom's past dealings
12 with Ameritech, it has been the case where one group at Ameritech may not
13 be aware that an issue is being disputed and that resolution of the dispute is
14 proceeding with another separate group within Ameritech. By requiring
15 that the dispute resolution process be invoked prior to barring a CLEC from
16 using the service, CLECs are protected from an arbitrary cut-off that might
17 be simply due to miscommunication.

18 **Q. Does TDS Metrocom have additional objections to the Ameritech
19 language?**

20 A. Yes. TDS Metrocom also deleted language which attempted to make TDS
21 Metrocom strictly liable for costs or damages related to access to the
22 electronic interfaces through terminals or information supplied by TDS

1 Metrocom, regardless of whether TDS Metrocom was at fault. The General
2 Terms and Conditions already contain adequate language which address
3 issues of indemnification and payment for damages when one party is at
4 fault. Further, there is a dispute resolution process which Ameritech would
5 have available if it felt that TDS Metrocom's failure to comply with the
6 agreement had caused damage to Ameritech. There are sufficient
7 safeguards to Ameritech, and thus the additional language attempting to
8 make TDS Metrocom liable regardless of whether TDS Metrocom was at
9 fault should be deleted. As noted above, this issue was addressed in the
10 arbitration between Ameritech and Level 3. The same result should occur
11 in this matter.

12 **Q. Please describe Issue TDS-124.**

13 A. Should TDS Metrocom be responsible for paying charges to Ameritech
14 every time there is an inaccurate order? This involves Section 3.4 of
15 Appendix OSS.

16 **Q. What is TDS Metrocom's position on Issue TDS-124?**

17 A. TDS Metrocom has modified the language proposed by Ameritech which
18 would make TDS Metrocom liable for even a single erroneous order. The
19 modifications make it clear that Ameritech should only recover the costs
20 incurred in actually provisioning the order. The difficulties encountered by
21 Ameritech with accuracy of its own orders has been well documented in the
22 press in recent months. Further, under the performance measures agreed to

1 in the OSS Collaborative, there is no performance measure where
2 Ameritech is required to begin paying costs or damages with the first error.
3 In fact, in most of the performance measures, Ameritech may have up to 10
4 percent errors or failure to comply before it begins to pay anything. If, and
5 to the extent, occasional inaccurate ordering does occur, this is a normal
6 cost of doing business, and should not result in charges by Ameritech,
7 unless Ameritech actually begins to provision the order. The language
8 proposed by Ameritech goes much further, and implies that an inaccurate
9 order could result in charges, just because it was submitted, even if
10 Ameritech does nothing to provision the UNE or service prior to the error
11 being discovered.

12 **Q. Were there additional problems with the language in Section 3.4?**

13 A. Yes. TDS Metrocom also deleted a sentence which required TDS
14 Metrocom to indemnify Ameritech for all claims related to TDS
15 Metrocom's use of the Ameritech OSS. Again, Ameritech is attempting to
16 require TDS Metrocom to indemnify Ameritech regardless of whether TDS
17 Metrocom was actually at fault. As stated previously, there are adequate
18 indemnification provisions in the General Terms and Conditions which
19 should govern this issue. Those provisions require a party to indemnify the
20 other when the indemnifying party is at fault, but not in all other instances.
21 This is the fair and correct standard. Once again, TDS Metrocom proposes

1 that this issue be decided in the same manner as the similar issue in the
2 Level 3 arbitration.

3 **Q. Please describe Issues TDS-129 and TDS-130.**

4 A. Should Ameritech be permitted to seek indemnity for claims by third
5 parties including claims caused by Ameritech’s own negligence? These
6 issues involve Sections 9.3 and 9.4 of Appendix 911.

7 **Q. What is TDS Metrocom's position on Issues TDS-129 and TDS-130?**

8 A. In each of these sections TDS Metrocom deletes language proposed by
9 Ameritech which would require TDS Metrocom to “indemnify, defend and
10 hold harmless Ameritech from any and all loss...unless the act or omission
11 approximately causing the loss constitutes gross negligence, recklessness or
12 intentional misconduct of Ameritech.” Under the language proposed by
13 Ameritech, if Ameritech were 99 percent at fault for damages that were
14 caused, or even if Ameritech were 100 percent at fault but the Ameritech
15 conduct was found to be ordinarily negligent rather than grossly negligent,
16 Ameritech would require TDS Metrocom to indemnify Ameritech. This is
17 clearly unfair and TDS Metrocom asserts that the language concerning
18 indemnification in the General Terms and Conditions already provides that
19 each party will indemnify for, and to the extent of, damage caused by its
20 fault. This is the appropriate standard. Since TDS Metrocom has no
21 control over actions by third parties, it is unfair to expect TDS Metrocom to
22 indemnify Ameritech from such claims when TDS Metrocom is not even at

1 fault. TDS Metrocom has agreed to waive TDS Metrocom's own claims
2 and has not objected to that language proposed by Ameritech. Therefore,
3 the language requiring TDS Metrocom to indemnify Ameritech in these
4 sections should be deleted, and the indemnity provisions of the General
5 Terms and Conditions should be controlling. The ruling of the Commission
6 in the Level 3 arbitration should control this issue as well.

7 **Q. Please describe Issue TDS-144.**

8 A. How are orders over TELIS handled? This involves Section 3.4.7 of
9 Appendix Number Portability.

10 **Q. What is TDS Metrocom's position on Issue TDS-144?**

11 A. TDS Metrocom has proposed language that provides that for orders placed
12 over TELIS Ameritech will provide for an Access Service Request (ASR)
13 format that integrates PNP ordering. TDS Metrocom should not be
14 required to send in two separate communications in order to place a single
15 order. Today, all CLECs utilizing TELIS ordering for loops must send the
16 loop-portion of the order over TELIS utilizing the ASR format. However,
17 the porting-portion of the order must be filled out manually in a Local
18 Service Request (LSR) format and faxed to the Ameritech Local Service
19 Center (LSC). This process is both inefficient and redundant to the CLEC
20 and Ameritech resources. Ordering efficiency can easily be improved by
21 adding the required LSR fields to the ASR.

22

1 **Q. Why is the process for sending LSR inefficient and redundant?**

2 A. First, the CLEC is required to send in two separate but related
3 communications to place a single order. The CLEC must indicate a Related
4 Purchase Order Number (RPON) on the LSR so that the LSC can bring the
5 LSR and ASR together and coordinate the provisioning. Second, much of
6 the information on the LSR is redundant with the ASR. There are only 5
7 fields on the 4 page LSR that need to be completed for PNP ordering.
8 Therefore the CLEC is being asked to waste time filling out an LSR to
9 simply accomplish the porting functions of an order. It would be much
10 easier for all parties to simply include 5 fields for the porting information
11 on the ASR. This would significantly reduce data entry for both the CLEC
12 and Ameritech as well as eliminate the potential risks of error from the LSC
13 having to constantly find an electronic and faxed order that relate to the
14 same customer.

15 **Q. What has been Ameritech's response?**

16 A. Ameritech has repeatedly stated that it intends to replace TELIS, and
17 therefore should not be required to improve it. The problem is that
18 Ameritech has been promising this improved replacement system for
19 months now, and yet TELIS remains in place, and continues to impose
20 hardships on CLECs that use it.

21

1 **Q. Please describe Issue TDS-167.**

2 A. Should there be penalties for violation of the agreement? This involves
3 Section 3.12 of Appendix Resale.

4 **Q. What is TDS Metrocom's position on Issue TDS-167?**

5 A. TDS Metrocom supports deleting the portions of this section calling for
6 penalties. It is true that often parties will include "liquidated damage"
7 provisions in their agreements. But a key factor of such liquidated damage
8 provisions is that they are agreed to by the parties, as a reasonable
9 estimation of the damages that would be incurred in the case of the
10 specified breach. In this case, TDS Metrocom does not agree that the
11 provisions in Section 3.12 set forth by Ameritech contain such a reasonable
12 estimation. It should be noted that this does not leave Ameritech without a
13 remedy. If Ameritech believes that TDS Metrocom has breached the
14 agreement, Ameritech may invoke the dispute resolution process under the
15 agreement, and recover those actual damages which it is able to prove were
16 incurred. There is no good reason for Ameritech, and only Ameritech, to
17 be relieved of its duty to prove damages it claims to have suffered.

18 **Q. Please describe Issue TDS-190.**

19 A. Should Ameritech be obligated to provision xDSL capable loops in
20 instances where physical facilities do not exist? This involves Section 4.6
21 of Appendix DSL.

22

1 **Q. What is TDS Metrocom's position on Issue TDS-190?**

2 A. This issue is completely covered by the new Ameritech Facilities
3 Modification Policy, as modified through the stipulations in the OSS
4 Collaborative, which provides for provisioning loops in a "new build"
5 situation. As stated in my testimony related to Issues TDS-28 and TDS-41,
6 the facilities modification process, as implemented through the stipulation
7 in the OSS Collaborative, should apply here. There is no reason for DSL
8 loops to be treated any differently than other loops for this purpose. Thus,
9 TDS Metrocom is entirely correct in deleting the first sentence of this
10 section.

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

12 A. Yes.

13