

Before the  
Illinois Commerce Commission

Rebuttal Testimony  
Of

Sharon Thomas  
Director of Regulatory Affairs, Talk America Inc.

In re Talk.com Holding Corp.  
Application to Amend its Certificate  
to Operate as a Facilities-Based Carrier  
of Local and Long Distance Telecommunications Services  
in the State of Illinois

Docket No. 00-0732

November 13, 2001

1

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Appel Exhibit No. 3

Witness

Date 1/2/02 reporter

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

2 A. My name is Sharon Thomas. My business address is 12001 Science  
3 Drive, Suite 130, Orlando, Florida 32826. My telephone number is (407) 313-  
4 1353 and my facsimile number is (407) 658-6312.

5  
6 **Q. By whom are you employed and in what capacity?**

7 A. I am the Director of Regulatory Affairs for Talk America Inc. ("Talk  
8 America" or "the Company").

9  
10 **Q. Please describe your background and experience.**

11 A. I have been employed in various capacities in the field of public utility  
12 regulation for more than 22 years, including more than 7 years with the  
13 Regulatory Operations Staff of the Public Utilities Commission of Nevada;  
14 approximately 13 years with a regulatory consulting firm that included as its  
15 clients many public utility commission staffs, Attorneys General, and various  
16 consumer advocate organizations; and the past 2 years with two competitive  
17 local exchange carriers.

18 I joined Talk America in my present capacity as Director of Regulatory  
19 Affairs in April 2001. From July 1999 until joining Talk America, I held a similar  
20 position in Reno, Nevada, as Director of Regulatory and Public Policy for  
21 Advanced TelCom Group, Inc., a competitive local exchange carrier  
22 headquartered in Santa Rosa, California. From March 1992 until July 1999, I held  
23 various managerial positions with the Regulatory Operations Staff of the Public

1 Utilities Commission of Nevada. I joined the Nevada Commission Staff as the  
2 Manager of the Telecommunications Division in 1992. In 1995, I was named  
3 Acting Manager of the Rates and Regulatory Analysis Division and was  
4 subsequently named as the permanent Manager of the same division. In  
5 September 1997, I was named Director of Regulatory Operations. In that  
6 position, I was responsible for the overall supervision of an approximately 50-  
7 employee PUC Staff, and was directly involved in Staff's participation in all  
8 aspects of the regulation of Nevada's telecommunications, gas, electric, and  
9 water utilities, as well as its railroad safety program.

10 From 1979 until 1992, I was employed by Ben Johnson Associates, Inc., a  
11 consulting firm specializing in public utility regulation. When I left the firm, I held  
12 the positions of Vice President and Senior Research Consultant.

13

14 **Q. What are your responsibilities at Talk America?**

15 A. I am responsible for the day-to-day management of the Company's  
16 regulatory department, which includes a staff of approximately 40 persons. In  
17 that role, I oversee the Company's response to and tracking of consumer  
18 complaints filed through regulatory agencies and other telecommunications  
19 companies. Working with an outside consultant, Technologies Management, Inc.  
20 ("TMI"), I also am responsible for maintaining and updating the Company's state  
21 and federal tariffs and the general terms and conditions that replaced its  
22 interstate retail tariffs, and for state and federal compliance reporting.  
23 Additionally, I review and inform the Company about state and federal regulatory

1 requirements, so that the requirements can be incorporated into the Company's  
2 operational processes.

3

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

5 A. I will respond to certain aspects of the Commission Staff's analysis of Talk  
6 America's application for facilities-based local and interexchange authority in  
7 Illinois, which led Staff to conclude that the Company does not have adequate  
8 managerial capability to provide telecommunications services in Illinois. First, I  
9 will discuss Staff's concerns about the overall number of complaints filed against  
10 Talk America, as reported in Attachment 2 to the Company's Amended  
11 Application, and explain why that information is not determinative of Talk's  
12 managerial capabilities. I also will respond to Staff witness Lucinda Jackson's  
13 contention that the slamming complaints reported to the Illinois Commission by  
14 Ameritech "demonstrate that the Applicant's management is not administering  
15 the necessary action within the company to prohibit slamming customers."  
16 (Jackson Direct Testimony, p. 9.) Finally, I will respond to certain other Staff  
17 concerns about Talk's managerial capability, which appear to be based on the  
18 Company's responses to various operational/compliance questions contained in  
19 its initial Application.

20

1 **Q. What is your response to Staff's suggestion that the levels of Talk**  
2 **America's customer complaints in jurisdictions outside of the State of**  
3 **Illinois reflect upon the Company's managerial capability to provide**  
4 **facilities-based telecommunications services in Illinois in compliance with**  
5 **state laws and regulations?**

6 ~~A. Staff witnesses Jackson and Marshall both refer to the number of~~  
7 ~~complaints that the Company reported in Attachment 2 to its Amended~~  
8 ~~Application, and imply that these complaint numbers and trends demonstrate~~  
9 ~~managerial deficiencies and portend an inability by the Company to comply with~~  
10 ~~Illinois laws and regulations. (See for example, Direct Testimony of Judith~~  
11 ~~Marshall, p. 12, and Direct Testimony of Lucinda Jackson, p. 9.) For various~~  
12 ~~reasons that I will discuss, I disagree that these reported complaint figures~~  
13 ~~demonstrate an overall lack of managerial proficiency on Talk's part, or that they~~  
14 ~~have any bearing on the Company's future ability to provide telecommunications~~  
15 ~~services in Illinois in compliance with state laws and rules.~~

16 Before explaining my response more fully, I would note at the outset that  
17 Talk America's management is extremely cognizant of the numbers of consumer  
18 complaints that the Company has received, and finds those numbers to be  
19 unacceptable both from a regulatory perspective and, perhaps even more  
20 significantly, from a business perspective. No company who is striving to  
21 compete against the incumbent local exchange companies in the  
22 telecommunications industry will succeed if their customers are not satisfied with  
23 their service.

1           Unfortunately, as Talk America witness Francie McComb discusses in her  
2 testimony, the Company experienced some hiccups in its processes when it  
3 entered the local services market in mid 2000 and undertook a rapid growth plan  
4 which, as it turned out, outpaced the Company's then-existing back office  
5 capabilities. The ensuing sales, provisioning, and billing issues that the Company  
6 faced as it attempted to roll out new bundled local and toll products to the mass  
7 consumer market led to a significant increase in customer complaints in the Fall  
8 of 2000 and into the first half of 2001. As the Company became aware of the  
9 shortcomings in its processes, it devoted and continues to devote significant  
10 resources to improving them. At the same time, it suspended certain problematic  
11 marketing channels (such as direct mailing of promotional checks) and  
12 substantially slowed its overall marketing efforts, so that its back office systems  
13 could "catch up" to its sales efforts.

14           The Company continues to work daily to improve its sales, provisioning,  
15 billing, and customer service processes in order to improve the experience that  
16 customers have when they purchase services from Talk, and to enhance the  
17 value that customers receive from those services. Talk America recognizes very  
18 clearly that it must be able to attract and retain customers in order to succeed in  
19 this industry, and that, in order to accomplish those goals, it must offer products  
20 that have value to customers as well as high-quality customer service. As  
21 improvements in our processes are made to achieve these objectives, customer  
22 complaints likewise will decline.

1           However, based upon my review of complaints received by the Company  
2 in various jurisdictions, it is apparent that the filing of complaints can significantly  
3 lag the correction of any underlying issue that led to the complaint. For instance, I  
4 have found that a significant number of complaints filed against the company in  
5 September 2001 continue to reflect issues that were experienced as far back as  
6 2000, at least nine months prior to the complaint. It is not unusual for the  
7 Company to receive complaints from customers alleging that they have been  
8 switched without authorization many months after the customer obtained service  
9 from Talk America. For example, my review of September complaints showed  
10 that some of the alleged "slamming" complaints reflected sales that were  
11 authorized via direct mail promotional checks, a marketing channel that the  
12 company suspended entirely nationwide in March 2001. Thus, although  
13 complaint numbers will decline as the Company's processes are improved, the  
14 decline will not be instantaneous, and may lag the improvements by many  
15 months.

16

17 **Q. Does the absolute number of complaints received by Talk have a**  
18 **direct relationship to the Company's ability to operate in Illinois as a**  
19 **facilities-based carrier in compliance with state laws and rules?**

20 A. No, not in my opinion. It is overly simplistic to suggest that the absolute  
21 number of complaints filed against the Company, particularly in other  
22 jurisdictions, is determinative of its ability to operate in compliance with Illinois  
23 rules and laws. First, the raw complaint numbers reported by the Company in

1 Attachment 2 to its Amended Application do not offer any evidence regarding the  
2 nature of those complaints, their veracity, or whether any of the complaints reflect  
3 a failure of the Company to comply with state laws and/or rules in the states  
4 where the complaints were filed. While I am certainly not attempting to suggest  
5 that none of the complaints that have been filed against the Company reflect  
6 ~~valid concerns and problems experienced by customers;~~ my experience in  
7 reviewing complaints indicates that a significant proportion of customer  
8 *complaints involve either confusion or error on the customer's part.* For instance,  
9 customers may not recall that they signed up for service or may not realize that  
10 their spouse authorized a switch. Or, customers may sign up for a calling plan  
11 and, although they are told that taxes and surcharges apply in addition to the  
12 quoted package price, they may dispute the level of the surcharges and fees  
13 once they receive their bills. Unfortunately, these surcharges and fees, which  
14 include such items as the Subscriber Line Charge, federal and state universal  
15 service fund surcharges, telecommunications relay surcharges, and other federal  
16 and state-specific funding mechanisms and taxes, are usually not insignificant  
17 and oftentimes may surprise customers when they receive their first bill.

18 The fact that customers may file complaints about the level of taxes and  
19 surcharges, to dispute their authorization for the switch to Talk America, or for  
20 various other reasons does not mean that Talk America has failed to comply with  
21 federal and state laws and regulations. Each complaint must be individually  
22 analyzed to determine whether any such violations occurred. Accordingly, the  
23 raw complaint numbers do not provide any useful information in that regard.

1 **Q. Wouldn't you agree, however, that the large number of complaints**  
2 **filed against Talk America in other jurisdictions reflects deficiencies in the**  
3 **Company's management and, therefore, its ability to provide**  
4 **telecommunications services in Illinois?**

5 **A. No.** First, the Company has been providing resold toll services in Illinois  
6 for more than ~~four (4) years~~ and currently service provides service to  
7 approximately 34,000 customers in Illinois. Prior to this certification proceeding,  
8 as far as I am aware, Staff had never alleged or even suggested that the  
9 Company had violated any state laws or rules with respect to the service that it  
10 has offered in the state. Second, the fact that the Company initially experienced  
11 some difficulties in its efforts to compete in the mass market for residential  
12 customers in other states, which led to a significant number of consumer  
13 complaints, does not suggest that the Company's management is unable to  
14 respond to and correct problems that have occurred, by improving its back office  
15 systems, marketing channels, and other processes. To the contrary, the  
16 Company has been doing just that, and the improvements made to date will help  
17 to prevent local customers in Illinois from experiencing the problems that other  
18 customers have experienced in the past.

19 When considering the complaints that have been filed against the  
20 Company, it is important to recognize the difficulties that confront competitors in  
21 their efforts to enter markets traditionally served by the monopoly incumbent  
22 LECs, particularly the residential markets that have been the focus of Talk  
23 America's entry strategy. In order to successfully compete in the residential

1 market, it is necessary to acquire a substantial number of customers, which  
2 requires a mass marketing effort. When it decided to enter the residential local  
3 market in mid 2000, Talk America was very successful in its marketing efforts  
4 and acquired more than a quarter of a million access lines within a relatively  
5 short period of time. Unfortunately, because of the volumes involved, any  
6 deficiencies in the Company's back office systems were magnified. Had the  
7 Company targeted its marketing efforts at small to medium-sized business  
8 customers, as most other CLECs do, the back office system problems that it  
9 experienced would have produced far fewer customer complaints, simply  
10 because of the fewer number of customers acquired. Because very few CLECs  
11 in the industry compete in the residential market, very few experience the volume  
12 of complaints that Talk America has experienced. That does not suggest,  
13 however, that Talk America's back office systems are any less robust or that its  
14 management is any less capable than that of other CLECs who may have  
15 experienced fewer absolute numbers of complaints.

16 To the contrary, based on my prior experience working for a CLEC that  
17 targeted small to medium-sized business, it is my opinion that such CLECs also  
18 experience back office difficulties with billing, provisioning, and customer service  
19 processes. However, because most do not serve the mass residential market  
20 and often market their services through account representatives who work  
21 directly with customers to establish service, they experience fewer gross  
22 numbers of complaints. It is overly simplistic to suggest, as Staff has, that these

1 gross numbers are good indicators of past or future managerial capabilities of a  
2 CLEC.

3  
4 **Q. What is your response to Staff witness Jackson's testimony**  
5 **regarding the number of slamming complaints that Ameritech has reported**  
6 **to the Commission?**

7 A. I have several observations regarding that testimony. Through discovery,  
8 Talk has obtained a copy of the Ameritech slamming complaint reports to which  
9 Ms. Jackson refers on pages 8-9 of her direct testimony. Because this  
10 information is deemed to be proprietary, I will discuss it in general and relative  
11 terms, to avoid disclosing any confidential information.

12 I would first note that the reports that I received do not indicate, as Ms.  
13 Jackson has testified, that the number of slamming complaints reported by  
14 Ameritech against Talk America for the first seven months of 2001 were  
15 "approximately twice as high as the total number recorded for the entire year of  
16 2000." (Jackson testimony, p. 8.) Rather, the reports that I received show that the  
17 number of complaints reported against Talk America (identified as The Phone  
18 Company in the complaints) for the first seven months of 2001 were  
19 approximately 33% lower than the total reported against the Company for the  
20 entire year of 2000.

21 Second, the reports reveal that for the first seven months of 2001, the  
22 reported number of slamming complaints for one of the major national carriers  
23 was more than *six and one-half* (6 ½) times the number reported for the

1 Company and the reported number for another major national carrier was more  
2 than seven and one-half (7 ½) times the number reported for the Company.  
3 Likewise, Ameritech reported far higher slamming complaints for those two  
4 carriers than for Talk America in 1999 and 2000. Thus, if the Commission Staff  
5 believes that Ameritech's raw complaint numbers demonstrate that "the  
6 Applicant's management is not administering the necessary action within the  
7 company to prohibit slamming consumers," (Jackson testimony, p. 9), then it  
8 must believe that these other two major carriers have the same (or worse)  
9 managerial deficiencies in this regard. However, Talk America is unaware of any  
10 adverse actions that have been taken by the Commission against these other  
11 two major carriers. Certainly, the Commission Staff should not discriminate in its  
12 treatment of competing carriers, by recommending that one carrier be denied an  
13 opportunity to compete in local market in Illinois due to the number of slamming  
14 complaints that Ameritech has reported against it, while allowing other carriers  
15 who have substantially higher numbers of reported complaints to enter and/or  
16 remain certificated in the state.

17 Even more importantly, despite its obligation under the FCC rules to do  
18 so, Ameritech has not forwarded to Talk America the slamming complaints  
19 reflected on the reports that it provided to the Commission. Consequently, Talk  
20 has no means of verifying or responding to the Ameritech-reported complaint  
21 numbers that have been cited by Staff. Within its regulatory department, Talk  
22 America has a dedicated group of representatives who receive and respond to  
23 allegations of unauthorized service switches that are forwarded to us by other

1 carriers. For instance, BellSouth submits such information to us via facsimile,  
2 which allows our representatives to investigate and respond to the complaints.  
3 Talk America has registered its contact information in the Slam Allegation Carrier  
4 Contact ("SACC") database, which was created and is being administered by the  
5 Industry Slamming Group. This database provides contact information for all  
6 participating carriers so that they may forward to one another allegations of  
7 slamming and, where necessary, submit the appropriate reimbursements to  
8 authorized carriers when a "slam" is determined to have occurred. However, we  
9 have received no such allegations of slamming from Ameritech.

10

11 **Q. What is your response to Staff's suggestions that Talk America's**  
12 **responses to certain operational/compliance questions in its Amended**  
13 **Application and testimony demonstrate a lack of managerial capability?**

14 A. I disagree that the issues identified by Staff in this regard demonstrate that  
15 the Company has managerial deficiencies that will prevent it from providing local  
16 and toll services in Illinois in compliance with state rules and laws.

17 On page 24 of his testimony, Mr. Agnew refers to a statement in Ms.  
18 McComb's testimony in which she referred to Ameritech as the number  
19 administrator and concludes that her unfamiliarity with number administration  
20 "provides a clear example of the Company's deficiency of managerial skills."  
21 (Agnew testimony, p. 24, lines 544-545.) I do not believe that Ms. McComb's  
22 lack of knowledge about the identity of the administrator of the numbering plan in  
23 Illinois demonstrates a deficiency in the Company's overall management

1 capabilities. An understanding of area code splits, the use of numbering  
2 resources, and the administration of these functions is part of the technical body  
3 of knowledge that is necessary to compete in the local and long distance  
4 markets. The Company has employees at both managerial and staff levels who  
5 have considerable experience in these technical and operational areas and who  
6 work directly in implementing system changes necessary to recognize area code  
7 splits and deal with other numbering issues that may require interfacing with  
8 Neustar. In fact, Commission Staff witness Marshall concluded that "[t]he  
9 resumes attached to Talk America's application appear to include employees  
10 with sufficient technical resources and ability to provide telecommunications  
11 service." (Marshall Testimony, p. 10.) As a result, Mr. Agnew's criticism of the  
12 Company's capabilities in this regard on the basis of the Associate General  
13 Counsel's testimony is misplaced.

14 Ms. Marshall offers a similar criticism of the Company's managerial  
15 capabilities, based upon its responses to 9-1-1 questions included in Appendix B  
16 to the Application. She concludes that those responses "do not demonstrate  
17 adequate knowledge of 9-1-1 operations within Illinois." (Marshall Testimony, p.  
18 15.) Again, I believe that knowledge and implementation of 9-1-1 operational  
19 issues falls within the realm of technical capabilities, which Talk America clearly  
20 has and clearly has demonstrated to the Commission. The Company has  
21 successfully provided local service in more than 20 states, including Michigan  
22 (another Ameritech state) in full compliance with state 9-1-1 requirements, and

1 has never received a complaint or inquiry from a commission regarding a lack of  
2 compliance with those requirements.

3 We certainly can and will provide additional information to Staff prior to  
4 initiating local operations in Illinois to explain our 9-1-1 processes, including  
5 collection and disbursement of surcharges, to assure Staff that all requirements  
6 will be met. I believe any confusion regarding the Company's understanding of,  
7 or ability to comply with, the state 9-1-1 requirements could easily have been --  
8 and still can be -- clarified through direct communications between the Company  
9 and Staff, and should not be cited as a reason to prevent the Company from  
10 offering a competitive choice to residential customers in Illinois.

11 Likewise, Staff witness Jackson's concern about the Company's  
12 understanding of and ability to comply with the Illinois rules regarding ITAC and  
13 UTAC funding and reporting (see Jackson Testimony, p. 21-22) is a compliance  
14 issue that could have been easily clarified through direct communication between  
15 the Company and its consultant, TMI, and the Commission Staff. Talk America  
16 complies with numerous state and federal universal service, TRS, and other  
17 funding requirements all of the states where it currently provides service. It  
18 employs the assistance of TMI to inform it about state-specific requirements and  
19 to submit the requisite compliance reports along with any fund remittances.  
20 Accordingly, TMI has submitted monthly ITAC reports on the Company's behalf,  
21 in compliance with our local resale authority in Illinois.

22 The Company certainly is aware that it is ultimately responsible for  
23 compliance with all funding and reporting requirements, but believes that its use

1 of TMI, a nationally recognized consulting firm that has many years of experience  
2 in this regard, is the best means to ensure that the requirements of each state  
3 are understood and met. It is my understanding that TMI performs this function  
4 for various CLECs who are certified to provide service in Illinois, and that it is  
5 familiar with the ITAC and UTAC funding and reporting requirements and will  
6 continue to assist us in fully complying with those requirements.

7 **Q. Does this complete your rebuttal testimony?**

8 **A. Yes.**

9

1

2