

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
 ILLINOIS BELL TELEPHONE )  
 COMPANY (AMERITECH ILLINOIS) and )  
 TDS METROCOM, LLC, AS as a )  
 successor in interest to TDS )  
 METROCOM, INC. )  
 ) 02-0558  
 Approval of the First Amendment )  
 to the interconnection agreement )  
 dated August 29, 2002, pursuant )  
 to 47 U.S.C. Section 252 (a)(1) )  
 and 252(e) )

Chicago, Illinois  
September 26, 2002

Met, pursuant to notice.

BEFORE:

MR. JOHN RILEY,  
MR. TERRY HILLIARD, Administrative Law Judges.

APPEARANCES:

MR. JAMES A. HUTTENHOWER  
MS. NANCY HERTEL  
225 West Randolph Street, Suite 25D  
Chicago, IL 60606

-and-

MAYER, BROWN, ROWE & MAW  
MR. DENNIS FRIEDMAN  
190 South LaSalle Street  
Chicago, IL 60603  
for Ameritech Illinois;

1 APPEARANCES: (Continued)

2 SCHIFF, HARDIN & WAITE  
3 MR. OWEN MAC BRIDE  
4 6600 Sears Tower  
5 Chicago, IL 60606

6 -and-

7 MR. PETER HEALEY  
8 525 Junction Road, Suite 6000  
9 Madison, Wisconsin, 53717  
10 for TDS Metrocom, LLC;

11 MR. DARRELL TOWNSLEY  
12 205 North Michigan Avenue, Suite 1100  
13 Chicago, IL 60601  
14 for WorldCom, Inc.;

15 MS. CHERYL HAMILL  
16 222 West Adams, Suite 1500  
17 Chicago, IL 60606  
18 for AT&T Communications of  
19 Illinois, Inc.;

20 MR. JAMES WEGING  
21 MR. CARMEN FOSCO  
22 MR. SEAN BRADY  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601  
for staff.

23 SULLIVAN REPORTING COMPANY, by  
24 MICHAEL R. URBANSKI, C.S.R.,  
25 License No. 084-003270

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1 JUDGE RILEY: Let me call the docket.

2 Pursuant to the direction of the Illinois  
3 Commerce Commission I now call Docket 02-0558. This  
4 is a petition by Illinois Bell Telephone Company and  
5 TDS Metrocom, LLC, as successor in interest to TDS  
6 Metrocom Incorporated, approval of the first  
7 amendment to the interconnection agreement dated  
8 August 29, 2002, pursuant to 47 USC Section 252  
9 (a) (1) and 252 (e).

10 And beginning with Ameritech, counsel, would  
11 you enter an appearance for the record, please.

12 MR. HUTTENHOWER: James Huttenhower,  
13 H-u-t-t-e-n-h-o-w-e-r and Nancy Hertel, H-e-r-t-e-l,  
14 appearing on behalf of Illinois Bell Telephone, 225  
15 West Randolph Street, Suite 25-D, Chicago, 60606.

16 JUDGE RILEY: For TDS Metrocom.

17 MR. FRIEDMAN: Also on behalf of Ameritech  
18 Illinois, Dennis Friedman, F-r-i-e-d-m-a-n, Mayer,  
19 Brown, Rowe & Maw, 190 South LaSalle Street,  
20 Chicago, Illinois, 60603.

21 JUDGE RILEY: Thank you.

22 Is there anyone else from Ameritech? Okay.

1           MR. MAC BRIDE:  On behalf of TDS Metrocom, Owen  
2           MacBride, 6600 Sears Tower, Chicago, Illinois,  
3           60606.

4           JUDGE RILEY:  Thank you.

5           MR. HEALEY:  Also on behalf of TDS Metrocom,  
6           Peter Healey, 525 Junction Road, Suite 6000,  
7           Madison, Wisconsin, 53717.

8           JUDGE RILEY:  Thank you.

9           And for staff.

10          MR. WEGING:  Let the record reflect the  
11          appearance of James Weging, W-e-g-i-n-g, Carmen  
12          Fosco, F-o-s-c-o, and Sean Brady, B-r-a-d-y,  
13          appearing on behalf of the Commission staff.

14          JUDGE RILEY:  Thank you.

15          And we also have Mr. Townsley for -- is it  
16          MCI/WorldCom?

17          MR. TOWNSLEY:  It's WorldCom, your Honor.

18          Appearing on behalf of WorldCom, Incorporated,  
19          Darrell Townsley, 205 North Michigan Avenue, Suite  
20          1100, Chicago, Illinois, 60601.

21          JUDGE RILEY:  And for AT&T?

22          MS. HAMILL:  Appearing on behalf for AT&T

1           Communications of Illinois, Inc., Cheryl Hamill,  
2           H-a-m-i-l-l, 222 West Adams Street, Suite 1500,  
3           Chicago, Illinois, 60606.

4           JUDGE RILEY: Thank you.

5           First order of business is I have two petitions  
6           to intervene in this matter, one from AT&T. Let's  
7           deal with that first.

8           Is there any objection from the parties to the  
9           intervention of AT&T in this matter.

10          MR. FRIEDMAN: Ameritech Illinois does object.

11          JUDGE RILEY: Does object.

12          And the grounds?

13          MR. FRIEDMAN: May I go on and say that  
14          Ameritech Illinois also objects to the petition to  
15          intervene of MCI/WorldCom.

16          Judge, in order to decide whether these  
17          carriers should be allowed to intervene, we think  
18          there are two things you need look at.

19          One is what is this case going to be about, and  
20          the other is what do the -- would the intervenors  
21          have to show about their interest in the case in  
22          order to be allowed to intervene under the

1 applicable standard.

2 Let me talk briefly about both of those things.  
3 First, what the case is about.

4 Two substantial corporations represented by  
5 counsel have agreed to amend their contract.

6 Probably in the world of commerce in this  
7 country, there's no right more fundamental than the  
8 right of corporations at arm's length to agree to a  
9 contract. The 1996 Telecommunications Act  
10 underscores that right.

11 You know that in Section 252 (a) of the Act,  
12 after having set out in Section 251 all the  
13 requirements that an incumbent LEC has to meet, in  
14 Section 252 (a) it says that the incumbent and the  
15 competing LEC, like TDS in this instance, can come  
16 to an agreement without regard to any of those  
17 requirements. That's Section 252 (a) of the Act.  
18 They can do whatever they want.

19 Courts throughout the country have emphasized  
20 that the Act prefers negotiation over other means of  
21 arriving at interconnection agreements.

22 Now, there is a requirement that the Commission

1       approve the parties' agreement, in this case the  
2       parties' amendment, and so TDS and Ameritech having  
3       voluntarily reached this agreement have asked the  
4       Commission to approve it.

5               The Commission can reject the agreement only if  
6       it finds -- only if someone persuades it that the  
7       implementation of this agreement would be contrary  
8       to the public interest.

9               Understandably, it's a very high hill to climb,  
10      okay.

11              Now, these standards that I'm reciting now are  
12      set out in 252 (e) of the Act.

13              There's also -- an agreement can also be  
14      rejected if it discriminates against a carrier  
15      that's not a party. That doesn't apply here.

16              There can be no possible claim of  
17      discrimination. If MCI wants this amendment MCI can  
18      have it today.

19              If AT&T wants it, AT&T can have it today. So  
20      forget about discrimination.

21              The only issue in this case is going to be  
22      would it be against the public interest for the

1 Commission to allow these parties to go ahead and  
2 implement this agreement that they have made.

3 This case is absolutely not going to be, and I  
4 emphasize this, is not going to be about what is  
5 going to happen or may happen in the remedy docket,  
6 remedy plan Docket 01-0120.

7 This case is not going to be about whether  
8 Ameritech will be able to or won't be able to  
9 substitute this performance measures amendment  
10 privately negotiated for some remedy plan that the  
11 Commission has approved elsewhere.

12 It's only about one thing, and that is does the  
13 public interest say that these two parties shouldn't  
14 be allowed to do this. So that's what the case is  
15 about.

16 Now, the next thing that you need to look at in  
17 considering whether these carriers should be allowed  
18 to intervene is what is the standard for  
19 intervention, what test do they have to pass.

20 If you look in the Administrative Code, I think  
21 you will find only one place where there is a  
22 standard that tells you how to decide a petition for

1 intervention, and that is in Section 766.20 of the  
2 Administrative Code. I have copies of that page  
3 here which I can pass around, if you like.

4 But here's what it says. It says:

5 "Intervention in any proceeding  
6 brought pursuant to Section 13-515 of the  
7 Public Utilities Act will be allowed only  
8 upon a showing that the entity filing a  
9 petition to intervene is in the same  
10 position, same position as the complainant  
11 or the respondent in the proceeding in  
12 which it is attempting to intervene."

13 Now, that rule is for proceedings under Section  
14 13-515 of the Public Utilities Act so it does not  
15 literally apply here. By its terms, that standard  
16 doesn't apply.

17 It's an appropriate model for you, though, in  
18 the absence of any other standard for this reason:

19 Proceedings under Section 515 are proceedings  
20 where a competitive carrier complains that  
21 Ameritech, for example, is behaving  
22 anticompetitively, okay, and it bears some important

1 similarities to this proceeding.

2 First of all, it's the private business of two  
3 companies. Someone complaining about Ameritech or  
4 another incumbent, okay. And this is the business  
5 of two companies, TDS and Ameritech.

6 Secondly, and I strongly suspect this is why  
7 there's a high standard for -- another reason  
8 there's a high standard for intervention in those  
9 515 cases is that there's an expedited schedule in  
10 those cases, 75 days. The ALJs have to issue a  
11 recommended decision in 60 days and then parties can  
12 object and the Commission has to act 15 days after  
13 that, so there's 75 days.

14 In this proceeding we have 63 days left, okay,  
15 because the Act --

16 JUDGE RILEY: I understand that.

17 MR. FRIEDMAN: You understand that.

18 So there really isn't time for a lot of people  
19 to come participate.

20 Now, again, for Section 515 proceedings, the  
21 test is does the would be intervenor have the same  
22 interest, will it be affected in exactly the same

1 way as the complainant.

2 I acknowledge that that rule doesn't apply  
3 here, but what it suggests is that these parties  
4 should have to demonstrate to you a real material  
5 interest akin to a property -- not just that they're  
6 interested in playing, okay, an actual interest in  
7 the outcome. They're going to be affected by the  
8 outcome. All right.

9 Now, let's see how they're going to be affected  
10 by the outcome. Let's look first at AT&T's  
11 petition.

12 AT&T's petition is easy. Has to be denied  
13 because there's another rule in the Administrative  
14 Code that AT&T didn't follow. Okay. And that is  
15 Section 766.20. It says what has to go into a  
16 petition to intervene. And that does apply to all  
17 petitions to intervene.

18 I'm sorry, I -- it's 200.200. I gave you the  
19 wrong number.

20 Petitions to intervene shall contain, and  
21 there's a short list. One item is a plain and  
22 concise statement of the nature of the petitioner's

1 interest, okay.

2 Now, if you look at AT&T's petition, and you  
3 search it for a plain and concise statement of the  
4 nature of petitioner's interest, you won't find one.  
5 All it says is AT&T has an interest.

6 Be kind of like if you went to the doctor and  
7 the doctor said, can you give me a plain and concise  
8 statement of what's ailing you and you said, well,  
9 Doctor, I'm ailing. Okay. So they're out because  
10 they haven't fulfilled that basic requirement.

11 MCI has taken a shot at showing what its  
12 interest is. But I would ask that you look with  
13 some care at their petition and what they say in  
14 particular at Page 4 which is when they get around  
15 to describing how they would like you to think they  
16 might be affected by the outcome of this proceeding,  
17 and you'll see frankly it just doesn't make any  
18 sense at all.

19 What they say is it is clear that Ameritech --

20 JUDGE HILLIARD: Where are you at?

21 MR. FRIEDMAN: I'm on Page 4 right in the  
22 middle of the page.

1 JUDGE HILLIARD: Okay.

2 MR. FRIEDMAN: There have been a lot of kind of  
3 preamble and lead-in to this, but it says that it's  
4 clear that Ameritech wants the TDS plan to be the  
5 default remedy plan that would apply to all  
6 competitive local exchange carriers.

7 Consequently, by all indications, Ameritech  
8 will be seeking to use specific terms of the TDS  
9 plan as ammunition against competitors other than  
10 TDS in the 271 docket.

11 I submit, Judges, that you cannot be worrying  
12 about that here. This case is not about what  
13 Ameritech may or may not try to do in the 271  
14 docket.

15 If MCI's suspicions prove true, I don't know  
16 what these indications are, but if they prove true  
17 and Ameritech tries to use something from this  
18 docket as ammunition, well, that can be dealt with  
19 in the 271 docket.

20 The only question here is public interest.

21 Then in Paragraph 5, MCI struggling mightily,  
22 and again I'd ask you to look at it carefully, says:

1                   "That because of the vital  
2                   importance of the terms of interconnection  
3                   agreements between incumbent local  
4                   exchanges carriers such as Ameritech and  
5                   competitors such as TDS who must  
6                   interconnect with ILEC networks in order  
7                   to provide service to their customers and  
8                   given the existence of the opt-in rights  
9                   in 47 USC Section 252 (i), the final form  
10                  of the TDS plan is important to other  
11                  competitors including WorldCom."

12                 Well, what does that mean? It's important  
13                 because it's important?

14                 It can make no difference to WorldCom what the  
15                 deal is between TDS and Ameritech Illinois except,  
16                 as WorldCom notes, that our agreement can be adopted  
17                 by someone else.

18                 Well, if they want it, they can adopt it. If  
19                 they don't want it, they don't adopt it.

20                 So for all of those reasons, Judges, and in  
21                 particular in light of the expediency with which  
22                 this proceeding has to be conducted, we would urge

1           you to deny the petitions to intervene.

2           JUDGE RILEY: Thank you.

3           Let me get responses from AT&T.

4           MR. MAC BRIDE: Judge, TDS Metrocom also  
5           objects to the petitions to intervene.

6           In addition to the reasons stated by Mr.  
7           Friedman, on behalf of the TDS, I'd simply note that  
8           TDS has entered into this interconnection agreement  
9           amendment through an arm's length negotiation with  
10          Ameritech of its own free will which it's totally  
11          entitled to do under both state and federal law.

12          And we would emphasize that any arguments about  
13          the implications of this agreement in any other  
14          docket of generic applicability can and should be  
15          made in those dockets and should not affect this  
16          case which should only address whether TDS and  
17          Ameritech are entitled to enter into this amendment  
18          under the two standards that Mr. Friedman has  
19          discussed.

20          JUDGE HILLIARD: Mr. Healey, do you have  
21          anything you want to say?

22          MR. HEALEY: Nothing additional. I think it's

1           been well covered.

2           JUDGE RILEY:   What is staff's position on the  
3           petitions to intervene?

4           MR. WEGING:   We support the intervention.

5           I don't want to speak on behalf of AT&T and  
6           MCI, I'm sure their attorneys are quite willing.  I  
7           just want to make two small points.

8           Rule 766 of the Commission rules is irrelevant  
9           to this case.  It is a rule that is part -- as  
10          counsel has stated, is part of the 13-514 and 13-516  
11          complaint system which almost constitutes its own  
12          little separate world of procedure and whatnot.  It  
13          has no bearing on negotiated agreements.

14          We have a rule in place, the Rule 763, if I  
15          remember the number correctly, that governs these  
16          proceedings.

17          In addition, there is an open question in all  
18          these proceedings of how much our general rules of  
19          practice apply here.

20          If you look at Rule 763 or the rules governing  
21          arbitrated agreements under the federal law, you  
22          will see that all those rules basically are nothing

1 but procedural rules.

2 And it was clear that there was an intent in  
3 drafting those rules of procedure for negotiated  
4 agreements and for arbitrated agreements that they  
5 were trying to avoid many of the rules contained in  
6 Rule 200 because -- and then some of the rules you  
7 will find in 763 are just repetitive of something in  
8 200, the implication being that they were trying to  
9 cut out certain matters. And I don't know how far  
10 200.200 actually applies to this proceeding.

11 And as a third matter, although counsel has  
12 expressed well their interest in negotiations and  
13 negotiated agreements, the public interest is the  
14 matter involved here. It's not just their private  
15 concerns.

16 Their private concerns presumably are expressed  
17 through their agreement and their joint petition.  
18 However, we're analyzing it not merely upon the  
19 basis of their interest, but on the public interest.  
20 And the public can indeed mean more people than the  
21 two parties involved herein.

22 So staff supports the intervention.

1           My cocounsel would like to add two points.

2           MR. FOSCO: Good morning. Carmen Fosco on  
3 behalf of the staff.

4           I have two additional points to make in  
5 addition to the points made by --

6           JUDGE RILEY: Please.

7           MR. FOSCO: -- Weging.

8           First, Ameritech has just read the 1996 in a  
9 way that basically reads away one of the provisions.  
10 I mean they admit that one of the standards is does  
11 this agreement discriminate against someone not a  
12 party, and they say that just doesn't apply because  
13 they can opt in.

14           Well, the opt-in provision is already in the  
15 Act. That right always exists. So by their  
16 definition here, there could never be discrimination  
17 against someone not a party to the agreement. And  
18 obviously that's not what Congress intended when  
19 they passed the 1996 Act.

20           Staff supports the petitions for intervention  
21 because who better than other CLECs to actually tell  
22 us how this might discriminate against them. I

1 don't think we have to decide here that it does or  
2 it doesn't but I think that they're in the best  
3 position to give some insight into how this  
4 agreement might discriminate.

5 Secondly this is kind of unique case since it  
6 involves the remedy plan. And without going into  
7 the details of what this amendment does or doesn't  
8 do, it has provisions that go -- that affect issues  
9 beyond the direct contractual relationship between  
10 Ameritech and TDS Metrocom.

11 There are Tier 2 penalties as part of this  
12 remedy that they are asking for approval. There are  
13 Tier 2 penalties in existing plans that this  
14 Commission ordered.

15 Without characterizing the change, they changed  
16 the Tier 2 payments that go to the State of  
17 Illinois. As such, I think those have an impact  
18 both on CLECs because the whole point of the remedy  
19 plan is to encourage the ILEC, in this case  
20 Ameritech, to perform in accordance with the  
21 standards, and that also has a strong public  
22 interest component.

1           Based on those factors we certainly think that  
2 the petitions to intervene are well taken.

3           JUDGE RILEY: All right. Thank you.

4           And AT&T response.

5           MS. HAMILL: Thank you, your Honors.

6           I won't belabor the point on the 13-514 and  
7 13-515 arguments regarding interventions. Mr.  
8 Weging is precisely correct that that intervention  
9 standard is different than the general intervention  
10 standard.

11           The 13-514 complaint process as you are  
12 familiar with is a rocket docket proceeding, if you  
13 will, to resolve a business dispute between a party  
14 for anticompetitive conduct, violations of the  
15 Illinois Public Utilities Act, et cetera, et cetera,  
16 et cetera. I don't think any further discussion is  
17 warranted on that topic.

18           What I heard Mr. Friedman say, I think, can be  
19 boiled down into two points.

20           First of all, you don't really need to worry  
21 about what Ameritech will or won't do with this TDS  
22 amendment for 271 purposes.

1           You need to worry about it because it has  
2 strong public interest considerations.

3           As your Honors may be aware that the Commission  
4 in the remedy plan docket, Docket 01-0120, the  
5 Commission entered a remedy plan for Ameritech, and  
6 although the parties are still briefing the issue,  
7 the Commission made it clear in that remedy plan  
8 order that the remedy plan adopted therein will  
9 apply for 271 purposes.

10           Staff has recently filed a motion in 271 asking  
11 Ameritech to articulate will you agree to do that or  
12 will you not.

13           We had a status in the 271 case which is Docket  
14 01-0662 about a month ago where Ameritech's counsel  
15 said, let's put this case on hold, we want to give  
16 you guys a few weeks to look at precisely the  
17 amendment that we're here today to discuss and  
18 perhaps set a schedule on.

19           So it does matter because 271 -- the remedy  
20 plan is important for backsliding of 271 purposes.  
21 The Commission has adopted a remedy plan and to the  
22 extent that Ameritech is going to use this plan, to

1 change what the Commission has ordered that has  
2 public interest considerations for 271 and for local  
3 competition.

4 I also heard Mr. Friedman indicate that this is  
5 a private contractual negotiation between Ameritech  
6 and TDS, and that only those two parties can speak  
7 to whether this agreement is in the public interest.

8 Well, I submit that I agree with Mr. Fosco that  
9 it can't be that the parties that have already  
10 agreed that that ought to be the contractual  
11 relationship are the only parties that can tell you  
12 whether the agreement is or is not in the public  
13 interest.

14 Mr. Fosco is correct that it's CLECs who are  
15 out there who have to maybe not live with this  
16 particular amendment but the ramifications and the  
17 implications of the amendment are precisely the  
18 parties that should be here telling you whether or  
19 not this amendment is in the public interest.

20 Thank you.

21 JUDGE RILEY: Anything from WorldCom?

22 MR. TOWNSLEY: Thank you, your Honor. I don't

1           have a lot to add to what's already been said by  
2           staff counsel and by Ms. Hamill for AT&T.

3           I would like to note for the record that  
4           WorldCom in particular is a large player in the  
5           local market in the State of Illinois.

6           We have a large customer base and would be  
7           severely impacted by a remedy plan that might become  
8           the default remedy plan for all local exchange  
9           carriers in the State of Illinois.

10          I would -- without having -- digging into the  
11          facts as to how many customers TDS happens to serve  
12          in the State of Illinois, I'd bet my next paycheck  
13          that we got a hell of a lot more customers than they  
14          do.

15          We certainly have an interest in this  
16          proceeding. We certainly have an interest in a  
17          remedy plan that's going to be adopted or provided  
18          some legitimacy by an approval of an amendment to an  
19          existing interconnection agreement by this  
20          Commission.

21          I would note to you that the standards under  
22          which you are going to be determining whether this

1           interconnection agreement amendment should be  
2           rejected or not includes whether the agreement  
3           between TDS and Ameritech or any portion of that  
4           agreement adopted by negotiation discriminates  
5           against the telecommunications carrier not a party  
6           to that agreement.

7           WorldCom is not a party to that agreement. We  
8           are very concerned as to whether the agreement  
9           itself or the terms and the conditions of that  
10          agreement are in the public interest; whether they  
11          would, in fact, discriminate against WorldCom as a  
12          major player in the local market in Illinois.

13          I sat on a conference call with counsel for  
14          Ameritech, Mr. John Lenahan, who explained that this  
15          particular amendment to the interconnection  
16          agreement locks a carrier into the agreement for  
17          four years.

18          And according to Mr. Lenahan, the carriers  
19          would not have the ability to opt out of that  
20          agreement for that four-year period and would not  
21          have the ability to opt into another agreement that  
22          may be a better agreement, whether it's Commission

1 approved or otherwise that might come down the road  
2 somewhere.

3 So I have serious concerns about whether the  
4 terms and conditions of this interconnection  
5 agreement amendment at least as Ameritech would  
6 interpret it would be in the public interest if it,  
7 in fact, would prohibit a carrier from exercising  
8 its rights under 252 (i) of the Telecommunications  
9 Act of 1996 of opting into another remedy plan  
10 agreement that might come down the road that might  
11 have better terms and conditions.

12 In fact, as has already been noted here, the  
13 Commission has undertaken a very lengthy review and  
14 examination of what appropriate remedy plan terms  
15 and conditions are in Docket 01-0120, and has stated  
16 in an order issued in that proceeding that the  
17 remedy plan moving forward and for purposes of  
18 Section 271 will be based on the remedy plan that  
19 the Commission has already reviewed and approved in  
20 that docket.

21 I view what Ameritech is doing within this  
22 proceeding as nothing more than a collateral attack

1 on what the Commission has already found to be just  
2 and reasonable terms and conditions of the remedy  
3 plan that came out of a fully litigated, fully  
4 contested docket where we were able to exercise all  
5 of our discovery rights and cross-examination rights  
6 and rights to comment on that plan.

7 Ameritech certainly exercised its right to do  
8 so as well.

9 What -- I don't think you can look at the  
10 interconnection agreement amendment that they are  
11 putting before you and asking you to approve in a  
12 vacuum. You have to look at the bigger picture.

13 You can't ignore the fact that the Commission  
14 has already looked at remedy plan terms and  
15 conditions in 01-0120.

16 You can't ignore the fact that Ameritech in  
17 seeking rehearing of the Commission's order in  
18 01-0120 specifically pointed to the TDS agreement as  
19 something that it wanted the Commission to at least  
20 give the Commission the ability to look at that  
21 agreement and say whether or not it meets the  
22 requirements of Section 271 of the Act.

1           The Commission denied that rehearing.

2           JUDGE RILEY:   Okay.   Fine, we're getting --  
3           seems to me we're get into an awful lot of detail.

4           I remind you, counsel, you said you had very  
5           little to add.

6           JUDGE HILLIARD:   Before he got wound up.

7           MR. TOWNSLEY:   Since I have been accused of  
8           struggling mightily, I want to make sure that I have  
9           fulfilled that accusation.   So.

10          JUDGE RILEY:   Let's wrap it up though.

11          MR. TOWNSLEY:   Let me wrap it up.

12          You have to look at whether this agreement is  
13          going to discriminate against any party not a party  
14          to this proceeding, including me, including AT&T.

15          You have to determine whether this amendment to  
16          this interconnection agreement is not in the public  
17          interest.

18          In fact, one of the things that the FCC has to  
19          look at in determining whether to grant 271  
20          authority to a carrier is whether that -- whether  
21          that application for 271 authority is in the public  
22          interest.

1           And one of the things it looks at to determine  
2 whether it's in the public interest is a remedy plan  
3 and what the terms and conditions of the remedy plan  
4 are for -- to insure that there will be no  
5 backsliding on performance.

6           So with all that, I would just wrap up by  
7 saying what you are -- the standards that you have  
8 to approve or evaluate this interconnection  
9 agreement by necessitate that other parties not, you  
10 know, parties who are not a party to the  
11 interconnection agreement amendment have an  
12 opportunity to comment on that interconnection  
13 agreement and tell you how it does or does not  
14 discriminate against them.

15           I'll leave it at that.

16           JUDGE RILEY: All right then. I thank the  
17 parties.

18           JUDGE HILLIARD: You want to respond?

19           JUDGE RILEY: Quickly, please.

20           MR. FRIEDMAN: Quickly. Just a couple points.

21           First, let me respond, if I may, to Mr. Fosco's  
22 point about discrimination.

1           Mr. Fosco said that our view that  
2           discrimination can't be an issue here reads  
3           something out of the Act. Let me explain why that's  
4           mistaken, all right.

5           What he was saying was, look, people can always  
6           adopt things under 252 (i) anyway, so if Ameritech  
7           was right and there's no possible discrimination  
8           claim here because of 252 (i), that would always be  
9           the case, okay. That's incorrect.

10           252 (i) does not allow a carrier to adopt  
11           anything and everything, okay. It applies to  
12           interconnection, services, resale and related terms  
13           and conditions, okay.

14           Using 252 (i) alone, it is not clear at all  
15           that a carrier could adopt this performance measures  
16           agreement -- amendment. Okay.

17           There are arguments that in order to get these  
18           under 252 (i) a carrier would have to take other  
19           chunks of an interconnection agreement having to do  
20           with interconnection unbundled network elements and  
21           so on, okay. You can't just go pluck a little  
22           piece.

1           What I said earlier was not, was not that  
2 anyone can have this under 252 (i).

3           What I said was on behalf of Ameritech  
4 Illinois, we will voluntarily make this available.  
5 If MCI wants this today, they may have it because we  
6 are willing to agree to do that, not because they're  
7 necessarily entitled to under 252 (i). It is that  
8 that takes care of the discrimination argument.  
9 Okay.

10           And, you know, we're hearing a lot about --  
11 bottom line is very simple. TDS maybe made a good  
12 deal for a CLEC or a bad deal.

13           If it's a good deal and MCI wants it, MCI may  
14 have it. If they -- if it's a bad deal for TDS,  
15 it's too bad for TDS, okay.

16           If MCI can have it and they can because we're  
17 saying they can, it can't discriminate against MCI,  
18 okay.

19           The second thing is we keep hearing these --  
20 you know, Ms. Urbanski -- I'm sorry, Hamill. It's  
21 been a while.

22           MS. HAMILL: Either one will be --

1           MR. FRIEDMAN: Says if Ameritech is going to  
2 use this plan to change what the Commission has  
3 ordered in another docket, you need to be concerned  
4 about it.

5           And Worldcom is saying, you know, Ameritech is  
6 going to do this, the Commission has decided that --  
7 the Commission may need to be concerned about that,  
8 but not in this docket. That's not pertinent to  
9 this docket.

10           Last comment. The standard for intervention, I  
11 cited a rule with a very high standard. It's been  
12 pointed out, as I did, that that rule by its terms  
13 does not apply here.

14           I simply said it was a good model. The fact of  
15 the matter is you're going to decide these motions,  
16 Judges, you are going to have to apply some  
17 standard. You are going to have to ask -- this  
18 isn't just an automatic free-for-all. What test do  
19 I apply to decide if someone can come in. All  
20 right.

21           The rule that I cited to happens to be the only  
22 one in the administrative code that gives a standard

1 for intervention and it's a very, very high standard  
2 and it's a proceeding rather like this proceeding.

3 My point is you have to put some meat on the  
4 standard, you have to really ask yourselves do these  
5 carriers have a legitimate interest, are they going  
6 to be affected directly by the outcome of this  
7 proceeding, not by something that might happen in  
8 some other docket after this proceeding.

9 Thank you.

10 JUDGE RILEY: Please, gentlemen, we're going to  
11 have to wrap this up very quickly.

12 MR. MAC BRIDE: Let me just say again,  
13 emphasize that TDS has voluntarily entered into this  
14 agreement.

15 Every argument that I heard from Mr. Townsley  
16 and Ms. Hamill is an argument that goes to another  
17 docket, not this docket. It can be made in those  
18 other dockets. It's preserved for those dockets.

19 Nothing about the approval of this amendment in  
20 this docket requires WorldCom or AT&T to adopt that  
21 amendment or to do anything.

22 Nothing about the approval of this amendment in

1           this docket does anything to force any other CLEC or  
2           the Commission to impose this amendment on any other  
3           CLEC in any other case.

4           I also want to point out in the order in Docket  
5           01-0120 where the Commission adopted the generic  
6           performance remedy plan, they said very clearly, I'm  
7           looking at Page 17, however, opting in to the plan  
8           that was adopted should not be automatic as a CLEC  
9           should be able to choose not to opt in to this  
10          performance remedy plan.

11          And that's what TDS has chosen. TDS is  
12          choosing to negotiate its own remedy plan and enter  
13          into a separate agreement with Ameritech for that.

14          JUDGE RILEY: Staff? Anything further?

15          MR. WEGING: Nothing further.

16          MR. TOWNSLEY: If I may just briefly respond.

17          Mr. Friedman has indicated here on the record  
18          that it is not required to provide this amendment to  
19          an interconnection agreement pursuant to 252 (i) of  
20          the Telecommunications Act of 1996.

21          The purpose of that provision is to prohibit  
22          discrimination by Ameritech in the terms and

1 conditions of interconnection that it can provide to  
2 other carriers.

3 By the very nature of Mr. Friedman's statement  
4 that this is -- that Ameritech will voluntarily  
5 provide this to other carriers, that says that they  
6 can also decide that they won't provide it to  
7 certain carriers. They'll provide it to some but  
8 maybe not others.

9 That in and of itself is discriminatory, your  
10 Honor and those are the kind of things that I'd like  
11 to be able to point out in this proceeding as a full  
12 party participant.

13 With that -- I'll leave it at that.

14 JUDGE RILEY: All right. Ms. Hamill.

15 MS. HAMILL: Mr. Townsley and I conferred while  
16 Mr. MacBride was speaking, so that's -- I'll go with  
17 his comments.

18 JUDGE RILEY: We're off the record.

19 (Whereupon, a brief recess  
20 was taken.)

21 JUDGE RILEY: We're back on the record.

22 And my co-ALJ and I have considered all of the

1 argument and we are going to allow or grant the  
2 petitions to intervene.

3 JUDGE HILLIARD: What's the next order of  
4 business?

5 JUDGE RILEY: Staff is -- is it staff that has  
6 raised the issues in this matter?

7 MR. WEGING: We haven't as yet. We have been  
8 talking to a great number of Ameritech and some TDS  
9 personnel --

10 JUDGE HILLIARD: Why don't we go off the record  
11 and just discuss things for a minute.

12 (Whereupon, a discussion was  
13 had off the record.)

14 JUDGE HILLIARD: Adjourned until 2:00.

15 JUDGE RILEY: Back on the record.

16 The parties have agreed that after lengthy  
17 discussion that we are going to recess now and we  
18 will reconvene at 2:00 p.m. and resume this matter.

19 Thank you.

20 (Whereupon, a recess  
21 was taken until 2:00 p.m.)

22 JUDGE RILEY: We are back on the record in

1 the -- in Docket 02-0558 after a recess from this  
2 morning.

3 And it has been agreed by all the parties that  
4 we will continue this matter for a status to next  
5 week, Thursday, October 3, at 2:00 p.m.

6 And at that time, we will take up the matter of  
7 a scheduling and the refiling.

8 JUDGE HILLIARD: Okay. But if you would,  
9 Mr. Friedman, if you could state what the -- your  
10 respective client's plans are as of right now and  
11 the reason we're having this continuation.

12 MR. FRIEDMAN: I'll take a shot at it and then  
13 I'll ask Owen MacBride to correct me because I'll  
14 undoubtedly make a mistake.

15 But my understanding is that TDS Metrocom and  
16 Ameritech Illinois intend to file possibly early  
17 next week, possibly later, a pleading in this matter  
18 called something like re-submission of amendment to  
19 interconnection agreement to Illinois Commerce  
20 Commission for approval or rejection pursuant to  
21 Section 252 (e) of the Telecommunications Act of  
22 1996. And --

1 MR. MAC BRIDE: And withdrawal of the --

2 MR. FRIEDMAN: And simultaneously to withdraw  
3 the joint petition filed on August 30th, and the  
4 interconnection agreement amendment that was  
5 attached to it. And our understanding -- we think  
6 the understanding of all parties and the  
7 Administrative Law Judge is that with that  
8 submission, the 90-day clock would start to run, the  
9 90-day clock within which the Commission must either  
10 approve or reject the amendment.

11 JUDGE HILLIARD: Okay. Mr. MacBride?

12 MR. MAC BRIDE: I agree with what Mr. Friedman  
13 said.

14 JUDGE HILLIARD: Anybody else have a comment?

15 MR. FOSCO: Just for staff, I mean, I think all  
16 the parties here are relying upon that statement of  
17 intent for continuing this because, otherwise, we'd  
18 be in a terribly tight time frame.

19 JUDGE HILLIARD: Certainly we are.

20 MR. FOSCO: I mean, that they intend to refile  
21 something.

22 JUDGE RILEY: As a matter of fact, it was

1 brought up earlier that I had tentatively set  
2 October 7th for a hearing on this matter. There was  
3 sent out a notice to cancel that.

4 MR. WEGING: There was never a notice for that  
5 October 7th date. It was just showing up on the  
6 calendar, on the e-docket. Although, I don't know  
7 if the clerk's office was going to do something.

8 JUDGE RILEY: But the potential for confusion  
9 is still there and I would delete October 7th's  
10 hearing date. That will be canceled.

11 JUDGE HILLIARD: All right. Then I guess we're  
12 adjourned until then.

13 (Whereupon, further proceedings  
14 in the above-entitled matter  
15 were continued to October 3,  
16 2002, at 2:00 p.m.)  
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