

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its Own Motion)	
)	
Investigation concerning Illinois Bell)	Docket No. 01-0662
Telephone Company's compliance)	
with Section 271 of the Telecommunications)	
Act of 1996)	

**BRIEF ON EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGES' PHASE 1A
PROPOSED ORDER OF
McLEODUSA TELECOMMUNICATIONS SERVICES, INC.
AND
TDS METROCOM, LLC**

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McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) and TDS Metrocom, LLC (“TDS Metrocom”) file this Brief on Exceptions to the Administrative Law Judge’s Proposed Order dated December 6, 2002 (“Proposed Order” or “PO”). McLeodUSA and TDS Metrocom take exception to three sets of conclusions in the PO.

I. Checklist Item 1 – Interconnection – Collocation -- Access to the MDF/CFA (PO, par. 288-291)

The PO rejects the position of competitive local exchange carriers (“CLECs”) that CLECs should be permitted access outside of their respective collocation spaces in Ameritech Illinois’ (“Ameritech” or “AI”) central office (“CO”) to perform maintenance or repair activities, in favor of Ameritech’s purported security concerns. The PO adopts Ameritech’s characterization of the issue as CLECs requesting access to the Main Distribution Frame (“MDF”) in Ameritech’s CO. The PO erroneously states that access to the Connecting Facility Assignment (“CFA”) is merely a matter of “convenience” for CLECs, which is outweighed by AI’s claim that access must be limited for security reasons. (PO at 72).¹

The PO fails to recognize the importance to CLECs of access to the CFA. CFAs are the basic interconnection points at which AI connects its wires to a CLEC’s network. The PO erred in its conclusion that access outside the collocation space to the location of the CFA was a mere “convenience.” (PO at 72). The record confirms that it is critical for a CLEC to access the CFA as well as the MDF to perform necessary testing and perform maintenance and repair functions to provide adequate service to its end user customers. (MTSI-TDS Joint Ex. 1.0, at 17-18; RCN Ex. 1.0, at 2; AT&T Ex. 6.0, at 25-

¹ McLeodUSA’s and TDS Metrocom’s evidence and arguments on this issue were presented at pp. 4-6 of our Phase 1A Initial Brief and pp. 4-6 of our Reply Brief.

32). Ameritech did not offer evidence disputing that performing such functions is critical for CLECs in serving their customers. Instead, Ameritech merely argued that the limitations it has imposed on CLECs' access to MDF/CFAs were overcome by other considerations.

The record is further undisputed that Ameritech does not provide CLECs access to the CFA at parity with the manner in which Ameritech itself accesses the CFA. Thus, there is a clear case of discrimination. The PO erroneously disregards the discriminatory treatment of CLECs in gaining access to the CFA, and accepts Ameritech's claim that this discriminatory treatment is justified by security concerns. The record was undisputed that Ameritech previously permitted CLECs direct access to the CDA. Other than Ameritech's bald assertions about security concerns, there is no evidence that permitting CLECs access to the CFA has ever caused any security problems for Ameritech.

The PO also ignores the evidence that Ameritech's alleged security concerns are undermined by its willingness to permit personnel of third party vendors unsupervised access to the CFA. Ameritech acknowledged that it permits approved third party vendors access to the CFA *without* an escort. (Tr. 1418-19) Yet, Ameritech is unwilling to permit a CLEC the same access to the CFA, even *with* an Ameritech escort. The anticompetitive thrust of Ameritech's limitation on CLECs is clear in light of this fact and of the fact that if a CLEC seeks to be qualified by Ameritech as a third party vendor, Ameritech imposes the unreasonable requirement that the CLEC, as a third party vendor, be willing to perform work on Ameritech's facilities.

Proposed Replacement Language

Paragraphs 288-292 of the PO should be deleted in their entirety and replaced with the following language:

Access to the MDF/CFAs

288. The record indicates that access to the MDF and the CFA is a matter of critical importance to CLECs providing facilities-based services using their own switching facilities in conjunction with UNE loops for performing testing and maintenance procedures. This Commission looks at this issue on two levels: (1) is the request founded on a matter of law or convenience; and (2) is there a reason for the Company's refusal of access or is it arbitrary and capricious?

289. Ameritech previously permitted CLEC technicians direct access to the MDF/CDA for purposes of performing maintenance and testing. Citing security concerns after September 11, 2001, Ameritech changed its policy.

290. As a matter of law, Ameritech must provide nondiscriminatory access to CLECs. It is clear that Ameritech itself has access to the MDF/CFA to perform such tests for itself in serving its own retail customers. The question becomes whether such discrimination is reasonable in light of the security concerns identified by Ameritech. While giving full credence to Ameritech's security concerns, the Commission concludes that there are less anticompetitive means to achieve the same end. In other words, Ameritech's policy of not permitting CLECs reasonable access to the MDF/CFA is arbitrary and capricious, and an unjustified discrimination.

291. CLECs expressed a willingness to permit their own technicians to be escorted by an Ameritech technician when the CLEC needs access to the MDF/CFA. This scenario provides at least as much if not more security for Ameritech than the access afforded by Ameritech to unescorted third party vendors. In the interest of security, Ameritech may also choose to require CLECs to become certified third party vendors, or establish some other reasonable credentialing procedure for CLEC technicians, provided that Ameritech does not impose unreasonable conditions on granting such certification, such as a requirement that a CLEC be willing to perform maintenance or testing work on behalf of Ameritech or any other like requirement.

II. Checklist Item 1 – Interconnection – Negotiation of Agreements – Negotiation Process (PO, par. 304)

The PO concluded that there was not adequate evidence to conclude that Ameritech engages in bad faith negotiation of interconnection agreements as a matter of course. The PO concluded that McLeodUSA's "singular negotiation experience" as described in the record was not enough to indict Ameritech, especially when Ameritech claimed it had taken steps to improve its processes. While MTSI and TDS Metrocom do not dispute for purposes of this brief on exceptions that the experience of McLeodUSA alone may not be enough to reach a conclusion that Ameritech engages in bad faith negotiations, the PO erroneously excuses Ameritech's noncompliance with its Section 251 obligation to negotiate interconnection agreements in good faith based on vague testimony that Ameritech has improved its processes.²

The primary issue that should concern the Commission is that SBC's policy continues to subject CLECs to having to "negotiate" interconnection agreements with SBC negotiators that have no independent authority to substantively deviate from SBC's 13-state template agreement. Am. III. Ex. 12.0 at 4. This means that each negotiation session is little more than a take it or leave it proposition for the CLEC. An SBC negotiator simply does not have authority to deviate from the company line on substantive issues. It makes no difference that SBC has better trained its negotiators on preparing for a negotiation session (as AI claims has been done) if that negotiator has no authority to actually "negotiate" with the other party a compromise on substantive issues. According to Black's Law Dictionary, to "negotiate" is to "communicate or confer with another so as to arrive at a settlement of some matter. To

² McLeodUSA's and TDS Metrocom's evidence and arguments on this issue were

meet with another so as to arrive through discussion at some kind of agreement or compromise about something.” The record shows that an SBC negotiator cannot “negotiate” with a CLEC to substantively deviate from the SBC standard 13-State agreement. Until SBC demonstrates that it provides negotiators who are actually authorized to compromise on substantive issues during negotiation sessions, AI must be found to be not in compliance with its obligation under Section 251 of the Telecommunications Act of 1996 to negotiate interconnection agreements in good faith, and thus not in compliance with Checklist item 1 for purposes of Section 271 compliance.

Proposed Replacement Language

Paragraph 304 of the PO should be deleted in its entirety and replaced with the following language:

304. The record shows that SBC-Ameritech’s interconnection agreement negotiation processes amount to a failure to comply with the Section 251 obligation to negotiate interconnection agreements in good faith since SBC-Ameritech fails to provide CLECs with the ability to directly negotiate substantive issues with an SBC negotiator who has authority to negotiate compromise resolutions that deviate from the provisions of SBC’s standard 13-State agreement. SBC must commit to provide negotiators who are authorized to substantively negotiate issues with the CLEC. It is no excuse that SBC has MFN considerations. SBC should provide a negotiator either familiar with those concerns or direct access to representatives from that organization to facilitate a more efficient negotiation process. Ameritech must demonstrate compliance with this requirement in Phase 2 of this proceeding in order to be found in compliance with its Section 251 obligations and with Checklist Item no. 1.

III. Checklist Item 2 – Unbundled Network Elements – OSS - Account Ownership Process (PO, par. 679)

The PO errs by concluding that McLeodUSA seeks a process to implement a change of “billing information”, when a CLEC changes ownership because of

presented at pp. 6-9 of our Phase 1A Initial Brief and pp. 6-7 of our Reply Brief.

acquisition by another CLEC acquisition, for “more convenience”. (PO, par. 679) The PO also errs in excusing Ameritech’s failure to provide such a process (which the record shows McLeodUSA first requested in 1998) because such a process has not previously been required of an RBOC in connection with a Section 271 determination.³

The PO errors in calling what McLeodUSA is requesting a proposal to implement a change of “billing information.” The PO fails to comprehend that this issue goes well beyond AI’s billing system. Each and every OSS used by Ameritech to process orders, process trouble tickets, process listings, process call terminations, process line terminations, etc. continues to retain incorrect carrier identification codes because Ameritech has no process in place to account for a CLEC being acquired by another CLEC. This means that every interaction of McLeodUSA with Ameritech for those situations that touch a former CLEC that McLeodUSA has acquired requires McLeodUSA to continue operating as if the acquisition never occurred

The record is undisputed that the lack of a process to implement changes of account ownership by Ameritech is not merely a matter of “convenience,” as mischaracterized in the PO. McLeodUSA must continue to order service as separate operating entities (i.e., as the various CLECs it has acquired). McLeodUSA must also check its records to verify which entity is “operating” in a CO according to Ameritech’s records when it must perform repair activities involving McLeodUSA’s collocation so that the correct carrier codes can be included in the trouble ticket. These are issues that Ameritech itself does not face in serving its retail customers.

The PO wrongly states that there is no legal authority for requiring Ameritech to

³ McLeodUSA’s and TDS Metrocom’s evidence and arguments on this issue were presented at pp. 9-11 of our Phase 1A Initial Brief and at pp. 7-9 of our Reply Brief.

provide a nondiscriminatory process to McLeodUSA to seamlessly change ownership. The only necessary legal authority is the obligation contained in Section 251(c) of the Telecommunications Act to provide nondiscriminatory access to unbundled network elements, including OSS. It is undisputed that Ameritech has such a process in place for its retail customers. The fact that this issue has not previously arisen in the context of a Section 271 determination does not mean it cannot or should not be considered here; it is this Commission's job to consider the particular facts and issues placed before it on the record of this case and determine whether the facts in this case demonstrate noncompliance with the Section 271 checklist items, including AI's obligation to provide nondiscriminatory access to its OSS. The underlying issue is non-discriminatory access. The record establishes that with respect to changes in account ownership, Ameritech's systems do not provide McLeodUSA (or similarly-situated CLECs) with non-discriminatory access to AI's OSS. Thus, the conclusion that the Commission must reach, based on this record, is that for Section 271 approval purposes, Ameritech is not in compliance with Checklist Item 1.

Proposed Replacement Language

Paragraph 679 of the PO should be deleted in its entirety and replaced with the following language:

679. McLeodUSA seeks a process to implement a change of carrier identification codes for CLECs that have been acquired by another CLEC. The lack of a process to account for changes of ownership forces McLeodUSA (and similarly-situated CLECs) to interact with Ameritech in all respects for those existing and future customers served out of equipment/systems that continue to be erroneously identified as ongoing operating entities that in fact have been dissolved, merely because Ameritech has not developed in its systems a process to recognize the change of ownership. The record shows that Ameritech has a process in place for its own retail customers to accommodate acquisitions. The lack

of a comparable process for a CLEC customer is discriminatory and violates Ameritech's obligation to provide nondiscriminatory access to unbundled network elements, including OSS. Ameritech must devise and implement such a process, and demonstrate in Phase 2 of this proceeding that it has done so, in order to be found in compliance with Checklist Item 2.

IV. Conclusion

McLeodUSA Telecommunications Services, Inc. and TDS Metrocom, LLC, respectfully request that the Commission modify the Proposed Order in accordance with the exceptions set forth in this brief.

Respectfully submitted,

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