

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

In the Matter of the Petition of	)	
SCC Communications Corporation	)	
for Arbitration Pursuant to Section 252(b)	)	Docket No. 00 -0769
of the Telecommunications Act of 1996	)	
to Establish an Interconnection Agreement	)	
with SBC Communications Inc	)	

**REPLY TO AMERITECH ILLINOIS’  
MOTION TO DISMISS PETITION FOR ARBITRATION**

**NOW COMES** the Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to 83 Ill. Admin. Code 200.190 and direction of the Hearing Examiners, and replies to Illinois Bell Telephone Company’s (“Ameritech Illinois” or “AI”) Motion to Dismiss the petition of SCC Communications Corp. (“SCC”) for arbitration under section 252 (b) of the Telecommunications Act of 1996 (“1996 Act” or “Act”).

In the Motion filed on December 13, 2000 (“Motion”), Ameritech Illinois avers that the Commission should deny SCC’s Petition on the grounds that : (a) SCC is not a telecommunications carrier under the 1996 Act and is therefore not entitled to Arbitration under the Act; and (b) SCC does not seek interconnection under the 1996 Act and is not entitled to arbitration. (Motion at 2-9).

Ameritech’s Motion relies heavily on Staff’s position and the Illinois Commerce Commission’s decision in Docket 97 AB-001. There the Commission denied a petition for arbitration under the 1996 Act “on the ground that [the Petitioner] does not meet the

threshold requirement that it be a telecommunications carrier under the 1996 Act.” (Motion at 3) AI then implies that the Commission Staff would agree with its present Motion, since Staff supported AI’s motion to deny arbitration in that Docket.

Staff agrees with AI insofar as the 97 AB-001 decision stands for the proposition that this Commission will require a petitioner to qualify as a “telecommunications carrier” in order to be eligible for arbitration under Section 252 of the Federal Telecommunications Act of 1996.. However, Staff’s position in that case was based on a factual situation that is significantly different from that presented in this Docket.

The petitioner in 97 AB-001, Low Tech Designs, Inc. (“LTD”), was seeking to establish an interconnection agreement through arbitration, but had not filed a petition seeking Certification a telecommunications carrier pursuant to Illinois law (220 ILCS 13-401). Staff took the position that there was a question as to whether LTD was a telecommunications carrier. (“Response Of The Staff Of The Illinois Commerce Commission To Ameritech Illinois’ Motion To Deny The Petition,” Docket 97 AB-001 at 1 - 2)<sup>1</sup> The basis for Staff’s concern was that LTD lacked Certification as a telecommunications carrier, and that no evidence had been presented in the arbitration proceeding which would establish LTD’s credentials as a telecommunications carrier. “[A]bsent such evidence or allegations” Staff would recommend the matter be dismissed. (Response, at pages 4 - 5) Staff also noted at page 4 of the Response,

If, however, the Commission determines that LTD *is* a telecommunications carrier under the [federal] Act, then Staff believes the arbitration should go forward .... (Emphasis in the original.)

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<sup>1</sup> AI has provided copies of Staff’s pleading and the Commission’s Order from Docket 97-AB-001 as Exhibit 1 to its current Motion to Dismiss. Both documents are found under Tab 2 of AI’s filing.

The posture of the case presented by SCC Communications differs significantly from the case presented by LTD. First, SCC filed a petition under 220 ILCS 13-401 to obtain Certification as a telecommunications carrier. Such petition proceeded as Docket No. 00-0606 and culminated on December 20, 2000 with this Commission's grant of SCC's petition for Certification. Second, in its Petition that is the subject of this proceeding, SCC presented a detailed description of its operations. SCC also noted that it has been certified in six other jurisdictions, and is seeking certification "throughout the United States." (SCC Petition, at pages 2 - 6)

Staff believes that SCC has presented sufficient evidence to establish its status as a "telecommunications carrier" under TA96. For the reasons stated, and pursuant to the further discussion set forth below, Staff submits that AI's Motion to Dismiss should be denied. Before proceeding with a discussion of the merits (or lack thereof) of AI's Motion, Staff first notes that AI elected not to object to SCC's Section 13-401 petition for Certification. Perhaps, if AI has objections to SCC's operations, they should have been raised in that forum. However, having chosen to let SCC's Section 13-401 petition to proceed without opposition, AI nevertheless now seeks to undermine the effects of the Commission's Certification of SCC. SCC has asserted that interconnection with AI's facilities is necessary for SCC to provide its telecommunication services. (Petition at 5) AI, in filing its Motion, seeks to prevent such interconnection. Stated in another way, without interconnection SCC cannot provide the services for which it was Certified by the Commission. The Commission should not countenance such a back door attempt to subvert its authority.

## SCC QUALIFIES AS A TELECOMMUNICATIONS CARRIER

Ameritech argues that SCC is not a telecommunications carrier and that therefore, SCC is not eligible for interconnection pursuant to Section 251 of the Act. Staff agrees that the duty to interconnect under Sections 251 (a) (1) and (c) (2) of the Act is limited to interconnection with or for the facilities and equipment of telecommunications carriers. 47 U.S.C. §251 (a) (1) and (c) (2). Sections 251 (b) (3), 251 (b) (4), 251 (c) (1), 251 (c) (3), and 251 (d) (2) (b) also limit the duties or obligations referred therein to “*requesting telecommunications carriers*” or “*providers of telephone exchange service*” or “*providers of telecommunications services.*” 47 U.S.C. § 251 (b) (3) , 251 (b) (4), 251 (c) (3) and 251 (d) (2) (B). However, Staff disagrees with AI’s assessment that SCC is not a telecommunications carrier.

Staff believes SCC is a telecommunications carrier. The Act contains the following definitions which are relevant to the issue presented:

The term “telecommunications carrier” means any provider of telecommunications services...A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

The term “telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to public, regardless of the facilities used.

The term, “telecommunications” means the transmission, between or among points specified by the user, of information of the users’ choosing, without change in the form or content of the information as sent and received.

47 U.S.C. §§ 153 (44) (46) and (43).

Ameritech argues that SCC is not a telecommunications carrier because it does not offer services directly to the public, instead, it is SCC’s customers (*i.e.*, its carrier customers) that provide telecommunications services directly to the public. (Motion, at 4 ) Yet, this argument is flawed. SCC does provide its services directly to the end user. SCC is using its carrier customers as a transport to the appropriate Public Safety Answering Points (“PSAP”) <sup>2</sup> which is a subset of the public.

Ameritech narrowly interprets the facts and language in *AT&T Submarine Systems, Inc.*, 13 F.C.C.R. 21 585 (rel. Oct. 9, 1998) and *Virgin Islands Tel. Corp. v. FCC*, [198] F. 3d 921 (D.C. Cir. 1999) (decision affirmed) to support its position that SCC is not a telecommunications carrier. The courts in that case applied the two-part test of *National Association of Regulatory Utility Commissioners v. FCC*, 173 U. S. App. D.C. 413, 525 F. 2d 630 (D.C. Cir. 1976) (“*NARUC 1*”) to determine if the petitioner AT&T-SSI offered telecommunication services. After applying such two-part test, the court in *NARUC 1* determined that AT&T-SSI was not a common carrier.<sup>3</sup>

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<sup>2</sup> SCC aggregates and transports 9-1-1 and emergency call traffic from end users of wireline, wireless, and telematics service providers to an ILEC’s Selective Routing Tandem and ultimately to the appropriate PSAP. The method of transmission of the 9-1-1 and emergency call traffic to SCC’s aggregation point is transparent to the PSAP. All necessary conversion functions and special applications necessary to transport calls and information from wireless and telematics end users calling 9-1-1 or requesting emergency assistance are made within SCC’s network. The PSAP that receives a 9-1-1 call from a wireless or telematics end user will be able to process such calls in a manner no different than that currently used for 9-1-1 calls made by wireline end users. (Petition, at 4 Footnote 6)

<sup>3</sup> As the Commission concluded in *Cable & Wireless*, the legislative history of the 1996 Act indicates that the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services. *Cable & Wireless*, 12 FCC RCD 8516, 8521-8522 (1997) (“*Cable & Wireless*”).

Under the *NARUC 1* test, a carrier does not have to be regulated as a common carrier if (1) it intends to make “individualized decisions, whether and on what terms to serve” or (2) the public interest does not require the carrier to be legally compelled to serve the public indifferently. *Id.* at 642. “The Commission has subsequently interpreted this two-part test to mean that a carrier has to be regulated as a common carrier if it will make capacity available to the public indifferently or if the public interest requires common carrier operation of the proposed facility.” *Cable & Wireless*, 12 FCC Rcd. 8516 at 14-15 (1997). The court reasoned that, applying the two-part test, that neither prong of the *NARUC 1* standard was applicable to AT&T-SSI’s proposed system and that the 1996 Act did not require that AT&T-SSI be regulated as a common carrier and that there are “*no public interest reasons for doing so*” (emphasis added) *Virgin Islands Tel Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999)

Ameritech’s analogy between the services AT&T-SSI provided and SCC’s services is incorrect. AT&T-SSI is distinguishable because their main purpose was providing the hardware, laying the cable and then the company leased the space. On the other hand, SCC provides telecommunications services that facilitate, enhance, and advance the provision of emergency services throughout the United States to end users of wireline, wireless, and telematics service providers. SCC is continually and actively providing services. After applying the *NARUC 1* test to SCC’s 9-1-1 services, this Commission should conclude that SCC does provide telecommunications services directly to the public and is a telecommunications carrier under the Act. It is a matter

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Specifically, the Joint Explanatory Statement states that the definition of telecommunications services “recognizes the distinction between common carrier services that are provided to the public...and private services.” H.R. conf. Rep. No. 104-458 at 116 (1996).

of public safety that the 9-1-1 service SCC needs to be regulated. In addition, under Section 253 (b), the Act gives the Commission certain discretion to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Public interest requires common carrier operation of the SCC's telecommunication services.

Respectfully submitted,

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