

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

LOW TECH DESIGNS, INC. :
 : 97 AB-001
Petition for Arbitration pursuant to :
Section 252(b) of the Telecommunications: :
Act of 1996 to establish wholesale rates: :
and an interconnection agreement for : :
access to and rates for unbundled : :
network elements with Illinois Bell : :
Telephone Company d/b/a Ameritech : :
Illinois. :

RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION
TO AMERITECH ILLINOIS' MOTION TO DENY THE PETITION

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and in response to Illinois Bell Telephone Company's ("Ameritech Illinois" or "AI") Motion to Deny the Petition for Arbitration to Establish an Interconnection Agreement ("Petition") filed by Low Tech Designs, Inc. ("LTD"), states as follows:

1. In the Motion filed on February 24, 1997, Ameritech Illinois avers that the Commission should deny LTD's Petition on the grounds that: a) the issues set forth by LTD, in its Petition, relate to matters that are not covered by the Telecommunications Act of 1996 ("TA 96" or "the Act"); and b) LTD is not a telecommunications carrier under TA 96. (Motion, at pp. 2-8).

2. Staff agrees with Ameritech that there is a question as to whether LTD is a "telecommunications carrier" as defined in TA

96 and the FCC's First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (FCC 96-325), CC Docket Nos. 96-98 & 95-185, (released August 8, 1996) ("First Report and Order"), and recommends that the Commission address this threshold issue.

3. As an initial matter, Staff notes that there is no requirement under TA 96 for a requesting telecommunications carrier to be certified by a state commission before requesting interconnection with an incumbent local exchange carrier ("ILEC").¹ However, 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)(1), 251(c)(3) and 251(d)(2)(B).²

¹ With respect to the duty to negotiate in good faith, the FCC has specifically held that "a party may not refuse to negotiate with a requesting telecommunications carrier, and a party may not condition negotiation on a carrier first obtaining state certification." First Report and Order, § 154.

² Although Congress did not repeat the phrase "telecommunications carrier" or "provider of telecommunications services" for each and every duty specified in Section 251, such a limitation has been found to exist based on the intent of Congress with respect to those provisions. For example, the FCC specifically found that "section 251(c)(4) does not require

4. This case represents the first instance in which an entity, which has not previously been certified by the Illinois Commerce Commission ("Commission") as a telecommunications carrier, has requested arbitration with an ILEC in Illinois under TA 96. In prior arbitrations, neither Staff, the Hearing Examiners nor the Commission were faced with the issue of making a determination as to whether the requesting party was a telecommunications carrier. However, since LTD is not certified to operate in Illinois, there is no record evidence to support the proposition that LTD is, in fact, a telecommunications carrier for purposes of interconnection under the Act.

5. The Act contains the following definitions which are relevant to the issue presented:

The term "telecommunications carrier" means any provider of telecommunications services

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 the public, regardless of the facilities used.

The term, "telecommunications" means the transmission, between or among points specified by the user, of

incumbent LECs to make services available for resale at wholesale rates to parties who are not 'telecommunications carriers' or who are purchasing service for their own use." First Report and Order, ¶875. Indeed, the FCC stated "the negotiation process established by Congress for the implementation of section 251 requires incumbent LECs to negotiate agreements, including resale agreements, with 'requesting telecommunications carrier or carriers,' not with end users or other entities." First Report and Order, ¶ 875, footnote citing to 47 U.S.C. § 252(a)(1) omitted.

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).

6. Using these definitions, Staff believes that reasonable minds could differ as to whether or not LTD meets the criterion to be a telecommunications carrier under the Act and, therefore, recommends that the Commission resolve this issue.

7. If the Commission were to determine that LTD is not a telecommunications carrier as defined by the Act, then Staff believes, as a matter of law, that LTD has no rights under Section 251 of the Act and, consequently, would not be eligible for interconnection under Section 251 or arbitration under Section 252 of the Act.

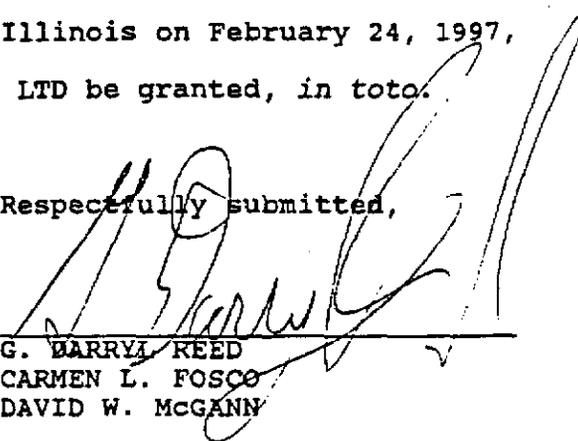
8. If, however, the Commission determines that LTD is a telecommunications carrier under the Act, then Staff believes the arbitration should go forward and the petitioning party will have the burden of proving that its request for interconnection is technically feasible.

9. Staff has not seen any record evidence or factual allegations which support LTD's contention that it is a telecommunications carrier under the Act and, absent such evidence or allegations, Staff is compelled to recommend to the Commission

that Ameritech Illinois' Motion to Deny the LTD's Arbitration Petition be granted.

WHEREFORE, based on the foregoing, Staff respectfully prays that the Motion filed by Ameritech Illinois on February 24, 1997, to Deny the Arbitration Petition of LTD be granted, in toto.

Respectfully submitted,



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Counsel for the Staff of the
Illinois Commerce Commission

February 28, 1997

STATE OF ILLINOIS



Handwritten note: → Mrs for file

ILLINOIS COMMERCE COMMISSION

Office of General Counsel

February 28, 1997

Ms. Donna Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Street
P.O. Box 19280
Springfield, Illinois 62794-9280

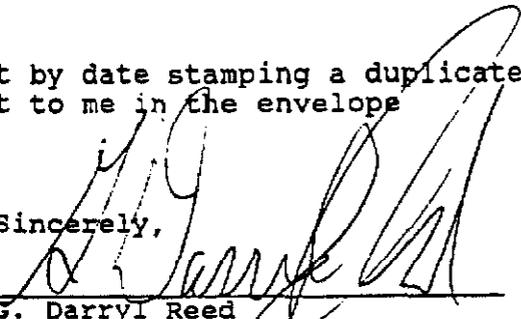
RE: Ill. C.C. Docket 97 AB-001

Dear Ms. Caton:

Enclosed for filing in the above-referenced docket please find an original and two copies of the "Response of the Staff of the Illinois Commerce Commission to Ameritech Illinois' Motion to Deny the Petition". Also enclosed is a Notice of Filing and Certificate of Service.

Please acknowledge receipt by date stamping a duplicate copy of this letter and returning it to me in the envelope provided.

Sincerely,


G. Darryl Reed
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Counsel for the Staff of the
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GDR/bjm

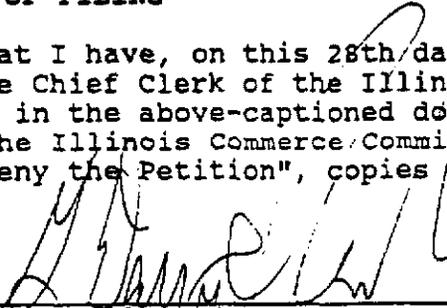
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NOTICE OF FILING

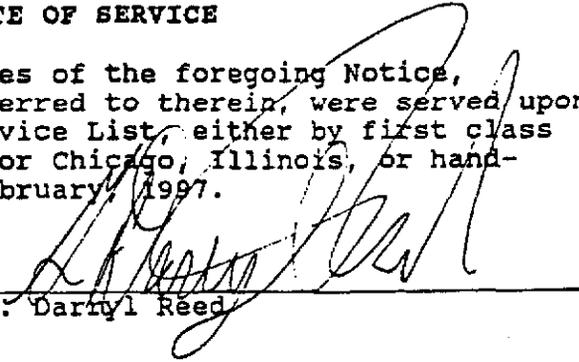
YOU ARE HEREBY NOTIFIED that I have, on this 28th day of February, 1997, forwarded to the Chief Clerk of the Illinois Commerce Commission, for filing in the above-captioned docket, the "Response of the Staff of the Illinois Commerce Commission to Ameritech Illinois' Motion to Deny the Petition", copies of which are hereby served upon you.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Notice, together with the documents referred to therein, were served upon the parties on the attached Service List, either by first class mail, proper postage prepaid, for Chicago, Illinois, or hand-delivery on this 28th day of February, 1997.



G. Darryl Reed

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97 AB-001
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