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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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CHIEF CLERK'S OFFICE

Illinois Commerce Commission :
On Its Own Motion :
vs :
Pre-Paid Local Access Phone :
Service Co. :
Citation to determine current fitness :
to offer telecommunications services :
under Sections 13-404 and 13-405 of :
the Public Utilities Act :

Docket No. 00-0073

**RESPONSE TO THE COMMISSION'S
MOTION FOR SUMMARY JUDGEMENT**

Comes now the Respondent, Pre-Paid Local Access Phone Service, Inc.,
by and through its Attorneys, Patrick H. Smyth & Associates, and hereby submits
this its Response to the Commission's Motion for Summary Judgement as
follows:

PRELIMINARY MATTERS

1. A Certificate of Service to operate as a reseller of
telecommunications services was issued to the Respondent had submitted
and the Commission had accepted the testimony which supported a conclusion
that it had "sufficient technical, financial and managerial resources" to provide the
required services for the benefit of the general public. It is acknowledge
that this Honorable Commission has the statutory duty to maintain that all
the holders of a Certificate must continue its ability to provide such a service
which is their duty. The Commission also has the obligation to oversee said

holders and to advise and counsel them if they had failed to comply with the Commission's Ruler and Regulations.

2. After obtaining said Certificate, the State of Illinois filed an action against Respondent in Docket No. 99 CH 17017 alleging lack of services under the Consumer Fraud and Reception Business Practice Act which a settlement agreement was entered into between the parties. The Defendant was not represented by counsel. It is the belief that such action filed by the Attorney General was beyond the scope of its authority as the only regulatory body that has jurisdiction over this Respondent is this Honorable Commission. See, *Nowakowski v. American Red Ball Transit Co., Inc.* 288 Ill. App 3d. 348, 680 N.E.2d 441 (1997).

3. Commission, by its own Motion, filed this action requiring Respondent to present evidence before the Commission that it still had maintained its necessary financial and managerial resources and ability to offer the services authorized to the general public. Subsequently, the staff submitted a list of questions that the Respondent was to Answer. Such Answers were submitted. But, by this Motion, the Examiner is now to find that the Respondent did not adequately answer and that its Certificate should be revoked.

4. Notwithstanding the Rules of Procedure issued by the Supreme Court, this Commission has its own Rules of Procedure and is not a Trial Court but an Administrative Tribunal. It is the position of the Respondent that not only does the holder of authority have a duty to conduct its business in accordance

with the Commission's stated goal and requirements, it is also the Commission's requirement to advise and assist the existing holders to maintain its operations for the benefit of the general public. Wherefore, it is respectfully submitted that the Commission, and its staff, should allow the Respondent to maintain its Certificate and, upon restrictions and guidance, to conduct its service for the general public. Argument.

5. In the beginning, the Respondent had only one provider Ameritech. This required, as the record indicates, that the Respondent was to enter into agreement with Ameritech, upon Commission approval, and which was not financially positive for the Respondent. The relationship between them resulted a negative income to the Respondent. Frankly, Ameritech put the Respondent in a hole. The Respondent is willing to arrange with Ameritech a plan that would deduct the amount due to Ameritech but not burden the operation of the Respondent. The Respondent now has filled arrangements with GTE, North and South, as additional sources of customers and will show a profit. It also entered into a financial agreement with the SBA, TCF Bank, and Pullman Bank. Additional sources of revenue is now being obtained by Merrill Lynch.

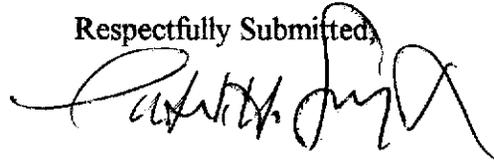
6. As for as management, the Respondent has brought in a new team with commitments as shown in the attachment.

7. Finally, as far as ability, to serve, attached is a new business plan that has been submitted to the SBA. This shows the changes of the Respondent and its ability to bounce back.

In conclusion, a Motion for Summary Judgment should be granted only

where there are no genuine issues as to any material fact showing that the Respondent had no "technical, financial, and managerial resources and abilities to provide the telecommunications service." The Respondent submits that by its prior statement and those here, there is a question of fact and that a hearing is required to develop same. Wherefore, it is respectfully requested that the Motion for Summary Judgment be denied, or in the alternative, that it would be held for a time period to allow the Respondent to operate in accordance with the Commission approval and to rectify its prior problems. The Commission could, with a mandate, oversee the Respondent's operations with guidance and to continue business for the benefit of all parties.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick H. Smyth", written in a cursive style.

Patrick H. Smyth

Of Counsel:
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ILLINOIS COMMERCE COMMISSION**

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NOTICE OF FILING

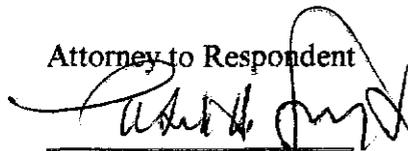
To: Donna Caton
Chief of Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62794

PLEASE TAKE NOTICE that on this date I have filed an Original and two copies of Respondents Motion for leave to Appear and Response to the Commission's Motion of Summary Judgement by expedited mail.

DATED at Chicago, Illinois, this 20 day of March, 2001.

Patrick H. Smyth & Associates
105 West Madison Street. Suite 2300
Chicago, IL 60602

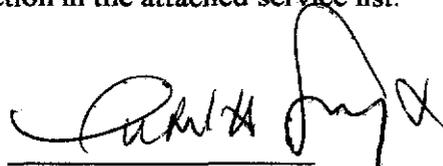
Attorney to Respondent



Patrick H. Smyth

CERTIFIED OF SERVICE

I, Patrick H. Smyth on March 20, 2001, served this notice and pleading by mailing or by hand a copy to each person to whom it is direction in the attached service list.



Patrick H. Smyth

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