EXHIBIT 2

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Consolidated Communications Enterprise Services, Inc. d/b/a Consolidated Communications Public Services	)	
	)	
Securus Technologies, Inc.'s Verified Reply in Support of Motion to Set Discovery Schedule and Continue Deadlines for Briefing on Exceptions Pending.	)	**Docket 12-0413**

SECURUS TECHNOLOGIES, INC.'S VERIFIED REPLY IN SUPPORT OF MOTION TO SET DISCOVERY SCHEDULE AND CONTINUE DEADLINES FOR BRIEFING ON EXCEPTIONS

Intervenor, Securus Technologies, Inc. ("Securus"), by its attorneys, respectfully submits its combined reply to the Response of the Staff of the Illinois Commerce Commission to Securus Technologies' Verified Motion to Set Discovery Schedule and Continue Deadlines for Briefing on Exceptions ("Staff's Response") and the Verified Response and Objections of Consolidated Communications Enterprise Services, Inc. to Securus Technologies, Inc.'s Motion to Set Discovery Schedule and Continue Hearing Deadlines ("Consolidated's Response"), in further support of its Verified Motion to Set Discovery Schedule and Continue Deadlines for Briefing on Exceptions ("Securus' Motion").

1. The clear import of Staff's and Consolidated's Responses is that Consolidated's Verified Petition for Declaratory Ruling ("Petition")—seeking to upend decades of prior Illinois Commerce Commission orders and guidance on the subject—should be decided as quickly as possible and with as little investigation or analysis as possible.

2. Consolidated's objection to discovery in these proceedings is understandable, if self-serving, because Consolidated's only interest in this proceeding is to get an ICC order reversing the Commission's long-held view on inmate-only telephone services that Consolidated hopes to parlay into support for its claim in the Springfield litigation now pending on appeal.

Discovery into the basis for and validity of Staff's conclusions on the propriety of regulation in this area can only work against Consolidated's efforts to obtain a quick and unconsidered order reversing decades of ICC authority on the issue.

3. However, Staff's response to the Petition, recommending a wholesale departure from the position consistently adopted by the ICC for decades, warrants further inquiry, as the factual basis for this new position cannot be discerned from its response. Armed with little more than a 1985 quote from Charles F. Phillips, Jr., and a conclusory assertion that the bidding process for the IDOC Contract will inherently yield "exorbitant rates" and "irrationally inflated prices" to the detriment of the "general public," Staff now takes the view that the market for inmate-only telephone services should be regulated.

4. There can be little debate that Staff's position reflects a fundamental change from the ICC's position on the subject for nearly 30 years. In 1986, in *Illinois Bell Telephone Company*, ICC Docket No. 84-0442, the ICC held that "to read into the definition of telecommunications carrier a legislative intent to include those entities providing telecommunications service other than for public use is not supportable or convincing." (*See* Ex. A at 4.)

5. The ICC further elaborated, in *Inmate Communications Corporation*, ICC Docket No. 96-0131:

> **Prisoners of detention and correctional facilities are not members of the public and the telephones located in non-public areas are not accessible to or used by a large number of the general public.** For these reasons, an Applicant providing these telephone services would not be a public utility or telecommunications carrier under Section 13-202 of the Public Utilities Act with respect to these phones, even though it may be considered to be reselling telecommunications services.
>
> Similarly, **the Commission considers operator services associated with the provision of non-public telephones in correctional institutions to be <u>exempt</u> from the operator service requirements of 83 Ill. Adm. Code 770.**

(Ex. B at 1 (emphasis added).)

6. In *Infinity Networks, Inc.*, ICC Docket No. 05-0429, the ICC again confirmed that pay telephones for use by inmates of correctional and other confinement facilities are for "private use," concluding that providers of such services were not subject to certification requirements in the Public Utilities Act. (Ex. C at 4.) Moreover, the ICC went on to specify that "[t]hese principles will guide all subsequent proceedings before this Commission." (*Id.*)

7. Staff's current position is also a 180° departure from the position it advocated in *Infinity Networks, Inc.*[1] While Staff now disregards prior ICC orders because they are not res judicata in the manner of final orders rendered by a court, Staff previously recognized in *Infinity Networks, Inc.*, Docket No. 05-0429, that "participants in the inmate payphone services industry *have a right to expect a consistent regulatory policy* in this area." (Ex. D ¶ 3 (emphasis added).)

8. Given the significant shift in position and the dearth of any supporting factual basis for Staff's conclusions regarding the nature and effect of unregulated inmate-only telephone services on the general public, Securus issued data requests to Staff seeking documents relating, among other things, to: (a) Staff's ex parte pre-Petition communications with Consolidated regarding the applicability of surcharge maximums to inmate telephone services[2]

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[1] The fact that the regulations contain an express exemption for inmate telephone services combined with the ICC's consistent interpretation that inmate-only services are not regulated "public" pay telephone services strongly suggests that if Staff wants to implement regulation of these services, it should do so through formal rule-making procedures and submit a proposed rule change to the ICC for consideration.

[2] In the bid protests and Springfield litigation, Consolidated attached to its complaint one portion of an email chain involving Staff member Kathy Stewart on this issue. Ms. Stewart subsequently verified Staff's Response, and presumably the communications she had with Consolidated several months before it filed its Petition informed her view on this issue. As such, Securus has requested those and any other communications Staff, including Ms. Stewart, had with Consolidated on the subject addressed in its Petition. In fact, the State's Chief Procurement Officer, noting the Stewart/Consolidated communication attached to Consolidated's bid protest, pointed out that "[t]he question presented to Ms. Stewart which led to her response is not

(for example: what question was Ms. Stewart answering in her email, who asked the questions and who else participated); (b) materials relating to prior orders and guidance from the ICC on this issue; (c) Staff analyses of the nature, scope and financial effects on the general public of unregulated inmate-only telephone service; and (d) other materials relating to conclusions contained in Staff's response to the Petition. (*See* Securus' Mot. Ex. A.)

9. Despite the potentially broad-ranging implications of this new position, which could affect future provider of inmate telephone services throughout the State and not just Petitioner, Staff and Consolidated oppose Securus' effort to develop a full and complete record for the ICC's consideration in this proceeding.

10. Staff's and Consolidated's opposition to discovery in these proceedings is contrary to ICC Policy. As set forth in Section 200.340 of the ICC's Rules of Practice, "[i]t is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding."

11. Critically, Staff does not dispute that the materials requested of it in Securus' data requests are relevant and material to the proceedings.[3] In fact, Staff's response to the Petition contains numerous factual assertions that are unsubstantiated and warrant discovery, including, for example, its assertions that a "winning bidder will charge exorbitant rates to ensure that its winning bid is financially beneficial"; that recipients of inmate telephone calls that pay the charges for those calls will be charged "uneconomical and irrationally inflated prices"; and that

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included in [Consolidated's] materials. Nor is there an explanation for why Ms. Stewart, an Engineering Analyst IV, was asked to give a legal opinion on the applicability of the Commission's rules."

[3] While Consolidated's Response broadly asserts that "none of the information requested in the data requests is needed for resolution of the declaratory ruling request," it offers no explanation for this conclusion.

regulation of this market is needed to provide "just, reasonable, and affordable rates" for such services. Securus' preliminary research into this issue suggests that the result of this most recent round of bidding will be a *reduction* from the current average rate per call paid by inmates, and it is entitled to discovery from Staff regarding the factual basis for its assertions.

12. Instead, Staff's and Consolidated's assertion that Securus should not be permitted to obtain discovery appear to be predicated on the fact that Securus did not anticipate the content of Staff's response at the Prehearing conference one month *before* that response was filed. While it is clear that Staff was communicating with Consolidated on this issue prior to the filing of the Petition (*see* Securus' Mot. Ex. A at Ex. A), Securus was not privy to those communications and did not have the benefit of knowing ahead time what was pre-planned to unfold in these proceedings.

13. Consolidated's Response also purports to take Securus to task for not issuing its data requests quickly enough after Staff filed its response to the Petition. In fact, Securus initially attempted to obtain relevant documents through a FOIA request in September 2012. Its efforts were unsuccessful, but an attorney with the ICC's General Counsel's office recommended to counsel for Securus that it utilize data requests in these proceedings instead.

14. Moreover, neither Staff nor Consolidated have identified any prejudice that would result from setting a discovery schedule and deferring briefing on exceptions until after the close of discovery. Staff makes no attempt to identify any potential prejudice and Consolidated simply speculates that the Appellate Court and/or its newest forum for complaint, the Procurement Policy Board,[4] may be interested in the ICC's final determination in these proceedings.

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[4] Section 5-5 of the Illinois Procurement Code, 30 ILCS 500/5-5, is not intended to provide disappointed bidders like Consolidated with yet another forum to reargue protest determinations.

15. Any delay resulting from the deferral of briefing on exceptions in these proceedings is far outweighed by the benefit of developing a full record for review and avoiding obvious due process issues down the road. Moreover, if Staff timely and fully responds to the data requests, the extent of the delay need not be significant.[5] Under the ICC's Rules of Practice, Staff's responses would be due on November 19, 2012. Allowing four weeks for resolution of any disputes over documents and, if necessary, depositions, discovery could be closed on December 17, 2012; briefs on exceptions could filed December 31, 2012; and replies to exceptions could be filed January 14, 2013.

16. The foregoing schedule would result in only limited delay and would not prejudice any of the parties to this proceeding. It would also facilitate the policies of the ICC in allowing for the development of a complete record, containing all relevant and material information, upon which the ICC can base its decision. It will also shed "sunlight" on the pre-Petition communications between Staff and Consolidated for the ICC, Securus and the Public to consider.

WHEREFORE, for the reasons set forth herein and in its Verified Motion to Set Discovery Schedule and Continue Deadlines for Briefing on Exceptions, Securus Technologies, Inc. respectfully requests that the Administrative Law Judge grant its motion, set a discovery schedule in this proceeding and continue the deadlines for briefing on exceptions to the Proposed Order issued October 23, 2012 pending completion of discovery.

This is not a situation where Consolidated's protests were ignored or buried; rather, Consolidated's claims were fully considered and rejected.

[5] Based on Staff's and Consolidated's Responses, it does not appear that either wish to conduct their own discovery. Accordingly, it appears that any discovery schedule need only provide for the discovery sought by Securus.

Dated: November 7, 2012

Respectfully submitted,

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SUBSCRIBED and SWORN to me this 7 th day of November, 2012

Janice D. McGrath
Notary Public

OFFICIAL SEAL
JANICE D MCGRATH
Notary Public - State of Illinois
My Commission Expires Apr 23, 2013

EXHIBIT A

H

Slip Copy

ILLINOIS BELL TELEPHONE COMPANY Petition for Declaratory Ruling Regarding Obligations of Telephone Companies on Customer-Owned Pay Telephones.
84-0442

Illinois Commerce Commission
June 11, 1986

ORDER

By the Commission:

On April 24, 1985, the Commission entered an Interim Order in the above-captioned docket and a docket with which it had been consolidated, Docket 84-0464, Illinois Bell Telephone Company Proposed Rates, Rules and Regulations for Customer Provided Pay Telephone Service Applicable in All Exchanges of Illinois Bell Telephone Company, directed towards the attachment of customer owned pay telephones to the telephone network. In its Interim Order the Commission distinguished between Customer Owned Pay Telephone Service ("COPTS") providers which locate pay telephones in locations accessible to and used by a large number of the public making them public utilities under the Public Utilities Act, and COPTS providers which place such telephones in locations where the telephones are available to a more limited group. The Commission listed illustrative locations for each type of COPTS provider. In the Interim Order, Finding (7), the Commission imposed certain terms and conditions on the provision of COPTS. The Interim Order also provided for a notification procedure ("Appendix 'B'" attached to the Interim Order) and a Procedure for Reviewing Alleged Violations of Regulations Applicable to Customer Owned Pay Telephones ("Appendix 'C'" attached to the Interim Order). The Interim Order reopened the consolidated proceeding for further examination of the proper delineation between those COPTS providers that are public utilities and those that are not public utilities, of the monitoring reports required of the utilities by Finding (14) of the Interim Order, and of the procedures set forth in Appendices "B" and "C."

Additional hearings and workshops were held on May 21, June 26, July 17, August 15 and September 10, 1985. On August 7, 1985, the Commission entered a Second Interim Order in Docket 84-0442 and a final Order in Docket 84-0464 ordering that all issues outstanding in the consolidated dockets be resolved in Docket 84-0442 and that Docket 84-0464 be dismissed. The record in Docket 84-0442 was marked "Heard and Taken" on September 10, 1985; thereafter, briefs were filed by the parties. The Examiner's Proposed Order was served on the parties. Illinois Bell Telephone Company filed a Brief on Exceptions to the Proposed Order. No Replies were filed and the Exceptions have been considered herein.

The hearings in this matter were conducted during the pendency of major changes in Illinois regulation of the telecommunications industry as set forth primarily in House Bill 1814 of the 84th General Assembly of the State of Illinois. On November 27, 1985, House Bill 1814 was certified as Public Act 84-1063, adding Article XIII, the Universal Telephone Service Protection Law of 1985 ("Law"), to the Public Utilities Act, which itself had been substantially revised by Public Act 84-617. Both Public Acts 84-167 and 84-1063 became effective January 1, 1986. This proceeding and the issues raised will be decided under the new Law.

Public Utility Status of COPTS Providers

As noted above, in the Interim Order the Commission found that COPTS providers that locate pay telephones in public locations are public utilities and those that locate pay telephones in private locations, as defined therein, are not public utilities. The Commission then listed illustrative locations which are public (Finding (4)) and those which are not public (Finding (6)).

In the additional proceedings, certain parties presented testimony proposing further refinements to, or modifications to or additions to the Commission's

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differentiation between public and private locations for purposes of determining the public utility status of COPTS providers. Certain parties maintain that all providers of pay telephones are public utilities unless the telephones are located on the grounds of private clubs or in employee lunch rooms. The various positions of the parties are set forth in greater detail below.

Jeffrey Greenberg, President of Chicago Payphone Service Inc. and Secretary-Treasurer of the Independent Coin Pay Phone Association ("ICPPA") appeared on behalf of the ICPPA, a trade association of COPTS providers, their suppliers and related persons and firms in the pay phone industry. Mr. Greenberg testified that if there must be a public/private distinction with "public" locations restricted to certified public utilities, then the Commission has adopted a reasonable approach insofar as it has been guided by the need to protect the interest of the public at large. The ICPPA accepts the view that a pay phone location should be qualified as "public" when the principal clientele of a pay phone at the location is the general public, and agrees with the Commission's unstated, but implicit, determination that a pay phone location is not per se a "public" location merely because the general public is likely to make incidental use of a pay phone. He testified that this is the situation for pay phones located in commercial establishments where formal barriers to public access do not exist, but where the principal pay phone users will be customers of the premise operator.

The ICPPA does not agree that a location should be classified as public solely because of the predictable size of the crowds using the location. In Mr. Greenberg's opinion, there are locations both publicly and privately owned where crowds gather that should be considered private locations for purposes of COPTS. He testified that the most obvious factor that distinguishes these locations is the restriction of access to them by admission charges, and mentioned sports arenas as a prime case in point, such as Soldier Field, a publicly owned facility, and Wrigley Field, a privately owned facility. He testified that the same is true of many exposition centers, museums and many areas of public transit facilities once within their gates. Mr. Greenberg would include in the public category, public areas of large office buildings and shopping malls where the public at large is allowed general access, but he would not include the lobby of buildings where access is restricted by the tenants or by the management of the buildings. There the users would be the guests or invitees of the premise owners or lessees. Because there will always be situations that are unclear Mr. Greenberg recommends expansion of the public and nonpublic categories as well as an expeditious procedure for Commission determinations in doubtful cases. Mr. Greenberg further testified that any phone on privately owned property should not be considered a public phone because the owner probably has the right to restrict usage under certain circumstances such as turning off phones at outdoor locations.

Theodore W. Kunkle, Manager, Economic Analysis-Service Cost for the six companies which comprise GTE Midwestern Telephone Operations, appeared for General Telephone Company of Illinois ("General"). He testified that the Interim Order should be supplemented in the following ways: all COPTS installations located in an outdoor environment that are available to be used by a large contingent of the public should be classified as public installations; COPTS instruments located within any municipal or government building, grounds, or in associated areas should be considered as serving the general public; the actual manner in which the COPTS instrument is connected to the network should be considered by the Commission in determining whether public utility status is appropriate since some COPTS providers may utilize PBX switches in conjunction with the resale of WATS, MTS and local service.

Richard A. Miller, District Manager, Tariffs and Costs for Illinois Bell Telephone Company ("Illinois Bell"), proposed clarifications of and additions to the definitions of the locations contained in the Interim Order. Mr. Miller testified that public locations should include pay telephones in public areas of shopping malls, shopping centers, hotel lobbies and outdoor phones of all kinds regardless of public or private ownership of the property where the phone is located. He testified these locations are accessible to and used by the public in large numbers and users are not necessarily patrons of a particular shop or store. He would categorize retail stores as private locations because they serve a client and employee body. Mr. Miller would classify a roadside oasis or a rest area as public since it seems to fall within the same category as toll service areas, public streets, roads and parks. Mr. Miller also suggested that the classifica-

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tion of military establishments needs to be clarified. Since phones at military establishments are generally accessible by a limited group, military personnel, he contends such phone locations have private class characteristics. He thinks it advisable for the Commission to establish an informal procedure whereby the parties can seek an opinion from the Commission's Consumer Affairs Division on particular installations, subject to filing a more formal request for a Commission ruling. On cross-examination Mr. Miller acknowledged that one exception to his position on telephones located outdoors would be a telephone on the premises of a country club or private club of some sort such as a tennis club.

Philip Felice, Jr., Manager of Rates and Tariffs for Central Telephone Company of Illinois ("Central Telephone"), testified that public locations should include Palwaukee Airport in Wheeling, Illinois, the largest privately-owned airport in the United States and Great America, a privately owned amusement park.

The major proponent of the position that a distinction cannot be legally drawn between public and private COPTS providers is the Intervenor, The Attorney General of the State of Illinois ("Attorney General"). The Attorney General's first argument is that Article XIII, The Universal Service Protection Law of 1985 ("Law") of the new Public Utilities Act no longer defines telecommunications providers as public utilities, but rather gives the Commission jurisdiction over "telecommunications carriers" as defined in Section 13-202 of the Law. The Attorney General contends that the definition encompasses resellers whether they are providing telecommunications services for public use or not. The Attorney General contends that "[a] reseller becomes a telecommunications carrier simply by exercising the resellers 'right' to engage in the provision of telecommunications services through its right to resell services."(Brief, page 3.)

The Attorney General argues that if Section 13-202 is not read in this manner, Section 13-202(c), which excludes from the definition of telecommunications carrier companies which provide telecommunication services solely to themselves and their affiliates or members, would be rendered superfluous which would be in contravention of Illinois court decisions holding that statutes are to be construed so that sentences, clauses, or words are not superfluous. (Cases cited in Brief.)

The Attorney General argues Section 13-203 of the Law gives further support to his interpretation of Section 13-202. Section 13-203 defines telecommunication service and then sets out exclusions from the definition. That Section provides that the Commission may exclude cellular radio service from regulatory oversight by rulemaking. This argument is set out at page 4 of the Brief as follows:

"[s]ince the definition of reseller posited here would classify resellers of cellular radio service . . . as telecommunications carriers, the Legislature allows the Commission the discretion of reducing regulatory oversight through rulemaking procedures."

. . . .

"Thus, the discretion delegated to the Commission by that language would allow the Commission to continue its policy of not regulating resellers of cellular radio service through a rulemaking proceeding."

Next, the Attorney General argues the Legislature has created a comprehensive regulatory scheme designed to regulate resellers. The Attorney General points to the separate definition for resale - Section 13-211; the requirement that resellers obtain a Certificate - Section 13-404; the requirement that they file tariffs - Section 13-501; and the implicit application of the Public Utilities Act to resellers in Section 13-101. The Attorney General contends that resold services cannot be declared competitive services under the Law because resold services do not offer new services that are a functional equivalent of or a substitute telecommunications service; that resale simply resells the underlying telecommunications service purchased.

From this the Attorney General concludes that "[t]he Commission's attempt to create a 'competitive' market in the resale of public pay telephone service through the classification of a large number of COPTS providers as 'private' is in conflict with the intent of the legislature to create a comprehensive regulatory scheme for resellers with limited and specific exemptions."(Brief, page 6.)

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The next position of the Attorney General is that the Commission's definition of private is in conflict with the Facilities for Handicapped Act, Ill. Rev. Stat. Ch. 111 1/2, par. 3702. The Attorney General argues that the purpose of that Act is to make facilities in public buildings, including pay telephones, available to handicapped persons. The Attorney General also argues that the Act's definition of a public building is the best indication of the Legislature's definition of a public facility if a test of "public/private" is required.

Centel contends that COPTS providers were public utilities under The Public Utilities Act and that that was not changed by The Universal Service Protection Law of 1985. Centel argues that in both the Act and the Law the key test is whether the facilities and services are being offered directly or indirectly for public use. It contends COPTS providers and COPTS services do not fit within any of the exceptions contained within the Law; and then contends that if the COPTS phones are being offered to the public indiscriminately such as in hotels, business establishments, stores, restaurants, airports, parks, and other commercial institutions, they are being installed to be made available to the general public so that they will be used and the owner will receive as much revenue as possible. Centel contends that the providers are then in most instances public utilities under the Act, unless they can show in fact the service is being provided only to a select and limited group citing to Mississippi River Fuel Corp., vs. the Commission, 1 Ill.2nd 509, 116 N.E.2nd 394 (1953).

The positions espoused by the Attorney General contain a number of errors. First, the Attorney General's argument regarding the definition of telecommunications carriers in Section 13-202 of the Law would result in extending Commission oversight to telecommunications carriers beyond that which would have resulted from the old Public Utilities Act by including within its purview all resellers regardless of whether they offer their services for public use.

The definition in Section 13-202 is as follows:

"'Telecommunications carrier' means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the provision of telecommunications services between points within the State which are specified by the user."

To accept the Attorney General's position one has to accept that the General Assembly rather than stating outright that all resellers were to be treated as telecommunications carriers regardless of whether their services were offered for public use, chose rather to very cleverly phrase the definition of telecommunications carrier so as to apply the phrase "public use" to part of the definition but not to the rest.

The definition of telecommunications carrier is very similar to the definition of "public utility" contained in the old and new Public Utilities Act except "telecommunications carrier" has been substituted for "public utility" and telecommunications services for the utility services listed in the Act. The definition of public utility has not been interpreted to include those entities that provide utility services other than for public use and to read into the definition of telecommunications carrier a legislative intent to include those entities providing telecommunications service other than for public use is not supportable or convincing.

Not accepting the Attorney General's interpretation of Section 13-202 does not render Section 13-202(c) superfluous. Section 13-202(c) sets into law this Commission's Finding (2) in the Third Interim Order, dated September 18, 1984, in Docket 82-0292 that entities that provide telecommunications services solely to themselves and their affiliates or members are not providing such services for public use and accordingly, are not public utilities.

The Attorney General's second argument is also based on a misreading of the Law. Section 13-203 provides the Commission authority to exclude from regulatory oversight cellular radio service. The Law does not refer to resellers of cellular service, as the Attorney General contends; it refers to cellular radio service. Currently, in Docket 85-0477 the Commission is considering the Petition filed by Chicago SMSA Limited Partnership for rulemaking with respect to exclusion of cellular radio service from active regulatory oversight. The Chicago SMSA Lim-

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ited Partnership holds a Federal Communications Commission license to operate a cellular system and provide cellular service in the Chicago area and owns and operates such a system.

Secondly, the Commission did not make a policy decision to exclude resellers of cellular service from regulatory oversight. The Commission found in its Second Interim Order, dated July 17, 1984, in Docket 82-0292, that resellers of cellular service are not public utilities and therefore are not subject to the Commission's jurisdiction. (Second Interim Order, page 4.)

The third argument of the Attorney General is, in effect, an argument that the General Assembly intended that all resellers be regulated as providers of noncompetitive telecommunications services. The Universal Telephone Service Protection Law of 1985 provides different schemes of regulation for competitive telecommunications services and for noncompetitive telecommunications services. In Section 13-209 of the Law "Competitive Telecommunications Services" are defined as follows:

"'Competitive Telecommunications Services' means a telecommunications service, its functional equivalent or a substitute service, which, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, is reasonably available from more than one provider, whether or not such provider is a telecommunications carrier subject to regulation under this Act."
If the types of services offered by a public reseller are available from another source then the resellers' services are competitive. (See Order, page 9, in Dockets 84-0538 and 84-0539, Allnet Communications Services, Inc., entered by the Commission on February 20, 1986, in which the Commission stated that "[a] reseller who purchases services from Certificated Common Carriers, virtually by definition provides a competitive service within the meaning of Section 13-209.") Regarding the case at hand, pay telephone service is now available from a number of certificated providers and applications are pending for Certificates of Service Authority to provide pay telephone service in Illinois.

Contrary to the assertion of the Attorney General, the Commission did not attempt to create a competitive marketplace in the resale of pay telephone service by classifying a large number of "COPTS" providers as private. The competitive marketplace results from approval of the Illinois Bell tariff permitting the attachment of customer owned pay telephones to the telephone network.

The last argument of the Attorney General concerns the Facilities for the Handicapped Act. The object of the Facilities for the Handicapped Act, Ill. Revised Statute, Chapter 111 1/2, Section 370 et al, is directed towards a concern that public buildings which lack facilities for handicapped persons create substantial risks for such persons and impair their full enjoyment of public buildings. Section 3702 provides that:

"[i]n this Act 'Public building' means: (a) a building, structure or improved area owned or leased by this State or its political subdivisions; (b) a building, structure or improved area used primarily by the general public as a place of gathering or amusement, including but not limited to: theaters, restaurants, hotels and stadia; (c) office buildings and factories, not including the second floor of any two-story office building or factory having less than 15,000 square feet at the second floor level nor any occupied levels below grade having less than 15,000 square feet unless the building is publicly owned."

As required by Section 3704 of that Act, the Capital Development Board has issued standards for the minimum requirements for facilities for handicapped persons in such buildings. These standards include standards for pay telephones located in such facilities. These standards must be met by all providers of pay telephones in such locations, and the terms and conditions imposed by the Interim Order include a requirement that pay telephone providers comply with statutes or rules concerning the use of pay stations by disabled persons before local exchange telephone companies connect up service to COPTS providers.

In the Interim Order entered in this matter on April 24, 1985, in considering whether providers of COPTS are public utilities as defined by The Public Utilities Act, the Commission stated the following:

"Customer owners of pay telephones are, as the term implies, customers of the local exchange telephone companies. They are likely to include both the pro-

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prietors of the premises on which the phones are located and specialized firms placing such telephones on premises owned or leased by others pursuant to contracts with the premises owners or lessees. In both instances, the customer owner will purchase telephone service from a local exchange telephone company and resell that service to others by means of pay telephone equipment owned (or leased) by the customer."

. . . .

"The record shows that COPTS providers own, control, operate or manage equipment used or to be used in conjunction with the transmission of telephone messages between points within Illinois. The focus of our decision on this issue is whether COPTS providers do so for public use. The Commission agrees with those parties that contend that some providers of COPTS will not provide such service to the general public and would not be public utilities under the Act." (Interim Order, pages 11 and 12.)

The Commission remains convinced that its decision in the Interim Order was correct under the Public Utilities Act and is further convinced that the Universal Service Protection Law of 1985 ("Law") does not require any change in that initial decision. The Law provides the Commission with jurisdiction over telecommunications carriers, and telecommunications carriers are those entities that own, control, operate, or manage, for public use, plant, equipment or property used to provide telecommunications services within the State.

In considering whether any or all COPTS providers are telecommunications carriers, it is helpful to look at State Public Utilities Comm.v. Monarch Refrigerating Co., 267 Ill.528 (1915). In that case the Illinois Supreme Court decided the following:

"Whether a given business, industry or service rendered is a public utility depends not upon legislative definition but upon the particular facts and circumstances in each case. It is the nature of the business or service rendered, - its public character, - that makes its regulation a matter of public consequence or concern that it affects the whole community, - that stamps it with such a public interest that it is properly subject to legislative supervision and control." (267 Ill. at 543.)

As it did in its initial decision, the Commission must look to whether the nature of the service rendered is of such a public character that its regulation is a matter of public consequence affecting the whole community such that it should be subject to Commission regulation.

As a result of an advance in telephone technology anyone can lease or purchase a pay telephone and if the telephone meets the requirements set forth in the local exchange telephone companies' tariffs it can be attached to the telephone network. This does not convert every beauty shop, bar, or restaurant that buys, leases or in some other way provides a pay telephone on its premises into a telecommunications carrier providing a telecommunications service within the geographical area covered by its business premises subject to regulation by this Commission.

On the other hand, some pay telephones are located in places used by the public at large and consequently have a public character, and others are located in places where such a large number of the public come and go and/or gather that the pay telephone service provided is a matter of public consequence. The services provided in these situations affect the whole community and are subject to regulation in the public interest.

The illustrations of those COPTS providers that are public utilities set forth in Finding (3) of the Interim Order should be restated in terms of the new Law and to those listed there should be added public areas of shopping malls and shopping centers, hotel lobbies, all telephones located outdoors (except those located on the property of a private club), road side oasis or

(MISSING PAGE 11)

On cross-examination Mr. Berlin testified that local exchange telephone company pay telephones in Illinois presently have a message on the face of the telephone indicating that no coin is needed to access emergency service. For privately owned coin operated pay telephones already in place he agreed that a decal with that information would be sufficient if the decal could not be removed easily.

No party opposes Mr. Berlin's recommendation and it

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will be adopted herein.

Reporting Requirements of Illinois Local Exchange Telephone Utilities

As described in the Interim Order, in the first phase of this proceeding certain parties contended that, in a competitive marketplace for pay telephones, the telephone companies would disconnect those pay telephones that generate less revenue than the costs incurred to keep the telephones connected resulting in the loss of the universal availability of pay telephone service, especially in low income areas.

In order to address this possibility, the Commission made the following Findings in the Interim Order:

"(12) the local telephone companies should provide sixty (60) days' notice to location owners or managers of an intent to remove any of their public pay telephones so that the location owners or managers can take actions they deem appropriate;

. . . .

"(14) the local telephone companies should prepare reports relative to the location of, need for and the revenue/cost relationship of their low volume pay telephones, using those public pay telephones in service at the inception of this proceeding as a benchmark, for submission during the further proceedings in this matter."

The record developed on reopening includes a lot of discussion regarding how the companies could prepare a report to comply with Finding (14) given the varying types of records maintained by the local telephone companies.

Illinois Bell, the City of Chicago, Community Action for Fair Utility Practice and the Attorney General of the State of Illinois, entered into a Stipulation and Agreement, Joint Exh. No. 1, for Illinois Bell's service territory in lieu of complying with Finding (14). The Stipulation and Agreement, in summary, provides for the following:

(A) before January 1, 1987, Illinois Bell will not remove its last public coin telephone at any public pay telephone site in the City of Chicago served by certain Illinois Bell central offices (as specified in the Agreement);

(B) before January 1, 1987, Illinois Bell will not (with certain stated exceptions) remove (1) the last 24-hour, outdoor public coin telephone at any public pay telephone site in the State of Illinois outside the City of Chicago and (2) the last public coin telephone provided by Illinois Bell at a public pay telephone site accessible to the public in a building owned or managed by a unit of government;

(C) before January 1, 1987, Illinois Bell will not initiate and or agree to support any request for an increase in the basic twenty-five cent (25¢) rate to initiate a telephone call from its public coin telephones;

(D) Illinois Bell will file the following monitoring reports with the Commission:

(1) until January 1, 1987, Illinois Bell will file an annual list of the locations of the 5% of Illinois Bell's public coin telephones that produce the lowest monthly revenue on an annualized basis;

(2) Illinois Bell will file the notices of intent to remove a public pay telephone required to be provided to location owners and managers under Finding (12) of the Interim Order and provide copies of such notices to the City of Chicago, the Attorney General and CAFFUP until January 1, 1988.

Regarding the monitoring reports required by Finding (14), General states, in its Brief, that the local exchange companies are required by Finding (12) to send notice to location owners and managers of the company's intent to remove company owned public pay telephones thus enabling location owners and managers to take any action they deem appropriate. General contends that if a simultaneous filing is made to the Commission, the Commission will be able to determine whether that telephone is indeed in a public need location; and that because this notice is sent at least sixty days prior to removal the Commission will have time to act before the telephone is removed. General contends that since it is the outward movement of pay stations that is critical in tracking the effects of competition, this reporting requirement would enable the Consumer Affairs Division to track any replacement telephone into that location and would provide enough information for the Commis-

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sion to initiate an investigation in an exchange or area that is identified as having a potential public need for pay telephone service.

Centel argues that a requirement that it provide reports of the cost revenue relationship of low volume pay telephones presents a very serious problem since it does not normally identify, except in the context of a rate case, cost and revenues related specifically to public coin telephones let alone to any particular segment of coin telephone service. It contends that to provide reports with respect to that relationship of only a portion of public pay telephone service would be an expensive time consuming and an almost impossible task. It further contends there has been no showing of a need for such information since there is no evidence that there has been a rash of removals of coin telephones which in any way has impacted service to the public.

Centel also contends that the Commission can determine if a large number of telephones are being removed by having the notices required by Finding (12) served on the Commission. Centel would have the following as exceptions to Finding (12) notices: removal of public coin telephones at the local exchange telephone company's initiative (a) when there is chronic or excessive vandalism or larceny to the public coin telephone; (b) when it is impossible or impractical to continue service in the location, for example, because the building in which the telephone is located is destroyed; and (c) when the installations are temporary or seasonal.

It appears that the Stipulation and Agreement entered into by Illinois Bell and Intervenors is an acceptable response to the problem to which the monitoring reports required by Finding (14) of the Interim Order was directed, and the Stipulation and Agreement will be accepted in lieu of Illinois Bell filing the monitoring reports required by Finding (14). The other local exchange telephone companies should also be excused from filing such reports. The record establishes that such a reporting requirement would be burdensome especially where there is no evidence that removal on their own initiative of public pay telephones will be a problem in their service territories. As recommended by General and Centel, it should be sufficient that they file with the Commission the notices required by Finding (12) subject to the exceptions suggested by Centel.

Certificates of Service Authority

John Kissel, Jr., Chief Telephone Engineer, Engineering Section, Public Utilities Division of the Commission appeared and testified that he has been receiving requests for application forms to be used by prospective COPTS providers to obtain a Certificate from the Commission. Mr. Kissel presented as Engineering Staff Exh. 1, a form letter, a form application along with excerpts from the Illinois Administrative Code and from the Interim Order. Mr. Kissel proposed that a standard form for applications be used to expedite the regulatory process for applicants.

ICPPA expresses a concern that COPTS providers are uncertain about the obligations that will arise if they become a public utility and are then unable to assess the burden they face if they become a public utility. ICPPA contends that in order to make an informed decision whether or not to enter the utility marketplace the COPTS provider must know all the regulations and restrictions to which it will then be subject including procedural rules as well as any substantive taxation or reporting requirements.

As noted previously, on January 1, 1986, the Universal Telephone Service Protection Law of 1985 ("Law") became effective as did the revised Public Utilities Act ("Act"). The new Act changes Commission regulation of telecommunications carriers. Telecommunications carriers providing solely competitive services are subject to a different level of regulation than telecommunications carriers providing noncompetitive services or both noncompetitive and competitive services.

Initially, a person proposing to provide COPTS at public locations as defined herein must file an application to obtain a certificate of service authority from the Commission pursuant to Section 13-404 of the Act. That application will be docketed and after proper notice is given a hearing will be held on the application. Section 13-404 provides that the Commission shall approve an application for a certificate for the resale of local exchange or interexchange telecommunications services upon a showing by the applicant and a finding by the Commission that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the resale of telecommunications services.

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After obtaining the certificate to resell local exchange and interexchange telephone services through the use of pay telephones, a telecommunications carrier has to file a tariff, pursuant to Section 13-501 of the Act, with the Commission, describing the nature of the service offered, applicable rates and other charges, the terms and conditions applicable to the service and the areas in which the service shall be offered or provided. Under Section 13-502(a) of the Act all services provided under tariff must be classified as either competitive or noncompetitive. Under Section 13-502(b) services can be classified as competitive only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges or some clearly defined geographical area, such service, or its functional equivalent, or a substitute service is available from more than one provider.

On December 18, 1985, the Commission adopted 83 Ill. Adm. Code 745 as an emergency rule effective January 1, 1986. This rule implements Section 13-502 and prescribes the procedure for telecommunications carriers to declare their service competitive. A copy of this rule is included with the suggested application attached hereto as Appendix "A."

Other Sections of the Act that potential applicants for certificates of service authority should consider are briefly described hereinafter. Under Section 13-503 of the Act all tariff filings must comply with Sections 9-101, 9-102 and 9-103. These sections require that all rates and charges be just and reasonable and set out certain filing requirements. The filing requirements adopted by the Commission in 83 Ill. Adm. Code 255.30 are included in Appendix "A."

Section 13-505 sets forth the law pertaining to filing for changes in rates for competitive services. It should be noted that under Section 13-505(c) proposed increases in rates for competitive local exchange services are treated as though the services are noncompetitive pursuant to the provisions of Section 13-504. Section 13-506 permits telecommunications carriers to file proposed tariffs for any competitive local exchange telecommunications service which includes and specifically describes a range, band, formula, or standard within or by which a change in rates or charges can be made without prior notice or prior Commission approval.

Section 13-101 of the new Act provides, in part, that "[e]xcept to the extent modified or supplemented by the specific provisions of this Article, Articles I through V, Sections 9-221, 9-222 and 9-250, Articles X and XI of this Act are fully and equally applicable to competitive telecommunications rates and services, and the regulation thereof."These Articles and Sections of the Act require competitive telecommunications carriers to pay the taxes applicable to public utilities. (See Sections 2-202, 9-221 and 9-222 of the Act.) These carriers are also required to comply with any uniform system of accounts established by the Commission (Section 5-102), to maintain an office in the State of Illinois where the business' books and records are maintained (Section 5-106), and to file an annual report with the Commission (Section 5-109).

Engineering Staff Exh. 1 has been revised to reflect the changes in the Act and is attached hereto as Appendix "A." The application contained therein can be used to expedite the regulatory process for applicants. The Commission has determined in Certificate Orders issued under the new Act that 83 Ill. Adm. Code 710 governing the Uniform System of Accounts and 83 Ill. Adm. Code 735 governing credit, billing, deposits and termination of service are applicable to competitive carriers unless waived. The Commission has granted waivers of Parts 710 and 735. (See Order entered April 16, 1986, in Docket 85-0417, Republic Pay Telephone Utility Company.) The proposed application form has been modified to include a provision requesting waiver of these Parts of the Illinois Administrative Code.

Appendix "B"

Appendix "B" to the Interim Order contained an Application form for COPTS to be used by the local exchange telephone companies. A set of the regulations applicable to COPTS was to be attached to the application along with a COPTS subscriber card. The subscriber card has to be filled out and filed with the Commission. After the Commission has received the card and examined it the Commission informs the local exchange telephone company that COPTS service can be provided to the subscriber.

Since the entry of the Interim Order this procedure has been implemented by the Consumers Affairs Division working in conjunction with Illinois Bell. The

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subscriber card in use is a 4" by 6" white card. On the front are spaces for the COPTS telephone number, the address where the telephone will be installed, the FCC registration number and the COPTS subscriber's name. The subscriber also has to sign a statement on the card indicating she/he is aware of the Commission's regulations applicable to COPTS subscribers and agrees to abide by them. On the back there are columns for descriptions of various types of private and public locations and the subscriber is required to mark off the type of location where the telephone is to be located or specify the location in a space for other.

The subscriber cards are stamped in by the Commission's Chief Clerk's Office and then forwarded to the Consumer Affairs Division. The Consumer Affairs Division keeps an index file of these cards indexed by telephone number. A blue card of the same size has been designed for notification of discontinuance of COPTS. These cards are provided by the local exchange companies when COPTS service has been removed or canceled for any reason and are used by the Consumer Affairs Division for keeping records current.

In its Brief the Staff states that the card system using 4" by 6" cards has been in place since June 1985 and has proved to be very workable, and that the system is also being used by the other local exchange companies which currently have COPTS subscribers. Staff recommends that all local exchange companies be required to use uniform cards for both applications and discontinuance of COPTS service. Staff recommends that the information provided on the card and the card size should be the same as the cards currently in use at the time they are provided to the Commission. Staff also proposes that Appendix "B" of the Interim Order, which can be construed as allowing more than one COPTS application per subscriber card, be changed by eliminating the plural forms on the application. As noted previously, the cards are filed by telephone number, and allowing for more than one COPTS telephone number on each card makes number sequential filing impossible.

On February 10, 1986, Staff filed a Motion requesting a change in the above procedure. Staff requests that the subscriber card be completed by the subscriber and returned to the local exchange telephone company, and that the local exchange telephone company forward the card to the Commission at the time of installation of the COPTS line. The Motion sets forth the following as justification for the revision in the procedure: it would eliminate four to five days (mail handling) from the overall time span from subscriber application to installation of the COPTS line; the Commission has approximately 8,000 approved COPTS applications of which only about 4,000 of these approved applications are installed and working COPTS service; under the revised procedure the Commission's file space and administration would be greatly reduced, and the file would only contain cards on working COPTS service; consumers will not be lodging complaints about COPTS until such service is available; the telephone companies have preassigned vacant telephone numbers to each of the COPTS application cards; this causes a burdensome problem for the telephone companies in administrating their vacant number assignment lists.

Centel and Illinois Bell filed Responses to the Staff Motion. Centel objects to Staff's proposed revision in the procedure. Centel contends that it is the Commission's responsibility to determine whether a COPTS provider is properly qualified to offer service in accordance with the Law and the Interim Order and that the revised procedure would shift that responsibility to the local exchange company. Centel contends such shift in responsibility would place the local exchange companies in a difficult position vis-a-vis their competitors, COPTS providers. Centel suggests that the vacant number assignment list problem could be alleviated by having the local exchange companies periodically notify the Commission which COPTS telephone numbers have been assigned for more than a specified period but where no instrument has been installed. At such times the files could be purged of COPTS applications which have not been implemented.

Illinois Bell, in its Response, agrees that the existing procedures create administrative burdens for the Commission Staff and the local exchange telephone companies but contends Staff's proposal unduly burdens the local exchange companies by requiring them to collect the cards and forward them to the Commission. Illinois Bell proposes that when a COPTS subscriber requests a COPTS line from a local exchange company, that company would make arrangements to install the service; at the same time, that company would provide the COPTS subscriber with the

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COPTS application form; the application card, like the card now in use, would require the COPTS subscriber to sign a statement that she/he is aware of the regulations and agrees to abide by them; the COPTS subscriber would be required to return the signed application form to the Commission within thirty days of placing the order for a COPTS line.

The procedure suggested by Illinois Bell should be implemented. In addition, the Appendix "B" procedure should be revised in accordance with the recommendations in Staff's Brief that all local exchange telephone companies use the subscriber card in place at the time the subscriber card is provided to a COPTS applicant.

Appendix "C"

Attached to the Interim Order as Appendix "C" was a Procedure for Reviewing Alleged Violations of Regulations Applicable to Customer Owned Pay Telephones."

During the proceeding a Revised Appendix "C" was prepared and circulated among the parties. The revisions conformed the procedure in Appendix "C" to 83 Ill. Adm. Code 735, Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Telephone Utilities in the State of Illinois. It is also being updated to reflect the requirement that pay telephones be placarded with dialing instructions for obtaining emergency assistance.

The Commission, having considered the entire record herein and being fully advised of the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the parties and the subject matter herein;

(2) the recitals of fact and conclusions reached in the prefatory portion of this order are supported by evidence of record and are hereby adopted as findings of fact;

(3) COPTS providers who locate customer owned pay telephones in locations accessible to and/or used by a large number of the public are telecommunications carriers within the meaning of Section 13-202 of the Public Utilities Act ("Act") and must meet the requirements of the Act in order to provide COPTS in Illinois;

(4) providers of customer owned pay telephones in the following locations are illustrative of those providers that are telecommunications carriers under the Act: transportation centers and terminals, stadiums, exposition centers, toll service areas, public streets and roads, parks, public areas of shopping malls and shopping centers, hotel lobbies, all telephones located outdoors (except those located on the property of a private club), roadside oases and rest areas, amusement parks, municipal and government buildings, grounds and associated areas, and military establishments;

(5) COPTS providers who locate customer owned pay telephones in locations where the telephone is available to a limited group such as family, club members, employees, or patrons are not telecommunications carriers under the Act;

(6) providers of customer owned pay telephones in the following locations are illustrative of those providers that are not telecommunications carriers under the Act: banking establishments, restaurants, bars, taverns, retail stores, barbershops, beauty shops, grocery stores, department stores, movie houses, hospitals, doctors' offices, gas stations, and factories;

(7) an informal procedure should be established whereby interested persons can seek an informal opinion from the Consumer Affairs Division of the Commission on the classification of particular customer owned pay telephone installations if they are not included in the locations listed above; such procedure would not preclude filing a formal petition with the Commission seeking such rulings;

(8) the terms and conditions applicable to customer provided pay telephones, set forth in Finding (7) of the Interim Order, should be modified to require that customer provided pay telephones contain information on dialing instructions for obtaining emergency service;

(9) accordingly, the following terms and conditions should be applicable to all customer owners of pay telephones used intrastate in Illinois:

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(A) all customer provided pay stations shall be connected to the access lines of the local exchange telephone company provided that they have been registered by the Federal Communications Commission under Part 68 or are connected behind suitable registered protective connecting arrangements;

(B) all customer provided pay stations shall be connected to local telephone company access lines that provide message rate service or service on a usage-sensitive basis; a business coin telephone access monthly rate shall be required in any area which only provides flat rate usage service;

(C) all customer provided pay stations shall have the following minimum features:

(1) Touch dialing;

(2) ability to access 911 Emergency Service (where available) and "O" Operator ("O-minus") without prior insertion of coins or credit card, to place calls to public safety agencies (i.e., police, fire, rescue) or to access such agencies directly, without prior insertion of coins or credit card;

(3) compliance with statutes or rules concerning the use of said pay stations by disabled persons, such as handicapped in wheel chairs or the hearing impaired;

(4) ability to complete both local and long distance calls (upon payment of applicable charges);

(5) a program that would not limit the duration of a local message, so long as the user continues to pay applicable charges, through deposit of additional coins or otherwise;

(6) an informational message in, on, or adjacent to each pay telephone (i.e., by voice recording, visual display, etc.) explaining the general operation of the pay telephone, dialing instructions for obtaining emergency assistance; the owner's name, the method of reporting service problems and the method of receiving a credit for a faulty call;

these terms and conditions should be contained in the local exchange telephone companies' tariff provisions, currently on file, or filed in the future with the Commission;

(10) the Stipulation and Agreement, Joint Exh. No. 1, entered into by Illinois Bell, the City of Chicago, Community Action for Fair Utility Practice and the Attorney General of the State of Illinois is an acceptable agreement and filing with the Commission the information outlined therein should be accepted in lieu of Illinois Bell filing the monitoring reports required by Finding (14) of the Interim Order;

(11) the other local exchange telephone companies should not be required to file the monitoring reports required by Finding (14) of the Interim Order because of the burdensome nature of that filing requirement;

(12) in lieu of filing monitoring reports, the local exchange telephone companies should file with the Commission the notices required by Finding (12) of the Interim Order;

(13) accordingly, Finding (12) of the Interim Order should be modified as follows:

the local exchange telephone companies should provide sixty (60) days notice to location owners or managers of an intent to remove any of their public pay telephones so that the location owners or managers can take actions they deem appropriate; copies of such notices should be provided to the Commission; such notices do not have to be provided in the following instances: (a) when there is chronic or excessive vandalism or larceny to the public coin telephone; (b) when it is impossible or impractical to continue service in the location, for example, because the building in which the telephone is located is destroyed; and (c) when the telephone installations are temporary or seasonal;

(14) Appendix "A" attached hereto, a form letter, a form application along with excerpts from the Public Utilities Act and the Illinois Administrative Code and this order may be provided to potential applicants to expedite the regulatory process;

(15) Appendix "B" to the Interim Order should be revised to require one application and subscriber card per COPTS installation, as set forth in Revised Appendix "B" attached hereto; and all local exchange

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telephone companies should use the application form set forth in Revised Appendix "B" along with the 4" by 6" subscriber cards and discontinuance of service cards currently in use by the Consumer Affairs Division of the Commission at the time the cards are provided to the Commission; at the time a potential COPTS provider requests a COPTS line from a local exchange telephone company, that company would provide the COPTS subscriber with the COPTS application form; the application card, like the card now in use, would require the COPTS subscriber to sign a statement that he is aware of the regulations and agrees to abide by them; the COPTS subscriber would be required to return the signed application form to the Commission within thirty (30) days of placing the order for a COPTS line; at the same time as the card is provided to the COPTS provider, the local exchange company should make arrangements to install service; the local exchange company should be required to forward a list of names and addresses of the COPTS subscribers to the Commission on a regular basis;

(16) the procedure for Reviewing Alleged Violations of Regulations Applicable to Customer Owned Pay Telephones, set forth in Revised Appendix "C", attached hereto and made a part hereof, should be the procedure used when such violations are alleged;

(17) the Motion of Illinois Bell, filed February 11, 1985, and the Motion To Submit Late Filed Exhibit filed by the People of the State of Illinois on October 23, 1985, should be granted; all other motions not previously disposed of, are disposed of consistent with this order;

(18) the Interim Order entered by the Commission on April 24, 1985, except as modified herein, should remain in full force and effect.

IT IS THEREFORE ORDERED that an informal procedure is hereby established whereby persons can seek an informal opinion from the Consumer Affairs Division of the Commission regarding whether particular installations or proposed installations of customer owned pay telephones, which are not included in the locations listed in Finding (4) and Finding (6) hereinabove, are or will be located in locations accessible to and/or used by a large number of the public making the provider of such telephone or telephones a telecommunications carrier with the meaning of Section 13-202 of The Public Utilities Act.

IT IS FURTHER ORDERED that all local exchange telephone companies, that have tariffs on file with the Commission for COPTS amend those tariffs to include the terms and conditions set forth in Finding (9) herein within fifteen (15) days of this order.

IT IS FURTHER ORDERED that all local exchange telephone companies which do not currently have tariffs on file for COPTS include the terms and conditions set forth in Finding (9) herein when they file tariffs for COPTS in accordance with the Interim Order entered in Dockets 84-0464 and 84-0442 on April 25, 1985.

IT IS FURTHER ORDERED that Illinois Bell Telephone Company shall file with the Commission the information outlined in Joint Exh. No. 1 in lieu of filing the monitoring reports required by Finding (14) of the Interim Order.

IT IS FURTHER ORDERED that the local exchange telephone companies shall provide notice of intent to remove public pay telephones in accordance with Finding (13) herein and shall file with the Commission copies of such notices, in lieu of complying with Finding (14) of the Interim Order.

IT IS FURTHER ORDERED that Appendix "B" to the Interim Order shall be revised in accordance with Finding (15) herein, and all local exchange telephone companies shall comply with the Application Form and procedure set forth in Finding (15) herein and Revised Appendix "B" attached hereto and made a part hereof.

IT IS FURTHER ORDERED that the procedure set forth in Revised Appendix "C" attached hereto and made a part hereof, Procedure for Reviewing Alleged Violations of Regulations Applicable to Customer Owned Pay Telephones, shall be used when a violation of the regulations is alleged.

IT IS FURTHER ORDERED that the Motions described in Finding (17) herein are hereby disposed of as described therein.

IT IS FURTHER ORDERED that the Interim Order in Dockets 84-0464 and 84-0442, entered by the

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Commission on April 24, 1985, except as modified herein, shall remain in full force and effect.

By Order of the Commission this 11th day of June, 1986.

(SEAL)

Chairman

APPENDIX "A"

DRAFT LETTER

[NAME]

Dear _____

In response to your request for guidance in the procedures for applying for a Certificate of Service Authority to provide customer-owned pay telephone service (COPTS) in Illinois, Staff is forwarding you a suggested form for such application along with a verification form, those portions of 83 Ill. Adm. Code 200 setting forth the filing requirements for filing pleadings with the Illinois Commerce Commission, those findings from the Commission's final Order in Docket 84-0442 which describe which providers of COPTS are telecommunications carriers regulated by the Commission, 83 Ill. Adm. Code 745 which sets forth the method for filing rates with the Commission, and 83 Ill. Adm. Code 255.30 which sets forth the rules regarding the form of rate sheet filings.

Sincerely,

SAMPLE GUIDELINES - CERTIFICATE FOR COPTS

(File original and two duplicates with Chief Clerk)

(see attached rules)

STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION APPLICATION FOR CERTIFICATE OF SERVICE AUTHORITY UNDER THE PUBLIC UTILITIES ACT

_____ (Full Name) Application for a Certificate of Service Authority to provide customer-owned pay telephone service (COPTS) within the State of Illinois.

Docket No._____ (leave blank)

To the Illinois Commerce Commission, Springfield, Illinois:

The Petitioner herein respectfully shows:

1. That it is a duly incorporated Company, incorporated under the laws of the State of _____ on _____, (date) 19_____, or that it is an individual or partnership doing business in the name of _____.

2. That the post office address of Petitioner is _____.

3. That Petitioner's charter authorizes Petitioner to engage in business covered by this application, as is fully set forth in a copy of said charter attached hereto and made a part hereof.

4. That Petitioner desires to operate customer-owned pay telephones in public locations as defined by the Illinois Commerce Commission in its Order in Docket 84-0442, of, 1986, and desires further to transact a general coinless or coin pay telephone business rendering telecommunications service for the public in the State of Illinois.

5. That Petitioner will comply with the terms of the Order of the Illinois Commerce Commission in Docket 84-0442.

6. That Petitioner states that its coin (coinless) pay telephones will be operated in conformance with the guidelines as set forth in Finding (9) of the Commission's Order in Docket 84-0442, entered on, 1986.

7. That if Petitioner is granted a Certificate of Service Authority it intends to follow the procedures set forth in 83 Ill. Adm. Code 745 for filing tariffs designating the services offered in the tariff as competitive thus exempting it from the provision of The Public Utilities Act and Commission regulations applicable to noncompetitive services provided by telecommunications carriers.

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8. That Petitioner requests to be exempted from 83 Ill. Adm. Code 710 and 83 Ill. Adm. Code 735.

9. That Petitioner will file with the Commission a tariff showing its rates and charges and conditions of service pursuant to Sections 13-501 and 13-502 and in compliance with 83 Ill. Adm. Code 255.30.

WHEREFORE, Petitioner prays:

(a) that the Illinois Commerce Commission, after a hearing, will issue to Petitioner a Certificate of Service Authority to provide public pay telephone service through the resale of local exchange and interexchange telecommunications services from public locations (as defined in the, 1986 Order entered in Docket 84-0442) in the State of Illinois;

(b) that the Petitioner further prays that it be exempted from 83 Illinois Administrative Code 710 and 735.

_____

Petitioner

By: _____

(Official Title)

Attorney for Petitioner

_____ (Name)

_____ (Address)

(SEAL)

VERIFICATION

I, _____, first being duly sworn upon oath depose and say that I am _____ of _____, an _____ corporation; that I have read the above and foregoing petition by me subscribed and know the contents thereof; that said contents are true in substance and in fact, except as to those matters stated upon information and belief, and as to those, I believe same to be true.

_____

_____

Subscribed and sworn to before me this _____ day of _____, 19 _____.

_____

Notary Public, Illinois

83 ILLINOIS ADMINISTRATIVE CODE PART 200

Sections 200.110, 200.120, 200.130

Section 200.110 Forms of Pleadings and Documents

All pleadings and documents filed with the Commission shall be typewritten or printed on paper cut or folded so that the size shall not exceed a width of 8-1/2 inches and a length of 11 inches and shall have inside margins not less than 1 inch wide. All exhibits of a documentary character shall, whenever practical, conform to said requirements of size and margin. If typewritten, the impression shall be on one side of the paper only and shall be double spaced; footnotes and quotations may be single spaced and indented. Reproductions may be by any process, providing that all copies are clear and permanently legible.

Section 200.120 Copies of Pleadings

Pleadings shall be filed with the Chief Clerk in one original and two copies, unless otherwise specified.

Section 200.130 Signature and Verification

The original of every pleading filed with the Commission shall be signed by the party filing the same or by an officer, agent or attorney therefor, provided that petitions filed under Section 27 of the Public Utilities Act (Section 7-102 of the new Act) shall be signed by the person(s) specified in that section. The contents of all formal complaints, petitions, applications, petitions to intervene, supplemental formal complaints and supplemental petitions shall be veri-

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fied by the filing party before a notary public.

FINDINGS FROM ILLINOIS COMMERCE COMMISSION'S ORDER

DOCKET 84-0442

DATED JUNE 11, 1986

(3) COPTS providers who locate customer owned pay telephones in locations accessible to and/or used by a large number of the public are telecommunications carriers within the meaning of Section 13-202 of the Public Utilities Act ("Act") and must meet the requirements of the Act in order to provide COPTS in Illinois;

(4) providers of customer owned pay telephones in the following locations are illustrative of those providers that are telecommunications carriers under the Act: transportation centers and terminals, stadiums, exposition centers, toll service areas, public streets and roads, parks, public areas of shopping malls and shopping centers, hotel lobbies, all telephones located outdoors (except those located on the property of a private club), roadside oases and rest areas, amusement parks, municipal and government buildings, grounds and associated areas, and military establishments;

TITLE 83: PUBLIC UTILITIES

CHAPTER I: ILLINOIS COMMERCE COMMISSION

SUBCHAPTER f: TELEPHONE UTILITIES

PART 745 TARIFF FILINGS

SUBPART A: GENERAL PROVISIONS

Section

745.10 Applicability

745.15 Definition

745.20 General Filing Requirements

745.30 Classification of Tariffs

SUBPART B: NONCOMPETITIVE TARIFFS

Section

745.100 Filing Requirements for Noncompetitive Tariffs

SUBPART C: COMPETITIVE TARIFFS

Section

745.200 Filing Requirements for Competitive Tariffs Generally

745.210 Additional Provisions Concerning Tariffs Filed Under Section 13-502(e)

745.220 Post-filing Proceedings Under Section 13-502(e)

745.225 Interim Orders

EXHIBIT A Notice of Competitive Tariff Filing Under Section 13-502(e)

AUTHORITY: Implementing Sections 13-501 and 13-502 and authorized by Section 10-101 of The Public Utilities Act (Ill. Rev. Stat. 1985, ch. 111 2/3, pars. 13-501, 13-502, and 10-101).

SOURCE: Emergency rules adopted at 10 Ill. Reg. 765, effective January 1, 1986, for a maximum of 150 days; adopted at 10 Ill. Reg., effective May 30, 1986.

NOTE: Statutory language is denoted by capital letters.

SUBPART A: GENERAL PROVISIONS

Section 745.10 Applicability

This Part applies to all telecommunications carriers subject to regulation by the Illinois Commerce Commission ("Commission") under the provisions of Article XIII of the Public Utilities Act Ill. Rev. Stat. 1985, ch. 111 2/3, pars. 13-101 through 13-803).

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Section 745.15 Definition

"Public Utilities Act" means The Public Utilities Act (Ill. Rev. Stat. 1985, ch. 111 2/3, pars. 1-101 et seq.).

Section 745.20 General Filing Requirements

a) NO TELECOMMUNICATIONS CARRIER SHALL OFFER OR PROVIDE TELECOMMUNICATIONS SERVICE UNLESS AND UNTIL A TARIFF IS FILED WITH THE COMMISSION WHICH complies with this Part and which DESCRIBES THE NATURE OF THE SERVICE, APPLICABLE RATES AND OTHER CHARGES, TERMS AND CONDITIONS OF SERVICE, AND THE EXCHANGE, EXCHANGES OR OTHER GEOGRAPHICAL AREA OR AREAS IN WHICH THE SERVICE SHALL BE OFFERED OR PROVIDED (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 13-501).

b) As required by Section 13-503 of the Public Utilities Act (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 13-503), WITH RESPECT TO RATES OR OTHER CHARGES MADE, DEMANDED OR RECEIVED FOR ANY TELECOMMUNICATIONS SERVICE OFFERED, PROVIDED OR TO BE PROVIDED, WHETHER SUCH SERVICE IS COMPETITIVE OR NONCOMPETITIVE, TELECOMMUNICATIONS CARRIERS SHALL COMPLY WITH THE PUBLICATION AND FILING PROVISIONS OF SECTIONS 9-101, 9-102, AND 9-103 of that Act (Ill. Rev. Stat. 1985, ch. 111 2/3, pars. 9-101, 9-102, and 9-103).

Section 745.30 Classification of Tariffs

a) Classification as competitive or noncompetitive.

1) As required by Section 13-502 of the Public Utilities Act (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 13-502), ALL TELECOMMUNICATION SERVICES OFFERED OR PROVIDED UNDER TARIFF BY TELECOMMUNICATIONS CARRIERS SHALL BE CLASSIFIED AS EITHER COMPETITIVE OR NONCOMPETITIVE. ANY TARIFF FILED WITH THE COMMISSION SHALL clearly INDICATE WHETHER THE SERVICE TO BE OFFERED OR PROVIDED IS COMPETITIVE OR NONCOMPETITIVE. Tariffs for noncompetitive services shall comply with Subpart B, and tariffs for competitive services shall comply with Subpart C.

2) All services for which effective tariffs are on file with the Commission on December 31, 1985, shall be classified as noncompetitive effective January 1, 1986. Thereafter, telecommunications carriers may classify these and other services as competitive by complying with the requirements of this Part.

b) All tariffs filed after January 1, 1986, shall state whether the service to be provided is an interexchange telecommunications service, a local exchange telecommunications service, neither or both.

SUBPART B: NONCOMPETITIVE TARIFFS

Section 745.100 Filing Requirements for Noncompetitive Tariffs

In addition to the requirements imposed by Subpart A, telecommunications carriers shall, with respect to tariffs for noncompetitive services, comply with the requirements imposed by Article XIII of the Public Utilities Act and by 83 Ill. Adm. Code 255 and 285.

SUBPART C: COMPETITIVE TARIFFS

Section 745.200 Filing Requirements for Competitive Tariffs Generally

a) In addition to the requirements imposed by Subpart A, telecommunications carriers shall, with respect to tariffs filed pursuant to Section 13-502 of the Public Utilities Act under which competitive services are to be offered or provided, comply with the requirements imposed on public utilities by 83 Ill. Adm. Code 255.30 (except subsections (i) and (j)), with the remainder of this Section, and with Section 745.210 when the filing is made under Section 13-502(e) of the Public Utilities Act.

b) As provided in Section 13-502 of the Public Utilities Act, PRIOR TO AUGUST 1, 1987, ANY TELECOMMUNICATIONS CARRIER WHICH SEEKS TO FILE A TARIFF CLASSIFYING A NEW INTEREXCHANGE TELECOMMUNICATIONS SERVICE AS COMPETITIVE OR RECLASSIFYING A PREVIOUSLY NONCOMPETI-

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TIVE INTEREXCHANGE TELECOMMUNICATIONS SERVICE AS COMPETITIVE SHALL APPLY FOR PRIOR COMMISSION APPROVAL OF SUCH TARIFF PURSUANT TO THE PROCEDURES OF Section 13-502(e).

c) All tariffs classifying a service as competitive shall clearly state whether they are being filed pursuant to Section 13-502(b) or Section 13-502(e).

d) All such tariffs shall be accompanied by a verified statement (see 83 Ill. Adm. Code 200.130) which:

1) specifically alleges that, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider, whether or not any such provider is a telecommunications carrier subject to regulation under the Public Utilities Act;

2) specifically identifies, through the use of descriptions, maps, or equivalent means, the identifiable class or group of customers in an exchange, group of exchanges or other clearly defined geographical area for which the classification is made;

3) specifically describes the service, its functional equivalent, or the substitute service for which classification is being made; and

4) specifies:

A) one or more entities that provide the same service, its functional equivalent, or a substitute service, and

B) the identifiable class or group of customers in an exchange, group of exchanges or other clearly defined geographical area to whom such service is offered by such entity or entities.

e) If a telecommunications carrier which files a tariff CLASSIFYING A SERVICE AS COMPETITIVE ALSO OFFERS OR PROVIDES NONCOMPETITIVE TELECOMMUNICATIONS SERVICE, IT SHALL FILE A LONG-RUN MARGINAL COST STUDY FOR THE SERVICE BEING CLASSIFIED AS COMPETITIVE at the time the tariff is filed (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 13-502). For purposes of this subsection, a long-run marginal study is a study that identifies the total cost required to meet a sustained marginal increase in demand at any particular time period in each year, presuming optimal adjustments in a telecommunications carrier's plant and equipment.

f) Tariffs filed pursuant to Section 13-502(b) take effect immediately upon filing; proposed tariffs filed pursuant to Section 13-502(e) take effect as provided in that Section and in Section 745.220 of this Part.

Section 745.210 Additional Provisions Concerning Tariffs Filed Under Section 13-502(e)

All telecommunications carriers filing proposed tariffs classifying a service as competitive under Section 13-502(e) of the Public Utilities Act shall comply with the requirements set forth in the remainder of this Section, in addition to those requirements stated in Section 745.200.

a) An application shall be filed with the Commission FOR AN ORDER FINDING THAT THE PROPOSED TARIFF IS PROPER AND CONSISTENT WITH LAW. This application must accompany the proposed tariff and the statement required by Section 745.200(d) (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 13-502).

b) Notice.

1) ANY TELECOMMUNICATIONS CARRIER APPLYING FOR COMMISSION APPROVAL of a proposed tariff under Section 13-502(e) SHALL PROVIDE TIMELY AND EFFECTIVE NOTICE OF ITS APPLICATION AND PROPOSED TARIFF TO POTENTIALLY AFFECTED PROVIDERS AND CUSTOMERS by causing to be published in the official State newspaper and in some secular newspaper (that has been regularly published for at least 6 months prior to the publication of such notice) in general circulation in the exchange, group of exchanges or other geographical area to be served under the proposed tariff, a notice containing the information specified in the form of Exhibit A, not more than 21 days before the proposed tariff is filed.

2) Certificates of the publication required by subsection (b)(1) shall accompany the proposed tariff when

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filed. Lists of the names and addresses of newspapers of general circulation in the State are available from the Chief Clerk of the Commission at 527 E. Capitol, Springfield, Illinois 62706.

Section 745.220 Post-filing Proceedings Under Section 13-502(e).

a) The Commission shall enter into hearings on a proposed tariff if any potentially affected provider or customer requests a hearing under Section 13-502(e) of the Public Utilities Act by filing a request for such a hearing not later than 10 days after the proposed tariff is filed.

b) IF THE COMMISSION ENTERS INTO HEARINGS UPON THE APPLICATION, IT SHALL ENTER A FINAL ORDER WITHIN 120 DAYS OF SUCH APPLICATION, AND, IF THE COMMISSION FAILS TO ENTER AN ORDER WITHIN SUCH PERIOD, THE APPLICATION SHALL BE DEEMED GRANTED, UNLESS, HOWEVER, THE COMMISSION, THE APPLICANT AND ALL PARTIES TO THE HEARING AGREE TO EXTEND SUCH TIME PERIOD (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 13-502).

c) The Commission shall enter into hearings on its own motion concerning any proposed or effective tariff when the Commission finds that it cannot make a determination based on the allegations contained in the verified statement required by Section 745.200(d).

Section 745.225 Interim Orders

The Commission shall issue an interim order if the Commission finds that an interim order will advance the legislative policy enumerated in Section 13-103 of the Public Utilities Act (Ill. Rev. Stat. 1985, ch. 111 2/3, par. 13-103). Any conditions imposed will be those needed to carry out the policy of Section 13-103 of the Public Utilities Act under the circumstances of the particular case.

Section 745.EXHIBIT A Notice of Competitive Tariff Filing Under Section 13-502(e)

Notice is hereby given that _____ (Applicant's Name) will file with the Illinois Commerce Commission an application to offer _____ (type of service) telecommunications service on a competitive basis under Section 13-502(e) of the Public Utilities Act. This application will be filed within twenty-one (21) days.

Requests for hearing must be made in accordance with the provisions of Section 13-502(e) of the Public Utilities Act and 83 Ill. Adm. Code 745.220.

Additional information concerning this filing may be obtained from the Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62706 or from _____ (Applicant), _____ (Address)

Section 255.30 Concerning Composition and Filing

a) Schedules not to be in handwriting.

All schedules must be clearly printed, mimeographed or typewritten on paper of good quality. Alterations in writing or erasures must not be made in schedules before filing.

b) Form and size of schedules.

All schedules must be in book, sheet or pamphlet form, and of size 8 1/2 x 11 inches. Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf. If the public utility has but a few rates, the schedule may consist of a single page.

c) Numbering of schedules.

The first schedule filed by each public utility for any class of service shall be designated with the prefix, "Ill. C.C. No. 1", and thereafter as other schedules are filed to replace such schedules they shall be designated with the next higher number in consecutive numerical order. Pages within a schedule shall be numbered in consecutive order. Subsequent additional pages inserted between existing pages of the schedule shall be numbered in accordance with decimal place notations.

d) The title sheet of every schedule shall show:

1) Name of Issuing Company.

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2) Ill. C.C. number of the schedule in upper right-hand corner and, immediately thereunder, the schedule number or numbers cancelled thereby.

3) Class of service, whether cooling, electric, gas, heating, sewer, telephone, telegraph or water.

e) Other sheets of schedule shall show:

1) Name of Issuing Company.

2) Ill. C.C. number in the right-hand corner of the sheet and, immediately thereunder, the original sheet number in case it is an original sheet. In cases where changes are made by filing revised sheets to schedules on file, the schedule number, revised sheet number and original or revised sheet number cancelled shall be shown.

3) Class of service, whether cooling, electric, gas, heating, sewer, telephone, telegraph or water.

4) The city or territory to which the sheet applies unless the information is set forth elsewhere in the schedule.

5) The rates and other charges explicitly stated in cents, including fractions thereof where applicable, or dollars and cents for each class of service rendered.

6) Date on which the sheet is formally filed with the Commission and the date on which it is proposed that the sheet will become effective.

7) Name, title and address of officer by whom sheet is issued.

f) Rules and regulations of public utilities.

Each schedule shall contain, or incorporate by reference if they already are on file, the rules which govern the schedule with the title of each rule shown in bold type.

g) Schedules for each class of service.

Separate schedules shall be filed for cooling, electric, gas, heating, sewer, telephone, telegraph or water services.

h) Changes in schedules.

Changes in a schedule may be made by filing an entire new schedule or by filing additional original sheets or revised sheets which shall refer in the manner provided in Section 255.30(e)(2), to the corresponding sheets of the schedule on file and state whether the new filing is an additional original sheet or a revised sheet. The proposed change shall be indicated on the additional original sheet or on the revised sheet, as the case may be, by an asterisk immediately preceding the item, or by underscoring the item or by some other method of symbols, with an explanation in the schedule of the symbols used. Where the new filing eliminates a rate, rule or regulation, it shall so show.

i) Schedules or sheets to be filed on 45 days' notice.

Except as hereinafter provided, no schedule or sheets to effect a change in any schedule will be accepted for filing unless it is delivered to the Commission on a date at least 45 days before the change or changes are to become effective. If a schedule or sheet reaches the office of the Commission on a Sunday or a holiday it will be considered as having been received on the following business day.

j) Permission for less than 45 days' notice.

On every schedule and on every additional original sheet or revised sheet permitted by order of the Commission to become effective on less than 45 days notice, there shall appear a notation to the effect that such schedule or such sheet is permitted to become effective on less than 45 days notice under order of or by authority of the Commission, and making reference to said order or authorization by its specific order number and date of issue. The request by a public utility for special permission should be in the form of a petition, in triplicate, addressed to the Commission and should contain information substantially as outlined in Exhibit B.

k) Address for schedules.

Schedules and changes therein sent for filing should be addressed:

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Illinois Commerce Commission

Chief Clerk

527 East Capitol Avenue

Springfield, Illinois 52706

l) Letter of transmittal.

1) All schedules and all additional original or revised sheets of schedules filed with the Commission shall be accompanied by a letter of transmittal on paper 8 1/2 x 11 inches in size, and shall include information as called for in Exhibit C and such other information as is considered appropriate to explain the nature, effect and purpose of the schedule, or additional original or revised sheets submitted for filing.

2) A statement shall either be incorporated in the letter of transmittal or attached as a separate sheet, explaining the nature, purpose and reasons for proposing the schedule, and insofar as the following matters may be applicable and feasible in each instance, showing in detail the changes in rates, tolls or other charges or rules and regulations contained in the new schedule as compared with the rates, tolls or other charges or rules and regulations in effect at the time of filing such schedules, the approximate number of customers affected, and the estimated increase or decrease in revenue resulting from each such change in rates, rules or regulations.

3) A separate letter may accompany each schedule or additional original or revised sheet, or Exhibit C may be modified to provide for filing under one letter as many schedules or sheets as convenient.

4) If receipted copies of any of the filed documents are desired, include an additional copy of the documents to be receipted, along with a receipt seeking such receipt, Said documents will be date stamped and returned.
(SOURCE: Amended at 9 Ill. Reg. 11807, effective July 25, 1985.)

TABLETABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

REVISED

APPENDIX "B"

Application for Customer Owned Pay Telephone Service (COPTS)

Service List Name_____

Service List Address_____

_____ Zip Code

Service Telephone 1/2 Assigned (____) _____

Dear COPTS Subscriber:

_____Telephone Company is required to advise you that the Illinois Commerce Commission ("Ill.C.C.") has adopted regulations applicable to COPTS service. The regulations are set forth in the attachment to this application. You are required to sign the COPTS subscriber card attached below to indicate that the pay telephone you will install at the above service address is in conformance with these requirements and to return this card to the ILL.C.C. at (address), within thirty (30) days of your subscription to COPTS. COPTS service will not be provided until you have returned the COPTS subscriber card to the ILL.C.C. and the ILL.C.C. informs us that it has received the card._____ Telephone Company is also required to notify the ILL.C.C. on a regular basis of all customers who have subscribed to COPTS. This notification, however, does not relieve you of the obligation to return the attached subscriber card to the ILL.C.C.

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APPENDIX "C"

PROCEDURE FOR REVIEWING ALLEGED VIOLATIONS OF REGULATIONS

APPLICABLE TO CUSTOMER OWNED PAY TELEPHONES

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The following procedure will be followed when an apparent violation of the regulations applicable to customer owned pay telephones is reported:

1. The public will be encouraged to report violations of regulations applicable to Customer Owned Pay Telephones to the Consumer Affairs Division of the Illinois Commerce Commission ("Commission") with referral to the telephone number and address of the Consumer Affairs Division.

When an alleged violation is reported to the local exchange company, the local exchange Company will promptly notify the Consumer Affairs Division of the reported violation in writing. It will provide the Consumer Affairs Division with all of the information that is available to the Company concerning the customer service name and address, billing name and address, the specific location of the set(s) in question and the nature of the violation.

2. The reports of violations will be treated as informal complaints under Section 735.200, Commission Complaint Procedure, of 83 Ill. Adm. Code 735.

3. Under Section 735.200 b) 1), the Consumer Affairs Division shall advise the party complained of that a complaint has been filed against it using the letter attached hereto.

4. The subscriber will be required to respond to the notice in a written statement to the Consumer Affairs Division within fourteen (14) calendar days from the date of the notice from the Consumer Affairs Division stating whether or not the subscriber is in compliance with the regulations and, if not, the date by which the violation will be corrected.

5. A hearing to review the alleged violation may be scheduled at the discretion of the Commission, by the filing of a formal complaint, or by the filing of a petition by the COPTS subscriber requesting a hearing.

6. If a subsequent informal complaint of violation is made against a subscriber who has responded with written confirmation that the violation has been corrected, the informal complaint will be referred to the Chief Telephone Engineer for the preparation of a show cause order for entry by the Commission requiring the COPTS subscriber to appear at a hearing to show cause why the COPTS service should not be disconnected for failure to comply with the regulations applicable to COPTS. A copy of the order will be served on the subscriber as a named respondent and on the local exchange telephone company as a named respondent.

7. The procedures for such hearing to review alleged violations will follow 83 Ill. Adm. Code Part 200, Rules of Practice.

ILLINOIS COMMERCE COMMISSION - ALLEGED VIOLATION CUSTOMER OWNED PAY TELEPHONE (COPTS)

May 14, 1986

Service List Name: _____

Service List Address: _____

_____

COPTS Telephone Number:

_____

_____

_____

_____

_____

Dear COPTS Subscriber:

A complaint has been made by _____ that the pay telephone you have installed at the above service address is not in compliance with the following regulation(s) applicable to COPT services:

___ Federal Registration

___ Touch dialing

___ Ability to access "0" minus and 911 Emergency Service without the deposit of any coins.

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___ Compliance with statutes or rules concerning the use of said pay stations by disabled persons, such as handicapped in wheel chairs or the hearing impaired.

___ Ability to complete local calls.

___ Ability to complete long distance calls.

___ A program which does not limit the duration of a local message, as long as the user continues to provide additional coins.

___ An informational message in, on, or adjacent to each pay telephone (i.e., by voice recording, visual display, etc.) explaining:

___ the general operation of the pay telephone;

___ the owner's name;

___ the method of reporting service problems with the pay telephone;

___ the method of receiving a credit for a faulty call;

___ the method for obtaining emergency services.

___ Other, please specify _____

Please respond to this complaint in writing to the Illinois Commerce Commission, Consumer Affairs Division, within fourteen (14) days of the date of this letter. You should advise us as to whether your pay telephone is in compliance with the above-referenced regulation(s) and, if not, identify by what date it will be brought into compliance.

Yours very truly,

ILLINOIS BELL TELEPHONE COMPANY Petition for Declaratory Ruling Regarding Obligations of Telephone Companies on Customer-Owned Pay Telephones.

84-0442

ORDER ON REOPENING

By the Commission:

On June 11, 1986, the Commission entered a final Order in the above-captioned docket which, among other things, included all providers of customer-owned pay telephones in public locations as telecommunications carriers within the meaning of Section 13-202 of the Public Utilities Act ("Act"), and which modified the application procedure for customer-owned pay telephone service ("COPTS").

On July 3, 1986, the Commission Staff filed a Motion to Reopen the proceeding to clarify the procedure for processing COPTS applications. On July 7, 1986, Intervenor Independent Coin Pay Phone Association ("ICPPA") filed a Motion for an Order Allowing Affected Parties a Reasonable Period of Time to Comply with the Commission's Order. Also, on July 7, 1986, Illinois Bell Telephone Company ("Illinois Bell") filed a Motion to Conform Appendix to Order (treated as an Application for Rehearing).

On July 9, 1986, the Commission granted the Staff's Motion to Reopen and granted, in part, the Motion of ICPPA and denied the Motion of Illinois Bell. Further proceedings were held on July 24, 1986.

On August 5, 1986, the Consumer Affairs Division of the Commission, Illinois Bell, Central Telephone Company of Illinois and ICPPA filed a Joint Proposal for Customer-Owned Pay Telephone Service Provider Application Procedure. On August 6, 1986, ICPPA filed a Proposal for Interim Procedure Governing Approval of Access Line Applications by Uncertificated COPTS Providers. The Examiner's Recommended Order directed to the two filings was served on the parties and any Exceptions and Replies thereto have been considered herein.

The Joint Proposal sets forth two procedures, one applicable to certificated COPTS providers and one applicable to uncertificated COPTS providers. The proposed procedure applicable to certificated COPTS providers would expedite the provision of service to such providers by permitting a local exchange company ("LEC") to install COPTS service without prior notice of approval from the Commission Staff. The proposed procedure applicable to uncertificated COPTS providers would require Staff approval of a COPTS application before the LEC would provide a

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COPTS access line to a COPTS provider. This procedure permits the Staff to determine before installation whether the uncertificated provider is proposing to install a pay telephone in a private location or a public location. If the location is a public location the Staff will be in a position to deny the application before service is installed, pending the issuance of a certificate of service authority to the COPTS provider.

The proposed procedures appear reasonable and will eliminate some of the delay caused by the existing application process. The procedures as adopted herein are contained in Appendix "B" attached to the order. The procedure described in the Order dated June 11, 1986, and set out in Appendix "B" attached thereto and the procedure described in the Interim Order and set forth in Appendix "B" attached to the Interim Order are replaced by the procedures set forth in Appendix "B" attached to this order.

The ICPPA proposal is directed to the problem faced by COPTS providers, which had placed pay telephones in outdoor locations or had entered into contracts to place such telephones pursuant to the Interim Order without having a certificate and which now require a Certificate of Service Authority under the terms of the Order dated June 11, 1986. The proposal sets forth a procedure to allow COPTS providers a reasonable period to comply with the Order dated June 11, 1986. In support thereof, ICPPA cites to Section 13.103(c) of the Act which provides that it is the policy of the State of Illinois that "all necessary and appropriate modifications to state regulation of telecommunications carriers and services should be implemented without unnecessary disruption to the telecommunications system or to consumers of telecommunications services and that it is necessary and appropriate to establish a reasonable period of time to permit preparation for orderly transitions in the provision of telecommunications services."

The procedure is interim in nature. It will permit COPTS providers until November 30, 1986, to file applications for certificates of service authority and will permit them to continue in business during the time periods provided therein. The procedure appears reasonable and is set forth in Appendix "D" attached to this order.

The Commission, having considered the entire record herein and being fully advised therein, is of the opinion and finds that:

(1) the Commission has jurisdiction over the parties and the subject matter herein;

(2) Finding (15) of the Order entered by the Commission on June 11, 1986, is not consistent with the application procedure described in Revised Appendix "B" attached to the Order; the procedure should be revised to remove such inconsistency and to reduce, to the extent possible, the administrative burdens created by the procedure; the procedures set forth in the Joint Proposal are reasonable and should be adopted;

(3) the application procedure set forth in the Revised Appendix "B" attached to the Order dated June 11, 1986, should be replaced by the procedures set forth in Appendix "B" attached to this order;

(4) the Interim Procedure proposed by ICPPA provides a reasonable transition period to allow COPTS providers to come into compliance with the Order dated June 11, 1986, and the Interim Procedure set forth in Appendix "D" should be adopted;

(5) further proceedings should be held on the City of Chicago's Petition for Rehearing and Reconsideration.

IT IS THEREFORE ORDERED that the application procedure set forth in Finding (15) and the Revised Appendix "B" of the Order entered by the Commission on June 11, 1986, be, and is hereby, replaced by the two procedures set forth in Appendix "B" attached hereto.

IT IS FURTHER ORDERED that the Interim Procedure set forth in Appendix "D" attached hereto be, and is hereby, adopted in accordance with Finding (4) herein.

By Order of the Commission this 17th day of September, 1986.

(SIGNED) MARY B. BUSHNELL

(SEAL)

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Chairman

APPENDIX "B"

PROCEDURE APPLICABLE TO UNCERTIFICATED COPTS PROVIDERS

A potential COPTS provider will be given a COPTS application card (formerly referred to as the COPTS subscriber card) by the local exchange company ("LEC") when placing an order with the LEC for a COPTS access line. One card will be provided for each COPTS installation. The cards provided will be the cards currently in use by the Consumer Affairs Division of the Commission at the time the cards are to be provided to the Commission. The potential COPTS provider will complete the card, including information on the location of the COPTS telephone, and will also be required to sign a statement on the card that she/he is aware of the Commission regulations applicable to COPTS providers and agrees to abide by them. The card will then be returned by the COPTS provider to the Commission for approval. If the application is approved, the Staff will forward notice of approval to the LEC. Once the LEC has received such notice of approval, it may provide the applicant with a COPTS access line. A COPTS access line will not be installed before the Staff has had an opportunity to review the application to ensure the telephone is to be placed in a private location, or that the COPTS provider is certificated before the COPTS telephone is placed in a public location.

PROCEDURE APPLICABLE TO CERTIFICATED COPTS PROVIDERS

A COPTS provider which has received a Certificate of Service Authority from the Commission and has provided a copy of the Commission order granting the certificate to the LEC may order a COPTS access line from the LEC and establish a date for installation of the line at the time service is ordered. The LEC may immediately take whatever steps are necessary to install the service on the agreed upon date. At the same time, the LEC will provide the COPTS subscriber with the COPTS application card for each installation. The cards provided will be the cards currently in use by the Consumer Affairs Division of the Commission at the time the cards are to be provided to the Commission. The COPTS subscriber will be required to return the signed application card to the Commission within thirty (30) days of placing the order for a COPTS line. The LEC will not be required to wait for Staff notice of approval of each application before installing service. However, each LEC will submit to the Commission on a monthly basis a list of all COPTS access lines installed by the LEC for a certificated COPTS provider during that month to permit the Staff to determine if all application cards have been returned to it. The LEC will cooperate with the Staff in providing any information the Staff may request regarding a COPTS telephone for which an application card has not been filed with the Commission.

APPENDIX "D"

INTERIM PROCEDURE GOVERNING APPROVAL OF ACCESS LINE APPLICATIONS BY UNCERTIFICATED COPTS PROVIDERS

In order to give COPTS providers a reasonable period of time to comply with the Commission's Order of June 11, 1986, the Commission hereby establishes the following interim procedure for the approval of COPTS access line applications by uncertificated COPTS providers:

1. Up until November 30, 1986, all COPTS access line applications made by uncertificated COPTS providers will be approved whether or not the service to be provided is in a public or private location. All COPTS providers who fail to file for a Certificate of Service Authority by such date shall be given ninety (90) days to dispose of their existing COPTS lines in public locations. After such ninety (90) days, the maintenance of a COPTS telephone in a public location shall be a violation of the Universal Telephone Service Protection Law of 1985.

2. After November 30, 1986, COPTS access line applications by uncertificated COPTS providers will continue to be approved whether or not the proposed service is in a public or private location if an application for a Certificate of Service Authority by the uncertificated COPTS provider is currently pending before the Commission provided that the COPTS provider's application for a Certificate of Service Authority was filed prior to November 30, 1986.

3. Applications for COPTS access lines from an uncertificated COPTS provider for whom an application

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for a Certificate of Service Authority has been denied shall be approved only if:

a. the COPTS provider's contract for the provision of the COPTS access line had been entered into prior to notice of the Commission's Order denying the provider's Application for a Certificate of Service Authority, and

b. the application for a COPTS access line is made within ninety (90) days of the Commission's Order denying the Application for a Certificate of Service Authority.

4. All COPTS providers who are denied a Certificate of Service Authority by the Commission shall be given a period of ninety (90) days from the date of the Commission's order denying the application to dispose of their COPTS lines in public locations. After such ninety (90) days, the maintenance of a COPTS telephone in a public location shall be a violation of the Universal Telephone Service Protection Law of 1985.

END OF DOCUMENT

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EXHIBIT B

Slip Copy

Inmate Communications Corporation
96-0131

Illinois Commerce Commission
June 5, 1996

Application for a certificate of service authority to provide local exchange and interexchange telecommunications resale service

ORDER

By the Commission:

On March 14, 1996, Inmate Communications Corporation("Applicant" or "Inmate Communications") filed an application with the Illinois Commerce Commission ("Commission") for a Certificate of Service Authority to provide customer owned pay telephone service and interexchange telecommunications resold services between and among market service areas in Illinois.

Pursuant to notice given in accordance with the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Hearing Examiner of the Commission at its offices in Chicago, Illinois on May 2, 1996. Mr. Stephen A. Edwards, Inmate Communications' President, appeared for the Applicant and testified in support of the application. At the conclusion of the hearing, the record was marked "Heard and Taken."

Applicant is requesting a certificate to provide local exchange and interexchange resale service to inmates of correctional or confinement facilities. Inmate Communications' system is designed so that only called parties who wish to accept charges on behalf of inmates are billed. If the called party does not accept responsibility for the charges, the call is terminated and no charges are incurred. In addition to its resale services to inmates in non-public areas of correctional facilities, Applicant desires to operate customer-owned pay telephones in public locations as defined by the Commission in its Order in Docket 84-0442.

Mr. Edwards testified that Inmate Communications is authorized to transact business in the State of Illinois. He described the managerial and technical ability of the applicant. Mr. Edwards was an elected board member of the California Payphone Association and its past president. He was also a founder and past president of the American Public Communication Council, a national organization representing the pay telephone industry. Financial statements attached to the Application demonstrated that the Applicant has substantial assets and its operations have been profitable. The Applicant provides similar services in a number of other states, and Mr. Edwards testified that it is in good standing in each of those states.

In a Request for Waiver, Inmate Communications seeks a waiver of the following operator service provider rules: 83 Ill.Adm. Code Sections 770.20 (b) (2), (d), (e) and (f), and 770.30.

With respect to the request for a certificate to operate as a provider of telecommunications services for prisoners of detention and correctional facilities, no formal Commission action is required. The Commission Order entered in Docket 84-0442 on June 11, 1986 stated that **telecommunication providers** that **do not locate** pay telephones in public areas are not public utilities and are not subject to Commission regulation with respect to the service. Prisoners of detention and correctional facilities are not members of the public and the telephones located in non-public areas are not accessible to or used by a large number of the general public. For these reasons, an Applicant providing these telephones would not be a public utility or telecommunications carrier under Section 13-202 of the Public Utilities Act with respect to these phones, even though it may be considered to be reselling telecommunications services.

Similarly, the Commission considers operator services associated with the provision of non-public telephones in correctional institutions to be exempt from the operator service requirements of 83 Ill.Adm. Code 770.

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The Commission notes however, that a particular correctional institution may request the Applicant to provide telecommunications facilities or services which would be available to the general public. The Applicant properly sought Commission certification for such an eventuality. For example, with respect to telephones in the public areas of the detention and correctional facilities, the Commission does have the authority to regulate the services provided. Public areas of government buildings are "public areas" as defined in Docket 84-0442.Therefore, a Certificate of Service Authority to provide pay telephone service and reseller authority in the public areas should be granted.

In the public areas, Applicant plans to use telephones which meet the requirements set forth by the Federal Communications Commission. The telephones will provide the following features: (a) touch dialing; (b) access to "911" emergency service and "O" Operator dialing without the use of a coin; (c) compliance with statutes and rules concerning use of pay stations by disabled persons; (d) ability to complete both local and long distance calls; (e) unlimited duration for local calls through the deposit of additional coins or otherwise; and (f) instructions for obtaining emergency assistance, owner's name, method of reporting service problems and method of receiving credit for faulty calls. These features comply with the requirements set forth in Finding (9) of the Order entered in Docket 84-0442 on June 11, 1986.

Applicant has requested that the Commission make certain declarations and grant certain waivers and modifications from the rules and regulations of the Commission. Specifically, Applicant seeks an exemption from 83 Ill. Adm. Code 710 and 735. Section 13-502 of the Public Utilities Act ("Act") provides that telecommunications carriers can file tariffs for the offering or provision of competitive services. 83 Ill. Adm. Code 745 prescribes the procedure for telecommunications carriers to declare their service competitive. To the extent that Applicant complies with Part 745, in particular Section 745.200, Filing Requirements for Competitive Tariffs Generally, many of the provisions of the Act as well as regulations adopted by the Commission will be inapplicable to competitive services.

A waiver of Part 710, governing the Uniform System of Accounts, should be granted pursuant to Section 13-402 of the Act and the Order entered in Dockets 84-0538 and 84-0539, in order to reduce the economic burdens of regulation on a telecommunication carrier which only provides competitive services. Further, Applicant should be granted a waiver of Part 735, governing credit, billing, deposits and termination of service for the reason stated hereinabove.

The Commission, having reviewed the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Applicant, Inmate Communications Corporation, is a California corporation authorized to do business in Illinois and seeks a Certificate of Service Authority to operate as a reseller of telecommunication services within the State of Illinois; as such, it seeks to become a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

(2) the Commission has jurisdiction over the Applicant and subject matter herein;

(3) as required by Section 13-404 of the Act, Applicant possesses sufficient technical, financial and managerial resources and abilities to provide the resale of local exchange and interexchange telecommunications services within the State of Illinois;

(4) pursuant to Section 13-402 of the Act, a waiver should be granted to Applicant of Parts 710 and 735 of 83 Ill. Adm. Code; such waiver will reduce the economic burden of regulation and is not inconsistent with the Act or purposes of Article XIII;

(5) Applicant should operate its coin operated pay telephones in public areas in conformance with the guidelines as set forth in Finding (9) of the Commission's Order in Docket 84-0442, and any guidelines set forth in subsequent Orders entered therein; such requirements include providing free access to "911" emergency service in areas where said service is available;

(6) Applicant is not a telecommunications carrier under the Act with respect to telephones in non-public areas of detention and correctional facilities;

(7) the application of Applicant should be granted as hereinafter set forth;

(8) Applicant should establish books of account such that revenues from its public pay telephones, subject to the public utility revenue tax, are segregated from the revenues derived from its private pay telephones;

(9) pursuant to 83 Ill. Adm. Code 250, Applicant is authorized to maintain its books and records in the State of California in accordance with Section 5-106 of the Act.

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IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Inmate Communications Corporation, be, and is hereby, granted a Certificate of Interexchange Service Authority for the provision of telecommunications services within the State of Illinois.

IT IS FURTHER ORDERED that the Certificate of Interexchange Service Authority hereinabove granted shall be the following:

CERTIFICATE OF INTEREXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Inmate Communications Corporation, is authorized to provide public pay telephone services and the resale of local exchange and interexchange services from public locations (as defined in the Orders entered in Dockets 84-0464 and 84-0442, and in any subsequent orders therein) in the State of Illinois.

IT IS FURTHER ORDERED that 83 Ill. Adm. Code 710 and 735 be, and are hereby waived as set out in Finding (4) hereinabove.

IT IS FURTHER ORDERED that as a condition of this Certificate, Applicant be, and is hereby, directed to operate its public pay telephones in conformance with the guidelines as set forth in Finding (9) of the Commission's Order in Docket 83-0442, and in any guidelines set forth in subsequent orders therein, including providing free access to "911" emergency service.

IT IS FURTHER ORDERED that as a condition of this Certificate, Applicant be, and is hereby, directed to establish books of account such that revenues from its public pay telephones, subject to the public utility revenue tax, are segregated from the revenues derived from its private pay telephones.

IT IS FURTHER ORDERED that pursuant to 83 Ill. Adm. Code 250 Inmate Communications Corporation, is authorized to maintain its books and records in the State of California.

IT IS FURTHER ORDERED that Applicant shall file rates and tariffs applicable to the proposed service herein certificated, and that said service shall not be commenced until these rates and tariffs are in effect.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 5th day of June, 1996.

END OF DOCUMENT

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EXHIBIT C

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Infinity Networks, Inc. d/b/a Infinity North America Networks, Inc.	:	
	:	**05-0429**
Application for a Certificate of Interexchange Authority to Operate as a Reseller of Telecommunications Services in the entire State of Illinois.	:	

ORDER

By the Commission:

I. Procedural History

On July 7, 2005, Infinity Networks, Inc., d/b/a Infinity North America Networks, Inc., ("Petitioner"), a Louisiana corporation, filed a verified application with the Illinois Commerce Commission ("Commission") seeking a Certificate of Service Authority to provide pay telephone service in correctional and other confinement facilities within the State of Illinois. Petitioner also requested that certain documentary materials be accorded confidential treatment in the Commission's official files.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois on August 2, 2005. Petitioner appeared by its President, James Smith, who presented written testimony and documentary exhibits. At the conclusion of the hearing, the record was marked "Heard and Taken."

On September 22, 2005, Commission Staff filed a "Response to Infinity Network, Inc.'s Application for a Certificate of Interexchange Service Authority." Because the evidentiary record had already been closed, the ALJ treated Staff's Response as a post-hearing brief. Petitioner did not reply to the Response and filed no documents with the Commission after the August 2 hearing.

II. Contents of the Petition and Confidentiality Request

Petitioner presently plans to provide payphone services by which persons residing in correctional and other confinement facilities can complete outbound, collect-only local and toll calls. Petitioner presented evidence of its managerial and technical experience.

Petitioner also presented financial data indicating that Petitioner has sufficient funds to provide payphone services.

Petitioner's pay telephones must meet certain requirements set forth by the Federal Communications Commission. Specifically, Petitioner's pay telephones must provide: (a) touch dialing; (b) compliance with statutes and rules concerning use of pay stations by disabled persons; (c) ability to complete both local and long-distance calls; and (d) a message explaining the telephone's general operations, owner's name, method of reporting service problems and method of receiving credit for faulty calls. These features comply with certain requirements set forth in Finding (9) of the Order entered by this Commission in Docket 84-0442 on June 11, 1986.

Petitioner has requested that the Commission make certain declarations and grant certain waivers and modifications from the rules and regulations of the Commission. Specifically, Petitioner seeks an exemption from 83 Ill. Adm. Code 710 and 735. A waiver of Part 710, governing the Uniform System of Accounts, should be granted pursuant to Section 13-402 and the Order entered in Dockets 84-0538 and 84-0539, in order to reduce the economic burdens of regulation on a telecommunications carrier which provides only competitive services. Further, Petitioner should be granted a waiver of Part 735, governing credit, billing, deposits and termination of service, for the reason stated above, and because the applicable regulations are not pertinent to the operation of pay telephones in correctional and other confinement institutions.

Petitioner requests permission to maintain its books and records at its principal place of business in the State of Texas, pursuant to 83 Ill. Adm. Code 250. That request should be granted in accordance with Section 5-106 of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/5-106.

Petitioner requests that the financial information it has filed in support of its application for service authority (in Exhibit III attached to the application) be treated as confidential and proprietary by the Commission. Petitioner asserts that disclosure of such information to persons other than Commission personnel would "materially damage [Petitioner's] competitive and financial positions." Section 5-109 of the Act states, in relevant part: "All reports made to the Commission by any public utility and the contents thereof shall be open to public inspection, unless otherwise ordered by the Commission." Section 7(g) of the Illinois Freedom of Information Act, 5 ILCS 140/7, exempts from disclosure:

> [t]rade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm.

In view of the foregoing, Petitioner's request for confidential and proprietary treatment of the financial information filed in this proceeding (in Exhibit III attached to the application) should be granted.

III. Staff's Position

Staff asserts that Petitioner does not require a certificate of authority to provide outbound, collect-only payphone service to inmates of correctional facilities. Staff relies on 83 Ill.Adm.Code 771.100(b), and subpart (2) thereof, which states:

> (b) This Part does not apply to pay telephone provider's provision of "private" or "private use" pay telephones in that the telecommunications services offered by these pay telephones are not for public use. Pay telephones in locations where the telephone is available to a limited group such as family, club members, employees, or patrons are not for public use under the Act, including, but not limited to, the locations described below:
>
> ...
>
> 2) Those areas of correctional institutions or facilities ..., county jails and detention centers, or any detention facility operated by a unit of local government that are not accessible to the public[.]

Staff maintains that the foregoing administrative regulation is consistent with Section 13-202 of the Act, which limits the definition of a "telecommunications carrier" to an entity furnishing telecommunications "for public use."

Nonetheless, Staff states that it does not oppose Petitioner's certification request, because Petitioner may choose to provide public payphone services in the future (perhaps at the request of officials in a confinement institution in which Petitioner provides non-public payphone service). Staff argues that nothing in the Act precludes the Commission from awarding authority that exceeds a petitioner's current business plan. In fact, Staff notes, the Commission has previously granted such authority, as in City of Naperville, Dckt. 03-0779, Order, Sept. 9, 2004. The pertinent question, in Staff's view, is whether a petitioner has sufficient technical, financial and managerial expertise to furnish the future service, as required by Section 13-404 of the Act.

IV. Analysis and Conclusions

As Staff observes, the Commission has not applied a consistent analysis to petitions for authority concerning prison payphones. In *some* cases, the Commission has appropriately adhered to the distinction between payphones for private use (i.e., for inmates only) and payphones available to the public. We concluded that inmate-only

payphone providers are not regulated "telecommunications carriers," within the meaning of Section 13-202 of the Act and, on that basis, dismissed proceedings concerning such payphones. Pay-Tel of America, Inc., Dckt. 91-0554, Order, Nov. 12, 1991; Hadley v. Consolidated Communications Public Service, Dckt. 93-0397, Order, Feb. 24, 1994. On the other side of the same coin, we granted a certificate when a private prison payphone provider wanted to begin furnishing payphones in public areas in confinement facilities. Evercom Systems, Inc., Dckt. 99-0012, Order, Mar. 10, 1999. Similarly, in cases in which providers requested certification for both public and private payphone services, we awarded certificates for the proposed public services, while denying certificates for the proposed private payphones. Inmate Communications Corporation, Docket 96-0131, Order, June 5, 1996; Tele-Matic Corporation, Dckt. 94-0093, Order May 4, 1994.

However, in several other instances, the Commission has simply granted certificates of authority to inmate-only payphone providers without determining whether their proposed services would include public use. Inmate Calling Solutions, LLC., Dckt. 03-0603, Order, Feb. 19, 2004; Global Tel*Link Corp., Dckt. 04-0695, Order, Mar. 9, 2005; Cincinnati Bell Telecommunications Services, Inc., Dckt. 99-0625, Order, Jan. 26, 2000; ITI Inmate Telephone, Inc., Dckt. 04-0418, Order, Oct. 20, 2004; Public Communications Services, Inc., Dckt. 05-0528, Order, Feb. 20, 2003. Consequently, we may have inadvertently awarded Certificates of Service Authority to providers of private-use payphones. Aside from exceeding our authority, such awards convey the incorrect message to payphone providers that certification is both authorized and necessary for private-use payphones.

That does not mean, though, that a private-use payphone provider is precluded from requesting public-use authority. If the private-use provider anticipates offering public-use payphones in the future, it may seek appropriate certification, as we specifically stated in Inmate Communications Corporation, *supra*. "[A] particular correctional institution may request the Applicant to provide telecommunications facilities or services which would be available to the general public. *The Applicant properly sought Commission certification for such an eventuality.*" Order, June 5, 1996, at 2 (emphasis added).

Thus, payphone providers may request certification for present or future public-use operations (and shall be awarded such certification if they can demonstrate the technical, financial and managerial resources and abilities required by statute), but do *not* need (and the Commission cannot grant) certification for private-use payphones. These principles will guide all subsequent proceedings before this Commission. Providers will be expected to clearly distinguish their public and private services, and certificates will be granted (assuming the requisite evidence of resources and abilities has been adduced) only for public-use payphones.

In the present case, Petitioner identifies plans to provide private-use payphones to inmates of correctional and other confinement facilities. Under the analysis articulated here, no certification is necessary or available for such services.

Petitioner does not expressly request (or abjure) certification for public-use services. Nevertheless, in view of the Commission's inconsistent treatment of inmate payphone cases, Petitioner would not have known that we intended to clarify and enforce the public-private service distinction discussed here. Importantly, the local and toll providers that will provide services to Petitioner for resale, as well as the telecommunications carriers that must interconnect with Petitioner and Petitioner's wholesalers, would also not have known of the Commission's intention to clarify its analysis. Such carriers might withhold services and/or interconnection if Petitioner has no certificate. Therefore, in this specific case, the Commission will infer that the petition requests certification for public-use payphones, to be provided in correctional and other confinement institutions. The record establishes that Petitioner has sufficient technical, financial and managerial expertise to furnish that particular service.

In subsequent cases, however, petitioners will be expected to be cognizant of the principles affirmed here, and to expressly request certification for public-use payphones. Additionally, wholesale telecommunications service providers and interconnecting telecommunications carriers will not be permitted to deny service or interconnection to a private-use inmate payphone provider on the ground that such payphone provider lacks a certificate of authority from this Commission.

The Commission commends Staff for its cogent and constructive analysis of the issues presented in this proceeding.

The Commission, after reviewing the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Petitioner, Infinity Networks, Inc., d/b/a Infinity North America Networks, Inc., a Louisiana corporation, is seeking a Certificate of Service Authority to provide pay telephone service and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

(2) the Commission has jurisdiction over the Petitioner and subject matter herein;

(3) Petitioner, as required by Section 13-404, possesses sufficient technical, financial and managerial resources and abilities to provide pay telephone services in correctional and other confinement facilities, as determined by the Interim Order in Dockets 84-0464 and 84-0442;

(4) Petitioner should operate its coin pay telephones in conformance with certain guidelines set forth in Finding (9) of the Commission's Order in Docket 84-0442 (and any modifications of, or additions to, such guidelines set forth in subsequent Orders), insofar as such guidelines are specifically applied to Petitioner's operations in the prefatory portion of this Order;

(5) pursuant to Section 5-106 of the Act and in accordance with the provisions of 83 Ill.Adm.Code 250, Applicant should be allowed to maintain its books and records at its principal place of business in the State of Texas;

(6) the financial information filed by Petitioner in support of this application for service authority (in Exhibit III attached to the application) should be treated as confidential and proprietary by the Commission for period of five years;

(7) the application of Petitioner should be granted as hereinafter set forth.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Infinity Networks, Inc., d/b/a Infinity North America Networks, Inc., is hereby granted a Certificate of Service Authority for the provision of pay telephone service in correctional and other confinement facilities in Illinois.

IT IS FURTHER ORDERED that the Certificate of Service Authority hereinabove granted shall be the following:

CERTIFICATE OF SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Infinity Networks, Inc., d/b/a Infinity North America Networks, Inc., is authorized to provide pay telephone services in correctional and other confinement facilities in the State of Illinois, and to resell local exchange and interexchange services through pay telephones in such facilities.

IT IS FURTHER ORDERED that, as a condition of this Certificate, Petitioner is hereby directed to operate its pay telephones in conformance with certain guidelines set forth in Finding (9) of the Commission's Order in Docket 84-0442 (and any guidelines set forth in subsequent orders), insofar as such guidelines are specifically applied to Petitioner's operations in the prefatory portion of this Order.

IT IS FURTHER ORDERED that Petitioner shall file rates and tariffs applicable to the proposed services herein certificated, and that said services shall not be commenced until these rates and tariffs are in effect.

IT IS FURTHER ORDERED that Petitioner is hereby granted leave to maintain its books and records outside Illinois, at its principal place of business in the State of Texas.

IT IS FURTHER ORDERED by the Commission that financial information contained in Exhibit III to the instant application for a certificate of service authority, as filed by Petitioner in this proceeding, is hereby afforded proprietary treatment and is exempt from public disclosure and will be accessible only by the Commission and the Commission Staff for a period of five (5) years from the date of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final, it is not subject to the Administrative Review Law.

By Order of the Commission this 19th day of October, 2005.

(SIGNED) MARTIN R. COHEN

Chairman

EXHIBIT D

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Infinity Networks, Inc. d/b/a Infinity North America Networks, Inc.	))	
	)	Docket No. 05-0429
Application for a Certificate of Interexchange Authority to Operate as a Reseller of Telecommunications Services in the entire State of Illinois.	))))	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
RESPONSE TO INFINITY NETWORKS, INC.'S APPLICATION FOR A
CERTIFICATE OF INTEREXCHANGE SERVICE AUTHORITY

NOW COMES the Staff of the Illinois Commerce Commission, by and through its counsel, states, in response to Infinity Networks, Inc.'s Application for a Certificate of Interexchange Service Authority, as follows:

1. On July 7, 2005, Infinity Networks, Inc. (hereafter "Infinity") filed its Application for a Certificate of Interexchange Service Authority, seeking authority under Section 13-404 to serve as a reseller in Illinois. See Application.

2. In its *Application*, Infinity stated that it intended to provide service as follows:

> Infinity ... proposes to provide automated collect calling services to inmates of confinement institutions throughout the State of Illinois. All services will be offered twenty-four (24) hours per day, seven (7) days a week. Infinity will provide correctional and confinement institutions with sophisticated premises equipment that permits inmates to make outgoing, collect-only calls without the assistance of a live operator. Infinity' systems provide a number of controls and restrictions that serve to reduce or eliminate fraudulent use of telephone systems. These restrictions also provide the correctional institution with increased control over the use of the telecommunications services by inmates confined within. Infinity' telephone instruments are placed in detention areas such as cell blocks or day rooms. Each instrument is connected to a central control unit which restricts and controls calls placed by inmates.

> Infinity' system and services allow inmates to remain in contact with family, friends and other associates while still providing facility administrators with the necessary control over inmate communications.

Application, Answer to Question 27

3. The threshold issue presented by this application, and the only one that Staff proposes to address, is whether Infinity is required to obtain state certification under Section 13-404 to provide local exchange or interexchange service from such payphones. At the outset, the Staff recognizes that participants in the inmate payphone services industry have a right to expect a consistent regulatory policy in this area. The Staff intends, in this pleading, to reconcile seemingly disparate Commission Orders in this area, and to propose an outline for resolving future applications of this type.

4. It is the Staff's view that the Commission should grant Infinity the certificate it seeks, for the reasons set forth below. That said, to the extent that Infinity is providing payphone services specifically and only to inmates of correctional or detainment facilities, it does not require any certification in that discrete capacity, again for the reasons set forth below.

5. Section 13-404 of the Illinois Public Utilities Act, pursuant to which Infinity seeks certification, provides that:

> Any telecommunications carrier offering or providing the resale of either local exchange or interexchange telecommunications service must first obtain a Certificate of Service Authority. The Commission shall approve an application for a Certificate for the resale of local exchange or interexchange telecommunications service upon a showing by the applicant, and a finding by the Commission, after notice and hearing, that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the resale of telecommunications service.

220 ILCS 5/13-404

6. Part 771 of the Commission's Administrative Rules governs the provision of pay telephone service within the State of Illinois. "Pay telephones" are defined as "coin, coinless, [or] credit card reader ... telephone[s] ... that the end user pays or arranges to pay for exchange and interexchange intraMSA and interMSA calls from such instrument on an individual call basis." 83 Ill. Admin. Code §771.110. It is clear that Infinity is providing pay telephone service within the meaning of this regulatory section.

7. However, Code Part 771, by its specific terms, applies only to those pay telephone providers who provide service for public use. Rule 771.100(b) provides, in relevant part, that:

> This [Code] Part [771] **does not apply to pay telephone provider's provision of "private" or "private use" pay telephones** in that the telecommunications services offered by these pay telephones are not for public use. Pay telephones in locations where the telephone is available to a limited group such as family, club members, employees, or patrons are not for public use under the Act, including, but not limited to, the locations described below:
>
> ...
>
> > **Those areas of correctional institutions** or facilities ..., county jails and detention centers, or any detention facility operated by a unit of local government **that are not accessible to the public[.]**

83 Ill. Admin. Code §771.100(b)(2) (emphasis added)

8. Thus, it is clear that any obligations imposed by Part 771 are not, without more, applicable to pay telephone providers who propose to provide

service only in non-public areas of jails, prisons and correctional facilities, as appears to be the case with the Applicant here.

9. The conclusion that pay telephone provider whose pay telephones are not in public areas need not obtain certification as a telecommunications carrier under Section 13-404 is consistent with Section 13-202 of the Public Utilities Act, which provides that telecommunications carriers are those that, inter alia, provide telecommunications service "for public use". 220 ILCS 5/13-202. Likewise, this conclusion is consistent with Rule 771.200, which provides that pay telephone providers offering service from public pay telephones have the duty to obtain certification as resellers of local exchange or interexchange service, to the extent that such pay telephone providers are providing such service. Specifically, Rule 771.200 provides that:

> Providers of pay telephone service that are providing the resale of either local exchange or interexchange telecommunications service **for public use** must first obtain a Certificate of Service Authority pursuant to Section 13-403, 13-404, or 13-405 of the Act, as appropriate.

83 Ill. Admin. Code §771.200 (emphasis added).

10. As noted above, "public use" is a defined term in Part 771, from which definition inmate pay phones are specifically excluded. Further, significantly absent from this section is any requirement that providers of <u>private</u> payphones obtain such certification. It follows from this that no such certification is required by Rule 771.200.

11. The Commission's previous orders in this area are less clear than the rules, and, on their face, not immediately subject to being reconciled with one

another. There are essentially two ways in the Commission has decided these cases. The first line of cases is exemplified by the Commission's *Order* in Pay-Tel of America, Inc.: Application for a Certificate of Service Authority to provide customer-owned pay telephone service (COPTS) within the State of Illinois, ICC Docket No. 91-0544, 1992 Ill. PUC Lexis 190 (April 29, 1992). There, the Commission denied certification as a COPTS provider to an applicant that sought to provide only private pay telephone service in "private jails, county jails and state prisons." Id. at 1-2, 4 (Lexis pagination). The Commission determined that the applicant was not, in this capacity, a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act, and was therefore not required to obtain COPTS certification. Id. at 4-5.

12. In Tele-Matic Corporation: Application for Authorization to provide Services on an Interexchange Basis, ICC Docket No. 94-0093, 1994 Ill. PUC Lexis 182 (May 4, 1994), the applicant sought a Section 13-404 certificate to provide pay telephones and services to be used by prisoners, facility staff and the general public, at detention and correctional facilities in the State of Illinois. Id. at 1, 4 (Lexis pagination). The Commission ruled that:

> **With respect to the request for a certificate to operate as a provider of telecommunications services for prisoners behind bars of detention and correctional facilities, the application cannot be granted.** The Commission Order entered in Docket 84-0442 on June 11, 1986 stated that telecommunication providers that do not locate pay telephones in public areas are not public utilities and are not subject to Commission regulation with respect to the service. Prisoners of detention and correctional facilities are not members of the public and the telephones located behind bars are not accessible to or used by a large number of the general public. For these reasons, the Applicant would not be a public utility or telecommunications carrier under Section 13-202 of the Public

Utilities Act with respect to these phones, even though it may be considered a reseller of telecommunication services.

With respect to telephones in the public areas of the detention and correctional facilities, the Commission does have the authority to regulate the services provided. Public areas of government buildings are "public areas" as defined in Docket 84-0442. Therefore, a Certificate of Service Authority to provide telecommunications service in the public areas may be granted.

Id. at 2-3 (emphasis added)

13. The Commission rendered a similar decision in Inmate Communications Corporation: Application for a certificate of service authority to provide local exchange and interexchange telecommunications resale service, ICC Docket No. 96-0131, 1996 Ill. PUC Lexis 289 (June 5, 1996) (emphasis added). There, the Commission determined that:

> With respect to the request for a certificate to operate as a provider of telecommunications services for prisoners of detention and correctional facilities, no formal Commission action is required. The Commission Order entered in Docket 84-0442 on June 11, 1986 stated that telecommunication providers that do not locate pay telephones in public areas are not public utilities and are not subject to Commission regulation with respect to the service. **Prisoners of detention and correctional facilities are not members of the public and the telephones located in non-public areas are not accessible to or used by a large number of the general public. For these reasons, an Applicant providing these telephones would not be a public utility or telecommunications carrier[1] under Section 13-202 of the**

[1] The Commission's *Inmate Communications Order* was entered in June of 1996, when providers of pay telephones were considered "telecommunications carriers". However, in its *First Payphone Order*, see *Report and Order*, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation; Petition of the Public Telephone Council to Treat Bell Operating Company Payphones as Customer Premises Equipment; Petition of Oncor Communications Requesting Compensation for Competitive Payphone Premises Owners and Presubscribed Operator Services Providers; Petition of the California Payphone Association to Amend and Clarify Section 68.2(a) of the Commission's Rules; Amendment of Section 69.2(m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption from End User

Public Utilities Act with respect to these phones, even though it may be considered to be reselling telecommunications services.

Id. at 2-3 (Lexis pagination) (emphasis added)

14. In the *Inmate Communications Order*, the Commission noted that:

[A] particular correctional institution may request the Applicant to provide telecommunications facilities or services which would be available to the general public. The Applicant properly sought Commission certification for such an eventuality. For example, with respect to telephones in the public areas of the detention and correctional facilities, the Commission does have the authority to regulate the services provided. Public areas of government buildings are "public areas" as defined in Docket 84-0442. Therefore, a Certificate of Service Authority to provide pay telephone service and reseller authority in the public areas should be granted.

Id. at 3-4 (emphasis added)

Thus, the Commission concluded in its *Inmate Communications Order* that, to the extent that the Applicant was providing only private pay telephone service, it was not a telecommunications carrier subject to certification under Section 13-404.

15. The Commission reached a similar conclusion in Evercom Systems, Inc.: Application for a Certificate of Service Authority to Provide Customer-Owned Pay Telephone Service and for Authorization to Provide

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Common Line Access Charges, FCC No. 96-98, CC Docket No. 96-128; CC Docket. No. 91-35, 11 FCC Rcd 20541; 1996 FCC LEXIS 5261; 4 Comm. Reg. (P & F) 938 (rel. September 20, 1996) (hereafter "First Payphone Order"), the FCC determined that pay telephones, at least those provided by Bell Operating Company ILEC, would thereafter be unbundled from the function of providing transmission service, classified as deregulated and detariffed "customer premises equipment" or "CPE". First Payphone Order, ¶142. This had the effect of removing providers of payphone equipment from the ambit of telecommunications carriers. *See also* 47 CFR 64.1330 (state entry and exit requirements for equipment providers prohibited, thereby proscribing any requirement that equipment provider show technical, managerial and financial resources and abilities). The Commission has recognized this. *Interim Order*, Illinois Commerce Commission On its Own Motion: Investigation Into Certain Payphone Issues as Directed in Docket 97-0225, ICC Docket No. 98-0195 (November 12, 2003) (hereafter "Payphone Order")

Competitive Telecommunications Resale Service, ICC Docket No. 99-0012, 1999 Ill. PUC Lexis 211 (March 10, 1999). There, an applicant sought a certificate of service authority under Section 13-404. Id. at 1, 8 (Lexis pagination). The applicant proposed to provide pay telephone service in public areas of county courthouses and "associated facilities" throughout Illinois. Id. at 2-3. The Commission noted that, at the time it applied for the certificate in question, the applicant was "provid[ing] telecommunications services through private pay telephones in correctional facilities in Illinois[,]" Id. at 2, without having obtained a certificate of service authority under Section 13-403, 13-404, or 13-405, inasmuch as the applicant's witness averred that the applicant "by any name, has never been certificated in Illinois." Id. The Commission granted the applicant a Certificate of Service Authority under Section 13-404, Id. at 8-9, which it almost certainly would not have done if the applicant had been operating in Illinois without a required certificate.

16. The second line of cases are ones in which the Commission has granted, without discussion, certificated of resale authority to inmates payphone providers without discussion of whether a certificate is in fact required. In Cincinnati Bell Telecommunications Services, Inc.: Application for a Certificate of Authority to operate as a private payphone provider in the State of Illinois, ICC Docket No. 99-0625, 2000 Ill. PUC Lexis 93 (January 26, 2000), the Commission granted the applicant a Certificate of Interexchange Service Authority pursuant to Section 13-404, even though the applicant appears to have intended to do nothing more than "provide coinless pay telephones in inmate facilities

throughout Illinois." Id. at 1-2, 4-5 (Lexis pagination). The Commission issued similar orders in several subsequent cases. *See, e.g., Order*, Global Tel*Link Corporation: Application for a Certificate of Interexchange Authority to Operate as a Reseller of Telecommunications Services in the State of Illinois, ICC Docket No. 04-0695 (March 9, 2005); *Order*, ITI Inmate Telephone, Inc.: Application for a Certificate of Interexchange Authority to Operate as a Reseller of Telecommunications Services in the Entire State of Illinois, ICC Docket No. 04-0418 (October 20, 2004); *Order*, Inmate Calling Solutions, LLC: Application for a Certificate of Interexchange Authority to Operate as a Reseller of Telecommunications Services in the entire State of Illinois, ICC Docket No. 03-0603 (February 19, 2004); *Order*, Public Communications Services, Inc.: Application for a Certificate of Interexchange Authority to Operate as a Reseller of Telecommunications Services in the Entire State of Illinois, ICC Docket No. 02-0528 (February 20, 2003); *Order*, Custom Teleconnect, Inc.: Application for a Certificate to Become a Telecommunications Carrier, ICC Docket No. 01-0209 (October 24, 2001)[2].

17. Clearly, these two lines of cases present something of a challenge for those seeking to reconcile their holdings, since one stands for the proposition that entities providing local exchange or interexchange service need not obtain certificates of service authority, and the other appears to stand for the proposition that such certificates will be granted upon a showing of sufficient technical,

[2] Although the Staff is informed and believes that Custom Teleconnect intended to provide pay telephone services to private, inmate-only areas of correctional facilities, it is not clear that the Commission knew this at the time it granted the application, as the application, exhibits and transcript appear to be silent on this point.

financial, and managerial resources and abilities, without comment as to whether the certifications are required. With that said, the two lines of decisions are not irreconcilable by any means. Staff notes that the Commission had no difficulty granting certificates of service authority to a payphone service provider that had no immediate plans to provide anything but private pay telephone service in correctional facilities, doing so on the basis that it might receive a request to do so after certification. *See, e.g.*, Inmate Communications Order at 4. Thus, the fact that the provider seeking certification has no present intention to provide public service does not constitute an impediment to its certification, so long as it has the requisite technical, managerial resources and abilities to provide the service in question.

18. Further, Section 13-404 supports the notion that an applicant may seek a certificate of authority that it does not immediately require. That Section provides that:

> Any telecommunications carrier offering or providing the resale of either local exchange or interexchange telecommunications service must first obtain a Certificate of Service Authority. The Commission shall approve an application for a Certificate for the resale of local exchange or interexchange telecommunications service upon a showing by the applicant, and a finding by the Commission, after notice and hearing, that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the resale of telecommunications service.
>
> 220 ILCS 5/13-404

The fact that "[a]ny telecommunications carrier *must* ... obtain a Certificate of Service Authority" cannot be said to exclude the possibility that an entity that does not currently require a certificate might wish to apply for one, and, upon a

finding that it possesses the technical, financial and managerial resources and abilities, be granted one. Indeed, Section 13-404 provides that "[t]he Commission shall approve an application for a Certificate ... upon a showing by the applicant ... that the applicant possesses sufficient technical, financial and managerial resources and abilities [.]" 220 ILCS 5/404 (emphasis added). The use of the term "applicant" rather than "telecommunications carrier" in this passage is significant, as is the well-established principle that criteria for granting certificates of service authority are plainly and unambiguously stated in the statute, which provides certificates are to be issued *only* on the basis of the findings stated in the statute without additional ones engrafted. IITA v. Commerce Comm'n, 183 Ill. App. 3d 220, 237; 539 N.E.2d 717, 726-27; 1988 Ill. App. Lexis 1892 at 29; 132 Ill. Dec. 154 (4th Dist. 1988); *app. den.*, 127 Ill. 2d 616; 545 N.E.2d 111; 136 Ill. Dec. 587 (1989) (hereafter "IITA v. ICC"). Further, the Commission has recognized that it has the authority to grant, and has granted, certificates of authority that afford an applicant greater authority than it currently requires. *Order* at 13, City of Naperville: Application for Certificates of Service Authority to provide facilities-based and resold local exchange and interexchange telecommunications services, or in the alternative, Request for Declaratory Ruling that no such Certificates are required for the City of Naperville to provide the proposed facilities and services, Docket No. 03-0779 (September 9, 2004). Accordingly, there is no basis for denying Infinity a certificate here.

19. In addition, granting certification in this manner will add regulatory certainty and clarity to the process. The Commission has granted certificates to a

number of entities that arguably do not immediately require them. To deny certification to other, presumably equally qualified, applicants might work a hardship on the latter group. By way of example, certain ILECs or IXCs might be less inclined to do business with non-certificated providers. Moreover, it makes sense from the standpoint of fairness to treat similarly situated carriers similarly. There is no evidence that Infinity lacks the requisite technical, managerial resources and abilities to provide resold interexchange and local exchange service, or, indeed, that Infinity possesses any lesser degree of these qualities than similarly situated providers to which the Commission has granted certificates. In consequence, the Staff sees no reason to deny Infinity a certificate.

20. As noted above, the Commission might elect to grant Infinity a certificate on the same grounds upon which it granted one to Inmate Communications; i.e., that a correctional facility may specifically request that Infinity provide service in public areas. As noted, Staff has no reason to believe that Infinity lacks the necessary technical, financial and managerial resources and abilities to render service pursuant to the certificate it seeks, and does not oppose the Application.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted,

/s/_____

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September 22, 2005

VERIFICATION

I, Dawn L. Johnson, first being duly sworn upon oath depose that I have read the above and foregoing Reply in Support of Motion to Set Discovery Schedule and Continue Deadlines for Briefing on Exceptions by me subscribed and know the contents thereof; and that the facts set forth in said Reply are true and correct to the best of my knowledge, information and belief, except as to those matters stated on information and belief, and as to those, I believe same to be true.

Dawn L. Johnson, Attorney for
Securus Technologies, Inc.

SUBSCRIBED and SWORN to me this 7 th day of November, 2012

Notary Public

OFFICIAL SEAL
JANICE D MCGRATH
Notary Public - State of Illinois
My Commission Expires Apr 23, 2013

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a true and correct copy of the foregoing **Securus Technologies, Inc.'s Verified Reply in Support of its Verified Motion to Set Discovery Schedule and Continue Deadlines for Briefing on Exceptions** to be served upon:

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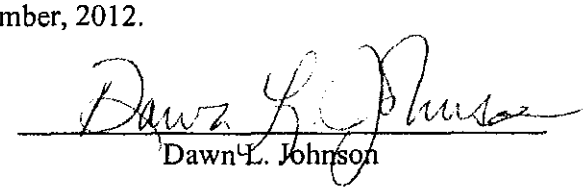
by e-mail and first-class mail, this 7th day of November, 2012.



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