

Docket No. 01-279
Staff Ex 2.0
COMMERCE COMMISSION

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DIRECT TESTIMONY
OF
BARBARA LANKFORD

CONSUMER SERVICES DIVISION
ILLINOIS COMMERCE COMMISSION

FIRST TELECOMMUNICATIONS SERVICES, INC
DOCKET NO. 01-0279

1 **Q. Please state your name and business address.**

2 A. My name is Barbara Lankford, and my business address is 527 East Capitol
3 Avenue, Springfield, Illinois.

4 **Q. What is your occupation?**

5 A. I am employed in the Consumer Services Division of the Illinois Commerce
6 Commission ("Commission").

7 **Q. What are your present responsibilities in the Office of Consumer Services?**

8 A. I began my employment with the Commission in October 1999, and have worked
9 in the Consumer Services Division as a Consumer Counselor. My responsibilities in
10 Consumer Services include reviewing applications and testimony from companies
11 requesting certification to provide local exchange telephone service in Illinois to
12 determine whether or not each applicant possesses the necessary managerial, financial
13 and technical abilities to provide local exchange telecommunications service in Illinois.
14 I have participated in 30 hearings to ensure the applicant's compliance with Illinois
15 statues and Commission rules and regulations. I also investigate consumer complaints,
16 violations of the Commission's Administrative Codes and approved tariffs, and assist
17 consumers in filing and resolving informal complaints.

18 **Q. Please describe your occupational experience.**

19 A. Prior to my employment with the Illinois Commerce Commission, I was employed
20 in the Governor's Office for 9 years where I handled multi-agency and utility casework
21 originating from letters, phone calls and visits to the Governor's Office. I also
22 supervised, trained, and evaluated a staff of four State Services Representatives.

23

24 **Q. What is the purpose of your testimony?**

25 A. My testimony will discuss deficiencies and the lack of clarity in the application,
26 responses to data requests, and responses to requests for additional information,
27 provided by First Telecommunications, Inc. ("First Tel"). I will also provide a
28 recommendation to the Commission for action on First Tel's application.

29 **Q. What is the Petitioner seeking in this docket?**

30 A. Petitioner filed an application under Article XIII of the Public Utilities Act for
31 Certification to operate as a telecommunications carrier. However, throughout much of
32 these proceedings, beginning with the Petition itself, it has been unclear as to the scope
33 and type of services First Tel is proposing to offer. And, after three hearings, numerous
34 conversations between Staff and representatives of the Petitioner, and volumes of
35 additional documentation, Staff believes the record is still unclear as to the authority
36 First Tel is requesting.

37

38 Initially, in its Application, First Tel requested authority under Section 13-404 and
39 13-405 for local exchange resale and facilities based authority. In addition, First Tel's
40 application seemed to indicate that Applicant would also provide pay telephone
41 services. However, the Applicant has changed its position on numerous occasions as
42 to whether First Tel is seeking certification under Section 13-403, 13-404, or 13-405.
43 Questioning posed by the presiding Administrative Law Judge ("ALJ"), to First Tel's Mr.
44 Kenneth Thompson at the April 18, 2001 hearing resulted in the following record:

45 Q. You are going to be contemplating providing resold inter- -- I'm
46 sorry, not resold -- facilities-based interexchange service under
47 Section 13-403? Because the box isn't checked.
48

- 49 A. Where? Can you tell me where that is again?
50
- 51 Q. It's on the first page of the application under Number 2, authority
52 requested.
53
- 54 A. Oh, I see, yes. I apologize. That should be checked off 13-403.
55
- 56 Q. So we'll be amending the application in that regard and to reflect
57 that you are also applying for facilities-based Interexchange
58 services.
59
- 60 A. Yes.
61 Tr. 40, Line 18 through Tr. 41, Line 8.
- 62 **Q. Did the Applicant provide any additional testimony that addressed the**
63 **authority being requested?**
- 64 A. Yes. During the same hearing, Mr. Mark Hanson of Staff also sought clarification
65 from Mr. Thompson of the authority that the Applicant was requesting.
- 66 Q. Is it your intention now then to, as Mr. Riley asked -- you about the
67 certificate you were seeking, to offer long distance i.e.,
68 interexchange services or are you just intending to offer local
69 service?
70
- 71 A. We're going to offer local service and the long distance service via
72 carrier.
73
- 74 Q. So it's not your intention to offer long distance services?
75
- 76 A. No. No. Actually -- well, the customers will be allowed to pick
77 various long distance carriers.
78
- 79 Q. You are not going to offer that service yourself?
80
- 81 A. No.
82
- 83 Q. Okay. I guess then I'm a little confused why you are asking for the
84 Certificate of Interexchange Authority then if you are strictly
85 intending to provide local exchange service.
86
- 87 A. You know, in actuality what I would need to do is.-- David had to
88 step out -- I would have to clarify that with him because that had --

89 some that is based on switching capability and I would have to
90 clarify that with him.
91 Tr. 46, Line 16 through Tr. 47, Line 16.

92 **Q. Did Mr. Hanson pose another line of questions regarding First Tel's**
93 **intention to provide facilities based service or resale service?**

94 A. Yes. Mr. Hanson tried another approach to clarify the authority that the applicant
95 was requesting, by asking if the company was purchasing any facilities for the
96 company.

97 Q. Now I would like to explore a little bit since you are applying for a
98 certification. As I understand it, you are all going to be -- you really
99 won't have any physical facilities. You intend to be purchasing
100 unbundled network elements in Ameritech; is that correct?
101

102 A. Yes, initially, yes.
103

104 Q. But you do plan at some point to acquire some physical facilities?
105

106 A. Well, Nortel Networks is going to sell First Tel its initial equipment
107 all of this year, so Nortel Networks will be installing the switch at
108 Ameritech's collocation point and assisting us with that technology
109 upgrade. It's in the initial start-up. We're not purchasing the switch
110 because of the time required to design the network and
111 infrastructure.
112

Tr. 34, Line 19 through Tr. 35, Line 13.

113

114 **Q. What is Staff's concern with the applicant's ability to provide service?**

115 Staff is concerned that the confusion shown by First Tel on the record, and
116 elsewhere, e.g., Data Responses, shows a lack of understanding of the requirements of
117 the Act and of the Commission's Rules and Regulations, and, thus, an inability to
118 comply with them. For example, First Tel has shown a lack of understanding of
119 Sections 13-403, 13-404, and 13-405, and its customer service obligations.

120

121 **Q. What is Staff's concern with the applicant's lack of understanding of**
122 **Sections 13-403, 13-404 and 13-405 of the Act?**

123 A. The Applicant's inability to understand the provisions of the Act under which it
124 purportedly seeks permission to operate as a telecommunications carrier indicates that
125 it will be unable to comport with the requirements of the Act and will not be able to
126 properly manage the provision of telecommunications services.

127

128 **Q. Did Judge Riley seek to clarify the authority that the applicant was**
129 **requesting?**

130 A. Yes. Judge Riley elicited the following exchange:

131 Q. Okay. You checked off on your application for certificates under
132 Section 13-404 of the Act, which is resold local and/or
133 interexchange services and under Section 13-405, which is
134 facilities-based local services. Under 404, are you going to be
135 providing local or interexchange or both for the resold services?
136

137 A. Both.

138
139 Q. Resold and interexchange?
140

141 A. Exactly
142

143 Q. Okay. Under 405, obviously is facilities-based, you contemplate
144 eventually obtaining a switch?
145

146 A. No, it's not a contemplation. We'll be purchasing a switch.
147 Tr. 39, Line 11 through Tr. 40, Line 4.

148

149 After three different people questioned the witness on the topic of the type of
150 services First Tel would offer, there was still confusion on what the applicant was

151 requesting. Referring back to the transcript Tr. 10, Lines 11 – 17, when First Tel's
152 witness was first cross-examined, it was stated:

153 Q. On Number 2 of the application, I want to clarify that you
154 have -- that you are not seeking authority for
155 facilities-based interexchange service; is that correct?
156

157 A. Let me clarify that. For clarification, at this point we have decided
158 that we're not going to have our own switch.
159
160

161 **Q. Throughout this process, did Staff gain a clear understanding of the authority**
162 **being requested by First Tel?**

163 A. No. Even after reading the application, attending three hearings and cross-
164 examining the witness(es), it was unclear as to what services First Tel believed it was
165 seeking to provide. Consequently, in an additional attempt to clarify this matter, Staff
166 issued a set of Data Requests seeking additional documentation and information
167 regarding the company's authority and service offering. Incorporated in Staff's Data
168 Request was a request for a copy of the tariff that the company planned to file, if it
169 received Certification. The purpose of obtaining the document was to try to gain an
170 understanding of the services that First Tel was offering, so that Staff could try to
171 determine what authority the company needed.

172 **Q. Does Staff generally request copies of an applicant's proposed tariff while**
173 **reviewing the application for certification?**

174 A. It is not unusual for Staff to request a copy of a company's tariff to gain an
175 understanding of how the company plans to provide service. Companies routinely
176 provide a copy of their tariffs when they file an application for service authority.

177 **Q. Did First Tel provide a copy of its proposed tariff to Staff?**

178 **A.** Yes. In fact, First Tel has provided several revised versions of its tariffs,
179 ostensibly in response to questions and comments provided by Staff.

180
181 **Q. Did the responses to Staff's Data Requests provide Staff with the**
182 **information that it needed to understand the type of service the company would**
183 **be offering?**

184 **A.** No. Although the Applicant provided Staff with numerous pieces of additional
185 information, the information did not provide Staff with the requisite information to clarify
186 the authority that the Applicant should be seeking or how it would be offering service.

187 **Q. Did Staff discuss with the company deficiencies or errors in the additional**
188 **documentation provided by the applicant?**

189 **A.** Yes. Staff took the time to review the information supplied by First Tel and
190 discussed with the applicant on numerous occasions the deficiencies and errors in the
191 documents, e.g., potential Illinois Administrative Code violations. And, in response,
192 First Tel would provide a "revised" document – but with no notable corrections to the
193 deficiencies or errors discussed with Staff.

194 **Q. What is Staff's concern regarding the Applicant's customer service**
195 **obligations?**

196 **A.** The information provided by First Tel is replete with standards and service
197 offerings, e.g., customer credit information, billing adjustments, the company's
198 customer contract, that conflict with the requirements of 83 Ill. Adm. Code Part 735.
199 ("Part 735").

200 **Q. Staff Data Request MAH 1.10 asked the Applicant to explain how a**
201 **customer will provide credit information to the Company to evaluate the**
202 **customer's credit worthiness. What was the Applicant's response?**

203 A. The applicant responded that residential service customers may establish credit
204 in one of following ways: 1) through the use of a Credit Evaluation Process, 2) through
205 the payment of a cash deposit to the Company, 3) by providing a sufficient guarantee of
206 payments for service by a guarantor satisfactory to the company, 4) by providing a
207 surety bond, provided that such surety bond has been issued by an insurance company
208 that has received a certificate of authority from the Department of Insurance to do
209 business in Illinois.

210

211 **Q. What are the credit information requirements in Part 735.100(e)?**

212 A. The credit information contained in Part 735.100(e) states:

213 1) If an applicant or service is unable to provide satisfactory credit
214 information the company may refuse to provide service unless the
215 applicant furnished a deposit, pursuant to Section 735.102.

216

217 2) For residential applicants for service, satisfactory credit shall be
218 based upon the following standards:

219

220 A) If the applicant has verifiable previous service with any
221 telephone company for at least twelve months and the
222 payment record on the account was satisfactory, the
223 applicant would obtain service without a deposit.

224

225 B) If the applicant had not paid for the previous service, or the
226 previous service had been disconnected for nonpayment
227 within the past twelve months, the company may require a
228 deposit prior to the connection of telephone service.

229

230 C) If the applicant does not have verifiable service, or if the
231 applicant had previous service for less than one year, the
232 applicant would be requested to provide further credit

233 information. The applicant would be requested to provide
234 proof of:

- 235
236 i) home ownership;
237 ii) employment of two years or more with the current
238 employer;
239 iii) major oil company credit card;
240 iv) major credit card;
241 v) checking account;
242 vi) savings account;
243 vii) age of 50 years or more.

244 3) If the applicant is unable to provide affirmative responses to
245 two of these credit criteria in subsection (e)(2) above, the
246 company may request the applicant to furnish a deposit prior
247 to the connection of telephone services.
248

249 4) For business customers, each company shall submit to the
250 Commission a credit evaluation plan. In evaluating the
251 company's credit evaluation plan the Commission will take
252 into consideration whether the plan establishes reasonable
253 criteria in relation to the risks the company might expect to
254 experience from business customers, whether the criteria
255 can be determined by objective, rather than subjective
256 standards, and whether the criteria do not unreasonably
257 discriminate against any class or group of commercial
258 customers.
259

260 **Q. Does Staff have a concern regarding First Tel's Credit Evaluation Process**
261 **("CEP")?**
262

263 A. Yes. Although Staff was not provided with a copy of the questions that form First
264 Tel's CEP, the CEP was addressed at the April 18, 2001 hearing. See, Tr. 23 – 29.
265 First Tel's witness referred to the process as a "credit scoring." Credit scoring that
266 inquires into such topics as an applicant's bill-paying history, the number and type of
267 accounts an individual has, late payments, collection actions, outstanding debt, and the
268 age of accounts would be inappropriate. These types of inquiry would not comply with

269 Part 735.100 of the Illinois Administrative Code. As long as the "standard questions,
270 known as the Credit Evaluation Process" referred to by First Tel limited the questions to
271 those listed in Part 735.100(e), the company would be in compliance with Illinois
272 Commerce Commission regulations.

273
274

275 **Q. Does the Applicant's billing adjustment criteria comply with Part 735?**

276 A. No. In Data Request MAH-1.17 First Tel was asked if it was aware that limiting
277 requests for billing adjustments to 60 days was in violation of Part 735. The applicant
278 responded yes, and revised the number of days to 14 days. Unfortunately, a 14 day
279 period is still out of compliance with Part 735. In fact, Part 735 contains no limiting time
280 frame for a customer to dispute a bill. Under Section 9-252 of the Public Utilities Act, a
281 customer has up to two years to dispute billing amounts.

282

283 **Q. What concerns does Staff have with the Applicant's customer contract for**
284 **service?**

285 A. In response to Data Request MAH-1.23, First Tel provided staff with a copy of its
286 Customer Cost and Terms of Connection contract.

287

288 Several of the terms of connection show that the Applicant is not familiar with the
289 requirements of Code Parts 735 and 732. As a consequence, the Applicant's
290 operations would be in violation of the Commission's regulations.

291

292 **Q. Specifically, which of the Terms of Connection are in violation of Commission**
293 **regulations?**

294 A. The following three items are included in First Tel's Customer Costs and Terms
295 of Connection:

296
297 1) Telephone service will be disconnected X¹ days after the due date on the bill.
298 First Tel does not offer grace periods or payment plans.

299
300 2) If phone service is disconnected, the customer will be required to pay a \$xxx
301 reconnection fee along with all fees and monthly statements owed before re-
302 establishing service.

303
304 3) If First Tel does not activate phone service within 15 working days, the
305 affected customer can request payment in full. [It does not explain payment of
306 what.]

307
308
309 **Q. Are there requirements for payment arrangements in Part 735.80 (a)?**

310
311 A. Yes. Part 735.80 (a) requires companies to offer payment arrangements
312 to customer who are indebted to a carrier. It states that: Residential customers
313 who are indebted to a company for past due utility service shall have the
314 opportunity to make arrangements with the company to retire the delinquent
315 amount by periodic payments referred to hereinafter as a Deferred Payment
316 Agreement.

317
318 As noted, in the contract terms above, First Tel would not provide for deferred payment
319 agreements as required in Part 735.80(a).

320 **Q. The second contract term mentioned above refers to charging a**
321 **reconnection fee before reestablishing service. Is there a requirement in Part 735**
322 **that refers to reconnection fees?**

323
324 A. Yes. Part 735.170 (a) requires that:

325
326 a) When service has been discontinued pursuant to Section 735.180
327 herein, the company may charge and collect the restoral charge, if any, set forth
328 in its rules, regulations or terms and conditions of service which are on file with

¹ The Xs are present in First Tel's contract. They do not indicate the deletion of information by Staff.

329 the Commission. Such rules, as filed, shall provide for automatic waiver of the
330 customer's first service restoral charge of each calendar year.

331
332 A telecommunications carrier must waive the first service restoral charge each calendar
333 year. First Tel's Terms of Contract does not contain such a provision.

334
335 **Q. The third contract term mentioned above refers to the activation of new**
336 **telephone service. The Terms of Contract state that the customer may request**
337 **"payment in full" if service is not activated within 15 working days. What are the**
338 **local exchange service installation obligation requirements in Part 732?**

339
340 A. Part 732.20 (a) states that each telecommunications carrier must
341
342 install basic local exchange service within 5 business days after receipt of
343 an order from the customer unless the customer requests installation date
344 that is beyond 5 business days after placing the order for basic service.
345 The carrier must also inform the customer of its duty to install service
346 within this timeframe. If the installation of service is requested on or by a
347 date more than 5 business days in the future, the telecommunications
348 carrier shall install service by the date requested. A telecommunications
349 carrier offering basic local exchange service utilizing the network or
350 network elements of another carrier shall install new lines for basic local
351 exchange service within 3 business days after provisioning of the line or
352 lines by the carrier whose network or network elements are being utilized
353 is complete. This subsection does not apply to the migration of a
354 customer between telecommunication carriers, so long as the customer
355 maintains dial tone.

356
357 **Q. How would First Tel's contract term be in violation of Part 732?**

358
359 A. According to the information in First Tel's Terms of Contract, First Tel would not
360 provide any reimbursement to a customer until 15 working days after the installation
361 date was missed. Part 732.20 requires a company to make restitution to the customer
362 if the company fails to install service within 5 business days.

363

364 Q. Does Part 732 include regulations on the manner in which customers must be
365 credited for violations of service quality standards?
366

367 A. Yes. Part 732.30(b) states:

368
369 If a carrier fails to install basic local exchange service as required under
370 Section 732.20(a), the carrier shall waive 50% of any installation charges,
371 or in the absence of an installation charge or where installation is pursuant
372 to the Link Up program, the carrier shall provide a credit of \$25. If a
373 carrier fails to install service within 10 business days after the service
374 application is placed, or fails to install service within 5 business days after
375 the service application is placed, or fails to install service within 5 business
376 days after the customer's requested installation date, if the requested date
377 was more than 5 business days after the date of the order, the carrier
378 shall waive 100% of the installation charge, or in the absence of an
379 installation charge or where installation is provided pursuant to the Link
380 Up program, the carrier shall provide a credit of \$50. For each day that
381 the failure to install service continues beyond the initial 10 business days,
382 or beyond 5 business days after the customer's requested installation
383 date, if the requested date was more than 5 business days after the date
384 of the order, the carrier shall also provide either alternative telephone
385 service or an additional credit of \$20 per day, at the customer's option
386 until service is installed.
387

388
389 **Q. Are there any other Administrative Code provisions that the Applicant fails**
390 **to understand?**

391
392 A. Yes, First Tel appears to not understand the installation obligations in 83 Ill.

393 Administrative Code 730.540.

394
395 **Q. What are the installation obligation requirements in Part 730.540?**

396
397 A. The installation provisions in Part 730.540 require:

398
399 a) The local exchange carrier shall complete 90% of its regular service
400 installations within five working days after the receipt of the application, unless a
401 later date is requested by the applicant.

402
403 b) Installation intervals beyond five working days may be appropriate in
404 those instances where installation forces are busy restoring services due to
405 interruption caused by emergency situations, where materials cannot be

406 obtained through no fault of the company, and during unusual rush periods
407 caused by weather or by work stoppages.

408
409 c) On a company basis, 90% of the local exchange carrier's regular
410 service order installation commitments shall be met, excepting customer-caused
411 delays or natural disasters. When, for the company reasons, the service
412 installation date cannot be made, the applicant will be notified, where possible, of
413 the delay the reason for the delay, and the approximate date when the service
414 installation will take place.

415

416 **Q. How would First Tel's proposed practice violate these provisions?**

417

418 A. In the Data Request MAH-1.23, staff requested a copy of First Tel's proposed
419 Customer Contract. In the contract provided by First Tel, under Customer Costs and
420 Terms of Connection, it states "I understand that if FTE does not activate my phone
421 within 15 days, I can request my payment in full". This would be in violation of both
422 Parts 730.540 and 732.20.

423

424

425 **Q. Are there any other concerns raised by the responses to the Data**
426 **Requests?**

427

428 A. Yes, in Data Request MAH-1.24, staff requested a copy of First Tel's Letter of
429 Authority. Upon reviewing the Letter provided by First Tel, it was found that language
430 within the document it is not in compliance with the Public Utilities Act, Section 13-902.

431

432 **Q. Could you provide examples of such language?**

433

434 A. Yes. The Letter of Authority in the first line refers to telecommunication needs,
435 and does not indicate if the customer is requesting a switch of local, local
436 toll or long distance service. As a result, the customer could be easily "slammed" or
437 "crammed."

438 Also, in the Letter of Authority is this statement:

439

440 This Letter of Authority expires sixty months from the execution date of
441 this agreement, or on a date or under circumstances otherwise agreed to in
442 writing by the parties hereto.

443

444 However, Section 13-902 provides that a telecommunications carrier shall submit a
445 preferred carrier change order on behalf of a subscriber within no more than 60 days
446 after obtaining a written or electronically signed letter of agency.

447
448 **Q. What information did Staff offer to First Tel to help it understand its**
449 **obligations in operating a telecommunications carrier and to be in compliance**
450 **with the Commission's rules and regulations?**

451 A. Staff has informally provided comments to the Applicant about the deficiencies in
452 its application and additional documents. On numerous occasions, Staff has
453 recommended that the Applicant seek the advise of an attorney or consultant who is
454 familiar with the Act and with the Commission's rules and regulations. However, the
455 case presented by the Applicant still reflects a high level of misunderstanding of the
456 management of a telecommunications carrier. Based on this record, Staff would have
457 to recommend that the Commission could not grant First Tel's application, as the
458 requisite findings that the applicant possesses sufficient technical, financial and
459 managerial resources and abilities to provide telecommunications services cannot be
460 made.

461 **Q. What is your conclusion with regard to the application submitted by First**
462 **Tel?**

463 A. Staff believes that First Tel has not exhibited an adequate understanding of the
464 customer service obligations that would be imposed upon it by the Public Utilities Act
465 and Commission Administrative rules to manage a telecommunications carrier.

466 **Q. Does this complete your testimony?**

467 A. Yes, it does.