

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company, d/b/a)	
Ameritech Illinois)	
)	
)	Docket No. 00-0393
)	
Proposed Implementation of High)	
Frequency Portion of Loop (HFPL)/Line)	
Sharing Service)	

**AMERITECH ILLINOIS’ REPLY IN SUPPORT
OF MOTION TO RECLASSIFY EXHIBIT AS CONFIDENTIAL**

Illinois Bell Telephone Company (“Ameritech Illinois”) respectfully submits its reply in support of its motion to reclassify Waken Cross Exhibit 3 as confidential. The CLECs’ attempt to treat this internal methods and procedures document as public is baseless and ignores all of the main points in Ameritech Illinois’ motion – including that the Commission already ruled that a prior version of this document was confidential in another case.

Ameritech Illinois’ motion explained that Waken Cross Exhibit 3 (“the document”) was stamped as confidential when produced in discovery; that the CLECs completely failed to follow any of the procedures in the Confidentiality Agreement in this case, which they signed, that *must* be followed when a party seek to de-classify a confidential document produced in discovery; and that Mr. Waken’s agreement to generally discuss the document on the public record did not apply to the document as a whole or all of its contents. The CLECs do not deny either of the first two points, which are dispositive: How can a document be de-classified when it was marked as confidential and the CLECs ignored the contractual prerequisites to challenging that designation?

Instead of trying to justify their behavior – which they cannot – the CLECs claim that Ameritech Illinois (1) admitted the document was public, (2) waived any right to challenge the

de-classification of the document, or (3) is relying on “frivolous” arguments. All three arguments are easily refuted.

First, Mr. Waken’s affidavit, attached to the motion, explained that although he agreed to generally discuss the document on the public record, he never intended to waive confidentiality as to the document itself or its contents. The CLECs feign not to comprehend this point, but it is obvious enough. Witnesses frequently engage in general discussions of topics or documents on the public record without anyone claiming there is a blanket waiver as to the topic or document. Parties and ALJs generally prefer to keep as much as possible on the public record, and cooperation in engaging in a high-level discussion of a topic or document cannot and should not be construed as a “waiver” of all confidentiality. If the CLECs wanted to de-classify the document they should have proceeded as required by the Confidentiality Agreement – especially when they knew that both another ALJ and the Commission itself had already rejected AT&T’s and Covad’s claim that a prior version of the document should be de-classified in Docket 00-0592 – not sprung the concept on a lay witness for the first time during cross-examination.

Second, there can be no “waiver” of confidentiality when it was the CLECs themselves who failed to follow the Confidentiality Agreement. If that were so, the Agreement would mean nothing, as the CLECs could simply ignore it whenever they chose and then blame Ameritech Illinois for their own violation. Waiver is an equitable doctrine, and the CLECs’ own conduct bars any application of equitable principles in their favor here. (The same principle bars the CLECs’ claim that Ameritech Illinois somehow waited too long to bring its motion, especially when granting the motion would have no effect on the CLECs’ briefs in this case.)

Third, the CLECs make the odd claim that if a witness discusses a document at all on the public record, even in the most general detail, that waives confidentiality as to the entire

document. This again makes no sense. Consider a trade secret case involving a recipe. A witness certainly could generally discuss parts of the recipe in the public record (*e.g.*, “it contains salt and sugar”) without waiving the entire recipe itself. The same principle applies here, where Mr. Waken generally discussed what types of actions the document applied to, but did not discuss in detail the “recipe” of Ameritech Illinois’ internal methods and procedures.

Finally, the CLECs do not deny that there would be no prejudice to anyone if the document is properly returned to its confidential designation. In light of that, it is difficult to see why the CLECs care about the designation of the document in this case at all. (Ameritech Illinois believes that the CLECs’ real motive has nothing to do with this case or the specific document at issue here, but rather with an earlier and different version of the document and the Commission’s ruling on interlocutory review in Docket 00-0592, but there is no need to delve into that now.)

For all of these reasons, Ameritech Illinois respectfully requests that Waken Cross Exhibit 3 be reclassified as Waken Cross Exhibit 3-P and afforded confidential treatment.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

By: _____

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CERTIFICATE OF SERVICE

I, J. Tyson Covey, an attorney, hereby certify that I caused copies of the attached Reply in Support of Motion to Reclassify Exhibit as Confidential to be served on the parties to this case via e-mail, messenger, overnight mail, and/or U.S. Mail, with all charges prepaid, this 18th day of September, 2001.
