

OFFICE OF  
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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CHIEF CLERK'S OFFICE

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Illinois Bell Telephone Company	)	
	)	
Application for Review of Alternative Regulation Plan	)	Docket No. 98-0252
	)	
Illinois Bell Telephone Company	)	
	)	
Petition to Rebalance Illinois Bell Telephone Company's Carrier Access and Network Access Line Rates	)	Docket No. 98-0335
	)	
Citizens Utility Board, People of the State of Illinois	)	Docket No. 00-0764
v.	)	
Illinois Bell Telephone Company	)	(Consol.)

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**MOTION TO STRIKE OF AMERITECH ILLINOIS**

Illinois Bell Telephone Company ("Ameritech Illinois" or the "Company"), by its attorneys, hereby files a Motion to Strike that portion of the direct testimony of the CLEC Coalition which addresses a shared and common cost study circulated in an Indiana ratemaking proceeding and all related testimony and exhibits. In support whereof, Ameritech Illinois states as follows:

**I. PROCEDURAL BACKGROUND**

The above-captioned proceeding was established to review the functioning of Ameritech Illinois' Alternative Regulation Plan which the Commission approved in 1994. Order in Docket 92-0448/93-0239, adopted October 11, 1994. Subsequently, in the SBC/Ameritech Merger Order, the Commission imposed an obligation on Ameritech Illinois to flow through 50% of merger savings to customers. Order in Docket 98-0555, adopted September 23, 1999, pp. 148-49. In that order, the Commission deferred to this proceeding a permanent rate adjustment to reflect merger savings based on actual data

through adjustments to the price index. *Id.*, p. 149. No resolution of the merger savings issue was reached during the initial proceedings in this docket due to a lack of actual data.

On January 16, 2002, Ameritech Illinois, the Citizens Utility Board, the Illinois Attorney General, the Cook County State's Attorney's Office and the City of Chicago filed a Joint Motion to Reopen the Record in this proceeding to consider a proposal to resolve the merger savings issue. The Commission granted this Motion on January 29, 2002, and the Administrative Law Judges subsequently established a procedural schedule.

In the course of discovery, the CLEC Coalition sought permission to use in this proceeding a shared and common cost study which had been circulated in an Ameritech Indiana ratemaking proceeding, which the Coalition's members had obtained as parties to that proceeding.<sup>1</sup> Alternatively, the Coalition requested production of this document by Ameritech Illinois in discovery. Ameritech Illinois objected. Because of the expedited time frames for this reopened proceeding, this discovery dispute was argued orally before the Administrative Law Judges without the filing of pleadings. The Administrative Law Judges granted the Coalition's oral Motion to Compel and took with the case Ameritech Illinois' preemptive oral Motion to Strike any testimony relying on this document on February 26, 2002. However, in a subsequent ruling, the Administrative Law Judges indicated that they would consider further argument on this issue.

By this Motion, Ameritech Illinois requests that all testimony and exhibits relying on and responsive to this Indiana document be stricken. The fact that the CLEC Coalition was allowed to use this document in its testimony has had a ripple effect through all the

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<sup>1</sup> The CLEC Coalition consists of AT&T Communications of Illinois, Inc.; MCIWorldcom, Inc.; and McLeodUSA Telecommunications Services, Inc.

testimony in this proceeding, because other parties, including Ameritech Illinois, then addressed the study. The Attachment to this Motion details those portions of CLEC Coalition Exhibit 1.0 which Ameritech Illinois is seeking to have stricken and the related portions of other witnesses' testimony which should be stricken if this Motion is granted.

**II. THE INDIANA SHARED AND COMMON COST STUDY IS NOT RELEVANT TO AN ISSUE THAT IS WITHIN THE SCOPE OF THIS REOPENED PROCEEDING**

Evidence admitted into a hearing record must be relevant and material to an issue in the proceeding. 83 Ill. Adm. Code § 200.610(a). A shared and common cost study prepared for an Ameritech Indiana proceeding is not relevant to any issue in this proceeding.

The Commission reopened the record in this docket on narrow grounds. In its Ruling on Reopening, the Commission made clear that the Joint Motion was being granted "for the purpose of determining whether the Joint Proposal to be advanced by Ameritech Illinois [and the Governmental and Consumer Intervenors] is fair, just and reasonable and in the public interest." Commission Ruling and Directive on Reopening, adopted January 29, 2002, pp. 8-9. The Joint Proposal involves the issuance of a one-time credit to customers in satisfaction of the savings flow-through obligation established in the Merger Order. The parties did not propose -- and the Commission did not authorize -- the initiation of a UNE rate proceeding.

Ameritech Illinois is not suggesting that the CLECs were precluded from arguing that permanent adjustments to UNE rates should be made in lieu of a one-time credit. In fact, the CLEC Coalition did just that in its testimony. (CLEC Coalition Ex. 1.0, pp. 1-

17). However, this is not a proceeding in which specific UNE rate changes could properly be proposed or approved.

Furthermore, this reopened proceeding is limited to the treatment of merger savings. (Staff Ex. 36.0, pp. 7-8). It was incumbent on the Coalition to demonstrate that the Indiana shared and common cost study had a direct and immediate relevance to the issue of merger savings relative to UNE rates. The CLEC Coalition did not do so. Instead, the Coalition merely claimed that the Indiana study constituted “new information . . . that would provide the Commission with a more realistic view of Ameritech’s post-merger, shared and common costs.” (CLEC Coalition Ex. 1.0, p. 6). This bare assertion does not constitute evidence of relevance or materiality.

In fact, the Indiana shared and common study has no bearing on merger savings. As Mr. Barch explained, Ameritech Indiana is not required to track merger savings and the Indiana shared and common cost study (and associated TELRIC studies) were not prepared for the purpose of explicitly flowing through merger savings. (Am. Ill. Ex. 15.0, p. 7). As participants in the Indiana proceeding, the members of the CLEC Coalition can be presumed to know this fact. Moreover, the Indiana study was based on calendar year 2000 actual results and merger savings in 2000 were relatively small. (Am. Ill. Ex. 14.1, pp. 7-8; Am. Ill. Ex. 15.0, pp. 6-7). Again, the members of the CLEC Coalition can be presumed to have known this. (Tr. 2574-75). Finally, 100 percent of merger savings achieved in calendar year 2000 were included in the Indiana study, which is contrary to the Illinois Merger Order’s requirements. (Am. Ill. Ex. 13.1, p. 18; Am. Ill. Ex. 15.0, pp. 6-7). Thus, the Indiana study is not relevant to any issue within the scope of this proceeding.

### **III. COST MATERIALS SPECIFIC TO OTHER COMPANIES ARE NOT ADMISSIBLE EVIDENCE**

Cost studies specific to another company cannot be used to set rates for Ameritech Illinois. It is well established that this Commission cannot borrow rates -- or inputs into the ratemaking process -- from other states or other geographic areas without a substantial evidentiary basis in this record. Wabash, C. & W. Ry. Co. v. Ill. Comm. Comm., 335 Ill. 624, 641 (1923); Union Elec. Co. v. Ill. Comm. Comm., 77 Ill.2d 364, 383 (1929); see, Atchinson, T. & S. F. Ry. Co. v. Ill. Comm. Comm., 335 Ill. 624, 641 (1929). The Commission Staff endorsed this principle from a policy perspective, stating that any shared and common cost factor should be "based on Ameritech Illinois' operations," noting that the Commission, in the past, has been "reluctant to base its decisions on regulatory treatment adopted by another state commission." (Staff Ex. 36.0, p. 8).

That is because all cost studies -- including shared and common cost studies -- are state-specific in nature. In other words, all of the cost amounts and most drivers of those costs are attributable to and/or are identifiable only to the state being studied. For example, uncollectibles are a significant factor in the overall level of shared and common costs. Ameritech Illinois has the highest level of wholesale uncollectibles in the Ameritech region, and Ameritech Indiana has the lowest. This difference alone could significantly impact the cost results. (Am. Ill. Ex. 15.0, pp. 9-10). Thus, the CLEC Coalition has not met its burden of establishing that this Ameritech Indiana study presents relevant information as to Ameritech Illinois' shared and common costs.

Furthermore, a shared and common cost study cannot be viewed in isolation from associated TELRIC studies. Updated shared and common and TELRIC studies were

circulated in Indiana. As Mr. Barch explained, the shared and common cost allocator is a ratio: it relates a pool of shared and common costs (the numerator) to a pool of direct costs (the denominator). Merger-related cost changes are likely to impact both the numerator and the denominator, which means that the ratio could change upwards, downwards or stay the same. Furthermore, different cost assumptions underlying the denominator can impact both the absolute value of the numerator and the relational value between the numerator and the denominator. Thus, a shared and common cost study cannot be used in isolation. (Am. Ill. Ex. 15.0, pp. 5-6, 8). Notably, the CLEC Coalition ignored the updated Indiana TELRIC studies which accompanied the Indiana shared and common cost study. (Am. Ill. Ex. 15.0, p. 5). The CLECs are obviously “picking and choosing” among the components of the Indiana filing and only bringing to Illinois the ones which serve their financial interests. This is not a reasonable basis for ratemaking.

**IV. THE INDIANA SHARED AND COMMON COST STUDY IS NOT EVIDENCE IN THE INDIANA PROCEEDING**

Even if an Indiana cost study were admissible for Illinois ratemaking purposes -- which it is not -- the specific study at issue in this proceeding is not even evidence in the Indiana proceeding. The very same CLECs which sought its admission into this record in Illinois have successfully persuaded the Indiana Commission to strike it from the Indiana proceeding. (Am. Ill. Ex. 15.0, pp. 10-11; Tr. 2753). Thus, the CLEC Coalition is relying on a document which exists only in some regulatory Twilight Zone. It is contrary to a reasonable regulatory policy to use in Illinois an Indiana study that will never even be

considered in Indiana, much less be the subject of a final regulatory decision by the Indiana Commission.<sup>2</sup>

This Commission's rules on administrative notice further underscore the fact that out-of-state testimony that has not been subject to review by the regulator should not be admitted into this record. Although parties may request administrative notice of testimony or exhibits in the records of other docketed proceedings in Illinois, no such policy applies to testimony or exhibits in proceedings in other states. Only "rules, regulations, administrative rulings and orders, and written policies of governmental bodies other than the Commission" are eligible for administrative notice. 83 Ill. Adm. Code § 200.640(a)(1). Thus, the Commission's own rules demand far more finality than just the circulation of a piece of testimony.

The risks inherent in importing studies before they have even been subjected to regulatory review are underscored by the fact that the SBC/Ameritech service cost organization has identified revisions which need to be made in the Indiana study since it was circulated. A significant problem in that study is that the direct costs used in the denominator were overstated; forward-looking adjustments need to be made to the direct costs to bring them into conformance with the TELRIC study results. (Am. Ill. Ex. 15.0, pp. 11-12). Although only preliminary data were available, these revisions were expected to increase the Indiana shared and common factor substantially. (Id., p. 12).<sup>3</sup> However, as noted previously, since this testimony has been stricken altogether, no such revisions will be made. Thus, the Indiana study is not usable as it was filed and it will not be

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<sup>2</sup> The members of the CLEC Coalition have no one to blame but themselves for the fact that the Indiana study is no longer part of the Indiana proceeding.

<sup>3</sup> The resulting shared and common factor was expected to be in the mid-to-upper 20% range. (Tr. 2828).

revised. Since it does not even provide relevant, material or probative evidence relative to Ameritech Indiana's shared and common costs -- much less Ameritech Illinois' -- it should be stricken from this record.

#### IV. CONCLUSION

The CLEC Coalition's use of an Indiana shared and common cost study as the basis for UNE rate changes is improper and should not be permitted. The Coalition is attempting to circumvent normal ratemaking processes in Illinois. The Commission must base any UNE rate decisions on substantial evidence in this record as to Ameritech Illinois' costs of operation. This is a requirement of both the Illinois Public Utilities Act and the Telecommunications Act of 1996, which requires cost-based UNE rates. The particular out-of-state cost study on which the CLEC Coalition attempts to rely is particularly problematic, because it is no longer part of the Indiana rate proceeding; it does not address merger savings at all; and it is not longer even supported by Ameritech Indiana.

WHEREFORE, in view of the foregoing, the portions of the record set forth in the Attachment should be stricken.

Respectfully submitted,

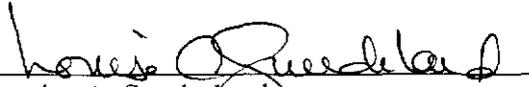
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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that a copy of the foregoing **MOTION** was served on the parties on the attached service list by U.S. Mail and electronic transmission on March 20, 2002.

  
Louise A. Sunderland

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