

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Z-TEL COMMUNICATIONS, INC.	}	
	}	
Complainant	}	
	}	
vs.	}	Docket No. 02-0160
	}	
ILLINOIS BELL TELEPHONE COMPANY, d/b/a AMERITECH ILLINOIS	}	
	}	
Respondent	}	

OPPOSITION OF ILLINOIS BELL TELEPHONE COMPANY
(AMERITECH ILLINOIS) TO Z-TEL COMMUNICATIONS, INC.'S
EMERGENCY PETITION FOR INTERLOCUTORY APPEAL OF
ADMINISTRATIVE LAW JUDGE'S RULING

Illinois Bell Telephone Company (Ameritech Illinois), by its attorneys, files this opposition to the Emergency Petition for Interlocutory Appeal of the Administrative Law Judge's Ruling filed by Z-Tel on March 22, 2002. The Administrative Law Judge's Ruling made on March 21, 2002 permitted Z-Tel to file an amended Count II to its original complaint to correct a legal defect in the original Count II. However, the Administrative Law Judge denied Z-Tel's request to file a Count III to the original complaint adding an entirely new cause of action filed under various provisions of the Public Utility Act other than Sections 13-514, 13-515 and 13-516. The Administrative Law Judge also denied Z-Tel's request to bifurcate the hearing on Count I (the alleged Section 13-514 violations) from the hearing on Counts II and (if it had been permitted to be filed) Count III.

I. The Commission should not entertain Z-Tel's Petition for Interlocutory Appeal.

Z-Tel's complaint was filed "pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act ("PUA") and 83 Ill. Admin Code Part 766." (Z-Tel Complaint filed February 22, 2002, p. 1, opening paragraph).

Section 766.25 of the Commission's Rules clearly states:

The Commission shall not conduct any interlocutory review of any rulings made by a Hearing Examiner in any proceeding filed pursuant to Section 13-515 of the Act. Section 200.520 of the Commission's Rules of Practice (83 Ill. Admin. Code 200.520) is not applicable to any proceedings subject to this Part.

83 Ill. Admin. Code Section 766.25.

Since Z-Tel filed its complaint pursuant to Sections 514, 515 and 516 of the Act, and no others, and since Z-Tel filed the complaint pursuant to 83 Ill. Admin. Code Part 766, Z-Tel's attempt to file a Petition for Interlocutory Appeal "pursuant to Part 200.520 of the Commission's Rules of Practice" (Z-Tel Petition, p. 1, opening paragraph) is specifically prohibited by the Commission's Part 766 Rules and should not be allowed.

2. If the Commission does entertain Z-Tel's Petition for Interlocutory Appeal, the Petition should be denied.

Z-Tel filed its motion to file an amended complaint on March 15, 2002.

This was fifteen days after Z-Tel agreed to the testimony and hearing schedule in this proceeding and three days after it filed its direct testimony. The motion was filed two business days before Ameritech Illinois' rebuttal testimony was due and only six business days before the hearing in this matter was statutorily required

to begin. Under any view of the facts, Z-Tel's attempt to file a new cause of action under ten new sections of the Act was untimely and would have been prejudicial to Ameritech Illinois. While the right to amend is liberally allowed, it is not absolute. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467, 605 N.E. 2d 493 (1992). Whether amendment should be allowed lies within the sound discretion of the trial court (in this instance, the Administrative Law Judge). *Bidani v. Lewis*, 285 Ill. App. 3d 545, 554, 675 N. E. 2d 647 (1st Dist. 1996). Here, the Administrative Law Judge exercised that discretion to deny the motion to file a new Count III based upon its obvious untimeliness and potential prejudice to Ameritech Illinois. The Commission should not second-guess the Administrative Law Judge's decision.

The Administrative Law Judge's ruling to deny bifurcating the hearings on Counts I and II was also correct and should be upheld. Counts I, II (and the purported Count III) all alleged the exact same facts and challenged the exact same conduct by Ameritech Illinois. What Z-Tel was seeking was not a separate hearing on separate issues, but a second chance to retry the same issues. This would have violated fundamental tenets of due process and fair play, and the Administrative Law Judge properly denied the motion.

Furthermore, the hearings on Counts I and II were conducted on March 25 and 26, and a full record was made. The Record was marked "Heard and Taken" on April 2, 2002. Thus, Z-Tel's Petition comes too late and should be rejected.

Ameritech Illinois incorporates by reference in support of its opposition to Z-Tel's Petition for Interlocutory Appeal its Response to Z-Tel's Motion to file an amended complaint filed on March 20, 2002.

WHEREFORE, for all the reasons stated, Ameritech Illinois respectfully requests that Z-Tel's Emergency Petition for Interlocutory Appeal not be heard by the Commission as being improper under the Commission's Rules, or in the alternative that the Petition be denied.

Respectfully submitted,

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Notice of Filing and Certificate of Service

The undersigned, an attorney, certifies that the foregoing Opposition of Illinois Bell Telephone Company (Ameritech Illinois) to Z-Tel's Emergency Petition for Interlocutory Appeal of the Administrative Law Judge's Ruling was filed with Donna Caton, Chief Clerk of the Illinois Commerce Commission, by E-Docket and copies were served on each person on the attached Service List by electronic mail on April 5, 2002.

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Service List Docket 02-0160

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