

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Z-Tel Communications, Inc.	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. 02-0160
	:	
Illinois Bell Telephone Company, d/b/a Ameritech Illinois	:	
	:	
Respondent	:	

**RESPONSE OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION TO AMERITECH'S
AND Z-TEL'S PETITIONS FOR REVIEW OF ADMINISTRATIVE
LAW JUDGE'S DECISION ISSUED APRIL 23, 2002**

Staff of the Illinois Commerce Commission ("Staff") respectfully submits this response to Illinois Bell Telephone Company's (Ameritech Illinois') Petition For Review of the Administrative Law Judge's Decision Issued April 23, 2002 ("AI Petition" or "Ameritech's Petition") and Z-Tel Communications, Inc.'s Petition For Review of the ALJ's April 23, 2002 Order ("Z-Tel Petition" or "Z-Tel's Petition").

I. INTRODUCTION

Staff, in general, supports the Administrative Law Judge's Decision issued April 23, 2002 ("ALJ Decision"). Staff's specific positions on many of the issues raised by Ameritech and Z-Tel were set forth in the Brief of the Staff of the Illinois Commerce Commission filed April 15, 2002 ("Staff Brief") and will not be repeated here. Thus, Staff's silence on a particular issue does not indicate its agreement or disagreement with a particular position. Staff does offer the following response to some of the arguments raised in Ameritech's Petition.

II. RESPONSE TO AMERITECH'S PETITION

The ALJ Decision correctly found that Ameritech violated four of the *per se* impediments to competition prescribed by Section 13-514 of the Public Utilities Act. ALJ Decision, pp. 15-18. Ameritech argues that the ALJ Decision improperly rejected its argument that Section 13-514 requires a finding that the offending carrier “intended” to impede competition. AI Petition, pp. 2-4. To the contrary, Section 13-514 of the Act contains no such requirement. 220 ILCS 5/13-514; Staff Brief, pp. 10-11. Further, Ameritech’s reading of the Section 13-514 would essentially read the legislature’s provision for *per se* violations out of the Public Utilities Act. Clearly, the chief purpose of Section 13-514 of the Public Utilities Act is to remove and discourage impediments to competition. This legislative goal would be seriously undermined if the victims of anticompetitive conduct had to demonstrate that such conduct was also undertaken with the intent to impede competition. The harm caused by anticompetitive conduct is not altered by the intent of the person or entity responsible for such conduct. The legislature has clearly spelled out conduct that constitutes *per se* knowing impediments to competition. The record in this case demonstrates that Ameritech engaged in such conduct and unreasonably and knowingly impeded competition. Section 13-514 does not require more, and Ameritech’s arguments to the contrary would undermine the intent of purpose of Section 13-514 and must be rejected.

Ameritech also argues that no remedies should be granted other than its voluntary commitments. Ameritech Petition, p. 7. Staff disagrees and supports the remedies ordered by the ALJ Decision. Although Staff did take the position that there were multiple methods to reach parity, Staff did not suggest that Ameritech should be the party to dictate the appropriate method. Further, Staff recommended that Z-Tel be

given the option of receiving the disconnect file. See Staff Brief, p. 18. Finally, it should be noted that true parity cannot be achieved in this case without causing potential harm to consumers. Ameritech uses automated systems to terminate billing of its retail customers who migrate to alternative local exchange carriers, whereas Z-Tel currently relies on the 836 Line Loss Notification and may be able to rely on the disconnect file in the future. Neither method achieves true parity because they do not equal the automatic billing system feed used by Ameritech retail. However, as the ALJ Decision properly decided, such relief should not be granted because of its potential harm to consumers. ALJ Decision, p. 19. Given these circumstances, it is appropriate to grant Z-Tel the option of receiving the disconnect file.

III. CONCLUSION

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that the Commission affirm the ALJ Decision.

Respectfully submitted,

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