

REVISED
DIRECT TESTIMONY
OF
JONATHAN FEIPEL

OFFICE OF THE DIRECTOR
TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

ICC ON ITS OWN MOTION
INVESTIGATION CONCERNING ILLINOIS BELL TELEPHONE COMPANY'S
COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT
OF 1996.

DOCKET NO. 01-0662 (PHASE I)

MARCH 2002
(Revised June 20, 2002)

OFFICIAL FILE

I.C.C. DOCKET NO. 01-0662
ICC Staff Exhibit No. 2.0
Witness Feipel
Date 7-1-02 Reporter KM

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

2 A. My name is Jonathan A. Feipel and my business address is 527 East
3 Capitol Ave., Springfield, Illinois 62701.

4
5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Illinois Commerce Commission as a Policy Analyst
7 in the Director's Office of the Telecommunications Division. I teach
8 Economics, part time, at Illinois Central College in East Peoria, Illinois. I
9 am also a trustee of the Illinois Economics Association.

10
11 **Q. Please describe your educational background.**

12 A. I graduated from Illinois State University in 1999 with a Master of Arts in
13 Economics with a focus in Regulatory Economics. I received a Bachelor
14 of Arts Degree in 1997 from Beloit College in Beloit, Wisconsin where I
15 majored in International Relations, Modern Languages (French, German,
16 and Italian) and Theatre Arts (Acting).

17
18 **Q. Please describe your work experience.**

19 A. I began working with the Illinois Commerce Commission in May of 1999
20 as an intern with the telecommunications Division. I continued to work
21 part time with the Commission until December of 1999 when I became a
22 full-time member of the telecommunications staff in the Director's Office.
23 The areas for which I am responsible include the oversight of legislative,
24 merger compliance and general enforcement issues. Of particular interest

25 to this case, I have coordinated Staff's SBC/Ameritech merger compliance
26 efforts since merger closure and led the Telecommunications Division's
27 involvement in the 2001 rewrite of the Public Utilities Act (which resulted in
28 the passage of House Bill 2900/Public Act 92-0022). During the rewrite
29 process, I briefed legislators, negotiated for Staff and testified before the
30 Senate and House Telecommunications Subcommittees. Since the
31 passage of House Bill 2900 (PA 92-0022), I have supervised the
32 implementation of the newly revised law to ensure the preservation of the
33 General Assembly's intent. I have also continued to appear before the
34 relevant Committees in order to keep the legislature apprised of the status
35 of the implementation of PA 92-0022. I am the Telecommunications
36 Division's member of the National Association of Regulatory Utility
37 Commissions' Staff Subcommittee on Telecommunications.

38
39 **Q. What is the purpose of your testimony?**

40 A. ICC Staff witnesses in this proceeding identify numerous and varied
41 examples of Ameritech Illinois' noncompliance with competitive
42 requirements that stem from Federal Law, Illinois State Law, FCC Orders
43 and ICC Orders. The purpose of my testimony is to draw together these
44 examples to provide the Commission with a direct focus on the issues of
45 Ameritech's noncompliance. To that end, I have compiled examples from
46 ICC Staff testimony in order to highlight the pattern of historical
47 noncompliance. I argue that the Commission must recognize Ameritech's
48 noncompliance as a separate issue in this proceeding and must make

49 certain that the Company implements all of Staff's proposed remedial
50 actions. Moreover, I recommend that in light of this pattern of
51 noncompliance, the ICC must enunciate a strong commitment to the
52 enforcement of its directives and must impose appropriate and meaningful
53 anti-backsliding measures. Ameritech's noncompliance hinders the
54 development of local competition in Illinois and can be devastating to
55 nascent competitive carriers.

56

57 **Q. How long has Ameritech Illinois' noncompliance persisted?**

58 **A.** Staff witnesses document that Ameritech Illinois' failure to comply with the
59 laws, orders and rules designed to open local telecommunications
60 markets has a prolonged history. Since the process of opening local
61 telecommunications markets to competition began in Illinois in 1995 to the
62 present, the Company has not comported with various requirements found
63 in:

64

- 65 1. The Federal Telecommunications Act of 1996 (TA96),
- 66 2. The FCC's UNE Remand Order,
- 67 3. Section 51.315 of the FCC rules,
- 68 4. The FCC's TELRIC pricing methodology,
- 69 5. Standards set in FCC 271 Orders,
- 70 6. The ICC's Order in Docket 95-0458/0531 (Wholesale Order)
- 71 7. The ICC's 2nd Interim Order in Docket 96-0486/0569 (TELRIC Order),
- 72 8. The ICC's Order in Docket 99-0953,

- 73 9. The ICC's Order in Docket 98-0555 (ICC's SBC/Ameritech Merger),
74 10. The ICC's Order in Docket 99-0615,
75 11. The ICC's Order in Docket 01-0623, and
76 12. Section 13-801 of the Illinois PUA.

77

78 In the following Question, I will provide examples for these twelve areas,
79 which illustrate that Ameritech has demonstrated a persistent pattern of
80 noncompliance.

81

82 **Q. To what extent has Ameritech Illinois' noncompliance affected the**
83 **opening of local telecommunications markets?**

84 A. The issues of Ameritech's unbundled network elements provisioning,
85 reciprocal compensation, interconnection, single point of interconnection,
86 rates, collocation, DSL practices and nondiscriminatory access to
87 Operational Support Systems (OSS) reflect the Company's
88 noncompliance with Federal and State directives:

89

90 1. *Unbundled Network Elements (UNEs)*: Staff Witness Dr. Zolnierек
91 specifies a number of noncompliance issues related to Ameritech Illinois'
92 UNE provisioning.¹ He notes, "Ameritech fails in general to meet cost,
93 ubiquity, usage flexibility, availability, and transparency criteria"² and "with
94 respect to the provision of new UNEs, Ameritech fails to meet cost,

¹ See, ICC Staff Ex. 3.0.

² ICC Staff Ex. 3.0 at 85.

95 timeliness, quality, and transparency criteria for availability.”³ Dr.
96 Zolnierек explains that these criteria are based in requirements of TA96,
97 the FCC’s UNE Remand Order, TELRIC pricing methodology established
98 by the FCC, standards set in other FCC 271 Orders, the ICC’s Second
99 interim Order in Docket 96-0486/0569 (TELRIC Order), the ICC’s Order in
100 Docket 99-0953 and provisions of Section 13-801 of the PUA.⁴ He
101 concludes that Ameritech fails to meet its obligations regarding the
102 availability of UNE combination migrations⁵ (pursuant to Section 51.315 of
103 the FCC rules, the ICC’s TELRIC Order and Section 13-801 of the PUA)
104 and the accessibility of new UNE combinations (pursuant to Section 13-
105 801 of the PUA).⁶

106
107 Staff witness Mr. McClerren’s analysis of Ameritech’s compliance with
108 loop provisioning time intervals concludes that the Company fails to
109 comply with Section 13-801 of the Public Utility Act as it pertains to
110 unbundled loops and the high frequency portion of the loop (“HFPL”).⁷

111
112 *2. Reciprocal Compensation:* Dr. Zolnierек’s testimony addresses the
113 subject of reciprocal compensation⁸ wherein he concludes that
114 Ameritech’s policies and procedures, with respect to reciprocal
115 compensation related opt-in, are not compliant. He specifies that

³ *Id.* at 122.

⁴ *See* ICC Staff Ex. 3.0 at 59-134.

⁵ ICC Staff Ex. 3.0 at 122.

⁶ *Id.* at 133.

116 Ameritech's reciprocal compensation rate structure does not comply with
117 the FCC's ISP-Bound Traffic Order,⁹ FCC and ICC TELRIC standards¹⁰
118 and the FCC's rules governing traffic.¹¹ He concludes,

119 "Therefore, Ameritech does not provide for interconnection on
120 rates, terms, and conditions that are just, reasonable, and
121 nondiscriminatory as required by Section 251(c)(2) of the 1996
122 Act."¹²
123

124 3. *Interconnection*: In Dr. Zolnierek's discussion of Ameritech's
125 Reciprocal Compensation practices, he notes that Ameritech has violated
126 Condition 27 of the Illinois Commerce Commission's SBC/Ameritech
127 Merger Order.¹³ With regard to third party terms and conditions of
128 interconnection, he states "Ameritech has elected a policy that prohibits
129 interconnected carriers from transiting traffic flowing between Ameritech
130 and third party local exchange carriers...This violates both Section
131 251(c)(2) of the 1996 Act and Section 13-801(a) of the PUA."¹⁴
132

133 3. *Single Point of Interconnection (POI)*: Dr. Zolnierek points out that
134 Ameritech Illinois' policies and procedures with respect to single POIs fail
135 to comply with FCC requirements and Section 13-801 of the PUA.¹⁵
136

⁷ See, ICC Staff Ex. 13.0.

⁸ See, ICC Staff Ex. 3.0 at 33-46 and 148-168.

⁹ *Id.* at 149.

¹⁰ ICC Staff Ex. 3.0 at 163.

¹¹ *Id.* at 165.

¹² *Id.* at 169.

¹³ *Id.* at 42.

¹⁴ *Id.* at 51.

¹⁵ *Id.* at 57.

137 4. *Rates:* With respect to collocation, ICC Staff witness Mr. Hanson
138 asserts that the Company fails to maintain transparent collocation rates
139 due to discrepancies between Ameritech's tariffs and the "General
140 Interconnection Agreement" (GIA).¹⁶

141
142 The prolonged history of compliance proceedings initiated to investigate
143 Ameritech Illinois' rates has led to further noncompliance concerns. ICC
144 Staff witness Mr. Koch addresses Ameritech's general UNE element
145 pricing, reciprocal compensation pricing, CNAM database access pricing,
146 HFPL pricing, and UNE pricing regarding Ameritech's broadband offering
147 under Project Pronto. His testimony indicates that Ameritech IL has
148 several open proceedings in which UNE pricing for specific services is at
149 issue, and as such, there are no Commission approved rates for these
150 services. He expects that the outcome of some of these proceedings will
151 be the establishment of interim rates (not final approved rates) and that
152 new proceedings will be required to examine UNE rates for additional
153 services.¹⁷

154
155 5. *Collocation:* ICC Staff witness Mr. Omoniyi concludes that Ameritech
156 has not fully complied with the requirements of Section 13-801 of the
157 Illinois Public Utilities Act as Ameritech currently only offers cross-
158 connections to collocated carriers and does not permit cross-connections

¹⁶ See, ICC Staff Ex. 5.0.

¹⁷ See ICC Staff Ex. 6.0.

159 between collocated and non-collocated carriers. He states that Ameritech
160 has not met the requirements of Section 13-801(c) governing the
161 restrictions on the types of equipment CLECs may collocate at the
162 Company's premises.¹⁸ Both of these conclusions are based on Staff's
163 positions presented in Docket 01-0614, a proceeding to investigate
164 Ameritech's tariffs filed pursuant to Section 13-801 of the PUA. Mr.
165 Omoniyi notes in his testimony that the Proposed Order in that Docket
166 supports his conclusions.

167
168 Mr. Omoniyi finds that Ameritech has failed to implement the
169 Commission's Order in Docket 99-0615 because the SBC All Equipment
170 List (AEL) is unreliable and not particularly useful.¹⁹ Finally, he concludes
171 that Ameritech has also failed to comply with the ICC's Order in Docket
172 01-0623 because the Company has attempted to change the power
173 cabling policy for both physical and virtual collocation sites.²⁰

174
175 6. *DSL*: ICC Staff Witness Dr. Liu notes that Ameritech's marketing
176 strategy to package DSL with its Internet services is anti-competitive.
177 Moreover, the Company's unilateral restriction to provision DSL on loops
178 on which Ameritech provides voice services is a barrier to competition in
179 both voice and DSL markets.²¹

¹⁸ See ICC Staff Ex. 4.0.

¹⁹ See ICC Staff Ex. 4.0.

²⁰ See ICC Staff Ex. 4.0.

²¹ See ICC Staff Ex. 10.0.

180

181 7. *Operational Support Systems*: ICC Staff Witness Ms. Weber explains
182 that Ameritech Illinois fails to provide accurate line loss reports to its
183 wholesale customers and the line-loss performance measure that
184 Ameritech Illinois produces is inaccurate. She concludes that this “clearly
185 indicates that Ameritech Illinois fails to provide nondiscriminatory access
186 to loss notifications” in accordance with the requirements of TA96 and
187 Section 13-801 of the PUA.²²

188

189 **Q. What particular aspects of the 2001 Rewrite of Article XIII of the PUA**
190 **(PA 92-0022) do you find pertinent to this pattern of behavior?**

191 **A.** I assert that Ameritech Illinois' pattern of noncompliance outlined above
192 brought about the following specific changes to PA 92-0022:

193

194 1. The new Section 13-801 codified key, existing Federal and State
195 market-opening requirements.

196

197 2. PA 92-0022 significantly increased (by a factor of 125) the maximum
198 penalty for general violations of the Act for Ameritech Illinois.²³

199

²² See ICC Staff Ex. 11.0 at 21.

²³ 220 ILCS 5/13-305. Before the enactment of PA 92-0022, the maximum penalty for Ameritech was \$2,000 per day. The increased penalty maximum is now .00825% of a carrier's gross, annual intrastate revenues or \$250,000 per day for Ameritech.

200 3. Regarding the expedited, inter-carrier complaint procedures of

201 Sections 13-514 / 515 / 516, PA 92-0022:

- 202 • Several categories of unreasonable actions regarding
- 203 collocation, OSS and UNEs and violations of Section 13-801
- 204 and ICC Orders were added to the list of per se impediments to
- 205 competition in §13-514,
- 206 • Removed Ameritech's exemption from interconnection
- 207 agreement violations under §13-515,
- 208 • Increased the maximum penalty in §13-516,
- 209 • Added damages, attorney's fees, and costs to §13-516.
- 210

211 4. PA 92-0022 grants the Illinois Commerce Commission the ability "to

212 impose an interim or permanent tariff on a telecommunications carrier as

213 part of the order in the case."²⁴

214

215 These measures were necessary to ensure that noncompliance would not

216 continue.

217

218 **Q. In your opinion, were the market opening provisions of Section 13-**

219 **801 included in part to address Ameritech's noncompliance?**

220 **A.** The General Assembly holds the stimulation of competition to be a vital

221 policy goal and Section 13-801 to be the linchpin. The preamble to this

222 Section states:

223 "The Commission shall require the incumbent local exchange

224 carrier to provide interconnection, collocation, and network

225 elements in any manner technically feasible to the fullest extent

226 possible to implement the maximum development of competitive

227 telecommunications services offerings."²⁵

228

²⁴ 220 ILCS 5/13-501(b).

²⁵ 220 ILCS 5/13-801(a).

229 The majority of Section 13-801 comprises regulations that had already
230 existed; the implementation of which Ameritech has unnecessarily
231 delayed. Ameritech filed tariff sheets in July (that the Company withdrew)
232 and again on September 13, 2001, which the Company claimed complied
233 with Section 13-801. The Commission suspended those tariff filings on
234 September 26, 2001 and initiated Docket 01-0614 in order to investigate
235 "the propriety of the proposed implementation of the tariff provisions
236 related to Section 13-801."²⁶ That case has proceeded to the issuance of
237 a Proposed Order issued by the Administrative Law Judge.

238

239 **Q. What actions should the Commission take in response to Ameritech**
240 **Illinois' noncompliance?**

241 A. Ameritech's continued noncompliance represents a prolonged and
242 systemic problem that has hindered the development of a competitive
243 telecommunications marketplace in Illinois. As a result, I recommend the
244 following:

245

246 1. *The Issue of Ameritech's Noncompliance and Subsequent Remedies:*

247 The Illinois Commerce Commission must address the issue of
248 Ameritech's noncompliance and the remedies outlined by Staff²⁷ when
249 formulating a recommendation to the FCC. The Company must
250 implement these remedies to the Commission's satisfaction before the

²⁶ Suspension Order, Docket No. 01-0614 at 1.

²⁷ See, ICC Staff Ex. 1.0, Sched. 1.02.

251 Commission provides a positive Section 271 recommendation to the FCC.
252 The Commission should impose a timetable that would give the
253 Commission enough time to review the company's efforts and tariffs²⁸ in
254 Phase II of this proceeding. ICC Staff raises these concerns and
255 remedies in the following exhibits:

- 256 • Exhibit 1.0
- 257 • Exhibit 3.0
- 258 • Exhibit 4.0
- 259 • Exhibit 5.0
- 260 • Exhibit 6.0
- 261 • Exhibit 10.0
- 262 • Exhibit 11.0
- 263 • Exhibit 12.0
- 264 • Exhibit 13.0
- 265

266 *2. Enforcement Policy:* The Illinois Commerce Commission must be
267 committed to the implementation and strict enforcement of provisions
268 designed to open the local telecommunications market to competitors.
269 Noncompliance is a serious threat to the development of local
270 competition. This agency must aggressively pursue noncompliance and
271 employ all of the enforcement mechanisms granted to it by the Public
272 Utilities Act. To this end, the Commission must send a clear message
273 that it will utilize the enforcement tools at its disposal whenever necessary,
274 including, but not necessarily limited to:

- 275 • Conduct management audits pursuant to §8-102,
- 276 • Conduct tariff investigations pursuant to §9-250,
- 277 • Order refunds pursuant to §9-252,
- 278 • Seek mandamus or injunction pursuant to §13-303,
- 279 • Impose fines for general violations pursuant to §13-305,

²⁸ See, ICC Staff Ex. 1.0.

- 280 • Impose tariffs pursuant to §13-501(b),
281 • Impose penalties for inter-carrier complaints pursuant to §13-516.
282

283 This enforcement policy will incent the Company to comply with
284 Commission Orders and prevent Ameritech from frustrating competition
285 through noncompliance.

286
287 3. *Performance Measurements and Remedy Plan*: The ICC must
288 establish a comprehensive performance measurement plan (like the one
289 proposed by Staff Witness Mr. McClerren²⁹) coupled with appropriate and
290 meaningful remedies (such as those proposed by Staff witness Dr.
291 Patrick³⁰) in order to prevent backsliding and ensure competitiveness in
292 the Illinois local telecommunications marketplace.

293

294 **Q. Does this conclude your testimony?**

295 **A. Yes it does.**

²⁹ See, ICC Staff Ex. 13.0

³⁰ See, ICC Staff Ex. 12.0