

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

---

<b>Illinois Commerce Commission</b>	)	
<b>On Its Own Motion</b>	)	
	)	<b>00-0596</b>
<b>Revision of 83 Ill. Adm. Code 730</b>	)	

---

**ILLINOIS BELL TELEPHONE COMPANY'S**  
**REPLY BRIEF ON EXCEPTIONS**

**Mark A. Kerber**  
**Attorney for Ameritech Illinois**  
**225 West Randolph Street, 25-D**  
**Chicago, Illinois 60606**  
**(312) 727-7140**

**September 6, 2002**

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

---

<b>Illinois Commerce Commission</b>	)	
<b>On Its Own Motion</b>	)	
	)	<b>00-0596</b>
<b>Revision of 83 Ill. Adm. Code 730</b>	)	

---

**ILLINOIS BELL TELEPHONE COMPANY'S  
REPLY BRIEF ON EXCEPTIONS**

Illinois Bell Telephone Company (“Ameritech Illinois”) submits this Reply Brief on Exceptions in the above-captioned proceeding. To the extent the issues addressed below have already been discussed in the parties’ prior briefs, Ameritech Illinois will not repeat those arguments in detail, but will refer the ALJ and the Commission to the relevant portions of the earlier briefs.

**I. THE PROPOSED ORDER’S CONCLUSIONS REGARDING THE CALCULATION OF INSTALLATION AND REPAIR PERFORMANCE MUST BE RECONSIDERED AND REWRITTEN.**

Staff, carrier parties and consumer parties alike have asked that the Commission reconsider and modify the Proposed Order’s conclusions regarding the calculation of installation and repair performance, particularly with regard to the treatment of the statutory exceptions to those performance measures. (See, e.g., Staff Br. on Exc. at 8; Am. Ill. Br. on Exc. at 13-20; Allegiance/McLeod/RCN Br. on Exc. at 11-13; Verizon Br. on Exc. at 8-10; AG/CUB Br. on Exc. at 12-15). In fact, even the AG and CUB, whose

position the Proposed Order would largely adopt, ask that the portion of the Proposed Order addressing repair be clarified and that the portion addressing installation be substantially rewritten. (AG/CUB Br. at 12-15). In short, the parties are virtually unanimous in pointing out that this portion of the Proposed Order is, at minimum, in need of substantial additional attention by the ALJ and the Commission.

Both Staff and local exchange carriers oppose the Proposed Order's adoption of the AG/CUB position regarding the methodology for calculating installation and repair performance. As these parties have pointed out, the AG/CUB position suffers from at least three fundamental flaws. (See, e.g., Staff Br. at 8; Am. Ill. Br. on Exc. at 13-20; Allegiance/McLeod/RCN Br. on Exc. at 11-13; Verizon Br. on Exc. at 8-10).

First, their position is supported by literally no record evidence. The AG/CUB witness, Ms. TerKeurst, criticized only Staff's proposed treatment of "emergency" situations, not any of the other statutory exemptions from the statutory exceptions to the installation and repair requirements. (Am. Ill. Br. on Exc. at 13-15; Verizon Br. on Exc. at 8-9; see TerKeurst, AG/CUB Ex. 1.0 at 17-20; TerKeurst, AG/CUB Ex. 3.0 at 2-7). Thus, even the AG's and CUB's own witness does not support their position.

Second, while the Proposed Order finds (at 43) that the purpose of the Commission's rule is to measure the extent to which repair or installation is "timely complete," the result of the proposed order is inconsistent with that goal. The Proposed Order would remove from both the numerator and the denominator of the calculation

situations in which repair or installation were unquestionably timely, for example, installations and repairs completed at a time requested by the customer, or installations and repairs for which the carrier dispatched its workers in timely fashion but could not complete the work because the customer failed to provide access to the premises. In effect, the Proposed Rules would treat these cases as if they did not exist at all. However, there is simply no question that the carrier's response was, in fact, timely in these situations. In similar fashion, the Proposed Order's methodology disregards delayed installation or repair cases that are caused by the willful or negligent acts of the customer or are caused by faulty consumer premises equipment or inside wire. Once again, in these cases, any delay is completely within the control of the customer. That result makes no sense, even by the Proposed Order's own reasoning. (Am. Ill. Br. on Exc. at 16; Verizon Br. on Exc. at 9).

Third, the Proposed Order would ignore the added workload imposed on carriers by the situations addressed by the rule's exceptions. (Staff Br. at 66-67; Staff Br. on Exc. at 8; Am. Ill. Br. on Exc. at 17-18; Allegiance/McLeod/RCN Br. on Exc. at 11-13; Verizon Br. on Exc. at 9-10; see McClerren, Tr. 493-94; Muhs, Am. Ill. Ex. 1.1 at 18-19). This, in Staff witness McClerren's words "omits the impact upon the carrier of having to try and meet the standard anyway . . . . They are using the manpower, and that is impacting their ability to meet the standard in other cases." (Tr. 493-94).

In summary, the parties broadly recognize that the portions of the Proposed Order discussing the calculation of installation and repair performance must be substantially

rewritten. In doing so, the ALJ and the Commission should reject the position of the AG and CUB. To do so, the Commission should adopt one or more of the changes proposed by Staff and the carrier parties. (See, e.g., Staff Br. at 8; Am. Ill. Br. on Exc. at 13-20; Allegiance/McLeod/RCN Br. on Exc. at 11-13; Verizon Br. on Exc. at 8-10).

## **II. THE EXCEPTIONS OF THE CITY OF CHICAGO LACK MERIT.**

The Proposed Order (at 27, 32, 38-39) correctly rejects several proposals by the City of Chicago (the “City”). As the Proposed Order finds, those proposals are unnecessary, needlessly burdensome and inconsistent with the relevant provisions of the Public Utility Act (the “Act”). The City’s exceptions add nothing to its earlier arguments, and its proposals should again be rejected.

First, the City continues to press for additional record retention requirements. (City Br. on Exc. at 1-3). As various carriers have explained, and as the Proposed Order properly finds, the City’s proposal is outside the scope of this proceeding. The Commission’s record retention policies are found in Part 705, not Part 730, of the Illinois Administrative Code. The City’s proposal would create an additional and conflicting rule in Part 730. That result makes no sense. (See, e.g., Am. Ill. Br. at 8-9; Verizon Br. at 14-15).

The City contends that the existing record retention rules do not work, because witnesses for Ameritech Illinois and Verizon were not familiar with some aspects of their

companies' document retention practices. (City Br. on Exc. at 2-4). For example, Ms. Boswell testified that Verizon may retain documents for a longer period than is required by the existing rules. (Tr. 257). The fact that Mr. Muhs and Ms. Boswell were not intimately familiar with all of their companies' record retention policies hardly proves that the existing rules need clarification. (Indeed, neither of them is directly responsible for their company's compliance with record retention policies.)<sup>1</sup> The existing Part 705 record retention rules are quite specific and detailed. See 83 Ill. Admin. Code Part 705, App. A. The record contains no evidence that local exchange carriers do not understand those rules or that they have failed to follow them, and the City's proposal should be rejected.

The City also continues to pursue the adoption of its burdensome and pointless reporting proposal. This proposal has been addressed thoroughly by the parties (see, e.g., Staff Br. at 39-41; Am. Ill. Br. at 8-9; Verizon Br. at 11-12), and was rejected by the Proposed Order (at 27). The City provides no reason to reverse that conclusion.

Finally, the City seeks reconsideration of its proposal regarding adequacy of service. In doing so, the City substantially misconstrues the record and the positions of the parties. The City contends that "the record shows that no carrier disputed the reasonableness of the City's recommendation," and it asserts that "Ameritech even

---

<sup>1</sup> The City's claim that the record shows that "the carriers do not know how long they keep records" grossly overstates the record. The fact that two witnesses—neither of whom is directly responsible for record retention—could not explain in detail the period for which various records are retained by their companies proves nothing at all about what the companies themselves know. Had the City bothered to propound appropriate discovery requests on the subject, which it did not, Ameritech Illinois could easily have provided the City with the retention guidelines applicable to any records relevant to this case. In fact, those guidelines uniformly require retention periods consistent with or longer than those required by Illinois' Part 705 rules.

testified that it already follows the practice the City recommends . . .” (City Br. on Exc. at 6). This is wrong in very important respects.

Initially, it is true that Ameritech Illinois does follow the substantive steps suggested by the City in seeking to make facilities available for new service orders. (Muhs, Am. Ill. Ex. 1.1 at 15). However, this does not demonstrate that the City’s proposal is appropriate. To the contrary, it demonstrates that the City’s proposal is simply a remedy in search of a problem. The record contains no evidence that any local exchange carrier in Illinois fails to take appropriate measures to make facilities available, and there is therefore no reason to adopt the City’s proposal. The City’s claim that “no carrier disputed the reasonableness” of the City’s position (City Br. on Exc. at 6) is simply false.

Moreover, the City’s adequacy of service proposal includes, in addition to its substantive requirements, extensive and detailed reporting requirements. Regarding those requirements, Mr. Muhs testified that the records necessary to support the proposed reports simply do not exist. As a result, Ameritech Illinois strongly objects to that proposal. (Muhs, Am. Ill. Ex. 1.1 at 16).

**III. SECTION 13-712 OF THE PUBLIC UTILITIES ACT DOES NOT PROVIDE THE COMMISSION’S AUTHORITY IN THIS PROCEEDING.**

The AG, CUB and Staff continue to argue that the order in this proceeding should cite Section 13-712 of the Act as one of the bases of the Commission’s authority.

(AG/CUB Br. on Exc. at 2-3; Staff Br. on Exc. at 10-11). These arguments are wrong, both as a matter of law and as a matter of fact. Indeed, as Ameritech Illinois pointed out in its Brief on Exceptions (at 21-22), the Proposed Order's existing references to that provision should be deleted.

Neither this proceeding nor the Commission's Part 730 service quality rules is governed by Section 13-712 of the Act. To the contrary, the Commission adopted its current Part 730 rules long before Section 13-712 became law. This proceeding was initiated under Section 13-512 of the Act, to review the Commission's current Part 730 rules. Initiating Order, Ill. C.C. Dkt. 00-0596, 2 (Sept. 7, 2000); see 220 ILCS 5/13-512. The current Part 730 rules, in turn, were adopted pursuant to Section 8-301 of the Act. 220 ILCS 5/8-301. By contrast, Section 13-712 provides the Commission's authority for its the Part 732 rules, which were recently adopted in Docket 01-0485. See Second Notice Order, Ill. C.C. Dkt. 01-0485 (Nov. 29, 2001); Order, Ill. C.C. Dkt. 01-0485 (Dec. 19, 2001).

The arguments of the AG, CUB and Staff are an exercise in revisionist history, for the purpose of turning this proceeding into something it is not and never was. Moreover, this is not a mere academic quibble. To the contrary, the AG and CUB use this fiction to provide cover for their proposal that the Commission ignore Section 13-305 of the Act. (See Part III, *infra*; Am. Ill. Br. on Exc. at 20-23; Verizon Br. on Exc. at 5-7). The parties' attempt to recast the nature of this proceeding is entirely improper. The Commission has already acted on the statutory mandates of Section 13-712 of the Act, in

Docket 01-0485, and it should reject the parties' attempts to gain a second bite at that apple here.

**III. THE COMMISSION SHOULD, AND AS A MATTER OF LAW MUST, CHANGE THE PROPOSED ORDER'S CONCLUSION REGARDING THE APPLICABILITY OF SECTION 13-305 OF THE ACT.**

The Proposed Order (at 24) would have the Commission ignore the explicit limits the General Assembly placed on the Commission's authority to levy civil penalties, in Section 13-305 of the Act. Both Ameritech Illinois and Verizon strenuously objected to that portion of the Proposed Order. (Am. Ill. Br. on Exc. at 20-23; Verizon Br. on Exc. at 5-7). Ameritech Illinois reiterates its earlier arguments on this point and notes its agreement with the additional arguments of Verizon. As both parties have argued, that portion of the Proposed Order should, and indeed must, be changed to conform to the law. See 220 ILCS 5/13-305.

**IV. THE PROPOSED ORDER PROPERLY REJECTS THE CLECS' REQUEST FOR A BROAD WAIVER OF THE RULE'S APPLICATION TO THEM.**

The CLEC parties in this proceeding seek a waiver provision that would broadly exempt them from much of the coverage of the Commission's service quality rules. (Allegiance/McLeod/RCN Br. on Exc. at 2-11; WorldCom Br. on Exc. at 1-12). The Proposed Order (at 15) rejects that request, finding that the rule's existing waiver provision is sufficient to permit CLECs (as well as incumbents) to obtain waivers in any situation in which a waiver is appropriate. The Proposed Order's conclusion is correct

and should not be changed. However, there are also additional reasons to reject the CLECs' request.

The CLECs argue at length that they should not be held responsible for issues over which they have no control. Indeed, this is essentially their entire argument. (Allegiance/McLeod/RCN Br. on Exc. at 2-11; WorldCom Br. on Exc. at 1-12). This argument is both incorrect and misdirected, for several reasons.

First, the service quality rules are designed to assure adequate service to end users, and they address service quality from an end user's perspective. The extent to which an end user's own carrier is directly responsible for a service quality problem is of no interest to the end user. Even if a CLEC were completely dependent on an ILEC (which is seldom, if ever, the case), the impact on the end user does not change and neither should the coverage of the service quality rules.

Second, even when CLECs rely on ILECs for network inputs, the CLECs still provide much of the end users' service themselves. For example, CLECs' own representatives may process service orders and trouble reports, provide operator services, and perform various other functions that affect service quality, even when the CLECs provide no network facilities themselves. (See Staff Br. at 18-19).

Third, CLECs have significant control over the terms and conditions upon which they obtain service from ILECs, through the operation of interconnection agreements, wholesale service tariffs and wholesale performance remedy plans. (See Staff Br. at 19).

Fourth, a CLEC's business decision to rely on an ILEC's network is just that—a business decision. Many CLECs in fact provide part, or even all, of their own networks. For example, AT&T Broadband has a substantial presence in the residential market in Ameritech Illinois' service territory, which it provides over its own cable television network. There is also substantial facilities-based competition for business services throughout Ameritech Illinois' service territory. Thus, the CLECs' claim that they are necessarily dependent on ILECs is vastly overstated.

In summary, as the Proposed Order concludes (at 15), the waiver process in Staff's proposed rule is sufficient to provide waivers where they are appropriate. The broader exemption and waiver proposals of the CLECs should be rejected.

**V. THE AG'S AND CUB'S ADDITIONAL PROPOSED REQUIREMENTS REGARDING INSTALLATION AND REPAIR APPOINTMENTS SHOULD BE REJECTED.**

The AG and CUB propose additional benchmarks and reporting requirements for installation and repair appointments. (AG/CUB Br. on Exc. at 15-16, 22-23). The Proposed Order rejected those proposals (Proposed Order at 47-48), and the AG's and CUB's exceptions simply repeat the arguments that were already rejected. The conclusion of the Proposed Order is correct and should not be changed.

The Proposed Order adopts standards to assure the timely completion of installations and repairs, and it provides for the reporting of performance for those aspects of service quality. The proposed rule would cover cases requiring customer appointments, as well as cases where the customer need not be present. See generally Proposed Order at 38-43. In addition, the Commission's Part 732 rules provide for customer credits of \$50 each for missed installation and repair appointments, and they require carriers to report their performance results for keeping appointments. 83 Ill. Admin. Code §§ 732.30(c); 732.60(b)(3). Those rules together will be more than sufficient to assure timely installation and repair and to permit the Commission to monitor carriers' performance in keeping their appointments.

**VI. THE AG'S AND CUB'S PROPOSED BENCHMARKS FOR TROUBLE, REPEAT TROUBLE AND INSTALLATION TROUBLE REPORTS SHOULD BE REJECTED.**

The AG and CUB also repeat their previous arguments concerning trouble reports. (AG/CUB Br. on Exc. at 18-22). The Proposed Order (at 50-51) rejects those arguments, finding that the standards proposed by Staff "are sufficient to protect the customers without adjusting . . . the percentages at this time." Ameritech Illinois agrees and urges the adoption of Staff's proposal.

In addition to the reasoning of the Proposed Order, Ameritech Illinois notes that the AG's and CUB's claim that "Ameritech Illinois' standard [for installation trouble reports] under alternative regulation is 5%" (AG/CUB Exc. at 21) is false. Ameritech

Illinois' current alternative regulation plan does not have a benchmark for installation trouble reports. Order, Ill. C.C. Dkts. 92-0448 et al. (cons.), 56-57 (Oct. 11, 1994). And the Final Post Exceptions Proposed Order in the pending review of Ameritech Illinois' alternative regulation plan would set an installation trouble report standard of 16.90 percent, not five percent. Final Post Exceptions Proposed Order, Ill. C.C. Dkts. 98-0252 et al., 166 (Nov. 2, 2001). Thus, the AG's and CUB's claims that their proposals are consistent with existing performance levels are dubious at best.

## **VII. REPLIES TO OTHER EXCEPTIONS.**

Ameritech Illinois also replies to the following additional exceptions.

### **A. Network Interface Devices.**

The IITA takes exception to the Proposed Order's decision to adopt Staff's proposed rule regarding Network Interface Devices ("NIDs"). (IITA Br. on Exc. at 3-5). Ameritech Illinois generally agrees with the IITA. (See Am. Ill. Br. on Exc. at 1-13).

However, Ameritech Illinois also wishes to emphasize that the Proposed Order's abrupt reversal of the Commission's long-standing exception for internal NIDs installed prior to October 1987 is a more serious problem than the core of Staff's proposal, which essentially codifies the Commission's prior NID orders. See Third Interim Order, Ill. C.C. Dkt. 86-0278, 2, 5 (Oct. 6, 1987) (the "Third Interim Order"); Order, Ill. C.C. Dkt.

94-0431 (July 6, 1995). It is one thing to codify existing orders in a rule. It is quite another to impose a rule that completely reverses fifteen years of Commission policy, while providing neither an explanation nor a transition period. That aspect of the Proposed Order crosses the line between that which is unwise and that which is unlawful.

As Ameritech Illinois pointed out in its Brief on Exceptions (at 4), “an agency changing its course must apply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.” General Services Employees Union v. Illinois Educ. Labor Rel. Bd., 285 Ill. App. 3d 507, 515 (1<sup>st</sup> Dist. 1996) (quoting Dehainant v. Pena, 32 F. 3d 1066, 1074 (7<sup>th</sup> Cir. 1994)); see also Commonwealth Edison Co. v. Commerce Comm’n, 180 Ill. App. 3d 899, 909 (1<sup>st</sup> Dist. 1988) (“an agency action that represents an abrupt departure from past practice is not entitled to the same degree of deference by a reviewing court”). Under Illinois law, “administrative agencies are bound by their long-standing policies and customs . . .” Central Illinois Public Service Co. v. Pollution Control Bd., 165 Ill. App. 3d 354, 363 (4<sup>th</sup> Dist. 1988). The Proposed Order does not begin to provide an adequate explanation for its reversal of the Commission’s policy regarding grandfathered internal NIDs.

As Ameritech Illinois also argued (Br. on Exc. at 7), such a change clearly requires a reasonable transition period. The Proposed Order would outlaw existing internal NIDs immediately, effective December 31, 2002, with no transition period. That result would not simply be erroneous, it would also be fundamentally unfair. Thus, even if the result of the Proposed Order were otherwise adequately justified? which it is

not? the absence of any transition period for grandfathered internal NIDs would constitute reversible error. Citizens Utilities Co. v. Commerce Comm'n, 153 Ill. App. 3d 28, 35-36 (3d Dist. 1987).

**B. Work Stoppages.**

Both Staff (Br. on Exc. at 1, 5-7) and Verizon (Br. on Exc. at 2) note that the Proposed Order fails to conform to the Commission's conclusion in Docket 01-0485 concerning the inclusion of work stoppages within the emergency exception to the Commission's installation and repair requirements. Ameritech Illinois made the same observation in its own exceptions. (Am. Ill. Br. on Exc. at 24). Strangely, however, Staff's recommendation is not to conform the two rules by including the same 90-day work stoppage exception that the Commission adopted in Docket 01-0485, but instead is to remove the exception completely. (Staff Br. on Exc. at 7).

Staff is correct that the Commission's conclusion in Docket 01-0485 is being reconsidered. However, in the meantime, the proper resolution is to include the same 90-day exception that is contained in the Part 732 rules, not to delete the exception. This is true for at least two reasons. First, the parties to this proceeding—including Staff—have generally agreed that Parts 730 and 732 of the Commission's rules should be consistent with each other. Thus, since Part 732 currently contains a 90-day work stoppage exception, Part 730 should, too, unless and until Part 730 is changed. Second, the Commission's ruling in Docket 01-0485 is presumed to be lawful and reasonable.

Archer-Daniels-Midland Co. v. Commerce Comm'n, 184 Ill. 2d 391, 397 (1998); United Cities Gas Co. v. Commerce Comm'n, 163 Ill. 2d 1, 12 (1994). Staff's proposal would violate that principle.

**C. Reporting.**

Verizon takes exception to the reporting of wholesale recourse credits and the dollar values of end users' credit exemptions. (Verizon Br. on Exc. at 2-5). Ameritech Illinois agrees with Verizon and notes its own, similar exception. (Am. Ill. Br. on Exc. at 24-25). In addition to the arguments made by Verizon, Ameritech Illinois calls the attention of the ALJ and the Commission to Attachment 1 to Ameritech Illinois' Brief on Exceptions, which shows that the Commission intentionally removed language regarding the reporting of wholesale recourse credits from the final version of the Part 732 rules adopted in Docket 01-0485. To remain consistent with that decision, the Commission should likewise remove that language here.

**D. Abandoned Calls.**

Ameritech Illinois agrees with Verizon that the Commission should remove the definition of "abandoned calls" from the rule, in light of the Proposed Order's decision not to measure that aspect of performance. (Verizon Br. on Exc. at 2). For the same reason, Ameritech Illinois agrees that the language in the proposed rule regarding abandoned calls should also be deleted. (Verizon Br. on Exc. at 8).

**E. Payphone Lines.**

Ameritech Illinois agrees with Verizon that payphone lines should not be included in the calculation of out-of-service performance. As Verizon points out, troubles associated with payphone lines are often caused by payphone equipment rather than network problems. As a result, including payphone lines will overstate the actual frequency of network-related trouble reports. (Verizon Br. on Exc. at 10-11).

**F. Definition of 24-Hour Notice.**

Ameritech Illinois agrees with Verizon that the language of Section 730.545(h) of the proposed rule should be modified to be consistent with Sections 730.535(c) and 730.540(d). (Verizon Br. on Exc. at 12).

Respectfully submitted,

---

Mark A. Kerber

Mark A. Kerber  
Ameritech Illinois  
225 West Randolph Street – 25D  
Chicago, IL 60606  
312) 727-7140