

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Z-TEL COMMUNICATIONS, INC.

Complainant

vs.

ILLINOIS BELL TELEPHONE COMPANY,  
d/b/a AMERITECH ILLINOIS

Respondent

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Docket No. 02-0160

**PROPOSED ORDER**

By the Commission:

I. Procedural History.

On February 22, 2002, Z-Tel Communications, Inc. (“Z-Tel”) filed with the Illinois Commerce Commission (“Commission”) a verified Complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois (“Ameritech”) pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act (“Act”). On May 8, 2002, we entered an Order granting, in part, Z-Tel’s verified Complaint. In particular, we held that Ameritech’s failure to provide accurate and timely Line Loss Notification were *per se* impediments to competition as prohibited by Sections 13-514(2), (6), (9), (11) of the Public Utilities Act. May 8, 2002 Order (“Order”) at 15-18. We further held that Ameritech unreasonably provided Z-Tel inferior and discriminatory access to operations support systems (“OSS”) in violation of 13-514(9), 13-514(11) and 13-801 of the Act. *Id.*

We further held that:

“Until such time as Ameritech provides CLECs the option of receiving an enhanced notice, Ameritech Winback personnel are directed to only use the 836 LLN. CLECs rely on 836 notices for marketing as well as billing. While we believe that it would be inappropriate to require Ameritech to switch to using 836 notices for billing purposes, we do find that it would be beneficial for CLECs and customers for CLECs to have the option to receive more detailed OSS information concerning a lost customer’s records. Once Ameritech has in place a system where Z-Tel can choose between the 836 LLN and/or a notice that is sent in the same timeframes and contains as much information as that currently sent to Ameritech’s retail and Winback business units, then Ameritech

Winback may use the enhanced LLN again. Ameritech is directed to make this option available to Z-Tel by July 1, 2002.

Order at 19-20.

With regard to the imposition of penalties, we held that, pursuant to Sections 13-304 and 13-305 of the Act, penalties are appropriate for Ameritech's violation of 13-801. Order at 23-24. We found that a proceeding should be initiated, with the proper notice, against Ameritech to determine whether the Commission should seek the imposition of civil penalties under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act. *Id.*

On June 6, 2002, Ameritech filed an Application for Rehearing requesting that the Commission rehear arguments on certain of its determinations in its Order. In particular, in its Application for Rehearing, Ameritech Illinois requested the Commission to reconsider the "parity" requirement that Ameritech Illinois provide the Local Loss Report to the CLECs. Ameritech Illinois argued that the Local Loss Report was redundant to the 836 LLN and would provide no additional benefit to the CLECs. Ameritech Illinois Application for Rehearing, p. 10.

Ameritech also requested rehearing on the Commission's determination that penalties are appropriate for Ameritech's violation of 13-801 and that the Commission should initiate a proceeding to address whether the Commission should seek the imposition of civil penalties under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act.

As a third request for rehearing, Ameritech sought rehearing on the issue of whether its actions are in violation of the Illinois Public Utilities Act, the so-called "liability" issue.

On June 19, 2002, the Commission granted Ameritech Illinois' application for rehearing on the penalty and parity issues. The Commission denied Ameritech's requested rehearing on the issue of "liability". The parties agreed that the issue of the imposition of penalties was legal in nature and further evidence was not required. As for the parity issue, Ameritech provided the Direct and Rebuttal testimony of Ms. Beth Lawson. Z-Tel provided the Reply testimony of Mr. Mike Reith, the Company's Director of Industry Policy. Staff also presented the Reply Testimony of Ms. Nancy Weber. Pursuant to notice and the Rules and regulations of the Commission, evidentiary hearings were held on September 27, 2002, after which the record was marked heard and taken. The parties filed separate Initial and Reply Briefs for both the penalty and the parity issues and proposed orders pursuant to 83 Ill. Admin. Code 766.310.

## I. **PARITY.**

In its Application for Rehearing, Ameritech argues that the provision of the line disconnect file to Z-Tel or other CLECs is not necessary to establish parity. Application for Rehearing at 10. Ameritech further argues that, since the information in the line disconnect file is redundant to the information in the 836 LLN, requiring Ameritech Illinois to provide both is economically wasteful and provides no added benefit to the CLECs.

## **A. Ameritech's arguments.**

## **B. Z-Tel's Reply.**

Z-Tel opposes Ameritech's request to amend the May 8, 2002 order. According to Z-Tel, the evidence is clear that the Local Loss Report provided by Ameritech provides information that is useful to CLECs managing their operations. Even Ameritech acknowledges that 29 CLECs retrieve the Local Loss Report information from Ameritech. Ameritech Ex. 3.0 at 4-5. In addition, the Local Loss Report provides CLECs at least 11 data fields that are not provided to CLECs in the 836 LLN. The information provided to CLECs in the Local Loss Report is not redundant to the information provided on the 836 LLN, and is clearly worthwhile to CLECs. As such, Z-Tel urges the Commission to reject Ameritech's request.

The evidence on the record demonstrates that the information that is delivered to Z-Tel on an 836 LLN is limited to the telephone number of the person that disconnects, and the date of disconnection. Z-Tel Ex. 7.0 at 5. The Local Loss Report of which Ameritech now seeks to dispose, however, contains the following information:

1. The CLEC identifier;
2. The working telephone number;
3. The reason the customer migrated;
4. The customer ID;
5. The transaction code;
6. The customer code associated with the bill number;
7. The billed number;
8. The customer code associated with the account;
9. The main telephone number associated with the account;
10. The state code associated with the account; and,
11. The type of facilities used to serve that customer.

*See*, Z-Tel Ex. 7.0 at 5, 8; Z-Tel Ex. 7.2; Ameritech Ex. 3.0 at Schedule A.

While Ameritech claims that it no longer relies on the Local Loss Report for its Winback group, it is clear to Z-Tel that Ameritech's retail business units still have access to the ASON service orders that contain this same information. Z-Tel Ex. 7.0 at 7-8 ; Z-Tel Ex. 7.1. Ameritech's retail operations are provided access to the information through the delivery of change records from ASON. Ameritech has several different databases that share information. Chief among these systems is the Ameritech Service Order Negotiation ("ASON") database. All service orders for Ameritech and Z-Tel customers are completed using the ASON database. Any change in a customer's service, including a disconnection, is provisioned through the ASON systems. *See*, Z-Tel Ex. 7.1 (Ameritech's Responses to Z-Tel's Interrogatory 7, wherein Ameritech indicates that its ASON system is the interface that Ameritech's retail service

representatives use to create, edit, distribute and control service orders, which is then available both in fit ASON and in downstream systems). The information in the ASON records for service orders is available to Ameritech's retail operation through a single batch delivery of change records.

While Ameritech's retail operations have access to a single-batch delivery of change records from the ASON database, neither the 836 LLN nor the Local Loss Report provide the same set of data to CLECs. Z-Tel Ex. 7.0 at 7-8; Z-Tel Ex. 7.1. The 836 LLN and the Local Loss Report is provided to Z-Tel in two separate reports. Z-Tel Ex. 7.0 at 6; Tr. at 490-492, 522-524.

With regard to the provisioning of the Local Loss Report and providing "parity", Z-Tel points to the Commission's finding that "[a]mple evidence was provided at hearing showing that the enhanced LLN that Ameritech Winback receives contains more data fields and is generated at an earlier stage than the notice sent to Z-Tel." Order at 19. As such, the Commission held that Z-Tel should have the option of receiving more detailed OSS information about disconnected customers, containing the same data fields as are currently sent to Ameritech's retail and Winback business units." *Id.* Notably, the Commission ordered that Ameritech not only provide CLECs with the same OSS information that is provided to Ameritech's retail groups, but further ordered that Ameritech make this information available through the same processes. *Id.* Z-Tel also points to the Commission's finding that:

we do find that it would be beneficial for CLECs and customers for CLECs to have the option to receive more detailed OSS information concerning a lost customer's records. Once Ameritech has in place a system where Z-Tel can choose between the 836 LLN and/or a notice *that is sent in the same timeframes and contains as much information as that currently sent to Ameritech's retail and Winback business units*, then Ameritech Winback may use the enhanced LLN again.

Order at 19 (emphasis added); See also Order at 17 (it is a violation of Section 13-801 for Ameritech to provide Z-Tel with "inferior access to OSS information.")

Z-Tel requests that the Commission make clear in its order on rehearing that Ameritech is required to provide CLECs with "nondiscriminatory rates, terms, and conditions for the preordering, ordering, provisioning, maintenance and repair, and billing functions of [Ameritech's] operations support systems . . . ." 220 ILCS 5/13-801. To comply with this provision, Ameritech must not only provide the Local Loss Report, but should also make available to CLECs the information that is maintained in the ASON database. On cross-examination, Ameritech witness Lawson indicated that Ameritech does indeed permit CLECs to retrieve data from the ASON database, through the Verigate processes that are available to CLECs'. Tr. 491. However, in order for CLECs to retrieve this information in the same single-batch manner that ASON records are delivered to Ameritech's retail operations, someone would have to develop "application to application" software to retrieve ASON records in a single-batch basis. Tr. 491.

Z-Tel argues that it has requested since its initial brief in the original phase of this proceeding that the ability to retrieve ASON records through a single-batch process (i.e., being able to download, in a single process, all of Z-Tel's customer service records for a day, rather than viewing and having to download each customer record separately.) On cross-examination, for the first time to Z-Tel's knowledge, Ms. Lawson admits that the delivery of this information is possible. Z-Tel explains that the ability to retrieve in a single batch all of the information available in the ASON database was not made clear prior to the cross-examination of Ms. Lawson. Z-Tel Initial Brief on Rehearing at 17. Assuming Ms. Lawson's testimony is to be believed, Z-Tel argues that Ameritech can achieve "parity" in the delivery of OSS information, and comply with the Commission's Order by developing an application-to-application software systems that will allow Z-Tel to retrieve ASON-generated records (through Verigate) in the same single-process that Ameritech's retail operations do. However, according to Z-Tel, in order to achieve parity in the delivery of OSS information, the Commission must order Ameritech to develop such software systems and make those systems available to competing CLECs. Z-Tel points out that under the terms of the Order, the burden is on Ameritech, not Z-Tel or any other CLEC, to develop a system that would allow for "a notice that is sent in the same timeframes and contains as much information".

Ameritech's refusal to develop the necessary systems to deliver ASON records to Z-Tel (through Verigate or otherwise) provides CLECs with OSS that is *not* in parity with the processes that Ameritech makes available to its own retail operations. Z-Tel requests that the Commission order Ameritech to comply with Section 13-801, and the requirement for parity, by making available ASON records (through a direct connection with ASON, or through Verigate) to Z-Tel in the same manner that Ameritech makes these records available to its retail operations. If this means that Ameritech is required to develop "application to application" software, then Ameritech should be ordered to create those applications. Z-Tel believes that Ameritech is required, pursuant to Section 13-801(e) of the Illinois Public Utilities Act and the Commission's Order in this case to provide CLECs with the same fluid and efficient access to OSS data that Ameritech's retail operations have.

To be clear:

1. Z-Tel opposes Ameritech's request to discontinue the delivery of the Local Loss Report;
2. Z-Tel does not request on rehearing that Ameritech modify the 836 LLN to provide information that SBC provides to CLECs in SBC's other operating territories; and,
3. Z-Tel maintains its position that the Commission's Order compels Ameritech to provide Z-Tel with the ability to retrieve in a single batch all of the information available in the ASON database by developing application-to-application software systems that will allow Z-Tel to retrieve ASON-generated records (through Verigate) in the same single-process that Ameritech's retail operations do.

Z-Tel Reply Brief at **XX**.

**C. Staff's position.**

Staff witness Weber agrees with Z-Tel that the information contained in the 836 LLN cannot be considered redundant to the Local Loss Report provided to Ameritech. Staff Ex. 3.0 at 2. Staff also asserts that just because Ameritech's retail organization has now determined that it will not use fit LLR or the data fields on the LLR, it should not be allowed to automatically stop providing those additional data fields to the CLECs. *Id.* at 3.

Ameritech Illinois should not be able to dictate what information it will and will not make available to the CLECs and change the information which is provided because their retail organization has subsequently determined it no longer requires or uses the information.

*Id.* Ultimately, Staff witness Weber recommends that the Commission enter an order mandating that Z-Tel be able to receive the ASON information from a single source rather than requiring Z-Tel to access multiple methods to retrieve the data. Tr. at 522-523.

**COMMISSION ANALYSIS AND CONCLUSIONS**

After consideration of the parties' arguments, the Commission is of the mind that its prior determination with respect to the "parity" issue was correct. As such, the Commission denies Ameritech's requested relief on rehearing and order Ameritech to provide Z-Tel with the Line Loss Report on a continuing basis. We find that true "parity" can only be achieved when Z-Tel has the ability to retrieve the same information in the same manner as Ameritech's retail operations.

It is clear from the record that the Line Loss Report provides numerous data fields with useful information for the CLECs that they are not getting from other sources. It is also clear that there is a demand for such information as at least 29 CLECs have requested access to the Line Loss Report since its inception in June 2002. We are loath to interrupt such information based upon the arguments raised by Ameritech on rehearing.

The record is clear that the Line Loss reports contain numerous data fields with information that the CLECs find useful. Ameritech Ex. 3.0 at Schedule A; Z-Tel Ex. 7.0 at 5, 8, Z-Tel Ex. 7.2. In comparison, the 836 LLN provides only the working telephone number and the disconnect date. Z-Tel Ex. 7.0 at 5. This fact alone belies Ameritech's claim that the Line Loss Report is "redundant" and "unnecessary" Ameritech Application for Rehearing at 10.

The Commission concludes that, in order for there to be true "parity" in the provisioning of OSS data, Ameritech must provide Z-Tel with the ability to retrieve the same information in the same manner as Ameritech's retail operations. In this case, Ameritech must provide Z-Tel (and all CLECs) with all of the information available to Ameritech's retail operations in the ASON database in a single batch and in similar timeframes. If this finding requires Ameritech to develop an application-to-application software systems that will allow Z-Tel to retrieve ASON-generated records (through Verigate) in the same single-process that Ameritech's retail operations do, then that is an obligation placed upon Ameritech in order to meet the statutory

requirements of nondiscrimination contained Section 13-801. It is clear to the Commission that Section 13-801, by its very terms, requires Ameritech to provide CLECs with “nondiscriminatory rates, terms, and conditions for the preordering, ordering, provisioning, maintenance and repair, and billing functions of [Ameritech’s] operations support systems . . . .” 220 ILCS 5/13-801.

As a result of this finding, the Commission reaffirms its previous determination that it would be beneficial for CLECs and customers of CLECs to have the option to receive more detailed OSS information concerning a lost customer’s records. Just as with our previous finding, we find that Ameritech must put in place a system where Z-Tel can choose between the 836 LLN and/or a notice that is sent in the same timeframes and contains as much information as that currently sent to Ameritech’s retail and Winback business units. To be clear, the burden of developing such a system rests with Ameritech as it is its own actions that have led to our previous finding that it has acted in a discriminatory manner in its provisioning of OSS data.

On cross-examination, Ameritech witness Lawson indicated that such a system was feasible that would allow a CLEC to retrieve in a single-batch all of the information contained in the ASON database on a daily basis. According to Ms. Lawson, there would need to be developed an application-to-application interface before such a system can be used. Tr. 491. In light of our determination that true “parity” can only be achieved when Z-Tel has the ability to retrieve the same information in the same manner as Ameritech’s retail operations, we order Ameritech to develop such application-to-application software systems and make those systems available to competing CLECs.

## **II. PENALTIES.**

Ameritech takes issues with our previous finding that penalties may be independently assessed under Section 13-305 of the Act, based on the Order’s finding that Ameritech Illinois also violated Section 13-801 of the Act. Ameritech Application for Rehearing at 2-4. According to Ameritech, the statutory language of Section 13-514(e) makes clear that a violation of Section 13-801 may be asserted only in a Section 13-515 proceeding. If the Commission finds a violation, it is a violation of Section 13-514(11), as the Order itself finds. Thus, according to Ameritech, the requirement in Section 13-516(a)(2) that penalties may be imposed only for a second or subsequent violation of Section 13-514 is equally applicable to the alleged violation of Section 13-801, which the Act treats as a violation of Section 13-514(11).

The parties agreed that the issue of whether the Commission should alter its previous determination that, pursuant to Sections 13-304 and 13-305 of the Act, penalties are appropriate for Ameritech’s violation of 13-801, is a legal issue and does not require additional evidence. We found that a proceeding should be initiated, with the proper notice, against Ameritech to determine whether the Commission should seek the imposition of civil penalties under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act. Order at 23-24.

**A. Ameritech Position.**

**B. Z-Tel Position.**

Z-Tel urges the Commission to keep in mind exactly what happened to bring the issue of penalties before the Commission. In reviewing this issue, the Commission must keep in mind that it has previously found Ameritech to have provided inferior and discriminatory line loss notification, conduct that was in violation Section 13-801. As we denied Ameritech’s requested rehearing on that conclusion, nothing in this rehearing stage can alter that conclusion. The issue, therefore, is whether the Commission will apply the clear mandates of Section 13-305 and pursue the penalty provisions required therein.

For Z-Tel, the syllogism is very simple:

1. Section 13-801 is a provision of the Illinois Public Utilities Act;
2. Ameritech has violated the terms of Section 13-801, as this Commission has already held;
3. As a violation of the Act, Section 13-305 mandates that the Commission must pursue its investigation to determine if penalties are appropriate; and,
4. The Commission is correct to pursue its obligations imposed upon it by the General Assembly and initiate its penalty proceeding.

Z-Tel argues that it is indisputable that the Commission has found Ameritech to have violated both Sections 13-801 and 13-514. The Commission clearly found separate and independent violations of both Section 13-514 and Section 13-801. “Ameritech has unreasonably provided Z-Tel inferior and discriminatory access to operations support systems (“OSS”) in violation of 13-514(9), 13-514(11) **and** 13-801 of the Act.” If the Commission were to have only found a violation of 13-801 as a subset of Section 13-514, then the use of the conjunctive “and” would be unnecessary. Rather, it held that there were violations of both 13-514 and 13-801.

The premise that the Commission found Ameritech’s conduct to have violated Section 13-801 on an independent basis is further supported by the language in the Commission Order’s findings wherein the Commission made separate findings related to Ameritech’s conduct.

The Commission, having considered the entire record herein and being fully advised of the premises, is of the opinion and finds that:

\* \* \* \* \*

- (5) Z-Tel Communications, Inc. has shown that Ameritech Illinois’ actions are per se impediments to competition as prohibited by Section 13-514(2), (6), (9), (11) of the Public Utilities Act;
- (6) Z-Tel Communications, Inc. has shown that Ameritech Illinois’ actions violate Section 13-801 of the Public Utilities Act;

\* \* \* \* \*

Order, p. 26. Thus, it is clear that the unlawful actions of Ameritech were found to violate Section 13-801 separate and aside from its violations of Section 13-514.

Z-Tel also urges the Commission to ignore Ameritech's argument that the record evidence does not support the imposition of penalties. Z-Tel believes it is more appropriate to address the merits of the claims the appropriate time – i.e., the penalty proceeding – rather than on rehearing where the issue is whether the Commission should reverse its previous decision regarding the imposition of penalties. At that time, the Commission can make a determination as to what penalties, if any, it will apply to Ameritech for its proven violations of the Act. The Commission can also then take into consideration these mitigating circumstances and defenses that Ameritech has proffered in its Brief.

### **C. Staff's Position.**

According to Staff, Section 13-305 does require notice, but it does not by its terms require notice from the Commission. 220 ILCS 5/13-305. Staff argues that the pre-suit notice from Z-Tel may have adequately advised Ameritech of the alleged violations. In any event, however, the issue should be addressed in the penalty proceeding.

Staff also argues that the legislative history of an enactment relied upon by Ameritech is an *extrinsic* aid to construction, as are all sources outside the text of the statute. 2A N. Singer, Statutes and Statutory Construction, § 48.01 (6<sup>th</sup> Ed. 2000). Generally, extrinsic aids to statutory construction cannot be considered unless intrinsic aids have been exhausted. See Burlington Northern RR Co. v. Oklahoma Tax Comm'n, 481 U.S. 454 (1987) (absent exceptional circumstances, the court's inquiry into a statute's meaning is complete once it is determined to be unambiguous). Section 13-305 simply requires notice, and there is no reason to look beyond the statute to impose requirements that were not provided for. Thus, Ameritech's reliance on the legislative history of P.A. 92-22, specifically an exchange from the May 31, 2001 final house debate, to support its assertion that notice must be delivered by the Commission is improper because the language of the statute is clear.

In the initial proceeding, the Commission made absolutely no findings as to the issue of when penalties begin to accrue. Thus, they are completely beyond the scope of Ameritech's application for rehearing and irrelevant. Ameritech's arguments address the penalties based on when notice was provided. That issue has no place in this proceeding. Indeed, notice by the Commission of Ameritech's violation of the Act was also given by service of process on Ameritech and by the Emergency Order. These issues should be addressed in the penalty proceeding and are not a basis for changing the Final Order.

## **COMMISSION'S ANALYSIS AND CONCLUSIONS**

When construing a statute, the Commission's primary objective is to ascertain and give effect to the legislature's intent. *Boaden v. Department of Law Enforcement*, 171 Ill.2d 230, 664 N.E.2d 61 (1996). The best means of determining legislative intent is through the statutory language. *In re Application of the County Collector of DuPage County for Judgment for Delinquent Taxes for the Year 1992*, 181 Ill.2d 237, 244, 692 N.E.2d 264 (1998). The

Commission must begin with the language of the statute, which must be given its plain and ordinary meaning. *Davis v. Toshiba Machine Co.*, 186 Ill.2d 181, 184, 710 N.E.2d 399 (1999). Where the language is clear and unambiguous, the Commission must apply the statute without resort to further aids of statutory construction. *Davis*, 186 Ill.2d at 185. One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. *Michigan Avenue National Bank v. County of Cook*, 191 Ill.2d 493, 504, 732 N.E.2d 528 (2000).

In light of the foregoing, an examination of Section 13-305 and the Commission's Order clearly demonstrates that both are clear and unambiguous. As a violation of Section 13-801, Ameritech has violated a provision of the Act and "shall be subject to a civil penalty imposed in the manner provided in Section 13-304." 220 ILCS 5/13-801. Penalties under Section 13-305 "shall attach and begin to accrue from the day after written notice is delivered to such party or parties that they are in violation of or have failed to comply with this Act." *Id.*

The bottom line is that the Commission has no choice but to uphold its prior determination and pursue penalties. Illinois courts have long held that the use the word "shall" is a clear expression of legislative intent to impose a mandatory obligation. See, e.g., *Village of Winfield v. Illinois State Labor Relations Board*, 176 Ill.2d 54, 64, 223 Ill.Dec. 33, 678 N.E.2d 1041 (1997); *People v. Thomas*, 171 Ill.2d 207, 222, 664 N.E.2d 76 (1996) (the use of the word "shall" expressed a clear legislative intent to make Class X sentencing mandatory for certain repeat offenders).

The General Assembly, in drafting Section 13-305, expressly used the word "shall" when ordering the Commission to impose penalties for violations of the Act. The General Assembly clearly intended to impose a mandatory obligation. *Winfield*, 176 Ill.2d at 64. For this reason, the Commission previously held that penalties are required for Ameritech's violation of Section 13-801. Order at 23. The Commission was doing nothing more than adhering to its obligations as mandated by the General Assembly. We do so again in this Order on Rehearing.

Section 13-305, on its face, requires the Commission to impose penalties against any carrier "that violates or fails to comply with **any provision of this Act**. . ." Section 13-305 does not exempt from this requirement Section 13-801, as argued by Ameritech. Reading an exemption where clearly none exist goes beyond the clear and unambiguous language of Section 13-305 and is improper as a matter of statutory interpretation. *Davis*, 186 Ill.2d at 185.

As such, we deny Ameritech requested relief on rehearing with regard to the issue of imposing penalties. We reaffirm our previous determination that, pursuant to Sections 13-304 and 13-305 of the Act, penalties are appropriate for Ameritech's violation of Section 13-801. We have previously found that Ameritech has violated Section 13-801 of the Act by providing inferior and discriminatory line loss notice to Z-Tel. As this finding was not subject to the rehearing process, there is nothing Ameritech can do to reverse this determination. In light of these determinations, we again order that a proceeding be initiated, with the proper notice, against Ameritech to determine whether the Commission should seek the imposition of civil penalties under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act.

To the extent that Ameritech wants to argue that the record evidence does not support the imposition of penalties (Ameritech Brief at 8-12), we agree with Z-Tel and Staff that those arguments should be properly addressed in the penalty proceeding, not on rehearing. At that point in time, we can make a determination as to what penalties, if any, we will apply to Ameritech for its proven violations of Section 13-801 of the Act.

Likewise the Commission disagrees with Ameritech's assertion that imposition of penalties can not predate the entering of our order. Ameritech argues that penalties cannot be applied under Section 13-305 for its violations of Section 13-801 for the period prior to the May 8, 2002 Order because, according to Ameritech, it had no prior notice of an alleged Section 13-801 violation. *See*, Ameritech Initial Penalty Brief at 5, 8. According to Ameritech, the only notice that it has received of its violations that would subject it to a penalty is the Commission's May 8, 2002 Final Order in this proceeding. Ameritech Brief at 5. Thus, under this argument, Ameritech does not argue that it cannot face penalties, it just believes that the penalties cannot predate the Order, the purported first time it was put on notice of an alleged Section 13-801 violation. Said another way, Ameritech admits, at the very least, that it received notice of the possibility of facing Section 13-305 penalties on May 8, 2002. Ameritech Brief at 5, 8.

The Commission finds Ameritech's arguments unpersuasive. We hold that notice was deemed given upon the proper service of the underlying complaint by Z-Tel on February 22, 2002. Initially, Illinois Courts have long recognized that a party must not only receive notice of the charges against him, but be afforded the opportunity to be heard on such charges. *Durkin v. Hey*, 376 Ill. 292 (1941); *Bruce v. Department of Registration and Education*, 26 Ill.2d 612 (1963); *People v. Peters*, 10 Ill.2d 577, 580 (1957). Notice to the alleged violator is a fundamental element of due process. *Id.* Charges in an administrative proceeding need not be drawn with the same refinements as pleadings in a court of law, but the charges must be sufficiently clear and specific to allow preparation of a defense. *Greco v. State Police Merit Board*, 105 Ill.App.2d 186, 245 N.E.2d 99.

Section 13-305 describes in clear and unambiguous terms that "Penalties under this Section *shall* attach and begin to accrue from the day after *written notice is delivered to such party* or parties that they are in violation of or have failed to comply with this Act . . ." 220 ILCS 5/13-305. Because the statute is clear as to when penalties begin to accrue, the Commission must apply the terms without resort to further aids of statutory construction. *Michigan Avenue National Bank*, 191 Ill.2d at 504. Thus, an analysis is required as to the appropriate manner in Illinois that notice is deemed given.

In Illinois, the complaint and summons once served upon a defendant provide sufficient notice to satisfy constitutional due process requirements. "Obviously, the complaint and summons once served upon the [Defendant] would have provided sufficient notice to satisfy constitutional due process requirements." *City of Marseilles v. Union Bank*, 713 Ill.App.2d 931; 741 N.E.2d 333, 336 (2000).

the [Plaintiff] met its statutory notice obligation by notifying the Bank that it would be filing suit. [The Plaintiff] met its constitutional due process obligation by serving a summons and complaint upon the Bank, which notified the Bank of the pendency of an

action and afforded it an opportunity to object to proposed infringement upon its property rights. Nothing more needed to be done to satisfy due process requirements of the Illinois and United States constitutions.

*Id.*

It is undisputed that Z-Tel provided Ameritech with proper service of its Complaint, including the allegation that Ameritech was violating Section 13-801, and that Ameritech was provided an opportunity to object to the claims contained therein. It is also undisputed that Z-Tel's Complaint sought as a remedy to "Impose a penalty of up to \$30,000 or 0.00825% of Ameritech's gross intrastate annual telecommunications revenue, whichever is greater, for each violation of the Illinois Public Utilities Act." See, e.g., Amended Complaint, Count I Prayer for Relief, ¶ L; Count III Prayer for Relief, ¶ F. This language is taken almost verbatim from Section 13-305 wherein penalties for violations of the Act are required.

Ameritech presented a stiff and aggressive legal defense of its actions, including devoting large sections of its briefs denying the allegations that it had violated Section 13-801 of the Act. Clearly, by Z-Tel serving the Complaint, Ameritech was on notice that it faced a possible finding that it had violated Section 13-801 and that it faced penalties under Sections 13-304 and 305 as a form of remedy. Under Illinois law, "nothing more needed to be done to satisfy due process requirements of the Illinois and United States constitutions." *Marseilles*, 741 N.E.2d at 336. In short, Ameritech was provided notice that it faced a possible Section 13-801 violation and Section 13-305 penalties, it was presented an opportunity to defend itself and be heard on such charges. *Peters*, 10 Ill.2d at 580.

### **Finding and Ordering Paragraphs**

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) Z-Tel is a Delaware corporation authorized to provide resold and facilities-based local and interexchange telecommunications throughout the state of Illinois and as such is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

(2) Illinois Bell Telephone Company, d/b/a Ameritech Illinois is an Illinois corporation and is a wholly-owned subsidiary of Ameritech Corporation, which is a wholly-owned subsidiary of SBC Corporation. Ameritech is an incumbent local exchange carrier, authorized to provide local and intraMSA interexchange telecommunications services in Illinois within its designated service territory and as such is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

(3) the Commission has jurisdiction over the parties and the subject matter herein and the recitals of fact and conclusions reached in the prefatory portion of this Order on Rehearing are supported by the record and are hereby adopted as findings of fact;

(4) Ameritech's requested relief in its Application for Rehearing is denied. Ameritech's request to terminate provisioning of the Line Loss Report is denied. As such, Ameritech must continue to provide the Line Loss Report to CLECs in a nondiscriminatory manner;

(5) Ameritech is ordered to provide Z-Tel with the ability to retrieve in a single batch all of the information available in the ASON database. Ameritech is ordered to develop an application-to-application software system that will allow Z-Tel to retrieve ASON-generated records (through Verigate) in the same single-process that Ameritech's retail operations can;

(6) The Commission should initiate a proceeding against Ameritech to determine whether the Commission should seek the imposition of civil penalties under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act;

(7) Ameritech shall bear the Commission's costs in relation to this rehearing proceeding plus Z-Tel's attorney's fees, costs and other expenses relating to the rehearing proceeding;

IT IS THEREFORE ORDERED that the findings of fact and the prefatory portions of this Order are supported by the record.

IT IS FURTHER ORDERED that findings of fact contained herein are hereby adopted as formal conclusions of the Commission.

IT IS FURTHER ORDERED that after the date of this Order Ameritech shall adhere to the requirements, procedures and policies set forth in Findings (4) through (7).

IT IS FURTHER ORDERED that any objections, motions or petitions filed in this proceeding that remain undisposed of are hereby disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED the Commission should initiate a proceeding against Ameritech to determine whether the Commission should seek the imposition of civil penalties under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act.

IT IS FURTHER ORDERED that, subject to the to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_ day of October 2002.