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Docket No. 01-0539

IMPLEMENTATION OF SECTION 13-712(g)
OF THE PUBLIC UTILITIES ACT.

REPLY BRIEF OF THE WIRELESS COALITION

October 18, 2002

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I. INTRODUCTION

No party has effectively refuted the law and evidence supporting the Wireless Coalition's proposals regarding service quality rules and remedies for wholesale special access services. As established on the record, the quality of such services, which are critical to the operation of wireless telecommunications networks, is poor and is a detriment to the development of Illinois' telecommunications market. As further established, the Illinois legislature expressly authorized the Illinois Commerce Commission ("Commission") to develop and implement rules and remedies that will incent providers of wholesale special access services to improve and consistently provide high quality, reliable service to their competitors. The wholesale special access-related rules and remedies proposed by the Wireless Coalition will accomplish these goals. Accordingly, the Commission should adopt the Part 731 rule recommended by the Wireless Coalition.

II. ARGUMENT

A. THE CLAIM THAT SECTION 13-712(g) OF THE PUBLIC UTILITIES ACT IS LIMITED TO BASIC LOCAL EXCHANGE SERVICE IS PLAINLY FALSE AND CONTRARY TO APPLICABLE LAW

Under well-settled Illinois law, statutory construction begins and ends with the words of the statute. Petersen v. Wallach, 198 Ill. 2d 439, 444 (2002); Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 504 (2000); Ragan v. Columbia Mutual Ins. Co., 183 Ill. 2d 342, 350-51 (1998). In this case, the relevant statute is Section 13-712(g) of the Public Utilities Act ("Act"), which states: "The Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules." 220 ILCS 5/13-220(g).

As demonstrated in the Wireless Coalition's Initial Brief, Section 13-712(g) plainly authorizes the Commission to establish and implement wholesale service quality rules and remedies for wholesale special access services. (Wireless Coalition Br. at 7-16.) Because the text of Section 13-712(g) is clear and unambiguous, neither the title of Section 13-712 nor the text of subparts of Section 13-712 *other than subpart (g)* are even arguably relevant to its construction. Petersen, 198 Ill. 2d at 445-46; Michigan Ave. Nat'l Bank, 191 Ill. 2d at 504-06. Finally, Section 13-712(g)'s plain language shows that it is not limited to wholesale services used to provide basic local exchange service. The argument that it is so limited directly contravenes black letter law. (Wireless Coalition Br. at 7-16.) Accordingly, the Commission should reject it.

Verizon's exaggerated and spurious claims regarding the import of language contained in the Commission's Initiating Order are meritless. The Commission's Initiating Order is not, and was not intended to be, an analysis of the scope of Section 13-712(g) of the Act. In its Initiating Order, the Commission merely described Section 13-712 in the same shorthand manner the legislature did. See Michigan Ave. Nat'l Bank, 191 Ill. 2d at 505-06 (quoting Brotherhood of R.R. Trainmen v. Baltimore and

Ohio R.R. Co., 331 U.S. 519, 528-29 (1947)) (emphasis added) (noting that a statutory title or heading is considered “only as a ‘short-hand’ reference to the general subject matter involved’ in that statutory section, and ‘cannot limit the plain meaning of the text.’”). Nothing more, nothing less. Verizon’s heavy reliance on the language of the Initiating Order, rather than on the language of the statute itself, simply reveals Verizon’s recognition of the obvious weakness of its position.¹

The conclusory assertion that most wholesale special access circuits are jurisdictionally interstate is not only false (Wireless Coalition Ex. 8.0 at 4:66-77), as expressly determined by ALJ Sainsot, “it’s a factual conclusion unsupported with specific facts.” (ALJ Sainsot, 8/13/02 Tr. 715:15-16, 715:2 – 717:2, ALJ Sainsot, 7/23/02 Tr. 193:20-22.) ALJ Sainsot struck this assertion from the record, and Ameritech’s and Verizon’s wholly improper and incorrect arguments based on this assertion should be stricken from their briefs. (ALJ Sainsot, 7/23/02 Tr. 185:7-12, 192:4 - 193:1, 193:19-22; ALJ Sainsot, 8/13/02 Tr. 715:2-6 and 15-22, 716:17 - 717:2.) Further, to the extent this assertion is based on the fact that some wholesale special access circuits are purchased through interstate tariffs, it is a red-herring. Although FCC rules, under certain circumstances, require carriers to purchase wholesale special access circuits under interstate tariffs, that requirement does not mean that the circuits or the traffic transported over the circuits is interstate. (See WorldCom Ex. 1.0 at 13:307 – 14:312; Ameritech Br. at 13.) Indeed, up to 90% of the traffic may be intrastate. (Id.) Thus, wholesale special access circuits are not

¹ *Citing testimony expressly stricken from the record* (Administrative Law Judge Claudia Sainsot (“ALJ Sainsot”), 7/23/02 Tr. 185:7-12, 192:4 – 193:1, 193:19-22), Verizon further contends that “[s]pecial access is an access service and, therefore, not a wholesale service subject to regulation under Section 13-712(g).” (See Verizon Br. at 8.) Because the cited testimony is not part of the record, this section of Verizon’s brief should be stricken. If it remains in the brief, it should be disregarded because it is nonsensical. As evidenced in this proceeding, telecommunications carriers purchase special “access services” to provide telecommunications services to their retail customers. (See Wireless Coalition Br. at 16-19.) Thus, the special “access services” they purchase are unquestionably wholesale services. (Id. at 9-10.)

“interstate” circuits simply because they may be purchased under interstate tariffs. (See Wireless Coalition Ex. 8.0 at 4:84 – 5:93.)

Finally, Ameritech’s repeated reference to the fact that the definition of “basic local exchange service” expressly excludes services that employ “advanced telecommunications capability” adds nothing to the frivolous assertion that Section 13-712(g) is limited to basic local exchange service. (See Ameritech Br. at 1 and 10.) Not only is Section 13-712(g) plainly *not* limited to basic local exchange service, the wholesale special access services at issue in this Docket do *not* employ “advanced telecommunications capability”. “Advanced telecommunications capability” pertains to high-speed, *switched*, broadband telecommunications services.² As Staff, the Wireless Coalition and WorldCom all have continuously asserted, without objection or dispute from any other party, the wholesale special access services at issue in this proceeding are not “*switched*”, broadband telecommunications services. (Wireless Coalition Ex. 3.0 at 4:87 – 5:93 and Ex. 3.1 at 9, § 731.105; ICC Staff Ex. 7.1 at § 731.105; WorldCom Ex. 1.0, Attachment B at 3; Ameritech Br. at 13.) Thus, Section 13-712(b)’s exclusion of services that employ “advanced telecommunications capability” is not relevant to any issue in this proceeding.

For these reasons and the reasons set forth in the Wireless Coalition’s Initial Brief, the contention that the Commission has no authority under Section 13-712(g) of the Act to establish service quality rules and remedies for wholesale special access services is meritless. Accordingly, the Commission should summarily reject it.

² “The term ‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” 47 U.S.C. § 157, n.(c)(1); see 220 ILCS 5/13-712(b).

B. BASED ON THE EVIDENCE IN THE RECORD, THE COMMISSION
CLEARLY SHOULD ESTABLISH SPECIFIC SERVICE QUALITY RULES
AND REMEDIES FOR WHOLESALE SPECIAL ACCESS SERVICES

1. Claims That Incumbent LECs Provide Adequate
Wholesale Special Access Services Are Unsubstantiated

The evidence in the record shows that incumbent LECs in Illinois provide poor quality wholesale special access services. (Wireless Coalition Br. at 4-6 and 20-22.) The performance statistics supporting this conclusion, which are part of the record, are based on information tracked and analyzed by the members of the Wireless Coalition. (Wireless Coalition Ex. 1.0 at 2-8 and Ex. 2.0 at 1-12 and Ex. 5.0 at 4-7 and Ex. 6.0 at 3-10 and Ex. 7.0 at 3-6; David J. Schmocker ("Schmocker"), 7/23/02 Tr. 655:5-10.)³ Ameritech's and Verizon's speculation about the Wireless Coalition members' performance data does not refute this evidence. Moreover, as Wireless Coalition witnesses expressly testified, Ameritech's and Verizon's speculation about the Coalition's performance data is erroneous.

Contrary to Ameritech's suggestion, U. S. Cellular's statistics regarding Ameritech's inordinately lengthy repair times do not include time that U. S. Cellular was not ready for repair work. (Robert Jakubek ("Jakubek"), 8/13/02 Tr. 896:12 – 898:3.) Also, as Wireless Coalition witness Schmocker testified, statistics regarding Ameritech's on-time installation performance for U. S. Cellular do not include any time that U. S. Cellular was not ready for installation. (Schmocker, 7/24/02 Tr. 661:9-18.) Although Ameritech witness Richard Dobson ("Dobson") disputed statistics Wireless Coalition witness Rajesh Tank ("Tank") reported regarding poor service Ameritech provided to VoiceStream, at the hearing, Ameritech ignored its opportunity to cross-examine Tank about VoiceStream's data. Thus, Dobson's counter-statistics do

³ If, as Ameritech now claims, it wanted or needed the data on which the Wireless Coalition members' performance statistics are based, Ameritech should have requested the same through discovery. Ameritech's obviously untimely request for discovery during the hearing was properly denied. (ALJ Sainsot, 7/24/02 Tr. 662:7-15.)

nothing more than evidence a dispute (compare Ameritech Ex. 4.0 at 10:243 – 11:251 and Wireless Coalition Ex. 2.0 at 11:227-28) and highlight the fact that Ameritech fails and refuses to resolve discrepancies between its performance data and the data tracked and analyzed by the Wireless Coalition members to which Ameritech provides wholesale special access services. (Wireless Coalition Ex. 1.0 at 5:108-09 and 2.0 at 7:144-46 and Ex. 6.0 at 8:144-48.)⁴

Ameritech's repeated assertion that Wireless Coalition witnesses Jakubek and Doug Blake ("Blake") provided inconsistent testimony is patently false. (Ameritech Ex. 4.0 at 11:252-56; Ameritech Br. at 19.) Jakubek and Blake did not testify about the same wholesale special access services or the same reporting periods. As stated in their testimony, U. S. Cellular tracks the performance of its wholesale special access service providers based on the location of the U. S. Cellular switches that the providers' circuits support. (Wireless Coalition Ex. 6.0 at 5:71-74; Wireless Coalition Ex. 7.0 at 4:59-62.) Jakubek testified about Ameritech's and Verizon's performance, between January 2001 and May 2002, in areas of Illinois surrounding U. S. Cellular's Rockford switch and in Illinois rural service area #1. (Wireless Coalition Ex. 6.0 at 5:78-83, 6:87-91 and 102-04, 9:152-58, 9:172 – 10:175.) Blake testified about performance, between July 2001 and June 2002, in areas of Illinois served by U. S. Cellular's Davenport and Peoria switches and in Illinois rural service areas #3 and #4. (Wireless Coalition Ex. 7.0 at 4:59-62 and 74-75, 5:67-70.) The performance data to which Jakubek and Blake testified is different because the wholesale special access

⁴ Ameritech falsely asserts that Wireless Coalition witnesses Tank (VoiceStream) and Jakubek (U. S. Cellular) did not allege that Ameritech refused to reconcile such discrepancies until August 13, 2002, the final day of hearing in this Docket. (Ameritech Br. at 20.) In reality, both of these witnesses, as well as Lester Tsuyuki (PrimeCo), testified about Ameritech's intransigence months earlier, specifically, in direct testimony that was filed and served in June 2002. (Wireless Coalition Ex. 1.0 at 5:103-09 and Ex. 2.0 at 7:134-46 and Ex. 6.0 at 7:130 – 8:146.) As stated therein, although Ameritech is made aware of discrepancies, Ameritech does nothing to resolve them. (Id.)

services U. S. Cellular received in their separate areas of responsibility during the referenced reporting periods was different.

Finally, Ameritech's attempt to prove that the quality of its wholesale special access services is not poor by arguing material the hearing examiner expressly excluded from the record is wholly improper and sanctionable. (Ameritech Br. at 20.)⁵ Thus, it requires no response.

Verizon's speculation about the Wireless Coalition's performance data and its testimony regarding contrary performance statistics are no more persuasive than Ameritech's. Citing its own internal records, Verizon repeatedly asserts that its performance is good. (Verizon Br. at 3 and 9.) U. S. Cellular's records prove otherwise (Wireless Coalition Ex. 5.0 at 8:135-43, 9:152-57 and 165-70 and Ex. 6.0 at 5:80-83, 6:100-04, 9:169 – 10:179; Schmocker, 7/24/02 Tr. 655:4-10), as does Verizon witness Jerry Holland's ("Holland") admissions that: (i) Verizon allegedly installed only [Redacted]% of the circuits U. S. Cellular purchased between January 2000 and June 2002 on time, and (ii) when Verizon failed to meet the installation dates that it established for U. S. Cellular, Verizon's "delay averaged [Redacted] days." (Verizon Ex. 6.0 at 6:114 – 7:1 (allegedly [Redacted] of [Redacted] circuits were timely installed) and 7:123-24.)⁶

As the evidence also shows, Verizon does not even provide its wholesale special access customers with monthly performance reports. (Wireless Coalition Ex. 6.0 at 8:147-49; see Holland, 7/23/02 Tr. 225:19-20 ("I know Verizon has special access internal standards for special access.")) Thus, in view of the Wireless Coalition witnesses' testimony that they did not include any data that was not specifically

⁵ The only proper purpose of an offer of proof, such as Ameritech made while cross-examining Wireless Coalition witness Tsuyuki, is to preserve for appeal the issue of whether evidence was properly excluded. E.g., Lagestee v. Days Inn Management Co., 303 Ill. App. 935, 941 (1st Dist. 1999). Ameritech's improper argument based on the contents of its offer of proof should be stricken from its brief. (Ameritech Br. at 20 and n.3.)

attributable to incumbent LECs in the installation and performance statistics they reported, the testimony of the Wireless Coalition witnesses should be afforded greater weight than Holland's testimony. (Schmocker, 7/24/02 Tr. 661:9-18; Jakubek, 8/13/02 Tr. 896:12 – 899:9.)

2. Claims That Rules And Remedies For Wholesale Special Access Services Are Not Necessary Are Untenable

Ameritech attempts to convince the Commission that service quality rules and remedies for wholesale special access services are not necessary because: (i) Ameritech already has measures, standards and remedies for wholesale special access services in place, (ii) in Ameritech's five-state region, it provides 69 of its wholesale special access customers with monthly performance reports that include information regarding significant wholesale special access performance metrics, and (iii) Ameritech is attempting to improve the quality of its wholesale special access services. (Ameritech Br. at 13-15.) These contentions run directly counter to the credible and unrebutted evidence in the record. They also ignore the admissions of Ameritech's own witness.

First, on cross-examination, Dobson testified that Ameritech reports on various performance measures for wholesale special access services, but never described any generally applicable service quality rules or performance standards for such services. Little wonder, Ameritech has no service quality performance standards for wholesale special access services. (Ameritech Ex. 1.0 at 20:492-95; Wireless Coalition Ex. 3.0 at 12:257-58.) Further, Dobson admitted that Ameritech has only three credits it provides based on its wholesale special access service performance, but those credits are only available for performance relating to tariffed wholesale special access services. (Ameritech Ex. 4.0 at 4:95 – 5:105; Dobson, 7/24/02 Tr. 611:10 – 612:4.) Thus, the

⁶ "As a result of installation delays, U. S. Cellular frequently is unable to begin providing service to its customers on a timely basis." (Wireless Coalition Ex. 5.0 at 4:51-52.)

limited credits that exist are not applicable to wholesale special access services purchased under private contracts. (See Tsuyuki, 8/13/02 Tr. 828:7 - 829:5.)

Second, Dobson admitted that Ameritech does not provide performance reports to all of its wholesale special access customers. (Dobson, 7/24/02 Tr. 606:15-17.) Consistent with that admission, Wireless Coalition witness Blake testified that Ameritech does not provide U. S. Cellular with performance reports for his geographic area of responsibility. (Wireless Coalition Ex. 7.0 at 5:76-78.) Also, Ameritech generally does not provide state-based performance reports. Instead, Ameritech reports wholesale special access performance data on a regional, five-state basis, which masks the poor service provided to Ameritech's Illinois wholesale special access customers. (Ameritech Ex. 4.0 at 3:72-73, 6:125-34 (Dobson reported Ameritech's alleged performance results in Illinois for certain "key" wholesale special access measures, each of the reported results is significantly lower than Ameritech's regional results); cf. Verizon Ex. 6.0 at 6:108 - 7:117 (Verizon's on-time installation for all wireless carriers in Illinois (presumably including its affiliate) allegedly was [Redacted]%, but for U. S. Cellular, Verizon's on-time performance, based on Verizon's own statistics, was only [Redacted]%. Based on U. S. Cellular's statistics, Verizon's on-time performance was approximately [Redacted]%. (Wireless Coalition Ex. 5.0 at 8:135-40.))

Further, as previously stated, Ameritech does not resolve discrepancies between performance data included in its reports and performance data collected by Wireless Coalition members, i.e., Ameritech does not revise information included in its reports even when the information is verifiably inaccurate. (Infra at 5-6.) Also, Ameritech does not provide its performance reports to the Commission. (Dobson, 7/24/02 Tr. 609:2-5.) Thus, the Commission has no means of evaluating the quality of Ameritech's (or Verizon's) wholesale special access services.

Third, Ameritech admitted that its purported attempts to improve the quality of its wholesale special access services are in part based on hiring and training additional service personnel (which practices, based on recent public announcements regarding substantial planned layoffs, may very well be reversed⁷). (Ameritech Ex. 4.0 at 6:142-44; Dobson, 7/24/02 Tr. 621:9-12 and 636:11 – 637:6.) This type of activity to improve service quality could have and should have been undertaken years ago. As Dobson admitted, Ameritech simply chose not to engage in such activity. (Dobson, 7/24/02 Tr. 636:4 – 637:19.) Without mandatory performance requirements, Ameritech may cease engaging in this and other activities that allegedly will improve the quality of its wholesale special access services altogether. Indeed, as Dobson admitted, although Ameritech initiated

[Redacted]

Accordingly, Ameritech's claim that the quality of its wholesale special access service will improve as a result of its implementation of [Redacted] is plainly disingenuous. (Ameritech Ex. 4.0 at 9:201-04.)

⁷ See Commission's Notice of Agenda for October 1, 2002 Open Meeting, Commission to consider Ameritech workforce reductions). The Commission may take judicial notice of Ameritech's public announcements regarding planned layoffs. Cf. Peters v. Delaware River Port Auth., 16 F.3d 1346, 1356, n.12 and 1357 (3d Cir. 1994).

More significantly, notwithstanding Ameritech's alleged efforts to improve the quality of its wholesale special access services, its service quality remains poor and inadequate. (Wireless Coalition Br. at 4-6 and 20-22.)

Verizon's similar claim that the record contains no "factual justification" for including rules and remedies for wholesale special access services in the Commission's Part 731 rule ignores reality. *Wireless Coalition* witnesses, as well as WorldCom's witness, presented substantial justification for including rules and remedies for wholesale special access services in the Commission's Part 731 rule. (Wireless Coalition Br. at 3-6 and 16-29; WorldCom Br. 3-10 and 19-23.) Their testimony establishes that incumbent LECs do not, and have no incentive to, provide wireless carriers and CLECs with reliable wholesale special access services, which are critical to these carriers' ability to provide telecommunications services and *successfully compete in the Illinois market.*

Verizon's claim that rules and remedies for wholesale special access services should not be established because the existing service problems relate solely to Ameritech are false. Although, for obvious reasons, the evidence focuses on Ameritech – Ameritech is by far the largest provider of wholesale special access services in Illinois (Eric Panfil, 8/13/02 Tr. 735:20 - 736:1-6; Tsuyuki, 8/13/02 Tr. 856:12-18), the evidence does not focus exclusively on Ameritech. *Wireless Coalition* witnesses Schmocker and Jakubek provided specific testimony about Verizon's poor wholesale special access services. (Wireless Coalition Ex. 5.0 at 8:135-43, 9:152-57 and 165-70 and Ex. 6.0 at 100-04, 9:169-10:179.) While Verizon's service is not as bad as Ameritech's, it still is of poor quality, and Verizon should not be exempt from rules requiring the provision of reliable, high quality wholesale special access services. Similarly, to the extent that other carriers provide wholesale special access services (i.e., Level 2 carriers), they too should be required to provide quality service. (See

Wireless Coalition Br. at 29-30 and Ex. A thereto at § 731.600 – 731.635 et seq.) This is the only way to achieve the legislature’s goal of promoting the development and deployment of a full range of telecommunications services throughout Illinois. 220 ILCS 5/13-102 and 13-103. (See Wireless Coalition Br. at 22-30.)

Finally, the Commission should reject Verizon’s suggestion that even if the Commission finds that its Part 731 rule should address wholesale special access services, the Commission “should include a section to allow for waiver of any particular section of the rule.” (Verizon Br. at 11-12.) The Commission should not permit such blanket requests for waiver. Doing so will simply produce further litigation on the threshold issue of the necessity of establishing rules and remedies for wholesale special access services, because on the date Level 1 carriers are required to file their Wholesale Service Quality Plans, they will likely seek waivers pertaining to any sections of the Commission’s Part 731 rule that require them to include performance measures, standards or remedies for wholesale special access services in their plans. Then, until the Commission resolved such waiver requests, there would continue to be no service quality rules and remedies for wholesale special access services. Instead of permitting blanket waiver requests, the Commission should, as the Wireless Coalition has proposed, require Level 1 carriers to include specific rules and remedies for wholesale special access services in their Wholesale Service Quality Plans but permit any such carrier to exclude a particular wholesale special access performance measure, standard or remedy from its plan if the carrier affirmatively proves that it would be appropriate to exclude the required provision. (Wireless Coalition Br., Ex. A at §§ 731.310 and 731.315.)

3. Claims That The Commission, For Policy Reasons,
Should Not Establish Rules And Remedies For
Wholesale Special Access Services Are Meritless

Ameritech contends that, for policy reasons, the Commission should not establish and implement service quality rules for wholesale special access services. In particular, Ameritech contends: (1) problems with wholesale special access services should be addressed through the Commission's complaint process; (2) establishing service quality rules for Level 1 providers of wholesale special access services will unfairly disadvantage such carriers *vis a vis* other providers of wholesale special access services; and (3) the Commission should continue to allow Ameritech's interstate wholesale special access services tariff to mirror Ameritech's intrastate wholesale special access services tariff. (Ameritech Br. at 15, 21 and 25.) These contentions have no merit.

First, the complaint process can only work if there are established performance standards. As Ameritech (and Verizon) has admitted, no such performance standards exist for wholesale special access services. (Ameritech Ex. 1.0 at 20:492-95; Holland, 7/23/02 Tr. 228:5-9; Faye Raynor, 7/23/02 Tr. 260:16-20.)⁸

Second, the un rebutted testimony of Wireless Coalition witnesses and others shows that, as yet, there essentially are no providers of wholesale special access services other than Ameritech and Verizon. (Wireless Coalition Ex. 8.0 at 5:96 - 6:114; WorldCom Ex. 1.0 at 8:168 - 9:188.) Thus, the establishment of rules and

⁸ Counsel for Verizon attempts to mislead the Commission by referencing a prior complaint proceeding PrimeCo filed against Ameritech. (Verizon Br. at 10-11.) Verizon's counsel formerly represented PrimeCo and is well aware of the fact that in the prior proceeding, Ameritech continuously asserted that there were no performance standards applicable to its wholesale special access services, and the order initially entered by the Commission subsequently was opened for rehearing. PrimeCo Personal Communications v. Illinois Bell Tel. Co., No. 00-0670, 2001 Ill. PUC LEXIS 632, at *1 (May 24, 2001). Before the Commission finally resolved any issues in that Docket, the parties settled. Id. 2001 Ill. PUC LEXIS 1150, at *1-2 (Oct. 2, 2001) (dismissing PrimeCo's complaint pursuant to the parties' settlement agreement). Thus, there is no Commission order resolving the substantive issues raised in PrimeCo's complaint. Moreover, as the evidence in this proceeding shows, the quality of Ameritech's wholesale special access services remains poor and inadequate. (Wireless Coalition Br. at 4-6 and 20-22.)

remedies for wholesale special access services will not even arguably cause any unfair competitive disadvantage.

Third, if uniformity between inter and intrastate wholesale special access tariffs is truly essential to Ameritech, following the Commission's entry of an order on Ameritech's Part 731 Wholesale Service Quality Plan, Ameritech can amend its interstate wholesale special access services tariff to conform to its intrastate tariff.⁹

C. THE WIRELESS COALITION'S PROPOSED PERFORMANCE METRICS ARE SUBSTANTIALLY SIMILAR TO PERFORMANCE METRICS THAT INCUMBENT LECS CURRENTLY TRACK OR ON WHICH THEY PRESENTLY REPORT; THUS, THE COALITION'S PROPOSED REPORTING REQUIREMENTS WILL NOT UNDULY BURDEN INCUMBENT LECS

Neither Ameritech nor Verizon presented any facts to rebut the reasonableness and appropriateness of the wholesale special access measures, standards and remedies the Wireless Coalition proposed. Instead, they falsely asserted, in purely conclusory fashion, that the Wireless Coalition's proposals are unsupported and unreasonable. (Ameritech Br. at 16-17; Verizon Br. at 8-9.) Their assertions are unfounded.

As indicated in the Wireless Coalition witnesses' testimony, the Coalition's proposals are based on, among other things, its members' experiences in the Illinois market, their familiarity with the technology utilized to provide wholesale special access services, their familiarity with wholesale special access services provided in Illinois and other jurisdictions and their knowledge of the capabilities of the incumbent providers as expressed to them by the incumbent providers. (Wireless Coalition Ex. 1.0 at 1-5 and 7:151-52 ("In most every case, Ameritech has told PrimeCo that if facilities are available, circuits can be provisioned in 15 days.") and Ex.

⁹ As set forth in the Wireless Coalition's Initial Brief, Ameritech's and Verizon's contention that the Commission need not establish *intrastate* service quality rules for wholesale special access services because of the FCC's pending rulemaking on *interstate* special access services is meritless. (Wireless Coalition Br. at 15-16.)

2.0 at 1-7 and Ex. 2.1 and Ex. 3.0 at 1-2 and Ex. 4.0 at 1-3 and Ex. 5.0 at 2-6 and Ex. 6.0 at 2-8 and Ex. 7.0 at 2-7.) The Wireless Coalition's proposals also are quite similar to WorldCom's wholesale special access services proposals, which are based on the experience and needs of the CLEC, IXC and business community. (Compare Wireless Coalition Br., Ex. A and WorldCom Ex. 1.0, Attachment B.)

Moreover, as noted in the Wireless Coalition's Initial Brief and as detailed in the chart attached hereto as Exhibit 1, the Wireless Coalition's proposed performance measures are consistent with performance measures established and currently utilized by Ameritech and/or Verizon. (Wireless Coalition Br. at 27-28 and Ex. 1 hereto.) Accordingly, the Commission should adopt the Wireless Coalition's proposed performance measures. Notwithstanding Ameritech's claims to the contrary, doing so will not result in any significant "disruption" or "overhauling" of Ameritech's current reports or Verizon's tracking system, and reporting will not unduly burden any carrier.¹⁰

Similarly, several of the Wireless Coalition's proposed performance standards are consistent with Ameritech's and Verizon's practices. The Wireless Coalition's recommended standard for its proposed timely installation measure (i.e., "FOC/EC Dates Met") is 98%. (Wireless Coalition Br., Ex. A at § 731.310(d).) Dobson admitted that Ameritech's "On Time Performance", which Ameritech describes as 92.2% in Illinois for the five months ended May 31, 2002, can improve. (Dobson, 7/24/02 Tr. 616:22 - 617:5; Ameritech Ex. 4.0 at 6:126-29.) Further, Ameritech's on-time performance allegedly can improve in a relatively short period of time. Ameritech touts

¹⁰ Dobson described each of the Ameritech performance measures included in Exhibit 1 as "traditional provisioning and maintenance" measures and admitted that Ameritech currently has systems in place to report on each of these "traditional" measures on a state, rather than regional, basis. (Dobson 7/24/02 Tr. 609:6 - 610:9.) Similarly, Verizon witness Holland described "on time performance [and] mean time [to] repair type measurements" as "typical". (Holland, 7/23/02 Tr. 225:8-10.) In view of the foregoing, the Commission should dismiss Verizon's bald claim that the Wireless Coalition's proposed measures and standards are arbitrary.

the alleged fact that its regional on-time performance for the first five months of 2002 was 94%, up from 87% in 2001. (Ameritech Br. at 20.)

The Wireless Coalition's proposed standard for its "New Circuit Failure Rate" measure is less than 1% per 100 circuits. (Wireless Coalition Br., Ex. A at § 731.310(h).) Ameritech recognizes the significance of properly installed circuits, claims to be addressing the existing problems with its installation services and admits that its performance with respect to "the rate of trouble on new installations", which Ameritech described as 7.1% for all new installations in Illinois during the five months ended May 31, 2002, can improve. (Dobson, 7/24/02 Tr. 617:6-9; Ameritech Ex. 4.0 at 6:129-31 and 8:185-91.)

Ameritech's objective for restoral time on DS1 and DS3 special access circuits is 5 and 3 hours, respectively, notwithstanding the location of the circuit. (Wireless Coalition Ex. 2.0 at Ex. 1 at 2.) Also, Dobson admitted that Ameritech's performance with respect to "mean time to restore", which Ameritech described as 5.4 hours in Illinois for the five months ended May 31, 2002, can improve. (Dobson, 7/24/02 Tr. 617:10-13; Ameritech Ex. 4.0 at 6:131-34.) The Wireless Coalition proposes a 3 hour standard for repair time. (Wireless Coalition Br., Ex. A at § 731.310(j).)

Finally, for *tariffed wholesale special access services*, Ameritech provides a remedy for out-of-service events that exceed one minute (Ameritech Ex. 4.0 at 5:99-100), a substantially stricter standard than the 99.98% network availability standard the Wireless Coalition proposes. (Wireless Coalition Br., Ex. A at § 731.310(l).) Thus, Ameritech should not find the Wireless Coalition's proposed standard unreasonable. Verizon also should not find the Wireless Coalition's proposed 99.98% standard unreasonable. Between January 2001 and May 2002, Verizon's alleged network availability was [Redacted]% in Wireless Coalition witness Jakubek's geographic area of responsibility, and Verizon witness Holland admitted that in order to improve

performance, performance standards must be better than historical performance. (Verizon Ex. 6.0 at 7:135-36; Holland, 7/24/02 Tr. 217:5 – 218:1.)

The remainder of the Wireless Coalition's proposed standards are equally reasonable. (Wireless Coalition Br., Ex. A at § 731.315.) Accordingly, the Commission also should adopt the Wireless Coalition's proposed performance standards.

D. IN ACCORDANCE WITH THE LEGISLATURE'S MANDATE, THE WIRELESS COALITION'S PROPOSED REMEDIES WILL INCENT INCUMBENT LECS TO IMPROVE THE QUALITY OF THEIR WHOLESALE SPECIAL ACCESS SERVICES

Section 13-712(g) specifically directs the Commission to establish "remedies" that will "ensure enforcement of the rules." 220 ILCS 5/13-712(g). As the Wireless Coalition's expert witness Carl J. Hansen ("Hansen") testified:

the [Wireless Coalition's] recommended Remedies, while not punitive are, more importantly, not trivial. They offer the Level 1 Carriers a strong incentive to proactively establish and maintain reasonable levels of service quality to their Wholesale Special Access service customers. Such enhancements to service quality will promote competition and accrue to the benefit of all telecommunications users in Illinois. In addition, the Remedies are easy to understand. They are based on pass/fail criteria for only seven Measurements and Standards, and they are relatively easy to calculate. I believe the proposed Remedies will promote the policies, goals and objectives of Section 731.110 and also comply with the general plan requirements described in Section 731.300.

(Wireless Coalition Ex. 4.0 at 7; Hansen, 7/24/02 Tr. 641:20 – 642:13.)

Ameritech's claim that the level of the Wireless Coalition's proposed remedies is "exorbitant" is untenable and, in significant part, is based on Ameritech's mischaracterization of the Wireless Coalition's remedy proposals. For example, Ameritech asserts that the Wireless Coalition's proposed remedy for late installations is unreasonable because a "seller would forfeit recurring charges from all prior months' installations even if the seller made the [Wireless Coalition's] 98 percent standard in those prior months." (Ameritech Br. at 19.) This assertion is false. If Ameritech satisfied the Wireless Coalition's proposed 98% standard for timely

installations in “all prior months”, no late installation remedy ever would be imposed. Under the Wireless Coalition’s proposal, remedies are only imposed if a carrier fails to satisfy applicable performance standards during two consecutive months. (Wireless Coalition Ex. 4.0 at 4-5; Wireless Coalition Br., Ex. A at § 731.315(b).)

According to Ameritech, if in one month Ameritech installed 3 out of 100 circuits “*even a second late*” it would be required to issue a credit to the carrier that ordered the circuits. (Ameritech Br. at 4 (emphasis added).) This assertion is also false. As indicated above, Ameritech would have to fail to satisfy the Wireless Coalition’s proposed performance standard for on-time performance for two consecutive months to incur liability for a credit.

Even more important, Ameritech typically does not fail to timely install a mere 2% of the circuits Wireless Coalition members order, and Ameritech’s installations generally are not late by a mere second. During the first five months of 2002, Ameritech failed to timely install 40% of the circuits PrimeCo ordered, and on average, Ameritech was late by 7.75 days. (Wireless Coalition Ex. 1.0 at 8:153-60.) During the same time period, Ameritech failed to timely install about 26% of the circuits VoiceStream ordered, and on average, Ameritech was late by 27 days (Wireless Coalition Ex. 2.0 at 8:172 - 9:180), and Ameritech failed to timely install about 60% of the circuits U.S. Cellular ordered, and on average, Ameritech was late between 1 and 14 days. (Wireless Coalition Ex. 5.0 at 7:126 - 8:134.) Without circuits, cell sites used to provide wireless telecommunications services are completely inoperable. Inoperable cell sites mean wireless customers cannot make or receive wireless telephone calls in areas those cell sites are intended to serve, including 911 emergency calls.

Additionally, the inability to place or receive wireless telephone calls causes wireless customers to negatively regard their wireless providers and causes wireless

providers to lose significant revenues. (See Wireless Coalition Br. at 18-21.) Ameritech simply ignores these and other consequences of its poor service.

To incent Ameritech and Verizon to satisfy service quality rules for wholesale special access services, the remedies the Commission establishes must be sufficient to discourage them from concluding that it is more advantageous to ignore the Commission's rules and pay remedies than to improve the quality of their wholesale special access services. (Wireless Coalition Ex. 4.0 at 7; Staff's Brief at 53.)

As a result of the Remedy provisions and the Measures, Standards and other requirements included in the [Wireless Coalition's] proposed Part 731 rule, Level 1 carriers will measure and track service quality of Wholesale Special Access services and remedial action may be taken proactively, by the Level 1 carriers, when declining trends are identified. Deteriorating plant facilities may be repaired or replaced promptly, before they contribute to payment of credits and lost revenue. In all, the facility infrastructure of all telecommunications carriers in the state will be improved.

(Wireless Coalition Ex. 4.0 at 7-8.) Accordingly, the Commission also should adopt the Wireless Coalition's proposed remedies.

IV. CONCLUSION

For all of the reasons spread of record, the Wireless Coalition respectfully recommends that the Illinois Commerce Commission adopt the Wireless Coalition's proposed rule as its Part 731 rule (Wireless Coalition Br., Exs. A and B). Alternatively,

the Wireless Coalition recommends that the Commission adopt the Wireless Coalition's alternative proposed rule (Wireless Coalition Br., Ex. C).

Dated: October 18, 2002

Respectfully submitted,

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