

1 AN ACT concerning telecommunications.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Public Utilities Act is amended by
5 changing Sections 13-100, 13-101, 13-501, 13-502, 13-506.1,
6 13-508, 13-514, 13-515, 13-516, 13-801, and 13-902 and adding
7 Sections 13-202.5, 13-216, 13-217, 13-517, 13-1001, and
8 13-1002 as follows:

9 (220 ILCS 5/13-100) (from Ch. 111 2/3, par. 13-100)

10 (Section scheduled to be repealed on July 1, 2001)

11 Sec. 13-100. Short title. This Article shall-be-known
12 and may be cited as the Telecommunications Consumer Choice
13 Universal-Telephone-Service-Protection Law of 2001 1985.

14 (Source: P.A. 84-1063.)

15 (220 ILCS 5/13-101) (from Ch. 111 2/3, par. 13-101)

16 (Section scheduled to be repealed on July 1, 2001)

17 Sec. 13-101. Application of Act to telecommunications
18 rates and services. Except to the extent modified or
19 supplemented by the specific provisions of this Article, the
20 Sections of this Act pertaining to public utilities, public
21 utility rates and services, and the regulation thereof, are
22 fully and equally applicable to noncompetitive
23 telecommunications rates and services, and the regulation
24 thereof, except where the context clearly renders such
25 provisions inapplicable. Except to the extent modified or
26 supplemented by the specific provisions of this Article,
27 Articles I through V, Sections 8-301, 8-505, 9-221, 9-222,
28 9-222.1, 9-222.2, 9-250, and 9-252.1, and Articles X and XI
29 of this Act are fully and equally applicable to competitive
30 telecommunications rates and services, and the regulation

1 thereof.

2 (Source: P.A. 90-38, eff. 6-27-97.)

3 (220 ILCS 5/13-202.5 new)

4 Sec. 13-202.5. Incumbent local exchange carrier.

5 "Incumbent local exchange carrier" means, with respect to an

6 area, the telecommunications carrier that provided

7 noncompetitive local exchange telecommunications service in

8 that area on February 8, 1996, and on that date was deemed a

9 member of the exchange carrier association pursuant to 47

10 C.F.R. 69.601(b), and includes its successors, assigns, and

11 affiliates.

12 (220 ILCS 5/13-216 new)

13 Sec. 13-216. Network element. "Network element" means a

14 functionality, facility, or equipment used in the provision

15 of a telecommunications service or, if unused, intended for

16 use in the provision of a telecommunications service. The

17 term also includes features and capabilities that are

18 provided by means of the functionality, facility, or

19 equipment, including, but not limited to, subscriber numbers,

20 databases, signaling systems, and information sufficient for

21 billing and collection or used in the transmission, routing,

22 or other provision of a telecommunications service.

23 (220 ILCS 5/13-217 new)

24 Sec. 13-217. Cost-based rate. "Cost-based rate" means a

25 rate for a service or a network element composed of:

26 (1) the forward-looking total long-run incremental
27 direct cost of the service or network element; plus

28 (2) a proportional allocation of any
29 forward-looking long-run incremental joint cost of 2 or

30 more services or network elements of which the service or

31 network element is a part; plus

1 (3) a proportional allocation of the
2 telecommunications carrier's forward-looking long-run
3 common costs.

4 A proportional allocation of joint costs shall occur in
5 the proportion of the percentage that that service's or
6 network element's long-run incremental direct cost is to the
7 aggregate long-run incremental direct costs of the joint
8 services or network elements. A proportional allocation of
9 common costs shall occur in the proportion of the percentage
10 that that service's or network element's long-run incremental
11 direct cost is to the aggregate long-run incremental direct
12 costs of the telecommunications carrier as a whole.

13 The long-run incremental direct cost of a service or of a
14 network element is the forward-looking additional costs
15 incurred by the telecommunications carrier to provide the
16 entire output of a service, or to provide a network element,
17 including additional resources such as labor, plant, and
18 equipment. Long-run incremental direct cost excludes any
19 costs, including common costs, that would be incurred if the
20 service is not produced or if the network element is not
21 provided. Long-run costs are the economic costs over a
22 planning horizon long enough so that there are no sunk inputs
23 or costs. Forward-looking costs are the costs to be incurred
24 by a telecommunications carrier in the provision of a service
25 or of a network element.

26 These costs shall be calculated as if the service or
27 network element was being provided for the first time and
28 shall reflect planned adjustments in the firm's plant and
29 equipment. Forward-looking costs ignore embedded or
30 historical costs; rather, they are based on the least cost
31 technology currently available which cost can be reasonably
32 estimated based on available data. Common costs are those
33 costs that a telecommunications carrier must incur to operate
34 that are not directly attributable to any particular service

1 or to any group of services smaller than the group of
2 services consisting of all the services of the
3 telecommunications carrier. Cost-based rates for network
4 elements shall not include any cost that arises due to a
5 telecommunications carrier's provision of retail services.

6 (220 ILCS 5/13-501) (from Ch. 111 2/3, par. 13-501)

7 (Section scheduled to be repealed on July 1, 2001)

8 Sec. 13-501. Tariff; filing; form.

9 (a) No telecommunications carrier shall offer or provide
10 telecommunications service unless and until a tariff is filed
11 with the Commission which describes the nature of the
12 service, applicable rates and other charges, terms and
13 conditions of service, and the exchange, exchanges or other
14 geographical area or areas in which the service shall be
15 offered or provided. The Commission may prescribe the form
16 of such tariff and any additional data or information which
17 shall be included therein.

18 (b) An interconnection agreement between an incumbent
19 local exchange carrier and another telecommunications carrier
20 must be filed with the Commission as a tariff. A
21 telecommunications carrier may order any offering from any
22 interconnection agreement or from any other tariff regardless
23 of whether or not the telecommunications carrier has its own
24 interconnection agreement.

25 (c) After a hearing, the Commission has the discretion
26 to impose an interim or permanent tariff on a
27 telecommunications carrier as part of the order in the case.
28 When a tariff is imposed as part of the order in a case, the
29 tariff shall remain in full force and effect until a
30 compliance tariff, or superseding tariff, is filed by the
31 telecommunications carrier and, after notice to the parties
32 in the case and after a compliance hearing is held, is found
33 by the Commission to be in compliance.

1 (Source: P.A. 84-1063.)

2 (220 ILCS 5/13-502) (from Ch. 111 2/3, par. 13-502)

3 (Section scheduled to be repealed on July 1, 2001)

4 Sec. 13-502. Classification of services.

5 (a) All telecommunications services offered or provided
6 under tariff by telecommunications carriers shall be
7 classified as either competitive or noncompetitive. A
8 telecommunications carrier may offer or provide either
9 competitive or noncompetitive telecommunications services, or
10 both, subject to proper certification and other applicable
11 provisions of this Article. Any tariff filed with the
12 Commission as required by Section 13-501 shall indicate
13 whether the service to be offered or provided is competitive
14 or noncompetitive.

15 (b) A service shall be classified as competitive only
16 if, and only to the extent that, for some identifiable class
17 or group of customers in an exchange, group of exchanges, or
18 some other clearly defined geographical area, such service,
19 or its functional equivalent, or a substitute service, is
20 reasonably available from more than one provider, whether or
21 not any such provider is a telecommunications carrier subject
22 to regulation under this Act. The determination of whether a
23 service is reasonably available shall include, but not be
24 limited to, a consideration of the following factors:

25 (1) the availability of other telecommunications
26 carriers or other persons to provide the same,
27 equivalent, or substitutable service in the relevant
28 market;

29 (2) the extent to which the same, equivalent, or
30 substitutable service is available in the relevant
31 market;

32 (3) the ability of customers in the relevant market
33 to obtain the same, equivalent, or substitutable service

1 at comparable rates, terms, and conditions;

2 (4) the ability of telecommunications carriers or
3 other persons to make the same, equivalent, or
4 substitutable service readily available in the relevant
5 market at comparable rates, terms, and conditions;

6 (5) the relevant market power of each
7 telecommunications carrier or other person providing the
8 same, equivalent, or substitutable service in the
9 relevant market;

10 (6) any affiliation of any telecommunications
11 carrier providing the service in the relevant market
12 which may affect competition; and

13 (7) the existence of any significant barrier to
14 entry or exit of a provider of the service in the
15 relevant market.

16 All telecommunications services not properly classified
17 as competitive shall be classified as noncompetitive. The
18 Commission shall have the power to investigate the propriety
19 of any classification of a telecommunications service on its
20 own motion and shall investigate upon complaint. In any
21 hearing or investigation, the burden of proof as to the
22 proper classification of any service shall rest upon the
23 telecommunications carrier providing the service. After
24 notice and hearing, the Commission shall order the proper
25 classification of any service in whole or in part. The
26 Commission shall make its determination and issue its final
27 order no later than 180 days from the date such hearing or
28 investigation is initiated. If the Commission enters into a
29 hearing upon complaint and if the Commission fails to issue
30 an order within that period, the complaint shall be deemed
31 granted unless the Commission, the complainant, and the
32 telecommunications carrier providing the service agree to
33 extend the time period.

34 (c) No tariff classifying a new telecommunications

1 service as competitive or reclassifying a previously
2 noncompetitive telecommunications service as competitive,
3 which is filed by a telecommunications carrier which also
4 offers or provides noncompetitive telecommunications service,
5 shall be effective unless and until such telecommunications
6 carrier offering or providing, or seeking to offer or
7 provide, such proposed competitive service prepares and files
8 a study of the long-run service incremental cost underlying
9 such service and demonstrates that the tariffed rates and
10 charges for the service and any relevant group of services
11 that includes the proposed competitive service and for which
12 resources are used in common solely by that group of services
13 are not less than the long-run service incremental cost of
14 providing the service and each relevant group of services.
15 Such study shall be given proprietary treatment by the
16 Commission at the request of such carrier if any other
17 provider of the competitive service, its functional
18 equivalent, or a substitute service in the geographical area
19 described by the proposed tariff has not filed, or has not
20 been required to file, such a study.

21 (d) In the event any telecommunications service has been
22 classified and filed as competitive by the telecommunications
23 carrier, and has been offered or provided on such basis, and
24 the Commission subsequently determines after investigation
25 that such classification improperly included services which
26 were in fact noncompetitive, the Commission shall have the
27 power to determine and order refunds to customers for any
28 overcharges which may have resulted from the improper
29 classification, or to order such other remedies provided to
30 it under this Act, or to seek an appropriate remedy or relief
31 in a court of competent jurisdiction.

32 (e) If no hearing or investigation regarding the
33 propriety of a competitive classification of a
34 telecommunications service is initiated within 180 days after

1 a telecommunications carrier files a tariff listing such
2 telecommunications service as competitive, no refunds to
3 customers for any overcharges which may result from an
4 improper classification shall be ordered for the period from
5 the time the telecommunications carrier filed such tariff
6 listing the service as competitive up to the time an
7 investigation of the service classification is initiated by
8 the Commission's own motion or the filing of a complaint.
9 Where a hearing or an investigation regarding the propriety
10 of a telecommunications service classification as competitive
11 is initiated after 180 days from the filing of the tariff,
12 the period subject to refund for improper classification
13 shall begin on the date such investigation or hearing is
14 initiated by the filing of a Commission motion or a
15 complaint.

16 (Source: P.A. 90-185, eff. 7-23-97.)

17 (220 ILCS 5/13-506.1) (from Ch. 111 2/3, par. 13-506.1)

18 (Section scheduled to be repealed on July 1, 2001)

19 Sec. 13-506.1. Alternative forms of regulation for
20 noncompetitive services.

21 (a) Notwithstanding any of the ratemaking provisions of
22 this Article or Article IX that are deemed to require rate of
23 return regulation, the Commission may implement alternative
24 forms of regulation in order to establish just and reasonable
25 rates for noncompetitive telecommunications services
26 including, but not limited to, price regulation, earnings
27 sharing, rate moratoria, or a network modernization plan.
28 The Commission is authorized to adopt different forms of
29 regulation to fit the particular characteristics of different
30 telecommunications carriers and their service areas. However,
31 no incumbent local exchange carrier may be subject to, or
32 continue under, an alternative form of regulation under this
33 Section after December 31, 2001, unless the Commission finds

1 that the incumbent local exchange carrier is in full
2 compliance with its obligations under Section 13-801.

3 In addition to the public policy goals declared in
4 Section 13-103, the Commission shall consider, in determining
5 the appropriateness of any alternative form of regulation,
6 whether it will:

- 7 (1) reduce regulatory delay and costs over time;
- 8 (2) encourage innovation in services;
- 9 (3) promote efficiency;
- 10 (4) facilitate the broad dissemination of technical
11 improvements to all classes of ratepayers;
- 12 (5) enhance economic development of the State; and
- 13 (6) provide for fair, just, and reasonable rates.

14 (b) A telecommunications carrier providing
15 noncompetitive telecommunications services may petition the
16 Commission to regulate the rates or charges of its
17 noncompetitive services under an alternative form of
18 regulation. The telecommunications carrier shall submit with
19 its petition its plan for an alternative form of regulation.
20 The Commission shall review and may modify or reject the
21 carrier's proposed plan. The Commission also may initiate
22 consideration of alternative forms of regulation for a
23 telecommunications carrier on its own motion. The Commission
24 may approve the plan or modified plan and authorize its
25 implementation only if it finds, after notice and hearing,
26 that the plan or modified plan at a minimum:

- 27 (1) is in the public interest;
- 28 (2) will produce fair, just, and reasonable rates
29 for telecommunications services;
- 30 (3) responds to changes in technology and the
31 structure of the telecommunications industry that are, in
32 fact, occurring;
- 33 (4) constitutes a more appropriate form of
34 regulation based on the Commission's overall

1 consideration of the policy goals set forth in Section
2 13-103 and this Section;

3 (5) specifically identifies how ratepayers will
4 benefit from any efficiency gains, cost savings arising
5 out of the regulatory change, and improvements in
6 productivity due to technological change;

7 (6) will maintain the quality and availability of
8 telecommunications services; and

9 (7) will not unduly or unreasonably prejudice or
10 disadvantage any particular customer class, including
11 telecommunications carriers; and-

12 (8) will promote the widespread development of
13 competitive local exchange services.

14 (c) An alternative regulation plan approved under this
15 Section shall provide, as a condition for Commission approval
16 of the plan, that for the first 3 years the plan is in
17 effect, basic residence service rates shall be no higher than
18 those rates in effect 180 days before the filing of the plan.
19 This provision shall not be used as a justification or
20 rationale for an increase in basic service rates for any
21 other customer class. For purposes of this Section, "basic
22 residence service rates" shall mean monthly recurring charges
23 for the telecommunications carrier's lowest priced primary
24 residence network access lines, along with any associated
25 untimed or flat rate local usage charges. Nothing in this
26 subsection (c) shall preclude the Commission from approving
27 an alternative regulation plan that results in rate
28 reductions provided all the requirements of subsection (b)
29 are satisfied by the plan.

30 (d) Any alternative form of regulation granted for a
31 multi-year period under this Section shall provide for annual
32 or more frequent reporting to the Commission to document that
33 the requirements of the plan are being properly implemented.

34 (e) Upon petition by the telecommunications carrier or

1 any other person or upon its own motion, the Commission may
 2 rescind its approval of an alternative form of regulation if,
 3 after notice and hearing, it finds that the conditions set
 4 forth in subsection (b) of this Section can no longer be
 5 satisfied. Any person may file a complaint alleging that the
 6 rates charged by a telecommunications carrier under an
 7 alternative form of regulation are unfair, unjust,
 8 unreasonable, unduly discriminatory, or are otherwise not
 9 consistent with the requirements of this Article; provided,
 10 that the complainant shall bear the burden of proving the
 11 allegations in the complaint.

12 (f) Under an alternative form of regulation, the
 13 Commission shall require that any penalties or fines imposed
 14 on the telecommunications carrier providing noncompetitive
 15 services not be reflected in the rates charged to ratepayers,
 16 directly or indirectly, through exogenous treatment or
 17 otherwise.

18 (g) ~~(f)~~ Nothing in this Section shall be construed to
 19 authorize the Commission to render Sections 9-241, 9-250, and
 20 13-505.2 inapplicable to noncompetitive services.

21 (Source: P.A. 87-856.)

22 (220 ILCS 5/13-508) (from Ch. 111 2/3, par. 13-508)

23 (Section scheduled to be repealed on July 1, 2001)

24 Sec. 13-508. Separate subsidiary for competitive
 25 services. The Commission shall, after notice and hearing,
 26 order structural separation of an incumbent local exchange
 27 carrier if, after January 1, 2002, the carrier is not in full
 28 compliance with Section 13-801. For purposes of this
 29 Section, "structural separation" means the separation of an
 30 incumbent local exchange carrier's retail telecommunications
 31 services ("retail affiliate") from the incumbent local
 32 exchange carrier's network elements and services provided to
 33 other telecommunications carriers ("carrier affiliate"). The

1 retail affiliate must have at least 20% of its stock
 2 publicly traded separately from the stock of the carrier
 3 affiliate. The carrier affiliate may not transfer or assign
 4 any network elements to its retail affiliate. The Commission
 5 may consider transitional plans to implement this Section
 6 provided, however, that after January 1, 2003 the carrier
 7 affiliate shall not offer any retail telecommunications
 8 service or related feature to any new customer, nor shall it
 9 market to or provide any new retail telecommunications
 10 service or related feature to any existing customer which
 11 telecommunications service or related feature was not being
 12 provided to that customer on January 1, 2003. The Commission
 13 is authorized, after notice and hearing, to order a
 14 telecommunications carrier which offers or provides both
 15 competitive and noncompetitive telecommunications service to
 16 establish a fully separated subsidiary to provide all or part
 17 of such competitive service where:

18 (a) no less costly means is available and effective in
 19 fully and properly identifying and allocating costs between
 20 such carrier's competitive and noncompetitive
 21 telecommunications services; and

22 (b) the incremental cost of establishing and maintaining
 23 such subsidiary would not require increases in rates or
 24 charges to levels which would effectively preclude the offer
 25 or provision of the affected competitive telecommunications
 26 service.

27 (Source: P.A. 84-1063.)

28 (220 ILCS 5/13-514)

29 (Section scheduled to be repealed on July 1, 2001)

30 Sec. 13-514. Prohibited actions of telecommunications
 31 carriers. A telecommunications carrier shall not knowingly
 32 impede the development of competition in any
 33 telecommunications service market. The following prohibited

1 actions are considered per se impediments to the development
2 of competition; however, the Commission is not limited in any
3 manner to these enumerated impediments and may consider other
4 actions which impede competition to be prohibited:

5 (1) unreasonably refusing or delaying interconnections
6 or collocation or providing inferior connections to another
7 telecommunications carrier;

8 (2) unreasonably impairing the speed, quality, or
9 efficiency of services used by another telecommunications
10 carrier;

11 (3) unreasonably denying a request of another provider
12 for information regarding the technical design and features,
13 geographic coverage, information necessary for the design of
14 equipment, and traffic capabilities of the local exchange
15 network except for proprietary information unless such
16 information is subject to a proprietary agreement or
17 protective order;

18 (4) unreasonably delaying access in connecting another
19 telecommunications carrier to the local exchange network
20 whose product or service requires novel or specialized access
21 requirements;

22 (5) unreasonably refusing or delaying access by any
23 person to another telecommunications carrier;

24 (6) unreasonably acting or failing to act in a manner
25 that has a substantial adverse effect on the ability of
26 another telecommunications carrier to provide service to its
27 customers;

28 (7) unreasonably failing to offer services to customers
29 in a local exchange, where a telecommunications carrier is
30 certificated to provide service and has entered into an
31 interconnection agreement for the provision of local exchange
32 telecommunications services, with the intent to delay or
33 impede the ability of the incumbent local exchange
34 telecommunications carrier to provide inter-LATA

1 telecommunications services; and

2 (8) violating the terms of or unreasonably delaying
3 implementation or enforcement of an interconnection agreement
4 entered into pursuant to Section 252 of the federal
5 Telecommunications Act of 1996 in a manner that unreasonably
6 delays, increases the cost, or impedes the availability of
7 telecommunications services to consumers;

8 (9) unreasonably impeding or delaying a
9 telecommunications carrier's access to or implementation of
10 its rights under this Article through bad faith resort to the
11 Commission; and

12 (10) violating the obligations of Section 13-801.

13 (Source: P.A. 90-185, eff. 7-23-97.)

14 (220 ILCS 5/13-515)

15 (Section scheduled to be repealed on July 1, 2001)

16 Sec. 13-515. Enforcement procedures.

17 (a) The following expedited procedures shall be used to
18 enforce the provisions of Section 13-514 of this Act except
19 as provided in subsection (b). However, the Commission, the
20 complainant, and the respondent may mutually agree to adjust
21 the procedures established in this Section. ~~If the~~
22 ~~Commission determines, pursuant to subsection (b), that the~~
23 ~~procedural provisions of this Section do not apply, the~~
24 ~~complaint shall continue pursuant to the general complaint~~
25 ~~provisions of Article X.~~

26 (b) (Blank). ~~The provisions of this Section shall not~~
27 ~~apply to an allegation of a violation of item (8) of Section~~
28 ~~13-514 by a Bell operating company, as defined in Section 3~~
29 ~~of the federal Telecommunications Act of 1996, unless and~~
30 ~~until such company or its affiliate is authorized to provide~~
31 ~~inter-LATA services under Section 271(d) of the federal~~
32 ~~Telecommunications Act of 1996; provided, however, that a~~
33 ~~complaint setting forth a separate independent basis for a~~

1 violation--of--Section--13-514--may--proceed--under--this--Section
2 notwithstanding--that--the--alleged--acts--or--emissions--may--also
3 constitute--a--violation--of--item--(8)--of--Section--13-514.

4 (c) No complaint may be filed under this Section until
5 the complainant has first notified the respondent of the
6 alleged violation and offered the respondent 48 hours to
7 correct the situation. Provision of notice and the
8 opportunity to correct the situation creates a rebuttable
9 presumption of knowledge under Section 13-514.

10 (d) A telecommunications carrier may file a complaint
11 with the Commission alleging a violation of Section 13-514 in
12 accordance with this subsection:

13 (1) The complaint shall be filed with the Chief
14 Clerk of the Commission and shall be served in hand upon
15 the respondent, the executive director, and the general
16 counsel of the Commission at the time of the filing.

17 (2) A complaint filed under this subsection shall
18 include a statement that the requirements of subsection
19 (c) have been fulfilled and that the respondent did not
20 correct the situation as requested.

21 (3) Reasonable discovery specific to the issue of
22 the complaint may commence upon filing of the complaint.
23 Requests for discovery must be served in hand and
24 responses to discovery must be provided in hand to the
25 requester within 14 days after a request for discovery is
26 made.

27 (4) An answer and any other responsive pleading to
28 the complaint shall be filed with the Commission and
29 served in hand at the same time upon the complainant, the
30 executive director, and the general counsel of the
31 Commission within 7 days after the date on which the
32 complaint is filed.

33 (5) If the answer or responsive pleading raises the
34 issue that the complaint violates subsection (i) of this

1 Section, the complainant may file a reply to such
2 allegation within 3 days after actual service of such
3 answer or responsive pleading. Within 4 days after the
4 time for filing a reply has expired, the hearing officer
5 or arbitrator shall either issue a written decision
6 dismissing the complaint as frivolous in violation of
7 subsection (i) of this Section including the reasons for
8 such disposition or shall issue an order directing that
9 the complaint shall proceed.

10 (6) A pre-hearing conference shall be held within
11 14 days after the date on which the complaint is filed.

12 (7) The hearing shall commence within 30 days of
13 the date on which the complaint is filed. The hearing
14 may be conducted by a hearing examiner or by an
15 arbitrator. Parties and the Commission staff shall be
16 entitled to present evidence and legal argument in oral
17 or written form as deemed appropriate by the hearing
18 examiner or arbitrator. The hearing examiner or
19 arbitrator shall issue a written decision within 60 days
20 after the date on which the complaint is filed. The
21 decision shall include reasons for the disposition of the
22 complaint and, if a violation of Section 13-514 is found,
23 directions and a deadline for correction of the
24 violation.

25 (8) Any party may file a petition requesting the
26 Commission to review the decision of the hearing examiner
27 or arbitrator within 5 days of such decision. Any party
28 may file a response to a petition for review within 3
29 business days after actual service of the petition.
30 After the time for filing of the petition for review, but
31 no later than 15 days after the decision of the hearing
32 examiner or arbitrator, the Commission shall decide to
33 adopt the decision of the hearing examiner or arbitrator
34 or shall issue its own final order.

1 (e) If the alleged violation has a substantial adverse
2 effect on the ability of the complainant to provide service
3 to customers, the complainant may include in its complaint a
4 request for an order for emergency relief. The Commission,
5 acting through its designated hearing examiner or arbitrator,
6 shall act upon such a request within 2 business days of the
7 filing of the complaint. An order for emergency relief may
8 be granted, without an evidentiary hearing, upon a verified
9 factual showing that the party seeking relief will likely
10 succeed on the merits, that the party will suffer irreparable
11 harm in its ability to serve customers if emergency relief is
12 not granted, and that the order is in the public interest.
13 An order for emergency relief shall include a finding that
14 the requirements of this subsection have been fulfilled and
15 shall specify the directives that must be fulfilled by the
16 respondent and deadlines for meeting those directives. The
17 decision of the hearing examiner or arbitrator to grant or
18 deny emergency relief shall be considered an order of the
19 Commission unless the Commission enters its own order within
20 2 calendar days of the decision of the hearing examiner or
21 arbitrator. The order for emergency relief may require the
22 responding party to act or refrain from acting so as to
23 protect the provision of competitive service offerings to
24 customers. Any action required by an emergency relief order
25 must be technically feasible and economically reasonable and
26 the respondent must be given a reasonable period of time to
27 comply with the order.

28 (f) The Commission is authorized to obtain outside
29 resources including, but not limited to, arbitrators and
30 consultants for the purposes of the hearings authorized by
31 this Section. Any arbitrator or consultant obtained by the
32 Commission shall be approved by both parties to the hearing.
33 The cost of such outside resources including, but not limited
34 to, arbitrators and consultants shall be borne by the

1 parties. The Commission shall review the bill for
2 reasonableness and assess the parties for reasonable costs
3 dividing the costs according to the resolution of the
4 complaint brought under this Section. Such costs shall be
5 paid by the parties directly to the arbitrators, consultants,
6 and other providers of outside resources within 60 days after
7 receiving notice of the assessments from the Commission.
8 Interest at the statutory rate shall accrue after expiration
9 of the 60-day period. The Commission, arbitrators,
10 consultants, or other providers of outside resources may
11 apply to a court of competent jurisdiction for an order
12 requiring payment.

13 (g) The Commission shall assess the parties under this
14 subsection for all of the Commission's costs of investigation
15 and conduct of the proceedings brought under this Section
16 including, but not limited to, the prorated salaries of
17 staff, attorneys, hearing examiners, and support personnel
18 and including any travel and per diem, directly attributable
19 to the complaint brought pursuant to this Section, but
20 excluding those costs provided for in subsection (f),
21 dividing the costs according to the resolution of the
22 complaint brought under this Section. All assessments made
23 under this subsection shall be paid into the Public Utility
24 Fund within 60 days after receiving notice of the assessments
25 from the Commission. Interest at the statutory rate shall
26 accrue after the expiration of the 60 day period. The
27 Commission is authorized to apply to a court of competent
28 jurisdiction for an order requiring payment.

29 (h) If the Commission determines that there is an
30 imminent threat to competition or to the public interest, the
31 Commission may, notwithstanding any other provision of this
32 Act, seek temporary, preliminary, or permanent injunctive
33 relief from a court of competent jurisdiction either prior to
34 or after the hearing.

1 (i) A party shall not bring or defend a proceeding
2 brought under this Section or assert or controvert an issue
3 in a proceeding brought under this Section, unless there is a
4 non-frivolous basis for doing so. By presenting a pleading,
5 written motion, or other paper in complaint or defense of the
6 actions or inaction of a party under this Section, a party is
7 certifying to the Commission that to the best of that party's
8 knowledge, information, and belief, formed after a reasonable
9 inquiry of the subject matter of the complaint or defense,
10 that the complaint or defense is well grounded in law and
11 fact, and under the circumstances:

12 (1) it is not being presented to harass the other
13 party, cause unnecessary delay in the provision of
14 competitive telecommunications services to consumers, or
15 create needless increases in the cost of litigation; and

16 (2) the allegations and other factual contentions
17 have evidentiary support or, if specifically so
18 identified, are likely to have evidentiary support after
19 reasonable opportunity for further investigation or
20 discovery as defined herein.

21 (j) If, after notice and a reasonable opportunity to
22 respond, the Commission determines that subsection (i) has
23 been violated, the Commission shall impose appropriate
24 sanctions upon the party or parties that have violated
25 subsection (i) or are responsible for the violation. The
26 sanctions shall be not more than \$7,500, plus the amount of
27 expenses accrued by the Commission for conducting the
28 hearing. Payment of sanctions imposed under this subsection
29 shall be made to the Common School Fund within 30 days of
30 imposition of such sanctions.

31 (k) An appeal of a Commission Order made pursuant to
32 this Section shall not effectuate a stay of the Order unless
33 a court of competent jurisdiction specifically finds that the
34 party seeking the stay will likely succeed on the merits,

1 that the party will suffer irreparable harm without the stay,
2 and that the stay is in the public interest.

3 (Source: P.A. 90-185, eff. 7-23-97; 90-574, eff. 3-20-98.)

4 (220 ILCS 5/13-516)

5 (Section scheduled to be repealed on July 1, 2001)

6 Sec. 13-516. Penalties for violation of a Commission
7 order relating to prohibited actions of telecommunications
8 carriers.

9 (a) Notwithstanding any other provision of this Act, the
10 Commission may impose penalties of up to \$1,000,000 ~~\$30,000~~
11 per violation of Section 13-514 ~~a-final-order-or-emergency~~
12 ~~relief-order-issued-pursuant-to-Section-13-515-of--this--Act.~~
13 Each day of a continuing offense against each entity shall be
14 treated as a separate violation for purposes of levying any
15 penalty under this Section. The period for which the fine
16 shall be levied shall commence on the day the
17 telecommunications carrier first violated the Act ~~Commission~~
18 ~~order-requires-compliance-with-the-order~~ and shall continue
19 until the party is in compliance with the Commission order.

20 (a-5) An incumbent local exchange carrier may not
21 declare any cash, stock, bond, or scrip dividend or
22 distribution, or divide the proceeds of the sale of any
23 stock, bond, or scrip among its stockholders while the
24 carrier is in violation of a Commission order or while there
25 exists against the carrier a Commission finding of failure to
26 meet its obligations under Section 13-801, except upon
27 Commission approval after notice and hearing.

28 (b) The Commission may waive penalties imposed under
29 subsection (a) if it makes a written finding as to its
30 reasons for waiving the fine. Reasons for waiving a fine
31 shall include, but not be limited to, technological
32 infeasibility and acts of God.

33 (c) The Commission shall establish by rule procedures

1 for the imposition of penalties under subsection (a) that, at
2 a minimum, provide for notice, hearing and a written order
3 relating to the imposition of penalties.

4 (d) The Commission is authorized to apply to a court of
5 competent jurisdiction for an order requiring payment of
6 penalties imposed under subsection (a).

7 (e) Payment of penalties imposed under subsection (a)
8 shall be made to the Common School Fund within 30 days of
9 issuance of the Commission order imposing the penalties.

10 (Source: P.A. 90-185, eff. 7-23-97.)

11 (220 ILCS 5/13-517 new)

12 Sec. 13-517. Damages for violations of Article XIII.

13 (a) The Commission is granted all powers necessary to
14 resolve and adjudicate disputes between telecommunications
15 carriers brought under this Act, and to award compensatory,
16 consequential, and punitive damages that are reasonably
17 calculated to maintain compliance with the purpose,
18 objectives, and express requirements of this Article.

19 (b) If after notice and hearing the Commission finds
20 that a telecommunications carrier has violated Article XIII,
21 including, but not limited to, a violation of any tariff
22 offering or requirement, causing damages to another
23 telecommunications carrier or carriers, the Commission shall
24 award compensatory, consequential, or punitive damages, or
25 any combination thereof, according to the facts of the case.
26 The Commission shall also award attorney fees and costs to
27 the prevailing telecommunications carrier or carriers.

28 (c) The violating telecommunications carrier shall not
29 pass through any of the amounts paid pursuant to this Section
30 or any other related defense costs to its customers in any
31 manner, directly or indirectly.

32 (d) Unless stayed by the Commission or a court, should
33 the violating telecommunications carrier fail to pay the

1 damages, fees, or costs within the time set in the
2 Commission's order, the telecommunications carrier or
3 carriers awarded the damages, fees, or costs may apply to the
4 court pursuant to Section 5-201 of this Act for enforcement
5 of the Commission's order and, in addition to the damages,
6 fees, or costs awarded by the Commission, the court shall
7 further award, to the telecommunications carrier or carriers
8 awarded damages, fees, or costs by the Commission, additional
9 damages for the sake of example and by the way of punishment
10 plus reasonable attorneys' fees fixed by the court, unless
11 the court finds a reasonable basis for the violating
12 carrier's failure to make timely payment according to the
13 Commission's order, in which instance the court shall
14 establish a new date for payment to be made. The
15 telecommunications carrier or carriers awarded the damages,
16 fees, or costs by the Commission may also apply to the court,
17 and the court may award, temporary, preliminary, or permanent
18 injunctive relief, or such other equitable relief as may be
19 necessary, to effectively implement and enforce the
20 Commission's order in a timely manner.

21 (220 ILCS 5/13-801) (from Ch. 111 2/3, par. 13-801)
22 (Section scheduled to be repealed on July 1, 2001)
23 Sec. 13-801. Incumbent local exchange carrier
24 obligations.

25 (a) An incumbent local exchange carrier shall provide a
26 requesting telecommunications carrier with interconnection,
27 collocation, and network elements to enable the provision of
28 existing and new local exchange and exchange access
29 telecommunications services. The Commission shall require
30 the incumbent local exchange carrier to provide
31 interconnection, collocation, and network elements in any
32 manner reasonably requested by the requesting
33 telecommunications carrier to the fullest extent possible to

1 implement the maximum development of competitive local
2 exchange offerings. In no instance may the Commission
3 approve interconnection, collocation, network elements, and
4 resale provisioning by the incumbent local exchange carrier
5 below the minimum required by Section 251 of the federal
6 Communications Act of 1934, as amended, and the subsequent
7 orders of the Federal Communications Commission.

8 (b) An incumbent local exchange carrier must provide for
9 the facilities and equipment of any requesting
10 telecommunications carrier's interconnection with the
11 incumbent local exchange carrier's network on just,
12 reasonable, and nondiscriminatory terms and conditions:

13 (1) for the transmission and routing of local
14 exchange and exchange access telecommunications services;

15 (2) at any technically feasible point within the
16 incumbent local exchange carrier's network; and

17 (3) that is at least equal in quality to that
18 provided by the incumbent local exchange carrier to
19 itself or to any subsidiary, affiliate, or other party to
20 which the incumbent local exchange carrier provides
21 interconnection.

22 An incumbent local exchange carrier shall make available
23 to any requesting telecommunications carrier the
24 interconnection terms and conditions that the incumbent local
25 exchange carrier or any of its subsidiaries or affiliates
26 offer or provide in other states. Incumbent local exchange
27 carriers shall also make available to requesting
28 telecommunications carriers the interconnection terms and
29 conditions that any of its subsidiaries or affiliates has
30 obtained in another state.

31 (c) The incumbent local exchange carrier shall provide
32 for physical or virtual collocation of any type of equipment
33 used and useful for interconnection or access to network
34 elements at any technically feasible place of the premises of

1 the incumbent local exchange carrier. The equipment shall
2 include, but is not limited to, optical transmission
3 equipment, microwave transmission facilities, multiplexers,
4 remote switching modules, and cross-connects between the
5 facilities or equipment of other collocated carriers. The
6 incumbent local exchange carrier must also allow, and provide
7 for, the collocation of cross-connects between the facilities
8 of a collocated carrier and any facilities of the incumbent
9 local exchange carrier being used to provide a
10 telecommunications service by another telecommunications
11 provider, whether the incumbent's facilities are purchased as
12 network elements, bundled or unbundled, or as part of a
13 telecommunications service purchased at wholesale by the
14 telecommunications carrier requesting the cross-connect
15 collocation. If the incumbent local exchange carrier has
16 deployed a collocation arrangement in any of its premises or
17 its affiliated company's premises, it shall be presumed that
18 such a collocation arrangement is technically feasible in
19 Illinois. Collocation arrangements shall be provided at
20 cost-based rates, and on just, reasonable, and
21 nondiscriminatory terms and conditions.

22 (d) The incumbent local exchange carrier shall provide
23 to any requesting telecommunications carrier for the
24 provision of an existing or a new telecommunications service
25 nondiscriminatory access to network elements on any unbundled
26 or bundled basis, as requested, at any technically feasible
27 point on terms and conditions that are just, reasonable, and
28 nondiscriminatory.

29 (1) An incumbent local exchange carrier shall
30 provide unbundled network elements in a manner that
31 allows requesting telecommunications carriers to combine
32 such network elements to provide a telecommunications
33 service.

34 (2) An incumbent local exchange carrier shall not

1 separate network elements that are currently combined,
2 except at the explicit direction of the requesting
3 carrier.

4 (3) At the request of any telecommunications
5 carrier, an incumbent local exchange carrier shall
6 combine any sequence of unbundled network elements that
7 it ordinarily combines for itself.

8 (4) Upon request, an incumbent local exchange
9 carrier shall combine requested unbundled network
10 elements in any manner, even if those network elements
11 are not ordinarily combined in the incumbent local
12 exchange carrier's network, provided that such
13 combination is:

14 (A) technically feasible; and

15 (B) would not impair the ability of other
16 telecommunications carriers to obtain access to
17 unbundled network elements or to interconnect with
18 the incumbent local exchange carrier's network.

19 (5) Upon request, an incumbent local exchange
20 carrier shall perform the functions necessary to combine
21 unbundled network elements with elements possessed by the
22 requesting telecommunications carrier in any technically
23 feasible manner.

24 (6) An incumbent local exchange carrier that denies
25 a request to combine elements pursuant to item (4)(A) or
26 item (5) of this subsection must prove to the Commission
27 that the requested combination is not technically
28 feasible.

29 (7) An incumbent local exchange carrier that denies
30 a request to combine network elements pursuant to item
31 (4)(B) of this subsection must prove to the Commission
32 that the requested combination would impair the ability
33 of other telecommunications carriers to obtain access to
34 unbundled network elements or to interconnect with the

1 incumbent local exchange carrier's network.

2 (8) A telecommunications carrier may use a network
3 elements platform consisting solely of combined network
4 elements of the incumbent local exchange carrier to
5 provide end to end telecommunications service without the
6 requesting telecommunications carrier's provision or use
7 of any other facilities or functionalities.

8 (9) The Commission shall establish maximum time
9 periods for the incumbent local exchange carrier's
10 provision of network elements. The maximum time period
11 shall be no longer than the time period for the incumbent
12 local exchange carrier's provision of comparable retail
13 services utilizing such network elements. The Commission
14 may establish a maximum time period for a particular
15 network element that is shorter than for a comparable
16 retail service offered by the incumbent local exchange
17 carrier if a requesting telecommunications carrier
18 establishes that it must perform other functions or
19 activities after receipt of the particular network
20 element to provide telecommunications services to
21 end-users. Notwithstanding any other provision of this
22 Article, the maximum time intervals established by the
23 Commission shall not exceed 5 business days for the
24 provision of unbundled loops, both digital and analog,
25 for the conditioning of unbundled loops, for existing
26 combinations of network elements for an end user that has
27 existing local exchange telecommunications service, and
28 one business day for the provisioning of high frequency
29 portion of the loop (line-sharing).

30 (e) When a telecommunications carrier requests a network
31 elements platform referred to in item (8) of subsection (d)
32 as is for an end user that has existing local exchange
33 telecommunications service provided through the incumbent
34 local exchange carrier, without explicitly directing that any

1 physical changes be made by the incumbent local exchange
2 carrier, the incumbent local exchange carrier shall provide
3 the requesting telecommunications carrier with the requested
4 network elements platform as is within 2 business days,
5 without any disruption to the end user's services, unless
6 otherwise agreed by the telecommunications carriers. Absent
7 a contrary agreement between the telecommunications carriers
8 entered into after the effective date of this amendatory Act
9 of the 92nd General Assembly, as of 12:01 a.m. on the second
10 business day after placing the order for a network elements
11 platform as is, the requesting telecommunications carrier
12 shall be the presubscribed primary local exchange carrier for
13 that end user line and shall be entitled to receive, or to
14 direct the disposition of, all revenues for all services
15 utilizing the network elements in the platform, unless it is
16 established that the end user of the existing local exchange
17 service did not authorize the requesting telecommunications
18 carrier to make the request.

19 (f) An incumbent local exchange carrier, its
20 subsidiaries, and affiliates, that provide retail
21 telecommunications services shall utilize the same
22 preordering, ordering, provisioning, maintenance and repair,
23 and billing functions of the incumbent local exchange
24 carrier's operations support systems as are provided to
25 telecommunications carriers ordering or receiving network
26 elements from the incumbent local exchange carrier. Instead
27 of utilizing the operational support systems that are
28 utilized by the incumbent local exchange carrier, a
29 telecommunications carrier may elect to receive similar
30 electronic functions that maintain parity with the incumbent
31 local exchange carrier's operations support systems.

32 (g) A telecommunications carrier that offers both
33 noncompetitive and competitive services shall offer all
34 noncompetitive services, together with each applicable

1 optional feature or functionality, subject to resale;
2 however, the Commission may determine under Article IX of
3 this Act that certain noncompetitive services, together with
4 each applicable optional feature or functionality, that are
5 offered to residence customers under different rates,
6 charges, terms, or conditions than to other customers should
7 not be subject to resale under the rates, charges, terms, or
8 conditions available only to residence customers.

9 (h) The Commission shall provide that the incumbent
10 local exchange carrier is compensated for the provisioning of
11 interconnection, collocation, network elements, and
12 operations support systems at cost-based rates. The
13 immediate implementation and provisioning of interconnection,
14 collocation, network elements, and operations support systems
15 shall not be delayed due to any lack of determination by the
16 Commission as to the cost-based rates. Where cost-based
17 rates have not been established, within 30 days after the
18 filing of a petition for the setting of interim rates or
19 after the Commission's own motion, the Commission shall
20 provide for interim rates that shall remain in full force and
21 effect until the cost-based rate determination is made, or
22 the interim rate is modified, by the Commission.

23 (i) The exemption for certain rural telephone companies
24 as described in 47 U.S.C. 251(f) is adopted and incorporated
25 by reference. The Commission may approve a deadline, other
26 than the deadline provided in this Section, for compliance
27 with a requirement of this Section by a telecommunications
28 carrier with fewer than 35,000 access lines in Illinois if
29 the Commission finds, after notice and hearing, that
30 compliance with a deadline provided in this Section would
31 impair the ability of the petitioning carrier to meet its
32 service obligations. However, the Commission may not approve
33 a deadline for compliance with any requirement of this
34 Section that is later than January 1, 2003.

1 (j) A telecommunications carrier may request the
 2 incumbent local exchange carrier to provide a schedule of
 3 rates listing each of the nonrecurring and recurring charges
 4 of the incumbent local exchange carrier that pertains to a
 5 proposed order identified by the telecommunications carrier
 6 for any of the matters covered in this Section. The
 7 incumbent local exchange carrier shall deliver the requested
 8 schedule of rates to the requesting telecommunications
 9 carrier within 2 business days.

10 ~~The Commission shall prepare and issue an annual report~~
 11 ~~on the status of the telecommunications industry and Illinois~~
 12 ~~regulation thereof on January 31 of each year beginning in~~
 13 ~~1986. Such report shall include:~~

14 ~~(a) A review of regulatory decisions and actions~~
 15 ~~from the preceding year and a description of pending~~
 16 ~~cases involving significant telecommunications carriers~~
 17 ~~or issues;~~

18 ~~(b) a description of the telecommunications~~
 19 ~~industry and changes or trends therein, including the~~
 20 ~~number, type and size of firms offering~~
 21 ~~telecommunications services, whether or not such firms~~
 22 ~~are subject to State regulation, telecommunications~~
 23 ~~technologies in place and under development, variations~~
 24 ~~in the geographic availability of services and in prices~~
 25 ~~for services, and penetration levels of subscriber access~~
 26 ~~to local exchange service in each exchange and trends~~
 27 ~~related thereto;~~

28 ~~(c) the status of compliance by carriers and the~~
 29 ~~Commission with the requirements of this Article;~~

30 ~~(d) the effects, and likely effects of Illinois~~
 31 ~~regulatory policies and practices, including those~~
 32 ~~described in this Article, on telecommunications~~
 33 ~~carriers, services and customers;~~

34 ~~(e) any recommendations for legislative change~~

1 which--are--adopted--by--the--Commission--and--which--the
2 Commission-believes--are--in--the--interest--of--Illinois
3 telecommunications-customers;-and

4 (f)--any--other--information--or--analysis-which-the
5 Commission-is-required-to--provide--by--this--Article--or
6 deems-necessary-to-provide-

7 The--Commission's--report--shall--be-filed-with-the-Joint
8 Committee-on-Legislative-Support-Services, the-Governor,--and
9 the-Public-Counsel-and-shall-be-publicly-available.-The-Joint
10 Committee--on--Legislative--Support--Services--shall--conduct
11 public--hearings--on--the--report--and--any--recommendations
12 therein-

13 (Source: P.A. 84-1063.)

14 (220 ILCS 5/13-902)

15 (Section scheduled to be repealed on July 1, 2001)

16 Sec. 13-902. Rules for verification of a subscriber's
17 ehange---in telecommunications carrier or addition to a
18 subscriber's service.

19 (a) As used in this Section, "subscriber" means a
20 telecommunications carrier's retail business customer served
21 by not more than 20 lines or a retail residential customer,
22 and "telecommunications carrier" has the meaning given in
23 Section 13-202 of the Public Utilities Act, except that
24 "telecommunications carrier" does not include a provider of
25 commercial mobile radio services (as defined by 47 U.S.C.
26 332(d)(1)).

27 (b) A subscriber's presubscribed local exchange and
28 interexchange telecommunications services shall be delivered
29 to and transmitted by the presubscribed ~~presubscription-of-a~~
30 primary local exchange or interexchange telecommunications
31 carrier selected by the subscriber and may not be transmitted
32 by switched--to another telecommunications carrier unless it
33 has obtained either without the subscriber's or presubscribed

1 telecommunications carrier's authorization. A presubscribed
2 telecommunications carrier's directing or delivering a
3 subscriber's transmission to another telecommunications
4 carrier shall create a rebuttable presumption of the
5 presubscribed telecommunications carrier's authorization for
6 the receiving telecommunications carrier and subsequent
7 telecommunications carriers to direct the carriage of such
8 transmission.

9 (c) A telecommunications carrier shall not effectuate a
10 change to a subscriber's telecommunications services by
11 providing an additional telecommunications service that
12 results in an additional monthly charge to the subscriber
13 (herein referred to as an "additional telecommunications
14 service") without following the subscriber notification
15 procedures set forth in this Section. An "additional
16 telecommunications service" does not include making available
17 any additional telecommunications services on a subscriber's
18 line when the subscriber activates and pays for the services
19 on a per use basis.

20 (d) It is the responsibility of the company or
21 telecommunications carrier requesting a change in a
22 subscriber's telecommunications carrier to obtain the
23 subscriber's authorization for the change whenever the
24 company or telecommunications carrier acts as a subscriber's
25 agent with respect to the change.

26 (e) A company or telecommunications carrier submitting a
27 change in a subscriber's primary exchange or interexchange
28 telecommunications carrier as described in subsection (d)
29 shall be solely responsible for providing written notice of
30 the change to the subscriber in accordance with this Section,
31 or for obtaining verification of the subscriber's assent to
32 the change in accordance with this Section. In addition, a
33 telecommunications carrier that provides any additional
34 telecommunications service to a subscriber shall be solely

1 responsible for providing written notice of the additional
2 telecommunications service to the subscriber in accordance
3 with this Section, or for obtaining verification of the
4 subscriber's assent to the additional telecommunications
5 service in accordance with this Section.

6 (1) If the company or telecommunications carrier
7 elects to provide written notice in accordance with this
8 Section, the notice shall be provided as follows:

9 (A) A letter to the subscriber must be mailed
10 using first class mail, postage prepaid, no later
11 than 10 days after the telecommunications carrier
12 submitting the change in the subscriber's primary
13 exchange or interexchange telecommunications carrier
14 is on notice that the change has occurred or no
15 later than 10 days after initiation of an additional
16 telecommunications service has occurred.

17 (B) The letter must be a separate document
18 sent for the sole purpose of describing the changes
19 or additions authorized by the subscriber.

20 (C) The letter must be printed with 10 point
21 or larger type and contain clear and plain language
22 that confirms the details of a change in the
23 presubscribed telecommunications carrier or of the
24 addition of the telecommunications service and
25 provides the subscriber with a toll free number to
26 call should the subscriber wish to cancel the change
27 or make additional changes.

28 (2) If the company or telecommunications carrier
29 elects to obtain verification in accordance with this
30 Section, verification shall be obtained as follows:

31 (A) Verification shall be obtained by an
32 independent third-party that:

33 (i) operates from a facility physically
34 separate from that of the telecommunications

1 carrier or company seeking the change or
2 addition of service;

3 (ii) is not directly or indirectly
4 managed, controlled, directed, or owned wholly
5 or in part by the telecommunications carrier or
6 company seeking the change or addition of
7 telecommunications services;

8 (iii) does not derive commissions or
9 compensation based upon the number of sales,
10 changes, or additions confirmed; and

11 (iv) shall retain records of the
12 confirmation of sales or changes for 24 months.

13 (B) The third-party verification agent shall
14 state to the subscriber, and shall obtain the
15 subscriber's acknowledgement to, the following
16 disclosures:

17 (i) the consumer's name, address, and the
18 telephone numbers of all telephone lines that
19 will be changed or to which additional
20 telecommunications services will be added;

21 (ii) the names of the telecommunications
22 carrier or company that is replacing the
23 previous presubscribed telecommunications
24 carrier or adding a telecommunications service
25 to the subscriber's account and, where
26 applicable, the name of the carriers being
27 replaced;

28 (iii) in cases where verification is
29 sought for the subscriber's presubscribed
30 telecommunications carrier, that for each line
31 the subscriber can designate only one
32 presubscribed telecommunications carrier to
33 handle each of the subscriber's local, long
34 distance, or local toll service depending upon

1 which presubscribed telecommunications service
2 or services are being verified; and

3 (iv) the fact that a fee may be imposed
4 on the subscriber for the change of primary
5 exchange or interexchange telecommunications
6 carriers or that a monthly recurring fee may be
7 charged for the additional service, if that is
8 the case.

9 (C) The third-party verification agent shall
10 obtain verification no later than 3 days after the
11 carrier submitting a change in the subscriber's
12 primary exchange or interexchange telecommunications
13 carrier is on notice that the change has occurred or
14 no later than 3 days after initiation of an
15 additional telecommunications service has occurred.

16 (D) The ~~telecommunications~~ company or
17 telecommunications carrier seeking to implement the
18 change in service or additional service may connect
19 the subscriber to the verification agent, provided
20 that all of the requirements for verification by a
21 third party as set forth in this Section are
22 otherwise complied with fully.

23 (3) The verification or notice requirements
24 described in this subsection shall apply to all changes
25 to a subscriber's presubscription of a primary exchange
26 or interexchange telecommunications carrier, whether the
27 change was initiated through an inbound call initiated by
28 the customer or outbound telemarketing. Where a
29 subscriber's telecommunications services are changed by
30 the provision of an additional telecommunications
31 service, the verification or notice requirements
32 described in this subsection shall apply if the change
33 was initiated through outbound telemarketing. Where a
34 subscriber's telecommunications services are changed by

1 the provision of an additional telecommunications service
 2 and the change was initiated through inbound
 3 telemarketing, the telecommunications carrier shall
 4 comply with all rules or regulations promulgated by the
 5 Federal Communications Commission.

6 (4) Verifications conducted or obtained in a manner
 7 not in compliance with this Section or notice given in a
 8 manner not in compliance with this Section shall be void
 9 and without effect.

10 (f) The Commission ~~may~~ shall promulgate any rules
 11 necessary to ensure that a subscriber's presubscribed local
 12 exchange and interexchange telecommunications services are
 13 delivered to and transmitted by the presubscribed primary
 14 local exchange or interexchange telecommunications carrier
 15 selected by the subscriber and are not transmitted by another
 16 telecommunications carrier without obtaining either the
 17 subscriber's or presubscribed telecommunications carrier's
 18 authorization ~~the---primary---exchange---or---interexehange~~
 19 ~~telecommuniations-carrier--of-a-subscriber-is-not-changed-to~~
 20 ~~another-telecommuniations--carrier~~ or that an additional
 21 telecommunications service is not added without the
 22 subscriber's authorization. The rules promulgated under this
 23 Section shall comport with the rules, if any, promulgated by
 24 the Attorney General pursuant to the Consumer Fraud and
 25 Deceptive Business Practices Act and with any rules
 26 promulgated by the Federal Communications Commission.

27 (g) Complaints may be filed with the Commission under
 28 this Section by a subscriber whose primary local exchange or
 29 interexchange ~~earrier--has~~ telecommunications services have
 30 been transmitted by another telecommunications carrier
 31 without obtaining either the subscriber's or presubscribed
 32 telecommunications carrier's authorization, by a subscriber
 33 ~~ehanged---to---another---telecommuniations--carrier--without~~
 34 ~~authorization--or~~ who has been provided an additional

1 telecommunications service not ordered by the subscriber, by
2 a subscriber's presubscribed primary local exchange or
3 interexchange telecommunications carrier, by----a
4 telecommunications--carrier--that--has--been--removed--as---a
5 subscriber's-----primary-----exchange-----or----interexchange
6 telecommunications-carrier-without-authorization, or by the
7 Commission on its own motion. Upon filing of the complaint,
8 the parties may mutually agree to submit the complaint to the
9 Commission's established mediation process. Remedies in the
10 mediation process may include, but shall not be limited to,
11 the remedies set forth in paragraphs (1) through (5) of this
12 subsection. In its discretion, the Commission may deny the
13 availability of the mediation process and submit the
14 complaint to hearings. If the complaint is not submitted to
15 mediation or if no agreement is reached during the mediation
16 process, hearings shall be held on the complaint pursuant to
17 Section 13-515 Article 10 of this Act. If, after notice and
18 hearing, the Commission finds that a telecommunications
19 carrier has violated this Section or a rule promulgated under
20 this Section, the Commission may in its discretion order any
21 one or more of the following:

- 22 (1) In case of an unauthorized transmission of
23 exchange--in a subscriber's presubscribed primary local
24 primary exchange or interexchange telecommunications
25 services carrier, require the violating
26 telecommunications carrier to refund to the subscriber
27 all fees and charges collected from the subscriber for
28 services from the time the violating carrier began
29 transmitting unauthorized transmissions up to the time
30 the subscriber receives written notice of the fact that
31 the violating telecommunications carrier is providing
32 telecommunications service to the subscriber. When For a
33 subscriber's presubscribed primary local exchange or
34 interexchange telecommunications carrier has been changed

1 and the new presubscribed telecommunications carrier that
2 elects to provide written notice of a change in a
3 subscriber's primary exchange or interexchange carrier,
4 notice consistent with paragraph (1) of subsection (e)
5 shall be deemed to be receipt of notice by the
6 subscriber for purposes of this paragraph. When a
7 subscriber's presubscribed primary local exchange or
8 interexchange telecommunications carrier has been changed
9 and the new presubscribed telecommunications For---a
10 carrier that elects to obtain verification of a change in
11 a subscriber's primary local exchange or interexchange
12 carrier consistent with paragraph (2) of subsection (e)
13 of this Section, either the first correspondence from the
14 carrier that notifies the customer of the change or the
15 subscriber's first bill for services, whichever is mailed
16 first, shall be deemed to be receipt of notice by the
17 subscriber for purposes of this paragraph. The
18 ~~Commission may order the remedial action outlined in this~~
19 ~~subsection only to the extent that the same remedial~~
20 ~~action is allowed pursuant to rules or regulations~~
21 ~~promulgated by the Federal Communications Commission.~~

22 (2) In case of an unauthorized transmission of a
23 subscriber's presubscribed change in the primary local
24 exchange or interexchange telecommunications services
25 carrier, require the violating telecommunications carrier
26 to refund to the subscriber charges collected in excess
27 of those that would have been charged by the subscriber's
28 chosen presubscribed telecommunications carrier.

29 (3) In case of an unauthorized transmission of a
30 subscriber's presubscribed change in the primary local
31 exchange or interexchange telecommunications services
32 carrier, require the violating telecommunications carrier
33 to pay to the subscriber's chosen presubscribed
34 telecommunications carrier the amount the chosen

1 presubscribed telecommunications carrier would have
 2 collected for the telecommunications service. The
 3 Commission is authorized to reduce this payment by any
 4 amount already paid by the violating telecommunications
 5 carrier to the subscriber's chosen presubscribed
 6 telecommunications carrier for those telecommunications
 7 services.

8 (4) Require the violating telecommunications
 9 carrier to pay a fine of up to \$1,000 into the Public
 10 Utility Fund for each repeated and intentional violation
 11 of this Section.

12 (5) In the case of an unauthorized additional
 13 telecommunications service, require the violating carrier
 14 to refund or cancel all charges for telecommunications
 15 services or products provided without a subscriber's
 16 authorization.

17 (6) Issue a cease and desist order.

18 (7) For a pattern of violation of this Section or
 19 for intentionally violating a cease and desist order,
 20 revoke the violating telecommunications carrier's
 21 certificate of service authority.

22 (Source: P.A. 89-497, eff. 6-27-96; 90-610, eff. 7-1-98.)

23 (220 ILCS 5/13-1001 new)

24 Sec. 13-1001. Annual report. The Commission shall
 25 prepare and issue an annual report on the status of the
 26 telecommunications industry and Illinois regulation thereof
 27 on January 31 of each year. The report shall include:

28 (1) a review of regulatory decisions and actions
 29 from the preceding year and a description of pending
 30 cases involving significant telecommunications carriers
 31 or issues;

32 (2) a description of the telecommunications
 33 industry and changes or trends therein, including the

1 number, type and size of firms offering
 2 telecommunications services, whether or not such firms
 3 are subject to State regulation, telecommunications
 4 technologies in place and under development, variations
 5 in the geographic availability of services and in prices
 6 for services, and penetration levels of subscriber access
 7 to local exchange service in each exchange and trends
 8 related thereto;

9 (3) the status of compliance by carriers and the
 10 Commission with the requirements of this Article;

11 (4) the effects and likely effects of Illinois
 12 regulatory policies and practices, including those
 13 described in this Article, on telecommunications
 14 carriers, services and customers;

15 (5) any recommendations for legislative change that
 16 are adopted by the Commission and which the Commission
 17 believes are in the interest of Illinois
 18 telecommunications customers; and

19 (6) any other information or analysis that the
 20 Commission is required to provide by this Article or
 21 deems necessary to provide.

22 The Commission's report shall be filed with the Joint
 23 Committee on Legislative Support Services and the Governor
 24 and shall be publicly available. The Joint Committee on
 25 Legislative Support Services shall conduct public hearings on
 26 the report and any recommendations therein.

27 (220 ILCS 5/13-1002 new)

28 Sec. 13-1002. Repealer. This Article XIII is repealed
 29 effective July 1, 2007.

30 (220 ILCS 5/13-505.3 rep.)

31 (220 ILCS 5/13-802 rep.)

32 (220 ILCS 5/13-803 rep.)

1 Section 10. The Public Utilities Act is amended by
2 repealing Sections 13-505.3, 13-802, and 13-803.

3 Section 15. The Illinois Antitrust Act is amended by
4 changing Sections 3 and 5 as follows:

5 (740 ILCS 10/3) (from Ch. 38, par. 60-3)

6 Sec. 3. Every person shall be deemed to have committed a
7 violation of this Act who shall:

8 (1) Make any contract with, or engage in any combination
9 or conspiracy with, any other person who is, or but for a
10 prior agreement would be, a competitor of such person:

11 (A) ~~a-~~ for the purpose or with the effect of
12 fixing, controlling, or maintaining the price or rate
13 charged for any commodity sold or bought by the parties
14 thereto, or the fee charged or paid for any service
15 performed or received by the parties thereto;

16 (B) ~~b-~~ fixing, controlling, maintaining, limiting,
17 or discontinuing the production, manufacture, mining,
18 sale or supply of any commodity, or the sale or supply of
19 any service, for the purpose or with the effect stated in
20 paragraph (A) ~~a-~~ of subsection (1);

21 (C) ~~c-~~ allocating or dividing customers,
22 territories, supplies, sales, or markets, functional or
23 geographical, for any commodity or service; or

24 (2) By contract, combination, or conspiracy with one or
25 more other persons unreasonably restrain trade or commerce;
26 or

27 (3) Establish, maintain, use, or attempt to acquire
28 monopoly power over any substantial part of trade or commerce
29 of this State for the purpose of excluding competition or of
30 controlling, fixing, or maintaining prices in such trade or
31 commerce; consistent or willful violations of the obligations
32 contained in Section 13-801 of the Public Utilities Act shall

1 be considered prima facie evidence of violation of this item
2 (3); or

3 (4) Lease or make a sale or contract for sale of goods,
4 wares, merchandise, machinery, supplies, or other
5 commodities, or services (including master antenna television
6 service), whether patented or unpatented, for use,
7 consumption, enjoyment, or resale, or fix a price charged
8 thereof, or discount from, or rebate upon, such price, on the
9 condition, agreement, or understanding that the lessee or
10 purchaser thereof shall not use or deal in the goods, wares,
11 merchandise, machinery, supplies, or other commodity or
12 service (including cable television service or cable
13 television relay service), of a competitor or competitors of
14 the lessor or seller, where the effect of such lease, sale or
15 contract for such sale or such condition, agreement, or
16 understanding may be to substantially lessen competition or
17 tend to create a monopoly in any line of commerce; or

18 (5) Being an employee, officer or agent of any foreign
19 government, or an employee, officer or agent of a corporation
20 or other entity which does business with or seeks to do
21 business with any foreign government or instrumentality
22 thereof; enforce, attempt to enforce, agree to or take action
23 to forward the aims of, any discriminatory practice by the
24 foreign government which is based on race, color, creed,
25 national ancestry or sex or on ethnic or religious grounds,
26 where such conduct, course of conduct, or agreement takes
27 place in whole or in part within the United States and
28 affects business in this State.

29 (Source: P.A. 82-219.)

30 (740 ILCS 10/5) (from Ch. 38, par. 60-5)

31 Sec. 5. No provisions of this Act shall be construed to
32 make illegal:

33 (1) the activities of any labor organization or of

1 individual members thereof which are directed solely to labor
2 objectives which are legitimate under the laws of either the
3 State of Illinois or the United States;

4 (2) the activities of any agricultural or horticultural
5 cooperative organization, whether incorporated or
6 unincorporated, or of individual members thereof, which are
7 directed solely to objectives of such cooperative
8 organizations which are legitimate under the laws of either
9 the State of Illinois or the United States;

10 (3) the activities of any public utility, as defined in
11 Section 3-105 of the Public Utilities Act to the extent that
12 such activities are subject to a clearly articulated and
13 affirmatively expressed State policy to replace competition
14 with regulation, where the conduct to be exempted is actively
15 supervised by the State itself;

16 (4) (blank) ~~The--activities--of--a--telecommunications~~
17 ~~carrier,-as-defined-in-Section-13-202-of-the-Public-Utilities~~
18 ~~Act,-to-the-extent-these-activities-relate-to-the-provision~~
19 ~~of--noncompetitive--telecommunications--services--under--the~~
20 ~~Public--Utilities--Act-and-are-subject-to-the-jurisdiction-of~~
21 ~~the-Illinois-Commerce-Commission--or--to--the--activities--of~~
22 ~~telephone--mutual--concerns--referred-to-in-Section-13-202-of~~
23 ~~the-Public-Utilities--Act--to--the--extent--these--activities~~
24 ~~relate--to-the-provision-and-maintenance-of-telephone-service~~
25 ~~to-owners-and-customers;~~

26 (5) the activities (including, but not limited to, the
27 making of or participating in joint underwriting or joint
28 reinsurance arrangement) of any insurer, insurance agent,
29 insurance broker, independent insurance adjuster or rating
30 organization to the extent that such activities are subject
31 to regulation by the Director of Insurance of this State
32 under, or are permitted or are authorized by, the Insurance
33 Code or any other law of this State;

34 (6) the religious and charitable activities of any

1 not-for-profit corporation, trust or organization established
2 exclusively for religious or charitable purposes, or for both
3 purposes;

4 (7) the activities of any not-for-profit corporation
5 organized to provide telephone service on a mutual or
6 co-operative basis or electrification on a co-operative
7 basis, to the extent such activities relate to the marketing
8 and distribution of telephone or electrical service to owners
9 and customers;

10 (8) the activities engaged in by securities dealers who
11 are (i) licensed by the State of Illinois or (ii) members of
12 the National Association of Securities Dealers or (iii)
13 members of any National Securities Exchange registered with
14 the Securities and Exchange Commission under the Securities
15 Exchange Act of 1934, as amended, in the course of their
16 business of offering, selling, buying and selling, or
17 otherwise trading in or underwriting securities, as agent,
18 broker, or principal, and activities of any National
19 Securities Exchange so registered, including the
20 establishment of commission rates and schedules of charges;

21 (9) the activities of any board of trade designated as a
22 "contract market" by the Secretary of Agriculture of the
23 United States pursuant to Section 5 of the Commodity Exchange
24 Act, as amended;

25 (10) the activities of any motor carrier, rail carrier,
26 or common carrier by pipeline, as defined in the Common
27 Carrier by Pipeline Law of the Public Utilities Act, to the
28 extent that such activities are permitted or authorized by
29 the Act or are subject to regulation by the Illinois Commerce
30 Commission;

31 (11) the activities of any state or national bank to the
32 extent that such activities are regulated or supervised by
33 officers of the state or federal government under the banking
34 laws of this State or the United States;

1 (12) the activities of any state or federal savings and
2 loan association to the extent that such activities are
3 regulated or supervised by officers of the state or federal
4 government under the savings and loan laws of this State or
5 the United States;

6 (13) the activities of any bona fide not-for-profit
7 association, society or board, of attorneys, practitioners of
8 medicine, architects, engineers, land surveyors or real
9 estate brokers licensed and regulated by an agency of the
10 State of Illinois, in recommending schedules of suggested
11 fees, rates or commissions for use solely as guidelines in
12 determining charges for professional and technical services;

13 (14) Conduct involving trade or commerce (other than
14 import trade or import commerce) with foreign nations unless:

15 (a) such conduct has a direct, substantial, and
16 reasonably foreseeable effect:

17 (i) on trade or commerce which is not trade or
18 commerce with foreign nations, or on import trade or
19 import commerce with foreign nations; or

20 (ii) on export trade or export commerce with
21 foreign nations of a person engaged in such trade or
22 commerce in the United States; and

23 (b) such effect gives rise to a claim under the
24 provisions of this Act, other than this subsection (14).

25 (c) If this Act applies to conduct referred to in
26 this subsection (14) only because of the provisions of
27 paragraph (a)(ii), then this Act shall apply to such
28 conduct only for injury to export business in the United
29 States which affects this State; or

30 (15) the activities of a unit of local government or
31 school district and the activities of the employees, agents
32 and officers of a unit of local government or school
33 district.

34 (Source: P.A. 90-185, eff. 7-23-97; 90-561, eff. 12-16-97.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.

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INDEX

Statutes amended in order of appearance

220 ILCS 5/13-100 from Ch. 111 2/3, par. 13-100
220 ILCS 5/13-101 from Ch. 111 2/3, par. 13-101
220 ILCS 5/13-202.5 new
220 ILCS 5/13-216 new
220 ILCS 5/13-217 new
220 ILCS 5/13-501 from Ch. 111 2/3, par. 13-501
220 ILCS 5/13-502 from Ch. 111 2/3, par. 13-502
220 ILCS 5/13-506.1 from Ch. 111 2/3, par. 13-506.1
220 ILCS 5/13-508 from Ch. 111 2/3, par. 13-508
220 ILCS 5/13-514
220 ILCS 5/13-515
220 ILCS 5/13-516
220 ILCS 5/13-517 new
220 ILCS 5/13-801 from Ch. 111 2/3, par. 13-801
220 ILCS 5/13-902
220 ILCS 5/13-1001 new
220 ILCS 5/13-1002 new
220 ILCS 5/13-505.3 rep.
220 ILCS 5/13-802 rep.
220 ILCS 5/13-803 rep.
740 ILCS 10/3 from Ch. 38, par. 60-3
740 ILCS 10/5 from Ch. 38, par. 60-5