

is subject to the further agreement reached by the parties. The compensation rate to the Payphone Association members may exceed 40%.

The Commission recognizes the lengthy period over which this issue has been in dispute and its significance in the development of competitive payphone services. Through the stipulation the parties have addressed both the issue of the proper allocation of operator services revenues to Illinois Bell's payphones and the treatment of Illinois Bell's operator services revenues to non-Illinois Bell payphone providers. We note that the Act requires that operator services traffic through payphones compensate those payphones for the use of their services and facilities under Section 13-510 of the Act. The stipulation identifies and structures the relationship of payphone services and operator services which both recognizes the historical relationship of these services and promotes competition in payphone services through a cost-recovery method which should promote overall lower end user rates. The Commission agrees with the 40% allocation of Illinois Bell's operator services revenues to its payphone services because Illinois Bell will offer at least this percentage to the Payphone Association members. We find that the terms of the stipulation by the parties is a just and reasonable resolution of these issues in compliance with the Act, given the particular history and circumstances set forth in the record between the Payphone Association and Illinois Bell.

E. Restructuring of Coin Rates

For calculating the imputation test it is necessary to determine the various network usages by Illinois Bell's payphone services in duration, distance, frequency, and time of day. However, Illinois Bell's payphone services lack of recorded usage data caused the imputation test information to be subject to question. Illinois Bell's coin end user zones also did not match the network usage bands being billed to competing payphone providers. This has added to the complexity of the imputation test application.

Under the stipulation, the parties have agreed that Illinois Bell payphone services shall measure and record the actual network usage through those payphones. Furthermore, Illinois Bell will restructure its coin rates to match the network usage bands currently being charged to competing payphone providers. The Illinois Bell payphone coin zone for Local will be adjusted to mirror the current Band A network usage area charged to competing payphone providers. Illinois Bell coin Zones A and B shall collapse into a new Zone A, which shall mirror the Band B network

usage area. Illinois Bell coin Zones C through H shall collapse into a new coin Zone B, which area shall mirror the Band C network usage area. Illinois Bell's end user coin rates shall go to a measured usage rate of three minutes for the initial deposit and an additional charge for each additional minute. Illinois Bell also will restructure end-user sent-paid (coin) rates to produce a minimum additional \$16.5 million to satisfy the competitive services aggregate revenue shortfall.

Requiring the measurement of network usage from Illinois Bell's payphones and the restructuring Illinois Bell's coin zones properly structures Illinois Bell's payphone services in a competitive environment for purposes of applying imputation test standards. Adjusting the local coin rates to measured usage reflects this Commission's policy of cost-based rates which has moved other end user rates to measured usage, as is reflected in the network usage rates underlying the payphone services.

When the Commission set Illinois Bell's local coin rate at \$.25 over ten years ago, even then the rate was identified as below cost. (See ICC Docket No. 83-0005, Order, Commissioner Barrett's Concurring Opinion.) With the additional legal requirements to recover imputed costs and common expenses, adjustments must be made in the rates. Adjustment of the coin rates places the cost recovery for the payphone services on the end user of those services. The Commission notes that we recently ordered an increase in the initial local coin rate for GTE public payphones based only upon a review of GTE's payphones long run service incremental costs. ICC Docket Nos. 93-0301/94-0041. The Commission finds that the stipulation restructuring Illinois Bell's payphone rates is just and reasonable and will bring Illinois Bell's competitive services into compliance with the Act with the classification of Illinois Bell's payphone services as competitive.

F. Other Payphone Association Issues

The record demonstrates the extensive and often difficult evolution of competition in services previously structured for a sole provider. Over the past 10 years payphone services served to be one of the initial areas of direct competition with the incumbent local exchange company. Through actual operations have evolved the issues and the resolution which the parties have addressed herein. As part of the stipulation resolving this complaint proceeding, the Payphone Association and Illinois Bell have agreed to further relief to the Payphone Association members in the form of a reduced offering of network usage rates through and including June 30, 2005.

The stipulation, particularly in the areas of allocating operator services compensation and of network usage, takes into consideration the facts of record and positively addresses the issues on a going forward basis. With the adjustments that the Commission is ordering herein, the Commission expects an even more vigorous and active competitive environment in the payphone services. The proposed network usage offering should assist the Payphone Association members' efforts by reducing their costs. We agree with the parties that this should only serve to further promote the development of an even more competitive payphone marketplace. However, the Commission recognizes that ordering the network usage rates stated herein does not prevent investigation of these rates during the term identified for compliance with the Act's requirements such as satisfaction of the statutory imputation tests. Subject to any adjustments needed over the stated term for compliance with the requirements of the Act, Illinois Bell will be required to make the network usage rates available as indicated to the Payphone Association members. On this basis we find that the agreed-upon relief is a just and reasonable resolution of the complaint, will further the Commission's policy of fostering development of competition in the marketplace, and will assist in keeping end user rates down.

A number of other issues raised in this proceeding between the Payphone Association and Illinois Bell have also been resolved between the parties in a separate agreement. Based upon the parties' resolution of these issues, the Payphone Association and Illinois Bell agree that the Commission does not need to address in this Order the remaining issues raised in the proceeding. The Commission commends the parties for having settled their differences and reached a negotiated resolution of their issues. As the Commission continues to develop competition in telecommunication services, it is hopeful that even more of the disputes arising from the restructuring of the telecommunications industry into a competitive marketplace will be resolved by reasonable negotiation and agreement between the carriers, thus eliminating the necessity for extended proceedings and Commission action.

IV. COMMISSION'S FINDINGS AND ORDERS

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

- (1) Illinois Bell Telephone Company is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of

Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act;

- (2) the Commission has jurisdiction over Illinois Bell and the subject matter of this proceeding;
- (3) the recitals of facts and conclusions reached in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact for purposes of this Order;
- (4) Illinois Bell's pay telephone service should be classified as a competitive service, as defined by the Act; this finding applies to all of Illinois Bell's pay telephones, including public, semi-public, and coinless, and shall extend to all of Illinois Bell's pay telephones in the State of Illinois;
- (5) Illinois Bell's payphone services are separate and distinct services from Illinois Bell's operator-assisted services;
- (6) based upon the cost and revenue information submitted in this proceeding, with the competitive classification of Illinois Bell's pay telephone service Illinois Bell's aggregate competitive services have an aggregate competitive revenue test shortfall in the amount of \$27 million.

IT IS THEREFORE ORDERED THAT:

- 1) Regardless of any rate changes or of the classification at any given time of Illinois Bell's operator-assisted services, Illinois Bell operator-assisted services shall allocate to Illinois Bell payphone services forty percent (40%) of the gross revenues for Illinois Bell's operator services traffic through Illinois Bell's payphones. This reduces the \$27 million competitive aggregate revenue shortfall to \$16.5 million.
- 2) Regardless of any rate changes or of the classification at any given time of Illinois Bell's operator services, to and including June 30, 2005 Illinois Bell shall pay each and every member of the Payphone Association a minimum of forty percent (40%) of the gross revenues for Illinois Bell's operator services traffic through any such member's individual telephone or aggregation of telephones. Payphone Association members may elect to

take Illinois Bell's operator services under this paragraph on an individual telephone-by-telephone basis:

- a) provided that, to qualify, the individual telephone presubscribes all of what is currently known as intraMSA or intraLATA operator service traffic to Illinois Bell's operator services; and
 - b) subject to the further agreement reached by the Payphone Association and Illinois Bell.
- 3) Illinois Bell shall restructure its end-user sent-paid (coin) rates in the structure as above described and to produce a minimum additional \$16.5 million to satisfy the competitive services aggregate revenue shortfall.
 - 4) Regardless of the classification at any given time of Illinois Bell's network services, to and including June 30, 2005, Illinois Bell shall offer to provide any individual payphone or aggregation of payphones of a member of the Payphone Association with network usage at the above described rates.

IT IS FURTHER ORDERED THAT, by July 1, 1995, Illinois Bell shall file tariffs for the implementation of conclusions reached by the Commission. With the filing of the above-stated network usage rates, Illinois Bell shall submit supporting cost studies.

IT IS FURTHER ORDERED THAT, all motions, petitions, and tariffs not previously disposed of are hereby disposed of consistent with the findings of this Order.

IT IS FURTHER ORDERED THAT, the Chief Clerk of the Commission should maintain information identified as proprietary and data so designated in this proceeding in a manner which will not permit disclosure, dissemination, revelation or reproduction thereof without further Order of the Commission; provided that the proprietary information and data shall be certified on any appeal in any manner which informs the Clerk of any Court of the action of this Commission with regard thereto in order to enable any such Court to enter such order or orders as such Court shall deem necessary and proper.

IT IS FURTHER ORDERED THAT, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

88-0412

By Order of the Commission this 7th day of June, 1995.

(SIGNED) DAN MILLER

Chairman

(S E A L)

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
CERTIFICATE

Re: 88-0412

I, DONNA M. CATON, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of order made and entered of record by said Commission on June 7, 1995.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on June 9, 1995.

Donna M. Caton
Chief Clerk

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CITIZENS UTILITY BOARD)	
Complainant)	
)	
v.)	
)	
ILLINOIS BELL TELEPHONE COMPANY)	Docket 96-0346
Respondent)	
)	
Complaint for an investigation)	
regarding the proper service)	
classification of Illinois Bell)	
Telephone Company's payphone)	
services and for the establishment)	
of just and reasonable payphone)	
rates.)	

MOTION TO DISMISS

Illinois Bell Telephone Company ("Ameritech Illinois" or "the Company"), by its attorneys, hereby moves to dismiss the Verified Complaint filed by the Citizens Utility Board ("CUB") in the captioned proceeding. In support whereof, Ameritech Illinois states as follows:

1. Ameritech Illinois currently offers payphone service pursuant to a competitive classification. The Commission concluded that Ameritech Illinois' payphone service was properly classified as competitive a little over a year ago after an extensive, litigated proceeding. Order in Docket 88-0412, adopted June 7, 1995 (hereafter the "Payphone Complaint Order"). The Commission also required and subsequently approved rate increases necessary for payphone service to satisfy aggregate revenue test established in Section 13-507 of the Public Utilities Act.

The Company has continued to make rate adjustments as appropriate in the marketplace.

2. Consistent with the Commission's conclusion in Docket 88-0412, payphone service offered by non-LEC payphone providers has been classified as competitive since the initiation of such service in the mid-1980s. No Commission proceeding has established any rate parameters applicable to payphone service provided to end users and no rate investigation has ever been conducted regarding non-LEC payphone providers' end user rates.

3. Notwithstanding this regulatory history, CUB has filed its complaint claiming that the competitive classification just approved last year should be reversed. CUB contends that Ameritech Illinois' payphones do not meet the standards applicable to competitive services under Section 13-502(b). (CUB Complaint, pp. 9-16). CUB also contends that, even if payphone service is properly classified as competitive, Ameritech Illinois' payphone rates are not "just and reasonable." (CUB Complaint, pp. 16-17). CUB's contentions are based primarily on comparisons with payphone rates of other telecommunications carriers outside of the state of Illinois. (CUB Complaint, pp. 18-25).

4. CUB based its complaint on several statutory provisions. CUB cites Sections 10-108 and 13-502(b) of the Act in support of its challenge to the competitive classification. (CUB Complaint, pp. 3-4). Its allegations

regarding just and reasonable rates are premised on Sections 13-505(c) and 9-250 of the Act. (CUB Complaint, p. 4).

5. CUB's complaint should be dismissed. The contention that Ameritech Illinois' payphone service is not competitive is nothing more than an improper collateral attack on the Payphone Complaint Order in Docket 88-0412 and may not be filed as a complaint. To the extent that CUB's complaint can be construed as a petition under Section 10-113 of the Act asking the Commission to reopen its classification decision in that proceeding, it should be denied. Finally, CUB has presented no legal or factual basis for investigating Ameritech Illinois' payphone rates at this time.

I. THE COMPETITIVE CLASSIFICATION

6. CUB's contention that it may contest the competitive classification of Ameritech Illinois' payphone service under Sections 10-108 and 13-502(b) of the Act is wrong as a matter of law. Under Section 10-108, CUB may file a complaint with respect to "...any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or of any order or rule of the Commission." Ameritech Illinois is not, and could not be, considered in violation of the Act or any Commission order or rule by virtue of classifying its payphone service as competitive. The Commission has already decided, after a fully contested proceeding initiated under Section 13-502(b), that Ameritech Illinois' payphone service

should be classified as competitive. Payphone Complaint Order, supra.

7. Docket 88-0412 was the longest, and most thorough, investigation of an Ameritech Illinois service that has ever been conducted. It was initiated in 1988 by the Independent Coin Payphone Association (now the Illinois Public Telecommunications Association) which contended that Ameritech Illinois' payphone service -- then classified as noncompetitive -- should be classified as competitive and seeking other relief (including increases in payphone prices to satisfy competitive fairness objectives). Virtually every aspect of Ameritech Illinois' payphone operations was ultimately subjected to scrutiny. Both industry and consumer interests were well aware of this proceeding. The Attorney General, the Office of Public Counsel and the People of Cook County were parties and the People of Cook County actively participated in every phase of the proceeding. At no time did CUB seek to intervene or participate in any way.

8. After almost seven years of litigation, the Commission adopted an order on June 7, 1995 which approved a competitive classification. No party sought rehearing and no party appealed. Thus, Ameritech Illinois is in full compliance with Section 13-502(b) of the Act, as interpreted by the Commission, and the Commission's Payphone Complaint Order. Use of the Section 10-108 complaint process would have been appropriate only in the event that Ameritech

Illinois had continued to classify payphone service as noncompetitive after the issuance of that order.

9. CUB has also presented no legal basis for proceeding under Section 13-502(b). It is a basic principal of both judicial and administrative procedure that issues need only be litigated once. Judicial litigants are prevented from obtaining a second "bite at the apple" through the doctrines of res judicata and collateral estoppel. See In re Marriage of Baumgartner, 226 Ill. App. 3d. 790, 794-95 (4th Dist. 1992). Administrative procedure modifies this rule, at least with respect to legislative and quasi-legislative proceedings, by allowing the agency to revisit its previous decisions, at the agency's discretion. See Mississippi River Fuel Corp. v. Commerce Comm'n, 1 Ill. 2d 509 513-14 (1953). However, principles of repose are as valid in the administrative context as in the judicial context: "a controversy should be resolved once, not more than once. The principle is as much needed for administrative decisions as for judicial decisions." K. Davis, Administrative Law §21:9 (1983); see also United States v. Utah Const. & Mining Co., 384 U.S. 394, 421-22 (1966) (res judicata properly applicable to administrative adjudication of issues of fact); Peoples Gas, Light & Coke Co. v. Buckles, 24 Ill. 2d 520, 528 (1962) (Commission orders not subject to collateral attack); Illini Coach Co. v. Commerce Comm'n, 408 Ill. 104, 110-114 (1951) (Commission orders not subject to collateral attack); Chicago and W.T.

Rys., Inc. v. Commerce Comm'n, 397 Ill. 460, 463 (1943)
(Commission's adjudication of facts cannot be relitigated);
Albin v. Commerce Comm'n, 87 Ill. App. 3d 434, 437 (4th Dist.
1980) (collateral estoppel precludes relitigation of prior
Commission order in second, related proceeding).

10. In this case, the Commission has two independent bases for dismissing CUB's complaint. First, consumers participated in and supported the Commission's decision in Docket 88-0412 regarding the competitive classification and, therefore, are barred by collateral estoppel from raising the same issues in a subsequent proceeding. CUB's stated function here is "to represent and protect the interests of Illinois residential utility customers in matters before the Commission and various other public bodies." (CUB Complaint, p. 3). Several consumer groups intervened in Docket 88-0412 and at least one -- the People of Cook County -- actively participated throughout the proceeding and supported the competitive classification. (Docket 88-0412, Initial Brief of the People of Cook County, administrative notice requested). Parties that have participated in a Commission proceeding must challenge the Commission's decision, if at all, in that proceeding through rehearing and appeal. Thus, customers are estopped from challenging the findings of the Payphone Complaint Order. Buckles, supra; Illini Coach, supra; Chicago and W.T. Rys., supra; Albin, supra.

11. The fact that customers are now represented by CUB rather than one of the former agencies does not change the

analysis. See People ex. rel. Neil F. Hartigan v. Commerce Comm'n, 243 Ill. 3d. 544, 549 (1st Dist. 1993) (res judicata barred class action where plaintiff was adequately represented in Commission proceedings by various consumer and governmental groups). Furthermore, nonparties have no greater right to collaterally attack orders than parties. CUB had every opportunity to participate in the Docket 88-0412 proceedings over their seven year course. CUB, for its own strategic reasons, elected not to. The mere fact that CUB has now apparently decided -- a year after the Docket 88-0412 proceedings were finally concluded -- that it does not like the result does not entitle CUB to start the case over again.

12. Second, the Commission generally has the power to dismiss a complaint without conducting evidentiary hearings, based on its own prior decisions and/or the affidavits filed by the parties, without conducting additional hearings. See, e.g., Chesterfield-Medora Telephone Co. v. Commerce Comm'n, 37 Ill. 2d 324, 327-28 (1967) (Commission has the power to dismiss complaints without hearings); Illini Coach Co. v. Commerce Comm'n, *supra*.

13. For example, in Illini Coach Co., complainants filed complaints seeking to vacate orders in which the Commission had denied them certificates of convenience and necessity and had granted certificates to the complainants' competitors. Respondents moved to dismiss, and the Commission granted dismissal. The Illinois Supreme Court

upheld the dismissal, holding that: (1) the complaints constituted an improper collateral attack on the Commission's prior orders, which should have been addressed through rehearing and appeal; and (2) the Commission had the power to dismiss the complaints, based on its earlier orders. Illini Coach Co., supra, at 109-14.

14. In Desai v. Metropolitan Sanitary District, 125 Ill. App. 3d. 1031 (1st Dist. 1984) the Illinois Appellate Court upheld an administrative decision by the Civil Service Board granting a "motion for summary judgment" by the defendant. The Board's decision was based in part on three of its earlier decisions, in which it had decided matters related to the complaint before it. The Court then held that the Board acted properly in relying on its past decisions in dismissing the plaintiff's complaint, and that the dismissal did not violate any of the plaintiff's procedural rights. Id. at 1033.

15. The Commission can and should exercise that power here. The investigatory proceeding authorized by Section 13-502(b) regarding the proper classification of Ameritech Illinois' payphone service has already been held. The Commission thoroughly investigated this issue and has unequivocally determined that Ameritech Illinois' payphone service is competitive within the meaning of the Public Utilities Act. Payphone Complaint Order, supra, p. 19. That decision is now binding on Ameritech Illinois and Ameritech Illinois' payphone services and should be relied on by the

Commission in dismissing CUB's complaint. The integrity of the Commission's orders would be hopelessly compromised if parties were allowed to end run final orders merely by filing a complaint under Sections 10-108 and 13-502(b) and demanding that the parties relitigate decided issues.

16. CUB claims that the Commission's conclusion in Docket 88-0412 relative to the proper classification of Ameritech Illinois' payphone service is not binding because it was based on a stipulation between Ameritech Illinois and the Payphone Association, not on its own legal analysis. (CUB Complaint, pp. 14-15). This is patently incorrect. The Commission clearly reached its own independent conclusion based on the record. The Commission noted in the Payphone Complaint Order that all parties to the proceeding (not just the parties to the stipulation) had agreed that Ameritech Illinois' payphone service was competitive and stated that it "agree[d]" with those parties. Payphone Complaint Order, supra, p. 19. Moreover, the Commission explicitly relied on the "...extensive facts of the record..." in reaching that conclusion, not on the stipulation. Ibid.

17. CUB contends that no analysis was undertaken in that Order of whether the Company's payphone service met the statutory standard. (CUB Complaint, p.15). It is obvious from the discussion cited above that the Commission did analyze the question. The fact that the Order does not contain an extended written discussion is beside the point. Since no party contested the competitive classification --

not Ameritech Illinois, not the Payphone Association, not Staff and not the People of Cook County -- there was no reason to do so. In any event, the depth of the Commission's written analysis only has legal relevance on appeal and no appeal was taken. Absent an appeal, the Commission's conclusion is final and binding, whether CUB finds it persuasive or not.

18. CUB's claim that the Commission believed that the competitive classification would "assist in keeping rates down" is taken out of context and is flatly inconsistent with the Order. (CUB Complaint, p. 15). The Commission could not have more clearly recognized that Ameritech Illinois' payphone rates would have to increase by at least \$16.5 million as a result of the reclassification. Payphone Complaint Order, supra, pp. 20-21. The rate discussion to which CUB cites related to the lower usage rates which Ameritech Illinois had agreed to charge Payphone Association members as part of the settlement. Payphone Complaint Order, supra, p. 24. The Commission concluded that this part of the stipulated agreement would assist in keeping the rates charged by Payphone Association members to their end users for payphone service down. This has nothing whatsoever to do with the rates charged by Ameritech Illinois to its end users for payphone service.

19. Accordingly, CUB may not pursue this proceeding under either Section 10-108 or Section 13-502(b), insofar as the competitive classification is concerned. Thus, even if

CUB is permitted to proceed on other grounds -- which it should not be, as discussed infra -- neither the 180-day time limit imposed by Section 13-502(b) or the one-year time limit imposed by Section 10-108 are applicable to this proceeding. (CUB Complaint, p. 4).

20. To the extent that CUB's petition can be maintained at all relative to the competitive classification -- and the Company believes that it cannot and should not be -- it must be viewed as a petition that the Commission rescind or alter its decision in the Payphone Complaint Order. Reversal of an existing Commission order falls within the purview of Section 10-113 of the Act:

"Anything in this Act to the contrary notwithstanding, the Commission may at any time, upon notice to the public utility affected, and after notice and opportunity to be heard as provided in the case of the complaints, rescind, alter or amend any rule, regulation, order or decision made by it."

As a petitioner under Section 10-113, CUB bears a heavy burden to demonstrate facts or circumstances that warrant such a reopening and the decision whether or not to grant such a petition lies entirely within the Commission's discretion.

21. Judicious exercise of the Commission's powers under Section 10-113 is essential to maintaining the integrity of the Commission's orders. Parties can and should be expected to participate in proceedings that impact their interests. All parties generally recognize that the Commission's decisions are final and will not be revisited, unless there are significant changes in the law or factual conditions that

existed at the time the order was entered. It would be extraordinarily disruptive if parties came to believe that they could collaterally attack final orders simply by filing a complaint. Indeed, the Illinois Supreme Court has recognized that the decision to reopen a prior order must take into account the public interest in the "...reasonable stability of the regulatory process." Union Electric Co. v. Commerce Comm'n, 39 Ill. 2d 386, 395 (1968).

22. The Commission's rules reflect this same policy orientation. Section 200.900 of the Rules of Practice which governs the reopening of proceedings provides that the Commission will only do so where the "conditions of fact or law have so changed" or the "public interest requires" such reopening. 83 Ill. Admin. Code §200.900 (emphasis added).

23. CUB has made no such showing here. CUB cites to no changes in the "conditions of fact or law" that would warrant reconsideration of the Payphone Complaint Order. CUB's theory of a "locational monopoly" could have been advanced in Docket 88-0412 just as easily as today. The mere fact that CUB did not raise it there does not make it a changed condition of fact. CUB has presented no evidence or even alleged any facts that would suggest that the payphone marketplace is any less competitive today than it was when the record in the Payphone Complaint Order was developed or when the Commission decided Docket 88-0412 last year. For example, CUB nowhere alleges that marketplace penetration by non-LEC payphones has significantly declined or that the

degree of competition has otherwise materially changed. Indeed, the Commission predicted that the effect of its order in Docket 88-0412 would be "an even more vigorous and active competitive environment" in payphone services. Payphone Complaint Order, supra, p. 24.

24. Similarly, there has been no change in the law. Section 13-502(b) of the Act establishes precisely the same standard today for a competitive classification as it did in 1988 when the Payphone Association filed its complaint and in 1995 when the Commission decided Docket 88-0412. The legal authority cited by CUB is utterly irrelevant. (CUB Complaint, pp. 10-12). The Illinois Supreme Court's 1953 decision in Produce Terminal Co. v. Ill. Commerce Comm'n., 414 Ill. 582 (1953), obviously does not interpret Section 13-502(b) of the Act -- which became part of the Act in 1986 -- and does not even constitute the Court's view on how to define "monopoly" services.¹ The MCI case involved dialing arrangements, not geographical access to services. The issue in that case was whether customers making long distance calls had competitive alternatives available when all calls using AT&T could be made on a 1+ basis, while competitors' calls in

¹ The "...on hand" language cited by CUB was used by the Court simply to distinguish the service options available to general firm gas customers versus interruptible and off-peak gas customers, which literally maintained their own, on-premises, stand-by facilities which used competing fuels. Id. at 594. This was unique to the particular circumstances at issue in that case and has no general bearing on what constitutes a competitive service. Indeed, the logical extension of CUB's argument would be that customers have to purchase telephone sets from all of the CPE vendors in the marketplace and have them "on hand" in their homes in order for telephone sets to be considered a competitive product. This is clearly nonsense.

certain areas of the state required extensive additional dialing arrangements. MCI Telecommunications Corp. v. Ill. Commerce Comm'n, 168 Ill. App. 3d. 1008 (1st Dist. 1988). Since there is no difference between the dialing arrangements available to customers using Ameritech Illinois and non-LEC payphones, the MCI case has no application to this proceeding. Moreover, this was a 1988 decision by the Illinois Appellate Court which the Commission was well aware of when it decided Docket 88-0412 and is not a "change" in the law since June of 1995.

25. Although it is not necessary to reach this issue given the Commission's decision in Docket 88-0412, CUB's theory of a "locational monopoly" has no merit in any event. (CUB Complaint, p. 10). Nothing in Section 13-502(b) requires that multiple payphones provided by different carriers be available at every payphone location for the service to be competitive. The record in Docket 88-0412 demonstrated that non-LEC payphones have been broadly deployed throughout Ameritech Illinois' service territory. (Docket 88-0412, Ill. Bell Ex. 1.2, administrative notice requested). The Commission properly concluded consumers had choices and that these choices were "reasonably available" within the meaning of the Act.

26. CUB's "locational monopoly" theory proves too much in any event. Any business with a geographic location has much the same characteristics CUB cites as proof that payphone service is not competitive. For example, Chevrolet

dealers only sell Chevrolets; the nearest Ford dealer may be several blocks or several miles away. Similarly, customers at McDonald's may buy McDonald's products but not Burger King or Wendy's products; and these restaurants are rarely co-located on the same premises. In both instances, customers must make some effort to find and avail themselves of their competitive alternatives. That does not mean that either the automobile or the fast food business is noncompetitive. Competitive alternatives are "reasonably available" in these marketplaces in the same sense that competitive alternatives are reasonably available in the payphone marketplace.²

27. Ameritech Illinois further notes that CUB's "locational monopoly" theory would, if adopted, require the Commission to reclassify as noncompetitive all payphones, not just Ameritech Illinois'. Consumers face the same degree of choice -- or lack thereof -- at all payphones, regardless of the identity of the provider. Thus, non-LEC payphone providers would have to be subject to the same regulatory mechanisms which CUB proposes for Ameritech Illinois.

28. CUB claims that the price increases implemented for Ameritech Illinois' payphones demonstrate that they are not competitive. (CUB Complaint, p. 13). CUB apparently

² CUB claims that consumers cannot be expected to "shop around" for alternative payphones because payphone calls are "essential". (CUB Complaint, p. 12). CUB's position has no merit. First, payphone calls run the gamut from the "essential" to the discretionary, and there is no reason to believe, *a priori*, that customers will not avail themselves of competitive options even for "essential" calls. Secondly, consumers "shop around" for "essential" goods every day: e.g. food, clothing and housing. There is no basis for CUB's assumption that payphone calls should somehow be considered exempt from normal marketplace forces.

refuses to accept the fact that services can be underpriced as a result of past regulatory decisions and that "regulated" prices can be below market levels. CUB also virtually ignores the fact that at least a \$16.5 million rate increase was required as a matter of law to satisfy the aggregate revenue test in Section 13-507 of the Act. Payphone Complaint Order, supra, pp. 20-21. Ameritech Illinois is at a loss to understand how rate increases required to meet express statutory requirements in the Public Utilities Act could conceivably be considered contrary to the General Assembly's legislative intent.

29. Finally, there is no "benefit" test that applies to competitive classifications under Section 13-502(b). (CUB Complaint, p. 14). If services meet the standard set forth in Section 13-502(b) of the Act, they must be classified as competitive. The Commission may not decide that a service that is otherwise competitive under the Act should be classified as noncompetitive based on some theory that ratepayers will not "benefit".³

30. In view of the foregoing, in the event that CUB's petition is viewed as a request under Section 10-113 of the Act to reopen Docket 88-0412, it should be denied. CUB has

³ In any event, CUB takes an unduly narrow view of consumer "benefit." Society as a whole will benefit as telecommunications services are provided by multiple carriers and marketplace forces, rather than regulation, determine economically efficient rate levels, even if that process results in rate increases for some underpriced services. The General Assembly made this very basic policy decision when it established the regulatory structures applicable to "competitive" and "noncompetitive" services. The fact that CUB disagrees -- and prefers continuation of monopoly regulation of payphone services -- has no legal significance.

presented no legal or factual basis that would warrant such an action. Ameritech Illinois, the Payphone Association, Staff and other parties spent seven long years litigating Docket 88-0412. Ameritech Illinois and the Payphone Association ultimately reached a settlement agreement that allowed them to put their past acrimony aside and move forward in a positive manner -- a settlement agreement which no party opposed and which the Commission found to be reasonable, supported by the record, and in the public interest. Since then, Ameritech Illinois and the Illinois payphone industry have appropriately relied on that Order in making a wide variety of business decisions and in establishing new business relationships. It would be a massive injustice to all parties which participated in Docket 88-0412 to reopen that order based solely on CUB's belated decision that it does not support the results. It would also open the procedural doors to requests by other parties to endlessly relitigate other Commission orders. No justification for such an action has been provided here.

II. AMERITECH ILLINOIS' PAYPHONE RATE LEVELS AND RATE STRUCTURE

31. CUB contends that, even if Ameritech Illinois' payphone service remains classified as competitive, the Commission should nevertheless initiate an investigation into whether its rates are "just and reasonable". (CUB Complaint, pp. 16-17). Ameritech Illinois agrees that the Commission has the authority to initiate such an investigation under