Ameritech

Law Department
150 E. Gay Street
Room 4C
Columbus, OH 43215-3111
Office: 614/223-7928
Fax: 614-223-5955

Jon F. Kelly
Counsel

September 8, 1997

Daisy Crockron, Chief
Docketing Division
Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, Ohio 43215-3793

Re: Sprint Communications Company L.P. v. Ameritech Ohio
Case No. 96-142-TP-CSS

Dear Ms. Crockron:

Submitted for filing in the referenced case, as requested by the Attorney Examiner, is a copy of the September 5, 1997, Order of the Illinois Appellate Court, First Judicial District in Case Nos. 1-96-2146 and 1-96-2166.

Very truly yours,

Jon F. Kelly

Enclosure

FIFTH DIVISION
September 5, 1997

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

Nos. 1-96-2146, 1-96-2166
Consolidated

IN THE
ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT

ILLINOIS BELL TELEPHONE COMPANY, Petitioner, v. ILLINOIS COMMERCE COMMISSION, MCI TELECOMMUNICATIONS CORPORATION, AT&T COMMUNICATIONS OF ILLINOIS, INC., LCI INTERNATIONAL TELECOM CORP., and SPRINT COMMUNICATIONS COMPANY, L.P., Respondents.	)	Petition for Review of the Illinois Commerce Commission Order of April 3, 1996, in ICC Docket Nos. 96-0075 and 96-0084 (consolidated).
THE PEOPLE OF THE STATE OF ILLINOIS ex rel. JAMES E. RYAN, ATTORNEY GENERAL, Petitioner, v. ILLINOIS COMMERCE COMMISSION and ILLINOIS BELL TELEPHONE COMPANY, Respondents.	)	Petition for Review of the Illinois Commerce Commission Order of April 3, 1996, in ICC Docket Nos. 96-0075 and 96-0084 (consolidated).

ORDER

Illinois Bell Telephone Company (Ameritech) appeals an order of the Illinois Commerce Commission (Commission) which found that Ameritech had violated the nondiscrimination provisions of the

Public Utilities Act (Act) (220 ILCS 5/1-101, et seq. (West 1996)). The Attorney General of Illinois, who was granted leave to intervene in the proceeding before the Commission, filed a separate appeal asserting that the Commission failed to enforce the tariff-filing requirements of the Act.

The Commission's order as to Ameritech is affirmed in part and reversed in part, and the Attorney General's appeal is dismissed for lack of jurisdiction.

Background

On February 12, 1996, AT&T Communications of Illinois, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and LCI International Telecom Corp. (LCI) filed a joint complaint with the Commission alleging that Ameritech's December, 1995, bill insert mailed to Ameritech's residential and small business customers in Illinois was misleading, discriminatory and anti-competitive in violation of sections 9-241 and 13-505.2 of the Act (220 ILCS 5/9-241, 5/13-505.2 (West 1996)). On February 13, 1996, Sprint Communications Company L.P. (Sprint) filed a complaint before the Commission making essentially the same allegations. (AT&T, MCI, LCI and Sprint will be collectively referred to as Complainants.)

The bill insert offered Ameritech customers protection from "slamming", the illegal practice of changing a customer's long distance service without the customer's knowledge or consent. Such protection is generally referred to in the industry as "PIC

protection", i.e., primary interexchange carrier protection. PIC protection has been available to Ameritech's customers since 1986, although Ameritech never actively promoted this service.

On the front of the bill insert, in bold letters, it states, "DON'T GET SLAMMED!" Immediately below that, the insert reads:

> "You can stop unauthorized changes to your long-distance phone service. Please read and respond now to protect yourself."

The inside of the bill insert states:

> "Some phone companies are engaging in a practice commonly known as slamming: switching consumers' long-distance or other telecommunications service without their knowledge or consent. This is an illegal practice on which the Federal Communications Commission has begun to crack down. While Ameritech can do nothing to resolve the problem after your long-distance service has been slammed, we can easily protect you before it happens.
>
> Simply complete the information below and return this form with your bill payment to ensure that slamming never happens to you. Upon receipt, Ameritech will not permit any changes to your account unless you notify us by phone or in writing of your desire to makes changes. There is

no charge to you for this service." (Emphasis original.)

Approximately 10% of the market, or 300,000 Ameritech customers, responded to the bill insert by requesting PIC protection.

The complaints allege that the bill insert is misleading in that it emphasizes protection from unauthorized changes in long distance service, while Ameritech is actually "freezing" not only a customer's long distance service provider, but also the customer's "intraMSA" and local service providers.[1] The complaints further allege that the mailing of the bill insert just a few months prior to customer notification and implementation of intraMSA presubscription[2] was intended to, and will have, a chilling effect on competition in the intraMSA and local exchange markets which Complainants and other carriers are

[1]"MSA" or "Market Service Area" is a designated telephone service area for billing and regulatory purposes. See 220 ILCS 5/13-208 (West 1996). Intermediate distance toll calls are referred to as "intraMSA" calls because they originate and terminate in the same MSA. Long distance calls cross MSA boundaries and are referred to as "interMSA" calls.

[2]Presubscription allows a customer to choose a carrier to which the customer's calls will be automatically routed, rather than dialing an access code on a call-by-call basis. To presubscribe, the customer communicates his or her choice of carrier to an interexchange carrier (IXC) such as Complainants, which then transmits the changes to the relevant local exchange carrier (LEC), such as Ameritech. The LEC processes the changes without contacting the customer. Because changes are transmitted by the IXC, rather than the customer, the potential for "slamming" exists. Ameritech was ordered by the Commission to implement presubscription in the intraMSA market no later than April 7, 1996.

attempting to enter. Once presubscription becomes available, customers who have signed up for PIC protection must contact Ameritech directly before Ameritech will permit a change in the customer's intraMSA provider.

AT&T, MCI, and LCI amended their joint complaint to add allegations regarding Ameritech's implementation in late February, 1996, of an "Anti-Slamming Hotline" designed to allow those customers who did not respond to the bill insert to elect PIC protection by dialing a toll-free number. The amended complaint alleged that the hotline, like the bill insert, was anti-competitive.

The Commission consolidated the two complaint dockets and leave was granted to the Illinois Attorney General to intervene. Following an evidentiary hearing and briefing of the issues, on April 3, 1996, the Commission issued its order finding that (1) the bill insert is misleading in that it fails to clearly inform customers that PIC protection will apply to all their telecommunication services, not simply long distance service; and (2) the insert is discriminatory and anti-competitive in that it establishes unfair and unreasonable barriers to IXC intraMSA competition contrary to sections 9-241 and 13-505.2 of the Act. The Commission ordered Ameritech to refrain from providing PIC protection to intraMSA service for a period of six months; to send out a new bill insert within 14 days, approved by Commission Staff, educating Ameritech's customers about PIC protection and

presubscription options; to refrain from attempting to retain its customers during telephone calls for the purpose of changing intraMSA service; and, with customer consent, to permit conference calls between IXCs, Ameritech, and the customer, to effectuate changes in intraMSA service.

The Commission also rejected the Attorney General's position that Ameritech failed to comply with the tariff-filing requirements of the Act with respect to its offer of PIC protection. Appeals by Ameritech and the Attorney General have been consolidated for review.

Ameritech's Appeal

Preliminarily, we note that Ameritech has already complied with a portion of the Commission's order--it has refrained from offering PIC protection for six months in the intraMSA market and has sent a new bill insert to its customers. Because no effective relief therefrom can be granted by this court, appeal of these portions of the Commission's order is moot. In re Estate of Wellman, 174 Ill. 2d 335, 353 (1996).

As to the balance of the Commission's order, we first address Ameritech's claim that the order "does not contain findings or analysis sufficient to allow an informed judicial review" and that the matter should be remanded. 220 ILCS 5/10-201(e)(iii) (West 1996). In particular, Ameritech argues that the Commission found Ameritech's conduct "anti-competitive" without providing a definition of that term or an appropriate

legal standard.

While the Commission's order does not explicitly set forth a definition of "anti-competitive", the order is nonetheless sufficiently specific to permit informed judicial review. The order states that, in order "[t]o determine whether the bill insert is discriminatory and anti-competitive, a review of Section 9-241 and 13-505.2 of the Act is necessary." Based on these statutory provisions, and the evidence adduced at the hearing, the Commission found that Ameritech's bill insert was "discriminatory and anti-competitive in that it establishes unfair and unreasonable barriers to IXC intraMSA competition". The order also provides that the bill insert was "designed to help maintain [Ameritech's] monopoly in the intraMSA and local market in Illinois and to place [Complainants] at a competitive disadvantage in attempting to break into the market." Thus, the statutory basis for the Commission's decision is clear, as is the Commission's notion of what constitutes discriminatory and anti-competitive conduct. Thus, there is no need to remand the matter to the Commission for further findings and analysis. See Chicago & North Western Transportation Co. v. Illinois Commerce Commission, 230 Ill. App. 3d 812, 818-19 (1992); Lefton Iron & Metal Co. v. Illinois Commerce Commission, 174 Ill. App. 3d 1049, 1055-56 (1988).

As to the substance of the order, the statutory provisions on which the Commission relies provide as follows:

"5/9-241. Discrimination-Prohibition

§ 9-241. No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service.

However, nothing in this Section shall be construed as limiting the authority of the Commission to permit the establishment of economic development rates as incentives to economic development either in enterprise zones as designated by the State of Illinois or in other areas of a utility's service area. Such rates should be available to existing businesses which demonstrate an increase to existing load as well as new businesses which create new load for a utility so as to create a more balanced utilization of generating capacity. The Commission shall ensure that such rates are established at a level which provides a net

benefit to customers within a public utility's service area.

Prior to October 1, 1989, no public utility providing electrical or gas service shall consider the use of solar or other nonconventional renewable sources of energy by a customer as a basis for establishing higher rates or charges for any service or commodity sold to such customer; nor shall a public utility subject any customer utilizing such energy source or sources to any other prejudice or disadvantage on account of such use. No public utility shall without the consent of the Commission, charge or receive any greater compensation in the aggregate for a lesser commodity, product, or service than for a greater commodity, product or service of like character.

The Commission, in order to expedite the determination of rate questions, or to avoid unnecessary and unreasonable expense, or to avoid unjust or unreasonable discrimination between classes of customers, or whenever in the judgment of the Commission public interest so requires, may; for rate making and accounting purposes, or either of them, consider one or more municipalities either with or without the adjacent

or intervening rural territory as a regional unit where the same public utility service serves such region under substantially similar conditions, and may within such region prescribe uniform rates for consumers or patrons of the same class.

Any public utility, with the consent and approval of the Commission, may as a basis for the determination of the charges made by it classify its service according to the amount used, the time when used, the purpose for which used, and other relevant factors. 220 ILCS 5/9-241 (West 1996).

* * *

§ 13-505.2. Nondiscrimination in the provision of noncompetitive services. A telecommunications carrier that offers both noncompetitive and competitive services shall offer the noncompetitive services under the same rates, terms, and conditions without unreasonable discrimination to all persons, including all telecommunications carriers and competitors. A telecommunications carrier that offers a noncompetitive service together with any optional feature or functionality shall offer the noncompetitive service together with each optional feature or functionality under the same rates,

terms, and conditions without unreasonable discrimination to all persons, including all telecommunications carriers and competitors." 220 ILCS 5/13-505.2 (West 1996).

Ameritech argues that a public utility's treatment of competitors is irrelevant under sections 9-241 and 13-505.2, except to the extent that such competitors are also customers of the utility. The Commission argues that, as to those customers who signed up for PIC protection, Ameritech, itself, would be treated differently than other carriers and that this is the essence of discrimination.

The primary objective of statutory construction is to give effect to the true intent of the legislature by considering the plain and ordinary meaning of the words employed in the context of the statute's necessity and its stated purpose. Kraft, Inc. v. Edgar, 138 Ill. 2d 178, 189 (1990); Illinois Bell Telephone Co. v. Illinois Commerce Commission, 282 Ill. App. 3d 672, 676 (1996). The Commission's interpretation of law is not binding on this court. Citizens Utility Board v. Illinois Commerce Commission, 166 Ill. 2d 111, 121 (1995). However, because the Commission is the agency charged with administration and enforcement of the Act, its interpretation will be accorded great deference and should be reversed only if it is erroneous. Illinois Bell Telephone Co. v. Illinois Commerce Commission, 282 Ill. App. 3d at 676.

Article IX of the Act sets forth a comprehensive structure governing the ratemaking authority of public utilities. The provisions of Article IX have general applicability to all public utilities, not merely telecommunications carriers. Section 9-241, on which the Commission relies, is titled "Discrimination-Prohibition". The opening paragraph of this section generally prohibits a public utility, as to its rates, services, and facilities, from granting any preference or advantage to any person or corporation or, conversely, subjecting any person or corporation to any prejudice or disadvantage. The balance of section 9-241 permits the development of economic development rates, prohibits discrimination against a customer based on the customer's use of solar or other nonconventional renewable sources of energy, permits the uniform establishment of rates for municipalities served by the same public utility, and permits a utility to classify its services for ratemaking purposes according to certain criteria. Plainly, the focus of section 9-241 is the prohibition of discrimination among a utility's customers. This interpretation is in accord with prior decisions of Illinois courts that have been called upon to construe and apply this section of the Act. See City of St. Charles v. Illinois Commerce Commission, 21 Ill. 2d 259, 264 (1961); Union Electric Co. v. Illinois Commerce Commission, 77 Ill. 2d 364, 383 (1979); Peoples Gas Light & Coke Co. v. Illinois Commerce Commission, 165 Ill. App. 3d 235, 243 (1987); Peoples Gas Light &

Coke Co. v. Illinois Commerce Commission, 175 Ill. App. 3d 39, 53 (1988); Shortino v. Illinois Bell Telephone Co., 207 Ill. App. 3d 52, 60 (1991); City of Chicago v. Illinois Commerce Commission, 264 Ill. App. 3d 403, 411 (1993).

Significantly, section 9-241 includes no mention of competition among utilities in general, or telecommunication carriers in particular. Nor does the language suggest any sort of prohibition related to a public utility's conduct vis a vis its competitors. Thus, we find that the interpretation now urged by the Commission and Complainants, that section 9-241 also prohibits anti-competitive conduct by telecommunications carriers or conduct which discriminates against a carrier's non-customer competitors, is not warranted by the plain language of the statute. Notwithstanding the Commission's erroneous interpretation of section 9-241, we affirm the Commission's decision as to Ameritech's conduct based on the provisions of section 13-505.2.

Unlike Article IX which is of general applicability to all public utilities, Article XIII is applicable solely to telecommunications carriers and was promulgated by the legislature in response to the "restructuring of the telecommunications industry" and the opening of "some aspects of the industry to competitive entry". 220 ILCS 5/13-102(b) (West 1996). The legislature specifically recognized the role that competition in the marketplace would play in the provision of

affordable and efficient telecommunications services (220 ILCS 5/13-102(c) (West 1996)), and that "competition should be permitted to function as a substitute for certain aspects of regulation" (220 ILCS 5/13-103(b) (West 1996)). See also Illinois Bell Telephone Co. v. Illinois Commerce Commission, 282 Ill. App. 3d 672, 676-77 (1996).

Thus, section 13-505.2 must be construed in light of the "changing nature of the telecommunications industry" (220 ILCS 5/13-103(e) (West 1996)), and stated legislative findings and policy favoring competition (220 ILCS 5/13-102(b), (c), 5/13-103(b) (West 1996)). Section 13-505.2 provides that noncompetitive services by a telecommunications carrier must be offered under the same rates, terms and conditions "without unreasonable discrimination to all persons, including all telecommunications carriers and competitors." (Emphasis added.) Ameritech construes this language to mean only that a utility may not discriminate among its customers in the offering of noncompetitive services, even where the customer is also a competitor. The Commission interprets section 13-505.2 as also prohibiting a carrier from engaging in anti-competitive conduct or discriminating against competitors in the offering of noncompetitive services, without regard to whether the competitor is also a customer. We believe the Commission's interpretation is reasonable in light of the express language of the statute and the legislative findings and policy underlying the adoption of

Article XIII. Accordingly, we defer to the Commission's interpretation.

Ameritech argues that its conduct was not, in any event, anti-competitive or discriminatory and that the findings of the Commission are not supported by substantial evidence. We disagree. On review of an order of the Commission, its finding and conclusions on questions of fact shall be held prima facie to be true and its decision shall be held to be prima facie reasonable. 220 ILCS 5/10-201(d) (West 1996). However, an order of the Commission will be reversed where its findings are not supported by substantial evidence based on the entire record. 220 ILCS 5/10-201(e)(iv) (West 1996). "Substantial evidence" is that "which a reasoning mind would accept as sufficient to support a particular conclusion". Central Illinois Public Service Co. v. Illinois Commerce Commission, 268 Ill. App. 3d 471, 479 (1994). It is more than a mere scintilla, but less than a preponderance. Central Illinois Public Service Co. v. Illinois Commerce Commission, 268 Ill. App. 3d at 479. A party challenging an order of the Commission on this basis must do more than show that the evidence supports a different conclusion. It must demonstrate that the opposite conclusion is clearly evident. Continental Mobile Telephone Co. v. Illinois Commerce Commission, 269 Ill. App. 3d 161, 171 (1994).

Relying on various antitrust cases, Ameritech contends its conduct is not "anti-competitive" because there were legitimate

business reasons for promoting its PIC protection service--avoiding lost revenues and protecting its market share. We are not convinced, however, that antitrust law should govern the determination of whether Ameritech's conduct complied with section 13-505.2 of the Act. Thus, the relevant inquiry is not, as Ameritech contends, whether its conduct was "designed solely to insulate the firm from competitive pressure" (State of Illinois ex rel. Burris v. Panhandle Eastern Pipe Line Co., 935 F.2d 1469, 1481 (7th Cir. 1991)), but rather whether Ameritech's conduct was consistent with our legislature's stated policy of facilitating competition in the changing telecommunications industry. We believe there is substantial evidence supporting the Commission's conclusion that Ameritech's conduct was violative of section 13-505.2.

While there may be a variety of reasons for Ameritech's active promotion of its nine-year old PIC protection service in December, 1995, the fact remains that Ameritech's bill insert was mailed on the eve of intraMSA presubscription and prior to customers even being notified that they would have a choice as to their intraMSA provider. In effect, Ameritech was locking in a customer's choice of intraMSA carrier before the customer was aware of a choice and had the opportunity to exercise it.

The testimony also established that PIC protection made it more difficult and time consuming, for both the customers and the Complainants, to implement a customer's initial choice of

intraMSA provider, where the choice was a carrier other than Ameritech. Before an IXC, such as Complainants, could implement a customer's selection, Ameritech would need to receive express written or oral authorization from the customer. An MCI witness testified that, historically, in the overwhelming majority of cases, customers with PIC protection do not follow up and provide their LEC (such as Ameritech) with the required authorization to make the change. Thus, by adding this additional step to the procedure for implementing a customer's initial intraMSA choice, customers who select a carrier other than Ameritech are less likely to follow through on their selection. While we do not question the value of PIC protection as a means of preventing illegal "slamming", we agree with the Commission that the timing of Ameritech's bill insert and offer of PIC protection hindered the opening of the intraMSA market to competition and presented an additional hurdle to customer choice.

Ameritech also argues that the Commission's decision is based, in part, on certain internal Ameritech documents which were not admitted into evidence. Even if the documents are not properly part of the record before this court, we believe the totality of the evidence adduced during the hearing and upon which the Commission relied is sufficient to sustain the Commission's finding that Ameritech's conduct was anti-competitive.

As to the Commission's finding that the bill insert was

"discriminatory", Ameritech's arguments to the contrary are premised on its narrow interpretation of section 13-505.2 which the Commission, and this court, have already rejected. Further, as discussed above, Ameritech's conduct prejudiced Complainants by hindering their ability to implement a customer's initial choice of intraMSA provider.

Finally, we consider Ameritech's claim that the record provides no support for the Commission's finding that the bill insert was "misleading". Ameritech emphasizes that the record contains no evidence that even one customer was misled and that the Commission's conclusion that the insert "could be" misleading is mere speculation.

It is undisputed that the mailing of the bill insert preceded customer notification of intraMSA presubscription. This fact, coupled with the language in the bill insert emphasizing protection of a customer's long distance phone service, provide a reasonable and sufficient basis for the Commission's finding that the bill insert was misleading. Since customers were not yet informed that they would have a choice in their intraMSA provider, there is no reason to believe that customers would interpret the insert as providing protection for anything other than their long distance service.

For the foregoing reasons, we reverse that portion of the Commission's order which determined that Ameritech had violated the provisions of section 9-241 of the Act, and affirm the

Commission's order based on the provisions of section 13-505.2 of the Act.

Attorney General's Appeal

The Attorney General asserts that the Commission committed reversible error when it failed to enforce various provisions of the Act upon discovering, during the course of the hearing, that Ameritech had not filed tariffs covering its PIC protection service. See 220 ILCS 5/9-201, 9-102, 9-103, 9-104 (West 1996). We agree with Ameritech and the Commission that the issue of tariffing PIC protection was not properly before the Commission and that no final and appealable order was entered on this matter.

Pursuant to the Illinois Administrative Code, a petition to intervene in a proceeding before the Commission shall contain, among other things, a "plain and concise statement of the nature of such petitioner's interest" and, "[i]f affirmative relief is sought, specific prayers for such relief, which may be in the alternative." 83 Ill. Adm. Code §200.200 a). Additionally, an intervenor "shall accept the status of the record as the same exists at the time of the beginning of that person's intervention." 83 Ill. Adm. Code §200.200 d).

The petition to intervene filed by the Attorney General contains only a statement of the Attorney General's interest in intraMSA presubscription on behalf of Illinois consumers. There is no request for affirmative relief and no mention of tariffing

PIC protection. The parties and the Commission first became aware that the Attorney General was seeking affirmative relief when he filed his brief subsequent to the evidentiary hearing. Although the matter of tariffing PIC protection was touched on briefly during the hearing, there was no prior indication that the Attorney General sought to make this an issue.

Further, at a prehearing conference held prior to the Attorney General's intervention but at which he was nonetheless present, the hearing officer made a determination limiting the scope of the proceeding to the issues raised in the complaints. Upon the Attorney General's subsequent intervention, he was bound to accept this determination. 83 Ill. Adm. §220.200 d).

We note also that the hearing officer's decision to limit the proceeding to the issues raised in the complaints is consistent with the well-settled rule that an administrative agency has broad discretion in conducting its hearing. See Antioch Milling Co. v. Public Service Co., 4 Ill. 2d 200, 210 (1954); Foley v. Metropolitan Sanitary District, 213 Ill. App. 3d 344, 351 (1991); Six-Brothers King Drive Supermarket, Inc. v. Department of Revenue, 192 Ill. App. 3d 976, 982 (1989). Moreover, the Commission is not at liberty to enter an order that is broader than the complaint. To do so would deprive the responding party of notice and an opportunity to defend and to address the issue or charge. People Gas Light & Coke Co. v. Illinois Commerce Commission, 221 Ill. App. 3d 1053, 1060 (1991).

The issue of tariffing PIC protection, raised by the Attorney General for the first time in his post-hearing brief, was not an issue of which Ameritech had notice and an opportunity to address, and thus was not an issue on which the Commission could properly rule. Indeed, with respect to the question of tariffing PIC protection, the Commission's order states only:

> "The AG would have Respondent [Ameritech] file an appropriate tariff to cover PIC protection. Because there is no need to tariff PIC protection as a result of this proceeding, this AG proposal is not accepted.
>
> * * *
>
> We do not agree that PIC protection needs to be tariffed at this time. Until slamming concerns and other presubscription issues are addressed by the Commission, the parameters of such a tariff cannot be adequately defined."

We do not view the Commission's rejection of the Attorney General's proposal at this time as a substantive finding that Ameritech's PIC protection service is subject to the Act's tariffing requirements. The Commission's order recognizes that anti-slamming services have not been fully or adequately explored by the Commission in this proceeding, or elsewhere. Thus, the order provides that "the Commission will initiate a separate

investigation docket into lawful methods of preventing slamming". The Commission's failure to initiate such a docket does not change the nature of the order entered or the scope of the proceeding.

Based on the record before this court, we conclude that the issue of tariffing PIC protection was outside the scope of the proceeding and that the Commission properly declined to rule on the Attorney General's claim. Accordingly, there is no final and appealable order as to the tariffing issue and the Attorney General's appeal is dismissed for want of jurisdiction. 220 ILCS 5/10-201 (West 1996); Moncada v. Illinois Commerce Commission, 164 Ill. App. 3d 867, 871-72 (1987).

No. 1-96-2146--AFFIRMED IN PART AND REVERSED IN PART.

No. 1-96-2166--APPEAL DISMISSED.

HOURIHANE, J., with HARTMAN, P.J., and HOFFMAN, J., concurring.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following parties by U. S. Mail, postage prepaid, this 8th day of September, 1997.

William A. Adams
Arter & Hadden
10 West Broad Street, Suite 2100
Columbus, Ohio 43215

Benita Kahn
Vorys, Sater, Seymour and Pease
P. O. Box 1008
Columbus, Ohio 43216-1008

Martha L. Jenkins
Sprint Communications Company L.P.
8140 Ward Parkway
Kansas City, Missouri 64114

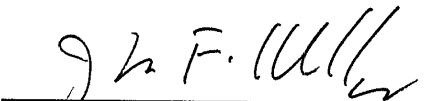
Evelyn R. Robinson-McGriff
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
77 S. High St., 15th Floor
Columbus, Ohio 43266-0550

Barth E. Royer
Judith B. Sanders
Bell, Royer & Sanders, Co. LPA
33 S. Grant Ave.
Columbus, Ohio 43215-3927

Darrell S. Townsley
MCI Telecommunications Corporation
205 North Michigan Avenue, Suite 3700
Chicago, Illinois 60601

Russell M. Blau
Swidler & Berlin
3000 K Street, Suite 300
Washington, D.C. 20007-5116

Paul A. Colbert
Stephen A. Reilly
Assistant Attorneys General
Public Utilities Section
180 E. Broad St., 7th Floor
Columbus, Ohio 43215-3793



Jon F. Kelly