

1 AN ACT concerning public utilities.

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 Section 13-515 as follows:

6 (220 ILCS 5/13-515)

7 (Section scheduled to be repealed on July 1, 2001)

8 Sec. 13-515. Enforcement.

9 (a) The following expedited procedures shall be used to  
10 enforce the provisions of Section 13-514 of this Act except  
11 as provided in subsection (b). ~~However,~~ The Commission, the  
12 complainant, and the respondent, however, may mutually agree  
13 to adjust the procedures established in this Section. If the  
14 Commission determines, pursuant to subsection (b), that the  
15 procedural provisions of this Section do not apply, the  
16 complaint shall continue pursuant to the general complaint  
17 provisions of Article X.

18 (b) The provisions of this Section shall not apply to an  
19 allegation of a violation of item (8) of Section 13-514 by a  
20 Bell operating company, as defined in Section 3 of the  
21 federal Telecommunications Act of 1996, unless and until such  
22 company or its affiliate is authorized to provide inter-LATA  
23 services under Section 271(d) of the federal  
24 Telecommunications Act of 1996; provided, however, that a  
25 complaint setting forth a separate independent basis for a  
26 violation of Section 13-514 may proceed under this Section  
27 notwithstanding that the alleged acts or omissions may also  
28 constitute a violation of item (8) of Section 13-514.

29 (c) No complaint may be filed under this Section until  
30 the complainant has first notified the respondent of the  
31 alleged violation and offered the respondent 48 hours to

1 correct the situation. Provision of notice and the  
2 opportunity to correct the situation creates a rebuttable  
3 presumption of knowledge under Section 13-514.

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

7 (1) The complaint shall be filed with the Chief  
8 Clerk of the Commission and shall be served in hand upon  
9 the respondent, the executive director, and the general  
10 counsel of the Commission at the time of the filing.

11 (2) A complaint filed under this subsection shall  
12 include a statement that the requirements of subsection  
13 (c) have been fulfilled and that the respondent did not  
14 correct the situation as requested.

15 (3) Reasonable discovery specific to the issue of  
16 the complaint may commence upon filing of the complaint.  
17 Requests for discovery must be served in hand and  
18 responses to discovery must be provided in hand to the  
19 requester within 14 days after a request for discovery is  
20 made.

21 (4) An answer and any other responsive pleading to  
22 the complaint shall be filed with the Commission and  
23 served in hand at the same time upon the complainant, the  
24 executive director, and the general counsel of the  
25 Commission within 7 days after the date on which the  
26 complaint is filed.

27 (5) If the answer or responsive pleading raises the  
28 issue that the complaint violates subsection (i) of this  
29 Section, the complainant may file a reply to such  
30 allegation within 3 days after actual service of such  
31 answer or responsive pleading. Within 4 days after the  
32 time for filing a reply has expired, the hearing officer  
33 or arbitrator shall either issue a written decision  
34 dismissing the complaint as frivolous in violation of

1 subsection (i) of this Section including the reasons for  
2 such disposition or shall issue an order directing that  
3 the complaint shall proceed.

4 (6) A pre-hearing conference shall be held within  
5 14 days after the date on which the complaint is filed.

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

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

29 (e) If the alleged violation has a substantial adverse  
30 effect on the ability of the complainant to provide service  
31 to customers, the complainant may include in its complaint a  
32 request for an order for emergency relief. The Commission,  
33 acting through its designated hearing examiner or arbitrator,  
34 shall act upon such a request within 2 business days of the

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

22 (f) The Commission is authorized to obtain outside  
23 resources including, but not limited to, arbitrators and  
24 consultants for the purposes of the hearings authorized by  
25 this Section. Any arbitrator or consultant obtained by the  
26 Commission shall be approved by both parties to the hearing.  
27 The cost of such outside resources including, but not limited  
28 to, arbitrators and consultants shall be borne by the  
29 parties. The Commission shall review the bill for  
30 reasonableness and assess the parties for reasonable costs  
31 dividing the costs according to the resolution of the  
32 complaint brought under this Section. Such costs shall be  
33 paid by the parties directly to the arbitrators, consultants,  
34 and other providers of outside resources within 60 days after

1 receiving notice of the assessments from the Commission.  
2 Interest at the statutory rate shall accrue after expiration  
3 of the 60-day period. The Commission, arbitrators,  
4 consultants, or other providers of outside resources may  
5 apply to a court of competent jurisdiction for an order  
6 requiring payment.

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

23 (h) If the Commission determines that there is an  
24 imminent threat to competition or to the public interest, the  
25 Commission may, notwithstanding any other provision of this  
26 Act, seek temporary, preliminary, or permanent injunctive  
27 relief from a court of competent jurisdiction either prior to  
28 or after the hearing.

29 (i) A party shall not bring or defend a proceeding  
30 brought under this Section or assert or controvert an issue  
31 in a proceeding brought under this Section, unless there is a  
32 non-frivolous basis for doing so. By presenting a pleading,  
33 written motion, or other paper in complaint or defense of the  
34 actions or inaction of a party under this Section, a party is

1 certifying to the Commission that to the best of that party's  
2 knowledge, information, and belief, formed after a reasonable  
3 inquiry of the subject matter of the complaint or defense,  
4 that the complaint or defense is well grounded in law and  
5 fact, and under the circumstances:

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

10 (2) the allegations and other factual contentions  
11 have evidentiary support or, if specifically so  
12 identified, are likely to have evidentiary support after  
13 reasonable opportunity for further investigation or  
14 discovery as defined herein.

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

25 (k) An appeal of a Commission Order made pursuant to  
26 this Section shall not effectuate a stay of the Order unless  
27 a court of competent jurisdiction specifically finds that the  
28 party seeking the stay will likely succeed on the merits,  
29 that the party will suffer irreparable harm without the stay,  
30 and that the stay is in the public interest.

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