

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 Section 13-508 and adding Section 13-202.5 as  
6 follows:

7 (220 ILCS 5/13-202.5 new)

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

9 "Incumbent local exchange carrier" means with respect to an  
10 area, the telecommunications carrier that provided  
11 noncompetitive local exchange telecommunications service in  
12 the area on February 8, 1996, and on that date was deemed a  
13 member of the exchange carrier association pursuant to 47  
14 C.F.R. 69, 601(b), and shall include its successors, assigns,  
15 and affiliates.

16 (220 ILCS 5/13-508) (from Ch. 111 2/3, par. 13-508)

17 (Section scheduled to be repealed on July 1, 2001)

18 Sec. 13-508. Classification of retail services as  
19 competitive and structural separations.

20 (a) Notwithstanding any of the ratemaking provisions of  
21 this Article or Article IX that are deemed to require rate of  
22 return regulation, and notwithstanding any plan of  
23 alternative regulation implemented pursuant to 13-506.1, the  
24 Commission may classify all retail service offerings of an  
25 incumbent local exchange carrier as competitive if the  
26 Commission makes all of the following findings:

27 (1) That the incumbent local exchange carrier has  
28 structurally separated its retail operations from its  
29 wholesale operations consistent with the requirements of  
30 subsection (c).

1           (2) That there is sufficient competition to prevent  
2 the incumbent local exchange carrier from increasing the  
3 rate for any retail service that is to be classified as  
4 competitive.

5           (3) That the incumbent local exchange carrier has  
6 fully complied with all relevant provisions of the  
7 Federal Telecommunications Act of 1996 and orders and  
8 regulations of the Federal Communications Commission and  
9 that the incumbent local exchange carrier has petitioned  
10 and received approval from the Federal Communications  
11 Commission to provide inter LATA interexchange service  
12 pursuant to Section 271 of the Federal Telecommunications  
13 Act of 1996.

14           (4) That the incumbent local exchange carrier has  
15 fully complied with all relevant provisions of this Act  
16 and orders and regulations of the Commission

17           (b) Any structural separation of the incumbent local  
18 exchange carrier must comply with or be designed to comply  
19 with all of the following requirements.

20           (1) The incumbent local exchange carrier must  
21 establish at least 2 separate affiliated corporations, a  
22 network affiliate and a retail affiliate.

23           (2) The network affiliate must own and operate the  
24 essential network elements and related facilities of the  
25 incumbent local exchange carrier as determined by the  
26 Commission.

27           (3) The retail affiliate must own and operate all  
28 retail operations and all non-essential network  
29 facilities of the incumbent local exchange carrier as  
30 determined by the Commission.

31           (4) The 2 affiliated companies must have separate  
32 boards of directors and be independently managed and  
33 directed. Specifically, there may be no common member of  
34 the boards of the companies. Further, no manager,

1 director, or other corporate officer of one company may  
2 be a manager, director, or corporate officer of the  
3 affiliate.

4 (5) No employee of one affiliate may also be an  
5 employee of the other affiliate.

6 (6) The 2 affiliated companies must maintain 2  
7 separate books of account.

8 (7) The compensation of the managers and directors  
9 of the affiliate companies must be based, at least in  
10 part, on the financial performance of the affiliates  
11 pursuant to a plan to be filed with the Commission.

12 (8) The network affiliate must be partially  
13 publicly owned in an amount not less than 20%.

14 (9) The network affiliate may not design its  
15 network, interfaces, support systems, databases, or other  
16 systems or implement technology into its network in a  
17 manner that unfairly favors its retail affiliate. The  
18 network affiliate may not share or disclose information  
19 about network deployment to its retail affiliate unless  
20 the information is simultaneously filed with the  
21 Commission and made available to requesting  
22 telecommunications carriers. The network affiliate may  
23 not discriminate against competitive local exchange  
24 providers in any manner in favor of its retail affiliate.

25 (10) All transactions or agreements between  
26 affiliate shall be in writing, filed with the Commission,  
27 and available for review by interested parties.

28 (11) The network affiliate may not offer retail  
29 services and any non-essential facilities owned and  
30 operated by the retail affiliate.

31 (12) To the extent the retail affiliate leases  
32 network facilities from the network affiliate, the retail  
33 affiliate must utilize the same operations support  
34 systems for those facilities as used by requesting

1 telecommunications carriers and must lease those elements  
2 on the same terms and conditions (including price and  
3 non-price terms) as provided to other requesting  
4 telecommunication carriers.

5 (13) To the extent the requirements of the federal  
6 Telecommunications Act of 1996 apply to the incumbent  
7 local exchange carrier as of the effective date of this  
8 amendatory Act of the 92nd General Assembly, those  
9 requirements shall apply to the relevant affiliate.

10 (14) The network affiliate shall be regulated by  
11 the Commission to ensure that the rates, terms, and  
12 conditions of the services and elements offered are just,  
13 reasonable, and in accordance with all applicable State  
14 and federal law. Further, the Commission shall have all  
15 necessary authority to ensure that the network affiliate  
16 provides reasonable service to requesting  
17 telecommunications carriers.

18 (15) The non-retail services, elements, and  
19 operations of the retail affiliate shall continue to be  
20 regulated by the Commission to ensure that the rates,  
21 terms, and conditions of the services and elements  
22 offered are just, reasonable, and in accordance with all  
23 applicable State and federal law. Further, the  
24 Commission shall have all necessary authority to ensure  
25 that the retail affiliate provides its non-retail  
26 services, elements, and operations in a reasonable  
27 manner.

28 (c) Prior to the implementation of any structural  
29 separation pursuant to this Section, the incumbent local  
30 exchange carrier must file with the Commission a detailed  
31 plan of implementation. After notice and hearing, the  
32 Commission shall review, reject, or modify the plan as  
33 necessary to comply with the requirements of this Section.

34 (d) Notwithstanding any other provision, the Commission

1 on its own motion or upon petition of any party may order an  
 2 incumbent local exchange carrier to implement a structural  
 3 separation consistent with subsection (b). The Commission  
 4 shall order such a structural separation after notice and  
 5 hearing after finding that the incumbent local exchange  
 6 carrier has failed to comply with the obligations contained  
 7 in:

8 (1) Sections 251 and 252 of the Communications Act  
 9 of 1934;

10 (2) orders and regulations of the Federal  
 11 Communications Commission;

12 (3) the obligations contained in this Act; or

13 (4) the obligations contained in orders and rules  
 14 of the Commission. The Commission is authorized, after  
 15 notice and hearing, to order a telecommunications carrier  
 16 which offers or provides both competitive and  
 17 noncompetitive telecommunications service to establish a  
 18 fully separated subsidiary to provide all or part of such  
 19 competitive service where:

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

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

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