

# Case Study

## Legislature Uses Mediation to Craft Illinois Telecommunications Act\*

### The Problem

In June 2001 the Illinois Telecommunications Act was set to expire. If the Legislature failed to enact a new law, it would be forced to extend the current legislation or relinquish statutory oversight of the telecommunications industry.

Under the 1994 law, the Illinois Commerce Commission (ICC) was responsible for regulating the rates and services of the different Incumbent Local Exchange Carriers (ILEC). In response to organizational and technological changes in the industry, however, state and federal mandates required deregulation of certain incumbent carriers and encouraged Competitive Local Exchange Carriers (CLEC) to enter the market.

The challenge for the Illinois General Assembly was to design legislation that reflected the current mandates and balanced the interests of both the CLECs and the ILECs. To ensure fair competition, the ILECs would need to share their existing operating systems with their competitors in return for authority to set their own rates free of ICC regulation. The ILECs and the CLECs had struggled to agree on legislation, but with the deadline approaching, both sides were unable to compromise.

### The Players & the Policy Makers

The final decision makers were members of the General Assembly. Other key players included representatives of the CLECs (more than 30 competitors) and the ILEC (Ameritech). A variety of secondary participants also provided information and input that influenced the policy makers' decisions and affected the final bill. These participants included experts from the ICC and telephone companies, as well as citizens, unions, government agencies, business, and university representatives.

House Speaker Michael J. Madigan asked Judge Michael Getty to act as his special assistant and serve as facilitator in a legislative dispute resolution process to rewrite the 1994 law. Judge Getty, a mediator and arbitrator with the Judicial Arbitration and Mediation Services, Inc., is a former legislator.

### The Process

Speaker Madigan's decision to depart from the traditional committee structure and implement a legislative process using a neutral third party was critical to the successful and timely enactment of the telecommunication reform act.

In January 2001, after submitting preliminary proposals, Ameritech and more than 30 competitors began the issue-resolution-process.

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Judge Getty used traditional mediation, alternating between joint sessions and private caucuses. The process worked well and helped to produce initial agreements negotiated between lawyers, with input from technical experts. According to Judge Getty, "...it would have been very difficult for a legislative committee to incorporate the...detail necessary to properly reach agreement between the parties."

Two months before the deadline, Ameritech agreed to meet in a joint session with the association of CLECs. The two groups reached agreement on more than 100 issues, while the technical experts and lawyers began drafting the legislation. The day before the deadline, the parties had resolved all but one of the issues. For the first time in the process, Judge Getty stepped outside his role as facilitator to make a recommendation to the Speaker to resolve the final issue.

## The Product

HB 2900 passed the House and Senate with only one and two respective dissenting votes. Initially, Ameritech opposed the bill because of the single unresolved issue, but under the new law, Ameritech has benefited from deregulation and settled two rate cases before the ICC. Some provisions of the bill include: (1) grants to advance telecommunication service; (2) requirement for carriers to provide three rate packages; (3) service and quality standards set by the ICC; and (4) a \$90 million rebate to Ameritech business customers to settle an ICC case.

While support for the bill was not 100 per cent, months of mediation and negotiation helped to expedite the legislative process and produce a fair, well-balanced bill that sets the foundation for a new telecommunication policy throughout Illinois.

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*\*This case excerpted from Dispute Resolution Magazine, published by the American Bar Association Section of Dispute Resolution, Winter 2002: "Legislative Dispute Resolution: Mediation techniques can assist in drafting difficult legislation," by The Hon. Michael Brennan Getty (ret.).*



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