

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

United Communications Systems, Inc.)	
d/b/a Call One)	
)	
Petition for Arbitration of an)	ICC Docket No. 03-0772
Interconnection Agreement with)	
Illinois Bell Telephone Company)	
d/b/a SBC Illinois Pursuant to Section)	
252(b) of the Telecommunications)	
Act of 1996)	

**UNITED COMMUNICATIONS SYSTEMS’
RESPONSE TO SBC ILLINOIS’ RENEWED MOTION TO STRIKE**

INTRODUCTION

In filing its Motion to Strike, Illinois Bell Telephone Company (“SBC”) seeks to preclude the Administrative Law Judge from considering certain testimony given by witnesses for United Communications Systems, Inc. (“UCS”). SBC seeks to strike UCS’ testimony regarding: (1) the parties’ negotiations; (2) SBC’s provision of a certain type of billing known as “18/6”; and (3) the fact that SBC’s policies violate the Public Utilities Act, 220 ILCS 5/1-101 to 5/19-135 (“PUA”). SBC’s motion must be denied because, among other reasons:

1. Negotiations are clearly admissible because, under 47 USC § 252, the petitioner must set forth the parties’ positions in the petition for arbitration. Moreover, under the Commission’s liberal rule regarding the admission of evidence, UCS’ witnesses need not have been present at the negotiations they describe in their testimony.
2. The discussion of “18/6” in UCS’ testimony is evidence relevant to an issue included in the Petition, and is not a new issue. In addition, SBC concealed its use of “18/6” billing in connection with certain services until after the inception of the arbitration, and UCS did not believe it was entitled to include a request for information regarding such billing in its petition.
3. Evidence of SBC’s noncompliance with the PUA is relevant because the goal of this arbitration is completion of an interconnection agreement that complies with state and federal law.

ARGUMENT

A. Because SBC’s Motion to Strike Is Unverified, Factual Assertions Must Be Stricken.

As a preliminary matter, the Commission must strike and disregard all factual assertions in SBC’s Motion to Strike. Under the Commission’s rules, “[t]he factual assertions contained in all documents shall be verified by the filing party before a notary public.” 83 ILAC § 761.130(b). SBC’s Motion to Strike contains numerous factual assertions, none of which have been verified. Attached hereto as Exhibit A is a copy of SBC’s pleading with factual assertions highlighted in yellow. The factual assertions in SBC’s Motion as highlighted in Exhibit A must be stricken and disregarded.

B. UCS’ Testimony Regarding Negotiations is Appropriate.

SBC objects on two main grounds to UCS’ testimony regarding negotiations.¹ First, SBC contends that evidence of “settlement” negotiations is not admissible. (Mot. at 3-5.) Second, SBC argues that UCS’ witnesses are not competent to discuss negotiations. (*Id.* at 5-6.) SBC is wrong on both counts.

1. The Negotiations Required By Section 251(c)(1) And 252(b)(5) Are Not Similar To Settlement Discussions In Civil Cases.

SBC paints with too broad a brush when it seeks to characterize evidence of negotiations as inadmissible “settlement” discussions. First, SBC ignores the unique nature of a Section 252 arbitration petition. The petitioner is required by federal law to describe the positions of both parties for the Commission. These positions can be only based upon the pre-petition

¹ SBC lodges a relevance objection in passing. (Mot. at 5.) As explained herein, the testimony is relevant under the mandates of the applicable rules and laws.

negotiations that SBC characterizes as “settlement negotiations.” Second, SBC ignores the fundamental distinction between the parties’ statements of what they believe they are required to do by law (which is the subject of UCS’ testimony) and concessions offered by parties to simply settle a case. Third, the rationale of the Illinois cases cited by SBC – that settlement discussion or the fact of settlement discussions is typically not disclosed because the fear of disclosure will deter parties from discussing settlement – does not apply in the case of 251/252 negotiations, because those parties are required by federal law to negotiate in good faith. Fourth, the FCC has determined that state commissions may take into account the parties’ compliance with the good faith negotiation requirement, and the negotiation positions of the parties must be disclosed for this reason as well. These points are discussed below. Finally, 251/252 arbitrations are different from typical civil cases because no determination of liability is made, and therefore, there is no risk to a party from having its pre-arbitration positions revealed.

a. UCS Was Required to State the Parties’ Positions.

Section 252 negotiations are different from settlement negotiations in civil cases and cannot be readily analogized to settlement negotiations. *See In the Matter of Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, 11 FCC Rcd. 15499, at ¶ 134 (Aug. 8, 1996) (“First Report and Order”) (noting that “the negotiation process contemplated by the 1996 Act bears little resemblance to a typical commercial negotiation”).

The first important difference is that Section 252 mandates that the petitioner provide the Commission with “all relevant documentation” regarding “the unresolved issues [and] the positions of each of the parties with respect to those issues.” 47 USC § 252(b)(2). It would be impossible to set forth the unresolved issues and the position of the parties on those issues without discussing the negotiations. The pre-petition negotiations are the only vehicles for

the parties to set forth their positions. The Commission previously recognized evidence of negotiations. *See Re AT&T Comms. of Illinois, Inc.*, No. 03-0239, 2003 WL 22518548, at *92 (Aug. 26, 2003) (noting reply testimony concerning course of negotiations).

b. SBC Ignores the Distinction Between Negotiating Positions Concerning Statutory Requirements and Traditional Settlement Offers.

Much of the UCS testimony challenged by SBC consists of SBC's and UCS' statements concerning what SBC must do to meet the minimum requirements of the Act and the PUA. For example, the first statement SBC seeks to strike concerns SBC's position on its obligation to permit the resale of ICBs to new end users. (UCS Joint Statement, at 4:20 to 5:6.) This is a statement of what SBC claimed the law required. In a typical civil case, "settlement discussions" refers to statements by a party that it was willing to pay an amount or make a concession it was not required to make in order to avoid the expense and distraction of a lawsuit. SBC ignores the fundamental distinction between the two types of statements.

The distinction can be drawn between negotiation positions and concessions. UCS is required to state the parties' respective positions in its Petition. *See* 47 U.S.C. § 252(b)(2)(A). This will of course require a discussion in the Petition, and hence testimony, of positions taken during negotiations. It will not necessarily include, however, a discussion of positions taken by either party solely to facilitate settlement prior to filing. For example, SBC could make an offer that exceeded its legal duty. SBC could qualify the offer by stating that the offer was conditional on a settlement prior to negotiation, was being made only to facilitate settlement and would be withdrawn if the matter did not settle. This is a concession that would go beyond a negotiating position and would not be an element of the position of the party at the time the Petition is filed.

Although such concessions might arguably be inadmissible, SBC's motion does not relate to the inclusion of such concessions in UCS' testimony.

c. The Rationale for Excluding Settlement Discussions in Civil Cases Does Not Apply in 251/252 Negotiations.

Another important difference between 251/252 negotiations and other civil cases is that under 251/252 the parties are *required* to participate in negotiations. The rationale cited by SBC for prohibiting disclosure of settlement discussions in civil cases was that the fear of disclosure will deter the parties from discussing settlement. This rationale has no application in 251/252 negotiations and arbitrations because the parties cannot be deterred from pursuing negotiations.

d. The FCC Anticipated That the Question of Whether the Parties had Negotiated in Good Faith Would be Relevant.

The FCC's First Report and Order specifically notes "[t]he likelihood that an arbitrator will review the positions taken by the parties during negotiations" *First Report and Order*, at ¶ 149. Therefore, the federal agency designated by Congress to map out the implementation of Sections 251 and 252 anticipated that arbitration such as the Administrative Law Judge presiding in this matter would consider the very evidentiary material that SBC's motion seeks to exclude from consideration.

e. Unlike Civil Cases, There is No Determination of Liability in 251/252 Cases.

Furthermore, a 252 arbitration does not fit the mold of standard civil litigation because it does not involve a determination of liability. In the typical civil case an admission during settlement discussions could be damaging if heard by a jury, and there are good reasons not to chill the litigants in their settlement discussions. Here, that justification is far less compelling.

The Administrative Law Judge is attempting to arbitrate an agreement, and evidence that will assist the arbiter should be admitted.

2. Even Where “Settlement” Negotiations are Inadmissible, There is an Exception for Facts Elicited During Negotiations.

Although Illinois courts have ruled evidence of settlement negotiations inadmissible, they typically carve out evidence of facts elicited during settlement negotiations from this prohibition. *See Wehmeier v. UNR Indus., Inc.*, 213 Ill. App. 3d 6, 20; 572 N.E.2d 320, 330 (4th Dist. 1991) (noting “[t]he well recognized exception to this rule which holds that admissions to other facts made during settlement discussions may be admissible”); *In re Marriage of Passiales*, 144 Ill. App. 3d 629, 640; 494 N.E.2d 541, 550 (1st Dist. 1986) (“Matters relating to offers of settlement or compromise are ordinarily inadmissible, but admission of other facts elicited incidentally during settlement discussions may be introduced as evidence.”). Some of the UCS testimony SBC seeks to strike falls into the category of facts elicited during negotiations and should be admitted regardless of the fate of the other UCS testimony. (*See, e.g.*, Joint Statement at 30:1-4; 40, n.59.) A prime example of this is “18/6” billing, which is discussed at greater length below. It was only through protracted investigation and negotiation that UCS learned that SBC was offering sub-minute billing on far more tariffed rates than was previously realized. (*See* Aff. of Craig Foster at ¶ 10, attached as Ex. B.) The facts uncovered regarding “18/6” billing (and, relatedly, Exhibit 4) should not be stricken simple because they were elicited through negotiation and investigation. (*See* Joint Statement, at 17:17 to 21:2; 95:11-20.) Unfortunately, that was the only way UCS could uncover the relevant facts, since they were neither listed in the tariff nor disclosed in response to proper discovery requests.

Similarly, SBC's attempt to bar UCS from introducing exhibits that are nothing more than documents produced in discovery is out of line. No exhibits should be excluded, and Exhibits 5 and 6, which are merely production documents, cannot be barred as evidence of settlement negotiations.²

3. SBC Itself Includes Substantial Testimony About the Positions of the Parties in Negotiations.

For its part, despite taking the position that testimony regarding negotiations is “irrelevant, improper, and inadmissible” (Mot. at 3.), SBC included voluminous evidence regarding negotiations in its testimony. Mr. Smith testifies at length regarding negotiations, pre-petition and post-petition. (*See, e.g.*, Smith Test. ll. 54-56; 787-89; 799-800; 927-28; 1354-55; 1367-70; 1715-16; 1770-72; 2011-13.) It would be unfair to strike UCS' version of the same events, and effectively allow the Administrative Law Judge to hear only one side of the story.

4. Foster and Surdenik are Competent Witnesses.

SBC also contends that Craig Foster and Chris Surdenik, the witnesses who sponsored the Testimony, cannot testify regarding negotiations because they do not have first-hand knowledge of those negotiations. This position misstates the facts and the rules. First, Mr. Foster was present at all but two of the pre-petition negotiation sessions with SBC, which were held either in person or via conference call. (*See Foster Aff.* ¶ 2.) Mr. Surdenik attended one of the meetings Mr. Foster missed, an August 21, 2003 conference call, and Mr. Surdenik subsequently briefed Mr. Foster on the meeting. (*See id.* at ¶ 2.) Although Mr. Lambert

² Likewise, Joint Statement at page 69, lines 14-15, which SBC moves to strike, is based upon an SBC discovery response, not anything that was disclosed in negotiations. In the unlikely event that the Commission concludes that testimony based upon negotiations should be stricken, it should scrutinize each of the passages that is the subject of SBC's motion carefully, for many of them are not based upon negotiations at all. (*See, E.g.*, Joint Statement at 110:9-13 (date of UCS initial request for negotiation and dates for modify “arbitration window”); 50:6-15 (description of provision that has been agreed by parties and is part of redline that is already part of record).

sponsored testimony regarding negotiations in UCS' initial Joint Statement, Mr. Foster is also competent to do so, as is Mr. Surdenik. SBC cites testimony from the original submission of testimony to the effect that Mr. Lambert was, for a period of time, UCS' lead negotiator.³ (Mot. at 5.) SBC cannot, however, make the leap (as it attempts to do) to arguing that Mr. Lambert was the *only* negotiator.

Indeed, SBC makes the bold assertion that “*Mr. Foster cannot possibly know anything about the pre-petition negotiations first-hand, because he was not involved in those negotiations.*” (Mot. at 6 (emphasis in original).) It is not surprising that SBC did not verify this factual assertion in its brief, as required by the Commission's rules, because it is flatly false. At least eight SBC lawyers and employees personally participated in pre-petition negotiations with Mr. Foster. (Foster Aff. ¶ 3.) Mr. Foster engaged in face-to-face meetings with SBC business people Mary Pat Regan, Thomas Harvey, Lee Sheehan, and Karl Wardin and SBC in-house counsel Paul Dorin. (*Id.*) Mr. Foster also participated in telephonic negotiations with all of the individuals listed above as well as SBC business people Jeff Gay and Ron Hill and SBC in-house counsel Mark Ortlieb. (*Id.*) Moreover, there is voluminous documentary proof of Mr. Foster's involvement in the negotiations. As the e-mails attached as Group Ex. C show, Mr. Foster is listed as the author, addressee, or carbon copy recipient of numerous e-mails exchanged between UCS and SBC during the course of negotiations. Ironically, one of the e-mails SBC seeks to strike as evidence of negotiations is from SBC's Lee Sheehan to UCS' Surdenik. (*See* UCS Ex. 1.) SBC therefore contends, on one hand, that Mr. Surdenik is not competent to testify regarding negotiations and, on the other hand, that an e-mail addressed to Mr. Surdenik must be stricken as

³ SBC's use of the original version of the Joint Statement to make a point is improper after SBC sought to (and succeeded) have the original Joint Statement that included Mr. Lambert stricken. SBC cannot, on one hand, seek to strike testimony but then use that same testimony to its advantage after it was stricken.

evidence of . . . negotiations. Similarly, SBC moves to strike footnote 59 of UCS' Joint Statement, which on its face reflects activities in which Mr. Foster, and Mr. Foster alone, participated on behalf of UCS. Thus, in the unlikely event that the Commission determines that Mr. Foster and Mr. Surdenik are not competent to testify about matters about which they do not have first-hand knowledge, it must conduct an item by item determination as to which of the matters the UCS witnesses actually lack knowledge.

Even if Mr. Surdenik and Mr. Foster were not personally involved in all of the negotiations sessions, they need not have first-hand knowledge to be competent to testify. The hearsay rules are relaxed in Section 252 arbitration proceedings. *See* 83 ILAC § 761.340 (“Relevant information may be admitted at the arbitration if it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs.”). If, for example, Mr. Lambert conveyed to Mr. Foster the substance of a one-on-one conversation between Mr. Lambert and an SBC representative, Mr. Foster's testimony regarding that conversation would certainly be “of a type commonly relied on by reasonably prudent persons in the conduct of their affairs” and therefore admissible. SBC cites no authority to the contrary. Mr. Foster and Mr. Surdenik are competent to testify regarding settlement negotiations.

Indeed, SBC recognizes that a witness may properly submit testimony about negotiations at which he was not present. While moving to strike the testimony of Mr. Foster and Mr. Surdenik on the grounds that they were not present at the negotiations about which they have submitted testimony, SBC has submitted the testimony of Mr. Smith regarding negotiations in which he did not participate. For example, Mr. Smith states with regard to a service agreement issue that “SBC Illinois has never advanced such a position.” (Smith Test. ll. 1715-16.) Mr.

Smith could not possibly have first-hand knowledge of this because he was not present at every single interaction between SBC and UCS. (*See Foster Aff.* ¶ 4.)

C. UCS' Testimony Regarding SBC's Use of "18/6" Billing on Certain Services is Appropriate.

SBC's contention that UCS cannot discuss a "new issue" in testimony is wrong for two reasons. First, what SBC characterizes as a "new issue" is merely evidence concerning an issue UCS raised in its Petition. Second, any delay by UCS in raising the issue is directly attributable to SBC's success in concealing it. (Mot. at 2, 6-7.)

1. Background of "18/6" Billing.

Some background is necessary to understand why "18/6" billing is in dispute. First, "18/6" billing refers to billing the end user in an initial 18-second increment and in six-second increments thereafter. This is in contrast to SBC's normal practice of billing in full-minute increments. Because charges for a given call will more closely reflect usage under an "18/6" billing system, and will thus be significant lower, both wholesale and retail customers find "18/6" billing to be highly desirable.

2. SBC's Use of "18/6" Billing is Evidence Relevant to Issue No. 1 in UCS' Petition.

SBC mischaracterizes UCS' discussion of "18/6" billing in its testimony as the raising of a "new issue[]" in the Petition. (Mot. at 6-7.) The "18/6" billing discussion is not a new issue but is evidence relevant to Issue No. 1. In Issue No.1, UCS requested that ICBs be included in the definition of "Resale Services" in the interconnection agreement. UCS' point by including this testimony is that the phrase "Resale Service" must be defined because, among other things, there is a need to address "undocumented service terms" such as "18/6" billing.

SBC has also raised the issue that UCS has slightly altered its prepared definition of Resale Services. This is not relevant because it is not a “new issue.” To the extent it represents a change in UCS’ position, UCS agrees with SBC that seeking to freeze the positions as of the date of filing “is wrong as wrong can be.” (*See* Docket No. 01-0466, Ameritech Illinois’ Resp. to Mot. to Strike & Mot. to Strike at 6 (noting that “contention that the parties (and the Commission) are stuck with the parties’ positions as they stand on the date the petition is filed is wrong as wrong can be”).) After all, as SBC previously stated, “[t]he law is clear that parties’ positions in an arbitration under the 1996 Act are not frozen when the petition is filed” (*Id.* at 2.) Similarly, UCS does not believe it should be “stuck” with its position concerning the proper definition of “Resale Service,” particularly when it was put in that position by SBC’s concealment of pertinent facts and misleading statements regarding the availability of “18/6” billing.

3. Until January 21, 2004, SBC Falsely Denied it Was Making “18/6” Available on Certain Products.

The ability to bill in 18/6-second increments is important to UCS. During the negotiation period, UCS repeatedly sought “18/6” billing from SBC, and the background of these discussions is set forth fully in UCS’ testimony. (*See* Joint Statement, at 16:10 to 19:6; Foster Aff. ¶¶ 8-9.) UCS repeatedly asked SBC during the negotiation period about the availability of “18/6” billing and was repeatedly told, essentially, that “18/6” billing was offered in connection with a tariffed service where stated in the tariff or as part of an ICB. (*See, e.g.*, UCS Ex. 4 (showing that UCS’ Lambert was requesting information regarding “18/6” billing in August and September of 2003); Foster Aff. ¶ 6.) The arbitration commenced, but UCS did not specifically request “18/6” billing in the Petition because UCS could not have raised “18/6” billing in the

Petition, based on SBC's representations that "18/6" billing was offered only on tariffed products that specifically referenced "18/6" billing in the tariff and certain ICBs. (Foster Aff. ¶ 7.) SBC then blocked UCS' attempt to learn more about sub-minute billing increments through discovery requests—SBC provided little to no information in response to the requests. (See Joint Statement, at 22:1-10.) Meanwhile, UCS was gathering evidence that SBC billed in six-second increments, but SBC asked for evidence that it was providing sub-minute billing on CompleteLink Select II service. (See Foster Aff. ¶ 8.)

On January 20, 2004, UCS presented evidence regarding "18/6" billing to SBC on an account that had clearly agreed to purchase CompleteLink Select II service. (See *id.* ¶ 9.) This time, SBC could not explain away the sub-minute billing and instead admitted that, contrary to its prior representations to UCS, SBC was providing "18/6" billing on tariffed "postalized rates" for Local Usage. (See *id.*) "Postalized rates" are those billed on a flat rate per minute as opposed to billing on a per-minute rate calculated as a discount off a different referenced rate. With minor exceptions, however, the tariffs filed by SBC with the Commission did *not* reflect the use of "18/6" billing on "postalized rates." SBC explained this discrepancy by stating that it was not necessary to specify the "18/6" billing increment in the tariff because it is a "discretionary billing function." (See *id.*) UCS disagrees and believes that "18/6" billing, which can have a significant effect on an end user's bills, is a material term and condition of the service.

Regardless, for present purposes the important point is that UCS tried for months to access information about "18/6" billing and was repeatedly stymied. Operating under the understanding (fostered by SBC) that "18/6" billing was not available beyond those instances noted in the tariff, UCS did not reference that specific term in its Petition for Arbitration. There

was no reason to do so. What UCS did not realize was that SBC was making “18/6” widely available but *not noting it in the tariff*. When UCS learned that information, it included it in its testimony. (*See id.* ¶ 10.) Having affirmatively misled UCS as to the facts, SBC cannot now be heard to complain of UCS’ raising of this issue with specificity promptly after SBC has admitted the truth.

D. UCS is Permitted to Discuss in Testimony Its Concerns Regarding SBC’s Violation of the PUA.

Although SBC discusses the PUA in its testimony, it seeks to strike those sections of the Testimony in which UCS discusses its concerns about SBC’s violations of the Public Utilities Act.⁴ (*See* Smith Test. ll. 289-94; Warren Test. ll. 92-95.) SBC presumably wants to excise embarrassing testimony, but it does not have the right to deprive the Administrative Law Judge and Staff of this relevant testimony.

Evidence of SBC’s compliance with the PUA is directly relevant to this matter because, at the end of the day, the arbitrated agreement the Commission approves must comply with federal and state law, including the PUA. (*See* Staff Br. at 14.) Indeed, the Act expressly contemplates that in conducting an arbitration such as this one, a state commission may “enforce[] other requirements of State law in its review of an agreement.” 47 U.S.C. § 252(d)(3). Likewise, the FCC has declared that “In reviewing arbitrated and negotiated agreements, the state commission may ensure that such agreements are consistent with

⁴ Although SBC states that UCS witnesses are making “legal conclusions, SBC does not shy away from having its witness, Mr. Smith, opine on legal matters. In several instances, Mr. Smith prefaces his discussion of a legal point by noting, “I am not a lawyer. However . . .” or “I am not an attorney, but . . .” (Smith Test. ll. 1127; 1522-23; 1616.) Mr. Smith opines on legal questions elsewhere as well. (Smith Test. ll. 200-08; 289-94; 1104-07; 1121-23; 1167-71; 1192-1200; 1228-37; 1405-07; 1457-62; 1532-57; 1601-08; 1635-36; 2162-71; 2202-12; 2257-60; 2273-75.)

applicable state requirements.” *First Report and Order*, at ¶ 134. If SBC’s proposals are inconsistent with the PUA, that information is highly relevant to the commission’s determination of the disputed issues. While SBC may view UCS’ allegations that SBC’s positions violate state law to be “scurrilous.” (Mot. at 8.), the fact that it violates state law is highly germane to the Commission’s disputation of this proceeding.

SBC also alleges that the UCS’ allegations that SBC’s policies violate the PUA are “unsupported.” This is not correct. Each of the sections of the testimony SBC seeks to strike alleges exactly how SBC’s policies violate the PUA. If SBC truly believes the PUA allegations are “unsupported,” it has a remedy. SBC has the ability to cross examine UCS’ witnesses. If UCS’ testimony is as ill-founded as SBC claims, then SBC should have ample fodder for cross examination. A motion to strike is not the proper forum to attack the PUA testimony because the Administrative Law Judge can accord the proper weight to the testimony.

CONCLUSION

For the reasons set forth herein, UCS respectfully requests that all factual assertions in SBC's Renewed Motion to Strike be stricken and that the Renewed Motion to Strike be denied in its entirety.

Respectfully submitted,

**UNITED COMMUNICATIONS
SYSTEMS, INC.**

By: Brendan J. Healey

Bruce N. Menkes
Brendan J. Healey
Mandell Menkes & Surdyk, LLC
333 West Wacker Drive, Suite 300
Chicago, Illinois 60606
(312) 251-1000
Fax: (312) 251-1010
bmenkes@mms-law.net
bhealey@mms-law.net

Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500
Fax: (312) 202-424-7643
ejbranfman@swidlaw.com
ewkirsch@swidlaw.com

EXHIBIT A

STATE OF ILLINOIS
ILLINIS COMMERCE COMMISSION

United Communications Systems, Inc.)	
d/b/a Call One)	
)	
Petition for Arbitration of an)	Docket No. 03-0772
Interconnection Agreement with)	
Illinois Bell Telephone Company)	
d/b/a SBC Illinois Pursuant to Section)	
252(b) of the Telecommunications)	
Act of 1996)	

SBC ILLINOIS' RENEWED MOTION TO STRIKE

Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC Illinois"), by its attorneys, respectfully moves pursuant to 83 Ill. Admin. Code § 200.190 to strike as irrelevant, improper, and inadmissible portions of the pre-filed testimony of Craig Foster and Chris Surdenik, filed in this proceeding on February 6, 2004 by United Communications Systems, Inc. d/b/a Call One ("UCS"). The circumstances giving rise to this motion are as follows:

On January 27, 2004, UCS filed the Joint Statement of Craig Foster, Chris Surdenik and Ronald Lambert (the "Original Joint Statement"). On January 29, 2004, SBC Illinois moved to strike the Original Joint Statement in its entirety, and to disqualify Ronald Lambert from testifying or participating in this proceeding, on the ground that Mr. Lambert's participation was in violation of the Illinois Rules of Professional Conduct. *See* SBC Illinois' Motion to Strike and Motion to Disqualify ("January 29 Motion"). Separate and apart from that, the January 29 Motion asked the Commission in the alternative to strike from the Original Joint Statement:

- (1) all testimony relating to the interconnection agreement negotiations between UCS and SBC Illinois, principally on the ground that evidence of settlement negotiations is inadmissible;

(2) testimony that sought to add new issues to the arbitration in violation of the 1996 Act's prohibition against adding new issues after the petition and response to petition have been filed, and

(3) certain unsupported and immaterial accusations regarding SBC Illinois' compliance with the Illinois Public Utilities Act.

The question of Mr. Lambert's participation in this case has now been resolved. On February 6, 2004, the Circuit Court of Cook County, which had previously issued a temporary restraining order prohibiting Mr. Lambert's further involvement in this case, entered a Consent Injunction Order (attached), which, among other things, prohibits Mr. Lambert from testifying on behalf of UCS; requires UCS to withdraw the Original Joint Statement; and provides for the filing of substitute testimony. Thereafter on February 6, UCS filed in place of the Original Joint Testimony the Joint Testimony of Craig Foster and Chris Surdenik (the "New Joint Statement"), which is the subject of this motion.

The New Joint Statement includes none of the references to Mr. Lambert that appeared in the Original Joint Statement. Other than that, the New Joint Statement is virtually identical to the Original Joint Statement. In particular, it still includes all the testimony identified above as items (1), (2) and (3) that SBC Illinois moved to strike on January 29. Accordingly, those portions of the New Joint Statement should now be stricken. Items (2) and (3) should be stricken for precisely the reasons set forth in the January 29 Motion; we restate those reasons in Sections II and III below. Item (1) should be stricken both for the reasons set forth in the January 29 Motion (namely, that evidence of settlement negotiations is inadmissible (*see* Section I.A below)), and for an additional reason: Neither Mr. Foster nor Mr. Surdenik (the sponsors of the New Joint Statement) has personal knowledge of the parties' pre-petition

negotiations, and therefore neither witness would be competent to testify about those negotiations even if such testimony were admissible. We discuss this new ground for the motion to strike in Section I.B below.¹

I. THE TESTIMONY CONCERNING NEGOTIATIONS SHOULD BE STRICKEN.

A. Evidence of Settlement Discussions is Inadmissible.

Several portions of the New Joint Testimony, as well as exhibits to that testimony, discuss the interconnection agreement negotiations between UCS and SBC Illinois, including various positions and arguments the parties allegedly made in those negotiation settlement discussions. (The relevant portions of the New Joint Testimony and exhibits are identified in Attachment A hereto.) This testimony is irrelevant, improper, and inadmissible. As explained below, both case law and public policy require that this testimony be stricken.

It is well settled in Illinois that "matters concerning settlement and negotiations are not admissible." *Garcez v. Michel*, 282 Ill. App. 3d 346, 348-49, 668 N.E.2d 194, 196 (111. App. 1996). *See also Barkei v. Delnor Hospital*, 176 Ill. App. 3d 681, 531 N.E.2d 413 (Ill. App. 1988); *Schnuck Markets, Inc. v. Soffer*, 213 Ill. App. 3d 957, 572 N.E.2d 1169 (Ill. App. 1991). And for good reason: "admitting evidence of settlements and negotiations would contravene public policy by discouraging litigants from settling before trial." *Garcez*, 282 Ill. App. 3d at 349. This policy plainly applies to interconnection agreement negotiations, which, pursuant to the Telecommunications Act of 1996, are an attempt to settle issues and thereby to avoid arbitrating them.

In an arbitration between SBC Illinois and XO (Docket No. 01-0446), XO moved to strike portions of SBC Illinois' testimony that discussed the interconnection agreement negotiations

¹ Since this motion renews the January 29 Motion, SBC Illinois assumes UCS will respond on the due date

between XO and SBC Illinois. As XO stated, "[l]ong-standing Commission policy, consistent with sound public policy, requires that settlement negotiations remain confidential. To treat settlement negotiations otherwise would stifle discussions and impede the possibility of settlement." XO's Motion to Strike, Docket No. 01-0466, at 4 (filed Aug. 2, 2001). Further, XO explained,

it is inappropriate for a witness in [an interconnection agreement arbitration] to discuss the statements made or positions taken during negotiations. By failing to strike [such testimony], the Commission would effectively discourage continued negotiations during this proceeding, as well as in future proceedings, and would severely limit the parties from engaging in the give and take and compromise necessary for any serious negotiation. *Id* at 5.

Responding to XO's Motion, Staff agreed, stating:

Staff shares the concern expressed by XO that positions taken during negotiations over the terms of an Interconnection Agreement not be brought into the record of arbitration proceedings. Parties must be free to offer and probe positions in negotiations that they may not ultimately support on the record. Bringing references to any such negotiation positions into the record may well have a "chilling effect" on parties' willingness to explore settlements in off-the-record settings. Staff Response to Motion to Strike, Docket No. 01-0466, at 2 (filed Aug. 16, 2001).

Indeed, Staff went even further, arguing that "the constraint against revealing settlement negotiations [] should extend to all filings and submissions, and not just to testimony." *Id.*²

Thus, all the discussion of the parties' negotiations in the New Joint Testimony (identified on the attachment hereto) should be stricken on the ground that evidence concerning settlement negotiations is inadmissible. Moreover, such testimony is irrelevant in an arbitration under the

for its response to that motion.

² In its own response to XO's Motion to Strike, SBC Illinois agreed to strike the portions identified by XO, provided that XO's own testimony referring to negotiations was also stricken. *See* SBC Illinois Response to Motion to Strike and Motion to Strike, Docket No. 01-0466, at 10 (filed Aug. 15, 2001).

1996 Act in any event. The purpose of this arbitration is not to decide which party should prevail on an issue based on the parties' prior settlement efforts or positions advanced in negotiations. Rather, the Commission's task is to reach a decision based on the arguments put forth *in this arbitration* by the parties.

B. Neither Sponsor of the New Joint Testimony Has Knowledge of the Parties' Pre-Petition Negotiations..

The Original Joint Testimony states that Mr. Lambert, and neither of the other sponsors of that testimony, engaged in the interconnection agreement negotiations between UCS and SBC Illinois that preceded the filing of UCS's petition for arbitration:

Q: Who participated in UCS' interconnection negotiations with SBC?

A: Mr. Lambert was the lead negotiator for UCS with SBC for approximately seven months.... On November 7, 2003 . . . , SBC suddenly refused to continue negotiating with UCS if Mr. Lambert participated. The remaining negotiations prior to the filing of the petition were conducted by two of UCS' outside counsel, Mr. Bruce Menkes and Mr. Edward Kirsch. There were also settlement negotiations after the filing of the petition. These were conducted by Mr. Menkes and Mr. Foster, and Mr. Kirsch and Mr. Branfman (another outside counsel for UCS) each participated in some of these.

Original Joint Testimony at 5-6. Thus, Mr. Lambert negotiated on behalf of UCS until November 7, 2003; Messrs. Menkes and Kirsch negotiated on behalf of UCS from then until the filing of the petition; and they, along with Messrs. Foster and Branfinan, negotiated on behalf of USC after that. Significantly for present purposes, Mr. Foster did not become involved in the negotiations until after the petition for arbitration was filed.

In keeping with the roles they played in the negotiations, Mr. Lambert sponsored the portions of the Original Joint Statement that concerned pre-petition negotiations up to November

7, and Mr. Foster sponsored the portions of the Original Joint Statement that concerned post-petition negotiations. *See* Original Joint Testimony at 1-2:

- Q. Which portions of the joint statement does each of you sponsor?
- A. Mr. Lambert sponsors the portions of the joint statement regarding the course of negotiations between UCS and SBC through November 7, 2003. ... Mr. Foster sponsors the portion of the joint statement regarding the course of negotiations after the filing of the Petition. . .

Now, in the New Joint Testimony, "Mr. Foster sponsors the portion of the joint statement regarding the course of negotiations" (New Joint Testimony at 2) - not just the post-petition negotiations, but the negotiations *in toto*. **Given Mr. Lambert's unavailability, this substitution of Mr. Foster for Mr. Lambert would be fine, except that Mr. Foster cannot possibly know anything about the pre petition negotiations first-hand, because he was not involved in those negotiations.** Accordingly, the New Joint Testimony concerning pre-petition negotiations must be stricken, not only because evidence of settlement negotiations is inadmissible, but also because neither UCS sponsor of the New Joint Testimony is competent to testify concerning those negotiations.

II. THE COMMISSION SHOULD STRIKE UCS'S ILL-DISGUISED ATTEMPT TO ADD NEW ISSUES TO THE ARBITRATION

Arbitration Issue 1, as identified in UCS's December 18, 2003 Petition for Arbitration (pp. 7-11), is "Whether the definition of 'Resale Services' in the Agreement should include individual case basis contracts ('ICBs')?" Petition at 7. As UCS then describes, the parties have been unable to reach agreement regarding whether UCS can resell SBC Illinois' ICBs to new end users. *Id.* at 7-11. However, in the New Joint Testimony, after discussing Issue 1 (at pp. 4-13), UCS then

launches into an entirely different issue regarding access to "18/6 billing" (at p.13 line 5 through p.23 line 13)³

This testimony clearly goes beyond the scope of Arbitration Issue 1, as UCS itself defined that issue in its Petition. Indeed, UCS goes so far as to propose entirely new interconnection agreement language that appeared nowhere in the proposed language UCS submitted as Attachment C to its Petition. *See* New Joint Testimony at 25. Pursuant to the 1996 Act, UCS was required to identify the issues to be arbitrated in its Petition. It is too late for UCS to sneak in new issues via its testimony, and this language should be stricken.

As the caption of this case indicates, this is an arbitration pursuant to Section 252(b) of the 1996 Act. Section 252(b)(4)(A) of the 1996 Act provides in no uncertain terms that "[t]he State commission *shall* limit its consideration of any petition under paragraph (1) (and any response thereto) to the *issues set forth in the petition* and in the response, if any, filed under paragraph (3)" (emphasis added). In other words, UCS, as the petitioner, was required to set forth the issues it wanted the Commission to arbitrate in its Petition, and the Commission *must* limit its arbitration decision to the issues raised in UCS's Petition (as well as any issues raised in SBC's response to the Petition). *See also* 83 Ill. Admin. Code § 761.110(b) (incorporating the requirements of Section 252(b)(2) into the Commission's arbitration rules). UCS cannot introduce new arbitration issues in its testimony.

Accordingly, the portions of UCS's New Joint Testimony identified above should be stricken.

³ UCS discusses this same new issue later in its testimony. *See* New Joint Testimony p. 95, lines 11 through 20. This testimony should be stricken as well.

II. UCS'S SCURRILOUS AND UNSUPPORTED ACCUSATIONS REGARDING SBC ILLINOIS' COMPLIANCE WITH THE ILLINOIS PUBLIC UTILITIES ACT SHOULD BE STRICKEN

In several places,⁴ UCS's Joint Testimony contains a bare allegation that certain SBC policies violate sections 13-514 and 9-250 of the Illinois Public Utilities Act ("PUA"). These scurrilous accusations should be stricken. If UCS believes that SBC Illinois has violated the PUA, the PUA contains provisions whereby UCS may institute a complaint proceeding before the Commission. *See, e.g.*, 220 ILCS 5/13-515 (providing procedures for telecommunications carriers to file a complaint alleging a violation of section 13-514). This Section 252(b) proceeding, however, is not the appropriate forum for such allegations.

Under the 1996 Act, the Commission's charge in this proceeding is to decide issues concerning the terms and conditions of an interconnection agreement between the parties, and to ensure that its resolution of the issues and any conditions it imposes upon the parties meet the requirements of Section 251 of the 1996 Act. UCS's disparaging accusations (which in the end amount to nothing more than bare assertions of legal conclusions) have no bearing on those matters. SBC Illinois should not have to choose between ignoring these accusations - which, though irrelevant and unfounded, paint SBC Illinois in an unflattering light - and spending time and effort responding to UCS's allegations. Accordingly, the accusations should be stricken.

⁴ The applicable pages are: page 9, lines 12-13; page 23, line 24, through page 24, line 2; page 71, line 5; page 74, lines 19-20; page 80, line 21, through page 81, line 1; page 86, line 16, through page 87, line 1; page 93, lines 14-16; page 103, line 5; and page 158, lines 5-6.

IV. CONCLUSION

For the reasons set forth above, the Commission should grant SBC Illinois' Renewed Motion to Strike.

123532v.1

EXHIBIT B

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

United Communications Systems, Inc.)	
)	
Petition for Arbitration of an)	
Interconnection Agreement with)	Docket No. 03-0772
Illinois Bell Telephone Company)	
d/b/a SBC Illinois Pursuant to Section)	
252(b) of the Telecommunications)	
Act of 1996)	

AFFIDAVIT OF CRAIG FOSTER

Negotiated Request:	August 31, 2003
135 th Day Thereafter:	January 13, 2004
160 th Day Thereafter:	February 7, 2004
9 Months Thereafter:	June 1, 2004

Bruce N. Menkes
Brendan J. Healey
Mandell Menkes & Surdyk, LLC
333 West Wacker Drive, Suite 300
Chicago, Illinois 60606
(312) 251-1000
Fax: (312) 251-1010
bmenkes@mms-law.net
bhealey@mms-law.net

Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
(202) 424-7877
Fax: (202) 424-7645
ejbranfman@swidlaw.com
ewkirsch@swidlaw.com

Dated: February 2, 2004

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

United Communications Systems, Inc.)	
d/b/a Call One)	
)	
Petition for Arbitration of an)	
Interconnection Agreement with)	
Illinois Bell Telephone Company)	ICC Docket No. 03-0772
d/b/a SBC Illinois Pursuant to Section)	
252(b) of the Telecommunications)	
Act of 1996)	

AFFIDAVIT OF CRAIG FOSTER

I, Craig Foster, do hereby state as follows:

1. I am the President of United Communications Systems, Inc. I have been, along with UCS' Ronald Lambert, UCS' lead negotiator in its efforts to secure an interconnection agreement with SBC.
2. I was present at all but two of the pre-petition group negotiation sessions with SBC, which were held either in person or via conference call. I did not participate in an August 4, 2003 conference call, and UCS' Chris Surdenik participated in an August 21, 2003 conference call in my stead. He subsequently briefed me on that meeting.
3. In the course of negotiations, I engaged in face-to-face meetings with SBC business people Lee Sheehan, Mary Pat Regan, Thomas Harvey, and Karl Wardin and SBC in-house counsel Paul Dorin. I also participated in conference calls with all the individuals listed above plus SBC business people Jeff Gay and Ron Hill and SBC in-house counsel Mark Ortlieb.
4. I understand that SBC's Roman Smith has testified regarding negotiations. Mr. Smith did not attend any of the in-person, pre-petition negotiations, and I was never informed that he was participating in any of the conference calls.

5. I kept Mr. Surdenik completely apprized of the course of negotiations, and both Mr. Surdenik and I are competent to testify regarding negotiations.

6. During pre-petition negotiations, UCS repeatedly sought information from SBC regarding the availability of “18/6” billing. SBC repeatedly told us, essentially, that “18/6” billing was offered in connection with a tariffed service only where noted in the tariff.

7. UCS would certainly have included a request for information regarding “18/6” billing in its Petition for Arbitration, but we did not think, based on SBC’s representations, that such billing was available to us outside the instances where it was noted in the tariff or through certain ICBs.

8. We nonetheless continued to pursue the question of “18/6” billing post-petition, both formally through document requests and informally in our conversations with SBC representatives. SBC invited UCS to prove that SBC billed in six-second increments. When we would present evidence showing sub-minute billing, SBC explained away every piece of evidence we presented.

9. SBC asked UCS to present evidence showing that “18/6” billing was being used in conjunction with CompleteLink Select II services, one of many services that did not provide for “18/6” billing under the tariff. On January 20, 2004, UCS’ counsel, at my direction, presented additional evidence regarding “18/6” billing to SBC. This evidence clearly showed use of “18/6” on CompleteLink Select II service. SBC then admitted that it was providing “18/6” billing on “postalized rates” for Local Usage. SBC explained this discrepancy by stating that it was not necessary to specify the “18/6” billing increment in the tariff because it is a “discretionary billing function.”

10. Through this negotiation, we learned that “18/6” billing was far more prevalent than we had previously realized. After uncovering the story behind “18/6” billing, we included it in our Joint Testimony.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein

A handwritten signature in black ink, appearing to read 'Craig Foster', written over a horizontal line.

Craig Foster

123469

EXHIBIT C



change nego start
date 11-10-0...

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Monday, November 10, 2003 10:43 AM
To: Craig Foster (E-mail)
Cc: DORIN, PAUL E (Legal); REGAN, MARY P (AIT); HILL, RONALD C (SWBT)
Subject: Extension

<<change nego start date 11-10-03.doc>>

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>
> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
intended
> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.
>
>

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Monday, November 10, 2003 9:50 AM
To: Craig Foster (E-mail)
Cc: REGAN, MARY P (AIT)
Subject: Meeting

Hello Craig,

I was suggested by Ron Lambert last week that it might be a good idea to schedule a meeting to discuss any outstanding issues that could be addressed

prior to mediation. We at SBC would be open to discuss these issues Tuesday

(tomorrow) at 2:30pm. We can talk via conference bridge or meet face to face. Please let me know your preference and I can schedule the meeting.

Thank you,

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>

> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are intended

> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise have

> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately from

> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.

>

>

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Friday, November 07, 2003 3:12 PM
To: 'Ron Lambert'
Cc: 'Craig Foster'; DORIN, PAUL E (Legal); SUNDERLAND, LOUISE (Legal);
REGAN, MARY P (AIT)
Subject: RE: Extension Letter

Ron,
30 days is fine. I will send a letter to extend to 12-15-03. Thanks.

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>

> This e-mail and any files transmitted with it are the property of SBC
Communications and/or its affiliates, are confidential, and are intended
solely for the use of the individual or entity to whom this e-mail is
addressed. If you are not one of the named recipients or otherwise have
reason to believe that you have received this message in error, please
notify the sender at 312-335-4680 and delete this message immediately
from
your computer. Any other use, retention, dissemination, forwarding,
printing or copying of this e-mail is strictly prohibited.
>

-----Original Message-----

From: Ron Lambert [mailto:rlambert@callone.net]
Sent: Thursday, November 06, 2003 5:54 PM
To: SHEEHAN, LEE D (AIT); DORIN, PAUL E (Legal); SUNDERLAND, LOUISE
(Legal); REGAN, MARY P (AIT)
Cc: 'Craig Foster'
Subject: Extension Letter

Lee,

Please verify with Paul Dorin but as a result of the deferral of the
mediation sessions to next week, SBC and UCS have agreed to extend the
closing of the arbitration window an additional 30 days.

Given that time is of the essence, please forward to Craig a revised
stipulation, signed by SBC, for his signature by noon tomorrow (Friday).

Please call me with any questions/comments.

Thanks,

Ron

Ron Lambert

SVP Corporate Development
UCS/Call One
500 West Madison, Suite 411
Chicago, IL 60661
(o) 312/681-8312
(c) 312/771-8156
(f) 312/681-8301
(e) rlambert@callone.net



change nego start
date ltr 10-...

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Wednesday, October 15, 2003 10:06 AM
To: 'craig.foster@callone.net'
Subject: Extension

Hello Craig,
I will fax to you. Please sign and send back to me. Thank you,

<<change nego start date ltr 10-15-03.doc>>

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>
> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
intended
> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.
>
>



change nego start
date ltr.doc...

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Wednesday, October 01, 2003 4:43 PM
To: 'craig.foster@callone.net'
Subject: Extend Negotiation

<<change nego start date ltr.doc>>

- > Lee Sheehan
- > Account Manager
- > SBC Industry Markets
- > Phone 312-335-4680
- > Fax 312-644-4461
- >
- > This e-mail and any files transmitted with it are the property of SBC
- > Communications and/or its affiliates, are confidential, and are
- intended
- > solely for the use of the individual or entity to whom this e-mail is
- > addressed. If you are not one of the named recipients or otherwise
- have
- > reason to believe that you have received this message in error, please
- > notify the sender at 312-335-4680 and delete this message immediately
- from
- > your computer. Any other use, retention, dissemination, forwarding,
- > printing or copying of this e-mail is strictly prohibited.
- >
- >

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Friday, September 19, 2003 10:36 AM
To: 'ronlambert29@comcast.net'
Cc: 'craig.foster@callone.net'; 'brmenkes@mms-law.net'; REGAN, MARY P (AIT)
Subject: RE: SBC UCS Meeting

Ron,
I have Paul, Jeff, Mary Pat and myself all open for 2pm Wednesday. Does that work? I think it more productive from our perspective to do this on a conference bridge. Thanks.

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>

> This e-mail and any files transmitted with it are the property of SBC Communications and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please notify the sender at 312-335-4680 and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited.
>

-----Original Message-----

From: ronlambert29@comcast.net [mailto:ronlambert29@comcast.net]
Sent: Thursday, September 18, 2003 9:31 PM
To: SHEEHAN, LEE D (AIT)
Cc: craig.foster@callone.net; brmenkes@mms-law.net; REGAN, MARY P (AIT)
Subject: RE: SBC UCS Meeting

Mary Pat and Lee,

Just want to touch base to understand when and in what form (meeting, preferable--or call) we are going to touch base with respect to the SBC internal meeting tomorrow. Please drop me either an email or call me on my home phone at 847-866-4094. Thanks.

--
Thanks,

Ron

Ron Lambert

> Ron,
> See attached GT&C's
> Thanks,
>
>
> -----Original Message-----
> From: ronlambert29@comcast.net [mailto:ronlambert29@comcast.net]
> Sent: Friday, September 12, 2003 4:01 PM
> To: SHEEHAN, LEE D (AIT); craig.foster@callone.net;
brmenkes@mms-law.net
> Cc: REGAN, MARY P (AIT); DORIN, PAUL E (Legal)
> Subject: Re: SBC UCS Meeting
>
>
> Lee,
>
> As discussed, my intent for the Wed. meeting is to discuss a redline
that
> UCS
> will provide to Paul as soon as possible so he has sufficient time to
> review.
>
> The action items for a successful meeting are:
>
> (1) SBC's responses to our issue list, which was originally expected
this
> past
> Tuesday. UCS needs to understand what issues you agree and disagree
with
so
> we
> can move forward with a productive redline; and
>
> (2) My receipt of an electronic copy of the GTCs by close of business
today
> so
> we can create the redline. Please send to Craig Foster and Bruce
Menkes
> (both
> copied on this message) in addition to me.
>

> Finally, given that we are within a mile or so of each other, I think
it
> makes
> sense to meet in person so we can have a more productive meeting.
>
> Please confirm that we will receive our two action items and your
thoughts
> on a
> meeting versus a call.
>
> Have a good weekend.
> --
> Thanks,
>
> Ron
>
> Ron Lambert
>
> > When: Wednesday, September 17, 2003 1:00 PM-2:30 PM (GMT-06:00)
Central
> Time
> > (US & Canada).
> > Where: 800-917-7668 passcode 6906576#
> >

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]

Sent: Friday, July 25, 2003 11:11 AM

To: 'craig.foster@callone.net'

Subject: Meeting

Hello Craig,

I have scheduled a meeting for Friday, August 1st, from 8am - 9am cst., to discuss the Completelink Agreement. Please dial into 800-917-7668 passcode 6906576#. If there are any changes to the schedule I will call you.

Thank you,

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>

> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
intended
> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.
>
>



Resale Agreement
071603 GT&C.r...

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Monday, July 21, 2003 9:39 AM
To: 'CRAig.foster@callone.net'
Cc: REGAN, MARY P (AIT)
Subject: Completelink GT&C's

Craig,
Along with the Appendix that Mary Pat had emailed to you, attached is a draft of the Resale Agreement for your review. In addition to these, the Completelink Agreement would need to be signed. Please call me if you have any questions. Thank you,

<<Resale Agreement 071603 GT&C.rtf>>

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>
> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
intended
> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.
>
>

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Monday, May 12, 2003 10:25 AM
To: 'craig.foster@callone.net'
Subject: Meeting

Hello Craig,

Thomas asked that I reschedule our meeting with you. Please let me know your availability for later this week or next to meet with Thomas, Mary Pat Regan and myself? Also, please let me know the topics you would like to discuss.

Thank you,

> Lee Sheehan
> Account Manager
> SBC Ameritech Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>

> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
intended
> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.
>
>

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mr1296@sbc.com]
Sent: Tuesday, October 14, 2003 1:37 PM
To: 'Ron Lambert'
Cc: SHEEHAN, LEE D (AIT); HILL, RONALD C (SWBT); cfoster@callone.net;
'Bruce Menkes'
Subject: RE: Resale Agreement

Yes, you are correct. Sorry I am tied up with a couple of issues today.

Mary Pat

-----Original Message-----

From: Ron Lambert [mailto:rlambert@callone.net]
Sent: Tuesday, October 14, 2003 1:36 PM
To: REGAN, MARY P (AIT)
Cc: SHEEHAN, LEE D (AIT); HILL, RONALD C (SWBT); cfoster@callone.net;
'Bruce Menkes'
Subject: RE: Resale Agreement

I've left you a message to chat...

The reason for my prior email is obviously we reached agreements on the CompleteLink offering that are not included in SBC's "offer"--e.g., right to aggregate, the calculation and application of the Additional Discount, applicability to all CompleteLink offerings and promotions and etc. I assume those additional issues, as well as the GTC issues we have identified and the ICB issues you identify in the below message, will be addressed in SBC's redlines. So, we will await the redlines which will provide more specificity on SBC's offer.

Thanks,

Ron

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mr1296@sbc.com]
Sent: Tuesday, October 14, 2003 11:54 AM
To: 'Ron Lambert'
Cc: SHEEHAN, LEE D (AIT); HILL, RONALD C (SWBT)
Subject: RE: Resale Agreement

Ron,

I do not understand your message. These are the terms of the offer. I also sent you a note saying that we would provide redlines back to you this week. The meeting next week is with the attorney's to work out language for an

agreement to remove the restrictions on Complete Link.

Thanks,
Mary Pat

-----Original Message-----

From: Ron Lambert [mailto:rlambert@callone.net]
Sent: Tuesday, October 14, 2003 12:45 PM
To: REGAN, MARY P (AIT)
Cc: SHEEHAN, LEE D (AIT); HILL, RONALD C (SWBT)
Subject: RE: Resale Agreement

Mary Pat,

I assume this message is superseded by your last message and the parties' commitment to work through the issues over the next 2 weeks.

Please let me know if I have misinterpreted anything.

Thanks,

Ron

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mr1296@sbc.com]
Sent: Tuesday, October 14, 2003 8:18 AM
To: 'rlambert@callone.net'
Cc: SHEEHAN, LEE D (AIT); HILL, RONALD C (SWBT)
Subject: FW: Resale Agreement

CONFIDENTIAL DRAFT FOR DISCUSSION PURPOSES ONLY

Ron,

Here is the outline of the offer on Complete Link, per our discussions.

- 1) Removal of the 250 business location cap.
- 2) Removal of the Maximum Annual Discount cap.
- 3) Discount applies only to eligible services per the tariff.
- 4) Ability to re-sell ICB's using the existing process. (per 13-509)
- 5) Ability to assume ICB's using the existing process.

Thanks,
Mary Pat

> -----Original Message-----

> From: SHEEHAN, LEE D (AIT)
> Sent: Tuesday, October 14, 2003 9:05 AM
> To: REGAN, MARY P (AIT)
> Subject: FW: Resale Agreement

>
>

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461

>
> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are

intended

> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.

>
>
> -----Original Message-----

> From: SHEEHAN, LEE D (AIT)
> Sent: Monday, October 13, 2003 4:26 PM
> To: REGAN, MARY P (AIT); DORIN, PAUL E (Legal); WARDIN, KARL (AIT);
> JOHNSON, RHONDA J (AIT)
> Subject: FW: Resale Agreement

> Per Ron's request, here is our offer back on the table.

> -----Original Message-----

> From: SHEEHAN, LEE D (AIT)
> Sent: Monday, October 13, 2003 4:25 PM
> To: 'ronlambert29@comcast.net'
> Subject: Resale Agreement

> Ron,

> I wanted to reiterate that SBC has been and remains available to
discuss
> our initial offer to UCS that was outlined in a letter to Craig Foster
> dated 6-20-03. Subsequent correspondence on how to calculate the
discount
> was emailed to you on 8-11-03.

> As you recall our offer involved entering into a new Resale Agreement
with
> an Appendix that specifically discusses Completelink and the removal
of
> the 250 location limit and removing the Maximum Annual Discount Cap.
> Please let me know if I can be of further assistance.

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461

> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
intended

> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.



Doc12.doc

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mr1296@sbc.com]
Sent: Thursday, September 04, 2003 3:10 PM
To: 'Craig Foster'
Subject: FW: 3.1 and 3.2

FYI

> -----Original Message-----

> From: ORTLIEB, MARK R (Legal)
> Sent: Thursday, September 04, 2003 3:04 PM
> To: SHEEHAN, LEE D (AIT); REGAN, MARY P (AIT); GAY, JEFFREY
> (SBC-MSI)
> Cc: DORIN, PAUL E (Legal)
> Subject: 3.1 and 3.2

>
> FOR DISCUSSION PURPOSES ONLY

> Lee:

> Please share this with Ron at UCS.

> <<Doc12.doc>>

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mrl296@sbc.com]
Sent: Wednesday, September 03, 2003 12:13 PM
To: 'Craig Foster'; 'ronlambert29@comcast.net'
Cc: DORIN, PAUL E (Legal); GAY, JEFFREY (SBC-MSI); STOKER, JANET (SWBT);
SHEEHAN, LEE D (AIT); ORTLIEB, MARK R (Legal)
Subject: 3:00 (CST) Thursday with UCS

All,

We can use my conference bridge at 312-798-2510 PC 3353085# for our
discussion tomorrow at 3:00(CST).

Thanks,
Mary Pat Regan



UCSresale1.doc

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mr1296@sbc.com]
Sent: Friday, July 18, 2003 3:53 PM
To: 'CRAig.foster@callone.net'
Cc: SHEEHAN, LEE D (AIT); 'ronlambert29@comcast.net'
Subject: DRAFT

<<UCSresale1.doc>>

Craig,

Here is a draft of the appendix for discussion purposes.

Thanks,
Mary Pat



United Completelink
Letter 6-2...

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mrl296@sbc.com]
Sent: Friday, June 20, 2003 4:15 PM
To: 'CRAig.foster@callone.net'
Cc: 'ronlambert29@comcast.net'; SHEEHAN, LEE D (AIT); HARVEY, THOMAS
AIIS (AIT)
Subject: SBC Response

<<United Completelink Letter 6-20-03.doc>>

Craig,

As promised. here is the SBC response in regard to Complete Link. I look forward to hearing from you next week.

Thanks,
Mary Pat

-----Original Message-----

From: Craig Foster [mailto:cfoster@callone.net]
Sent: Monday, November 10, 2003 3:42 PM
To: 'SHEEHAN, LEE D (AIT)'
Subject: RE: Meeting

Lee,

My preference would be to meet here at 2:30, if possible. Thanks.

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Monday, November 10, 2003 9:50 AM
To: Craig Foster (E-mail)
Cc: REGAN, MARY P (AIT)
Subject: Meeting

Hello Craig,

I was suggested by Ron Lambert last week that it might be a good idea to schedule a meeting to discuss any outstanding issues that could be addressed prior to mediation. We at SBC would be open to discuss these issues Tuesday (tomorrow) at 2:30pm. We can talk via conference bridge or meet face to face. Please let me know your preference and I can schedule the meeting. Thank you,

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>

> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
> intended solely for the use of the individual or entity to whom this
> e-mail is addressed. If you are not one of the named recipients or
> otherwise have reason to believe that you have received this message
> in error, please notify the sender at 312-335-4680 and delete this
> message immediately from your computer. Any other use, retention,
> dissemination, forwarding, printing or copying of this e-mail is
> strictly prohibited.
>
>

-----Original Message-----

From: Craig Foster [mailto:craig.foster@callone.net]
Sent: Friday, July 25, 2003 11:19 AM
To: SHEEHAN, LEE D (AIT)
Subject: RE: Meeting

Thanks Lee.

-----Original Message-----

From: SHEEHAN, LEE D (AIT) [mailto:ls2618@sbc.com]
Sent: Friday, July 25, 2003 11:11 AM
To: 'craig.foster@callone.net'
Subject: Meeting

Hello Craig,

I have scheduled a meeting for Friday, August 1st, from 8am - 9am cst.,
to
discuss the Completelink Agreement. Please dial into 800-917-7668
passcode
6906576#. If there are any changes to the schedule I will call you.

Thank you,

> Lee Sheehan
> Account Manager
> SBC Industry Markets
> Phone 312-335-4680
> Fax 312-644-4461
>

> This e-mail and any files transmitted with it are the property of SBC
> Communications and/or its affiliates, are confidential, and are
intended
> solely for the use of the individual or entity to whom this e-mail is
> addressed. If you are not one of the named recipients or otherwise
have
> reason to believe that you have received this message in error, please
> notify the sender at 312-335-4680 and delete this message immediately
from
> your computer. Any other use, retention, dissemination, forwarding,
> printing or copying of this e-mail is strictly prohibited.
>
>

-----Original Message-----

From: Craig Foster [mailto:craig.foster@callone.net]
Sent: Friday, July 25, 2003 1:37 PM
To: REGAN, MARY P (AIT)
Subject: RE: Appendix Resale

Thank you.

-----Original Message-----

From: REGAN, MARY P (AIT) [mailto:mrl296@sbc.com]
Sent: Friday, July 25, 2003 11:15 AM
To: 'Craig Foster'; SHEEHAN, LEE D (AIT)
Cc: ronlambert29@comcast.net; bmenkes@mms-law.net
Subject: RE: Appendix Resale

Craig,

Thanks for the redlines. We will review these internally and get our comments back to you. I think next Friday should work but let me check everyone's schedule and I will let you know.

Thanks,
Mary Pat

-----Original Message-----

From: Craig Foster [mailto:craig.foster@callone.net]
Sent: Friday, July 25, 2003 10:15 AM
To: SHEEHAN, LEE D (AIT); REGAN, MARY P (AIT)
Cc: ronlambert29@comcast.net; bmenkes@mms-law.net
Subject: Appendix Resale

Mary Pat and Lee:

Attached is a redlined version of the Appendix Resale which you sent to me on Friday of last week.

Our changes, which are explained in more detail in a Comment Section on the first page of the attached redline, are basically to:

1. Clarify the CompleteLink products attachments that UCS may use;
2. Clear up the interplay between the various agreements to be signed;
3. Give some more specificity to the aggregation rules; and
4. Revise the rules governing SBC's withdrawal of the offering, to make clear that the change in conditions which gives rise to SBC's right to withdraw must specifically impact the Resale Agreement.

We suggest that the best way for us to proceed would be for me and Ron to

meet with you on Thursday or Friday of next week (July 31 or August 1) to work out the final language. If you can get us your comments by Wednesday of next week, that would allow us to be prepared to address your concerns at the meeting. It would probably be helpful if our respective lawyers (Bruce Menkes on our end, and, we assume, Paul Dorin on your end) attend to resolve any wording issues.

Please confirm that these dates and this procedure is acceptable to you.

Craig

CERTIFICATE OF SERVICE

This is to certify that I have this date served a true and correct copy of the within and foregoing United Communications Systems' Response to SBC Illinois' Renewed Motion to Strike, by electronic transmission to the following:

Glennon P. Dolan
Administrative Law Judge
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601-3104
gdolan@icc.state.il.us
(also via hand delivery)

Michael J. Lannon
Brandy D.B. Brown
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601-3104
mlannon@icc.state.il.us
bbrown@icc.state.il.us

Torsten Clausen
Case Staff
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
tclausen@icc.state.il.us

Jeff Hoagg
Case Manager
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
jhoagg@icc.state.il.us

Nancy J. Hertel
Mark R. Ortlieb
Illinois Bell Telephone Company
225 West Randolph Street, Floor 25D
Chicago, Illinois 60606
(312) 727-2415
(312) 727-4517
Fax: (312) 845-8979
nancy.j.hertel@ameritech.com
mo2753@sbc.com

Theodore A. Livingston, Jr.
Dennis G. Friedman
Angela O'Brien
Mayer, Brown, Rowe & Maw LLP
190 S. LaSalle Street
Chicago, Illinois 60603
(312) 782-0600
Fax: (312) 701-7711
tlivingston@mayerbrownrowe.com
dfriedman@mayerbrownrowe.com
aobrien@mayerbrownrowe.com

This 26th day of February, 2004.


Brendan J. Healey