

BEFORE THE ILLINOIS COMMERCE COMMISSION

Docket No. 03-0596

**Rebuttal Testimony of John Haring
On Behalf of SBC Illinois**

SBC Illinois Exhibit 6.0

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1 **REBUTTAL TESTIMONY OF JOHN HARING**

2 **ON BEHALF OF SBC ILLINOIS**

3 **I. QUALIFICATIONS**

4 **Q1. WHAT IS YOUR NAME, TITLE AND BUSINESS ADDRESS?**

5 **A.** My name is John Haring. I am a founding principal of Strategic Policy Research, Inc., an
6 economics and public policy consultancy located at 7979 Old Georgetown Rd., Bethesda,
7 Maryland 20814.

8

9 **Q2. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
10 **PROFESSIONAL BACKGROUND.**

11 **A.** I received a B.A. with Highest Honors from the University of Virginia in Charlottesville
12 and was awarded the John R. Williams Prize as the outstanding honors graduate in the
13 Class of 1968. I received a M.Ph. and Ph.D. in economics from Yale University in 1972
14 and 1975. Before co-founding SPR in 1993, I served as Chief Economist of the Federal
15 Communications Commission and Chief of the Commission's Office of Plans and Policy.
16 In these capacities I managed and participated in the formulation of federal regulatory
17 policy toward the communications industry. Before joining the FCC, I was a visiting
18 professor of economics at my alma mater and, before that, I served, consecutively, as a
19 staff economist in the Federal Trade Commission's Bureau of Economics, the Civil
20 Aeronautics Board's Office of Economic Analysis and the Economic Policy Office of the
21 Antitrust Division within the U.S. Department of Justice. At these agencies, I worked on
22 a variety of competition policy issues, including ones related to accounting standards, the
23 OPEC oil cartel, airline deregulation and the supply of various energy resources.

24 I am the author of a considerable number of professional publications, including
25 five papers in the FCC Office of Plans and Policy Working Paper series, the
26 "Telecommunications" entry in the *Fortune Encyclopedia of Economics* and a book
27 entitled *International Trade in Telecommunications* (1998, MIT Press/AEI Press) in the
28 American Enterprise Institute's Studies in Telecommunications Deregulation series. I
29 have completed a large number of consulting projects for a great many enterprises in both
30 the private and public sectors of the economy, including most of the major
31 telecommunications and broadcasting companies and their trade associations. I have
32 consulted for the Iowa Utilities Board, the Federal Trade Commission of Barbados, the
33 Mexican Ministry of Transport and Communications and the Kingdom of Jordan's
34 Ministry of Information and Communications. Since 1993 I have served as an expert
35 economic adviser to the United Kingdom's Office of Telecommunications (OfTel) and its
36 new successor agency, the Office of Communications (Ofcom). I attach a copy of my
37 full curriculum vita.

38
39 **II. PURPOSE OF TESTIMONY**

40 **Q3. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

41 **A.** The purpose of my testimony is to offer a rebuttal to the testimony of ICC Staff
42 Economist Genio Staranczak and Sprint witness Gordon on the issue of potential
43 deployment of high-capacity loops. I explain that their claim that potential deployment
44 analysis requires two alternative providers (in addition to SBC Illinois) is erroneous.
45 This claim is, in my view, economically unfounded, and adopting it would have the
46 untoward consequence of deterring competition and the deployment of competing

47 facilities, the ostensible purpose of the Telecommunications Act and of the *Triennial*
48 *Review Order*. I also explain why I disagree with Staff's contention that the annual
49 telecommunications "spend" at a customer location must exceed a threshold of \$150,000
50 to make entry attractive. This contention is also economically unfounded, implicitly
51 resting on the premise that multiple facilities must be profitable to make competitive
52 deployment economically feasible.

53

54 **III. DISTINCTION BETWEEN TRIGGER ANALYSIS AND POTENTIAL**

55 **DEPLOYMENT ANALYSIS FOR LOOPS**

56

57 **Q4. PLEASE EXPLAIN THE DIFFERENCE BETWEEN THE FCC'S "TRIGGER"**
58 **ANALYSIS AND "POTENTIAL DEPLOYMENT" ANALYSIS FOR LOOPS.**

59 **A.** The FCC's self-provisioning and wholesale triggers specify conditions that the FCC
60 deems sufficient for a finding of non-impairment: their satisfaction *suffices* (but is not
61 *necessary*) to demonstrate that a particular ILEC element is not an economically essential
62 facility to support competitive entry. The FCC's holding is that if a sufficient number of
63 other facilities exist, that in and of itself demonstrates non-impairment. The FCC's
64 policy rationale is that access to a particular facility cannot be essential if substitute
65 alternatives (already) *exist* because their existence, *prima facie*, implies a credible
66 alternative course of action (*viz.*, reliance upon these rather than the incumbent's
67 facilities). In each case, the state commission must find that two CLECs have actually
68 deployed loop facilities to a particular location.

69 A particular service element *may*, however, not be economically essential for
70 competitive entry, even if substitute alternatives do *not* (currently) exist. If there were a
71 credible *potential for deployment* of substitute alternative capabilities, it would still be
72 economically reasonable to conclude that access to a particular facility is not necessary
73 for competitive entry. In this circumstance, *potential deployment* (rather than actual
74 existence) of an alternative facility implies a credible alternative course of action (*viz.*,
75 self-deployment to realize the benefits of entry).

76

77 **Q5. IF THE TRIGGER ANALYSIS REQUIRES THAT TWO ALTERNATIVE**
78 **PROVIDERS ACTUALLY HAVE DEPLOYED LOOPS TO A GIVEN**
79 **LOCATION, WHY SHOULD CREDIBLE POTENTIAL DEPLOYMENT OF,**
80 **SAY, ONLY ONE SUBSTITUTE ALTERNATIVE BE SUFFICIENT TO**
81 **SUPPORT A FINDING OF NON-IMPAIRMENT?**

82 A. The answer turns on the existence of a variety of other decision-relevant considerations
83 besides the *number* of alternative providers within particular classes of alternatives. The
84 FCC's "trigger" tests differ in significant respects from its "potential deployment"
85 analysis. The trigger tests specify certain rudimentary counts be undertaken without
86 reference to any alleged economic and/or operational impairments,¹ and the specific
87 triggers are established at sufficiently demanding levels that findings of non-impairment
88 *must* follow when the thresholds are met (unless a formal waiver is sought and granted).

89 In essence, the Commission is saying, "If there are *that many actual* supply capabilities,

¹These might relate to, say, unused capacity or the historical lineage of different facilities.

90 it is unreasonable to draw any conclusion other than that there is no impairment and that
91 is what one *must* therefore conclude.” Triggers are essentially designed as “bright-line”
92 tests.

93 Analysis of potential deployment entails a different, more analytically demanding
94 investigation of supply conditions in particular market settings.² A credible
95 demonstration of the potential for competitive facilities deployment can also provide a
96 compelling basis for a finding of non-impairment. The FCC thus affords state authorities
97 *discretion* to evaluate economic and operational impairments in assessing the credibility
98 of particular demonstrations and draw their own conclusions.

99 Staff argues that “logic” requires adoption of the same or higher thresholds for
100 potential as against actual facilities deployment, but this “logic” disregards the far more
101 rigorous analysis involved in a potential-deployment demonstration.³ A credible
102 potential deployment demonstration requires that the Commission find that the many
103 factors enumerated in the FCC’s Rules 51.319(a)(5)(ii) and 51.319(a)(6)(ii) would not
104 bar deployment of a loop to a particular location. The principle of logical consistency
105 suggesting that “likes should be treated alike” also presumably suggests that “unlikes
106 should be treated unlike.”

² The reason for concluding that competition would not be impaired differs in the case of a demonstration of potential deployment from that in the case of actual deployment. In the latter case, simply “seeing is believing” whereas, in the former, credibility derives from analyzing barriers to deployment. This analysis need not (indeed, would usually not) depend on the number of actors, but rather whether barriers exist. I note that the FCC’s rules (51.319(a)(5)(ii) and 51.319(a)(6)(ii)) ask the commission to determine whether “a requesting telecommunications carrier” (emphasis added) is impaired without access to a UNE loop. The referent is singular, not plural. Moreover, the analysis does not attempt to predict actual deployment. Rather, it looks at whether a CLEC “could” deploy a loop to a building—not whether a CLEC “would” actually deploy a loop.

107

108 **IV. BARRIERS TO ENTRY**

109 **Q6. PLEASE COMMENT ON STAFF'S CONTENTION THAT A SPEND**
110 **THRESHOLD OF \$50,000 IS TOO LOW AND MUST BE AT LEAST \$150,000.**

111 **A.** First, while there are differences among economists on this point, my view is that
112 analysis of entry barriers most incisively focuses on *supply-side* considerations. The
113 classic Stiglerian entry barrier (named for the University of Chicago Economic Nobelist,
114 George J. Stigler) involves the existence of differences in resource *input* costs that make
115 it impossible for competitors to expand supply to offset a monopolistic output restriction.
116 These differences may arise from legal barriers or differences in resource availabilities or
117 possibly other sources.

118 It is sometimes (more controversially) argued that economies of scale may
119 constitute an entry barrier. This often amounts to an argument that *demand* may not be
120 sufficient to support an additional competitor (or two or three), given the size requirement
121 for realization of potential scale economies and, moreover, that this may preclude or limit
122 competition. Thus, in this particular case the Staff argues that if one supply facility
123 requires \$50,000 worth of "room," two would require \$100,000 worth of "room," and the
124 appropriate threshold is thus likely to be more like \$150,000.

125 The issue for evaluation of competitive impairment is whether, without regulated
126 access to an unbundled element, there exist barriers to competitive entry, preventing an

³ Staff's logic presumes all other relevant considerations and requirements and their import for drawing conclusions and decision-making are the same when they are, in fact, *not* the same as conceived and dictated by the FCC.

127 expansion of output and the meeting of a *presumed* demand. The issue is *not*, as the Staff
128 seemingly contends, how much demand there is and whether the level of demand suffices
129 to support the simultaneous operation of some particular number of competitors. It is
130 whether there is anything preventing a competitor from deploying necessary facilities to
131 meet a specific level of demand and, incidentally, take the business away from an
132 incumbent.

133 The fact that there is allegedly only “room for one” does not mean there cannot be
134 *competition for the right to be the one* (i.e., so-called “franchise” competition), anymore
135 than the fact that a Chicago consumer buys single-line residential telephone service from
136 one carrier means there cannot be competition to be the one—even though there is only
137 “room for one.” That customer does not need to buy more than one line in order to
138 ensure the vigor of that competition.

139 By the same token, suppose there is (just) “room for three” at a particular building
140 location within the Chicago loop and, moreover, that three suppliers have each deployed
141 facilities to that location that are fully utilized. This set of conditions is no more or less
142 “competitive” than the circumstance that there is room for one and only one serves at any
143 given point in time.

144 The standard for non-impairment under the Act is that an efficient competitor can
145 offer the services that it seeks to offer. That standard does not require that there be room
146 for more than one firm. In particular, a competitor could induce customers to sign long-
147 term contracts and take business away from SBC Illinois. The standard of the Act does
148 not depend on their being room for SBC Illinois, as well. Barriers to entry would exist
149 (in the short run) only if SBC Illinois had previously locked up the customers with long-

150 term contracts. As Mr. Underdown of Access One has testified, this does not appear to
151 be the case because “virtually all customers sign contracts of 12, 24 or 36 months”. (line
152 168.)

153

154 **V. CONCLUSION**

155 **Q7. HOW WOULD YOU ADVISE THE ICC TO EVALUATE POTENTIAL**
156 **DEPLOYMENT?**

157 **A.** The fundamental economic issue is whether there exist any economic barriers preventing
158 a competitor from competing for existing demand—not whether a higher level of
159 hypothetical demand would allow room for more competitors.

160

161 **Q8. DOES THIS CONCLUDE YOUR TESTIMONY?**

162 **A.** Yes it does.

JOHN HARING

Received a B.A. with highest honors from the University of Virginia, where he was awarded the John R. Williams Prize as the outstanding honors graduate in the class of 1968, and M.Ph. and Ph.D. degrees in Economics from Yale University. He was a Woodrow Wilson Fellow, held a Yale University Fellowship, a Brookings Research Fellowship and is a member of Phi Beta Kappa and Phi Eta Sigma. His areas of specialization are industrial organization, regulated industries and monetary theory. He was a lecturer and teaching assistant at Yale University and an Adjunct Professor at the University of Maryland's University College.

He served as Chief Economist at the Federal Communications Commission ("FCC") and Chief of the Commission's Office of Plans and Policy during the Reagan and Bush administrations. At the FCC, he was a leading exponent of incentive regulation and pricing freedom for telephone companies operating in competitive environments. He was the principal architect of the Commission's price-cap regulatory reform plans as well as its efforts to strengthen resource rights in the electromagnetic spectrum and in broadcast programming.

Prior to his six years at the FCC, he was Visiting Professor of Economics at the University of Virginia, worked as a private economic consultant and served consecutively on the staffs of the Federal Trade Commission's Bureau of Economics, the Civil Aeronautics Board's Office of Economic Analysis and the U.S. Department of Justice's Economic Policy Office. He has prepared papers and reports on a wide range of subjects including telecommunications economics and regulation as well as accounting standards, conglomerate mergers, energy policy and resources, and the OPEC cartel.

He is the author of five papers in the FCC's Office of Plans and Policy Working Paper Series and the "Telecommunications" entry in the *Fortune Encyclopedia of Economics*. He is the coauthor (with Ronald Cass) of a book on international trade in telecommunications equipment in the American Enterprise Institute's Studies in Telecommunications series (MIT Press). In addition to his work for clients in the private sector, he has served as a consultant to the Iowa Utilities Board, the United Kingdom's Office of Telecommunications ("OFTEL") and the Mexican Ministry of Communications and Transport. Since 1993, he has served as an Economic Advisor to OFTEL and its Director General.

EDUCATION

YALE UNIVERSITY

Ph.D., Economics, 1975

YALE UNIVERSITY

M.Ph., Economics, 1971

UNIVERSITY OF VIRGINIA

B.A. with Highest Honors, 1968

EMPLOYMENT

1992-Present STRATEGIC POLICY RESEARCH, INC.—Bethesda, Maryland
Principal. Telecommunications and public policy consulting services for a variety of clients in the telecommunications industry.

1990-1992 NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.
(NERA)—Washington, D.C.
Vice President. Economics and public policy consulting services for a variety of clients in the telecommunications industry.

1989-1990 FEDERAL COMMUNICATIONS COMMISSION —
Washington, D.C.
Chief Economist. Economic policy analysis and evaluation for the Chairman of the Federal Communications Commission.

1983-1989 OFFICE OF PLANS & POLICY, FEDERAL COMMUNICATIONS
COMMISSION—Washington, D.C.
Chief (1987-1989). Management of and participation in the development of national regulatory policy in the communications industry.

1982-1983 UNIVERSITY OF VIRGINIA — Charlottesville, Virginia
Visiting Professor of Economics. Taught courses in microeconomics, industrial organization, regulation, statistics and econometrics.

- GLASSMAN-OLIVER ECONOMIC CONSULTANTS, INC.—
Washington, D.C.
- 1979-1982 *Vice President.* Microeconomic analysis of regulatory and competition policy issues for many of America's leading corporations.
- ANTITRUST DIVISION, ECONOMIC POLICY OFFICE, U.S.
DEPARTMENT OF JUSTICE—Washington, D.C.
- 1979-1979 *Senior Staff Economist.* Competition policy analysis of issues related to the energy industries.
- OFFICE OF ECONOMIC ANALYSIS, CIVIL AERONAUTICS
BOARD—Washington, D.C.
- 1977-1979 *Senior Staff Economist.* Economic analysis of competition policy issues related to regulatory reform in the air transportation industry.
- BUREAU OF ECONOMICS, DIVISION OF INDUSTRY
ANALYSIS, FEDERAL TRADE COMMISSION—Washington,
D.C.
- 1972-1977 *Senior Staff Economist.* Economic analysis of competition and regulatory policy issues in the transportation, energy and communications industries.

PROFESSIONAL ACTIVITIES

Member, American Economic Association

Member, Western Economic Association

Member, Mt. Pelerin Society

Telecommunications Policy Research Conference ("TPRC"):

President and Chairman of the Board of Directors, 1992-1993

Treasurer and Secretary, 1991-1992

PAPERS, PUBLICATIONS AND SUBMISSIONS

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