STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY (SBC ILLINOIS)	)	
	)	**04-0441**
Petition for Variance Pursuant to	)	
Part 735 of the Commission's Rules	)	

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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October 29, 2004

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The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the above-captioned matter.

I. OVERVIEW

This proceeding was initiated pursuant to a *Verified Petition For Variance Pursuant To Part 735 Of The Commission's Rules* ("Petition for Variance") filed by Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC Illinois" or "SBC") on June 21, 2004. Along with the Petition for Variance, SBC filed, among other things, the testimony of SBC witness, Mr. David F. Becker.

On August 12, 2004, the Administrative Law Judge ("ALJ"), held a status hearing, wherein he granted the Petition for Leave to Intervene of the Attorney General of the State of Illinois ("AG") , and set a schedule whereby the Staff would file a Verified Statement on September 10, 2004, and an evidentiary hearing would be held on September 20, 2004. Tr. 10-11. On August 3, 2004, the AG filed a "Response Of The

People Of The State Of Illinois To Illinois Bell Telephone's Petition for A Variance." On September 10, 2004, the Staff filed the Verified Statement of Ms. Joan S. Howard, who is employed by the Commission as a Consumer Policy Analyst in the Consumer Services Division. On September 17, 2004, SBC Illinois filed a Response to the Verified Statement of Staff witness Ms. Howard. Finally, on September 20, 2004, the ALJ held an evidentiary hearing in this proceeding.

II. SBC ILLINOIS' PETITION FOR VARIANCE

In its petition, SBC Illinois seeks a waiver from subsection 70(b)(1)(G) of Part 735 (83 Illinois Admin. Code §735) to permit SBC Illinois to implement a new billing option. SBC Illinois seeks a waiver from subsection 70(b)(1)(G) so it can offer to its residential and non-residential customers the *option* to choose whether they receive billing detail for local toll and long distance calls included in flat rate usage plans. SBC Ill. Ex. 1.0 (Becker), at 2. SBC Illinois proposes to offer a toll detail suppression option to customers who have purchased packages that include both unlimited local toll and unlimited long-distance calling at a flat rate ("Unlimited Toll/LD Packages"). *Id*., at 2. SBC Illinois proposes to provide a monthly usage summary to those customers who choose this toll detail suppression option. Customers that do not choose this option will continue to receive bills that have the current call detail, with the cost of the call shown as zero. *Id*.

All toll calls that are not included in the Unlimited Toll/LD Packages will continue to be listed on the bill, for example, international calls, credit card calls, and collect calls. SBC Illinois proposes to suppress the detail only if the customer affirmatively makes

that specific request, either at the point of sale, or via the mailing and/or customer contact. SBC Ill. Ex. 1.0 (Becker), at 5-6. Customers, moreover, can always choose the option of reverting back to receiving all future toll call detail simply by contacting SBC Illinois. *Id*.

III. THE APPLICABLE STATUTE OR RULE

Section 735.50 (Variance) of the Commission's Rules allows the Commission to grant a temporary or permanent waiver of the Commission's requirements set forth in Part 735. The party seeking the waiver, however, must meet the requirements of Section 735.50. Section 735.50 provides, in full, the following:

> The Commission, on application of a company, customer, applicant, or user or on its own motion, may grant a temporary or permanent variance from this Part in individual cases where the Commission finds that:
>
> a) The provision from which the variance is granted is not statutorily mandated;
>
> b) No party will be injured by the granting of the variance; and
>
> c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

In this proceeding, SBC Illinois seeks to have the Commission waive the requirements of subsection 70(b)(1)(G) of Part 735 of the Commission's Rules. Subsection 70(b)(1)(G) requires an "itemization of all toll calls." Section 735.70(b)(1)(G) of the Commission's Rules provides in full the following:

> if a local exchange company has assumed responsibility of collection for toll calls, it shall include an itemization of all toll calls charged to the account including, but not limited to the date and time of the call, the rate

> which applied to the call, the length of the call in minutes, the destination of the call, or point of origin for collect and/or third party calls;

See 83 Ill. Admin. Code Part 735.70(b)(1)(G).

IV. ARGUMENT

A. SBC Illinois' Position

In support of its request for variance, SBC Illinois presented the testimony of David F. Becker, Director of Billing Product Management for SBC Operations. Mr. Becker is Director of retail bill format across all 13 SBC states and in that role he is responsible for customer research analysis, bill format/content requirements, and end user billing strategies. Mr. Becker testified that results of a customer research initiative, with the objective of improving the end user monthly bill, indicated that customers prefer a bill as close to one page as possible, and forgoing the call detail on Unlimited Toll/LD Packages for calls for which no separate charge is assessed. SBC Ill. Ex. 1.0 (Becker), at 4. Further, Mr. Becker asserted that suppressing toll detail for flat rate plans may potentially reduce costs for paper and postage. Id. at

Mr. Becker, moreover, emphasized the fact that call detail suppression would be optional. In this regard, Mr. Becker testified as follows:

> Yes, toll itemization would be optional, in that a customer could choose to suppress her toll/LD call detail or choose to receive the call detail itemized on her monthly bills. Also, if a customer chooses local toll/long distance suppression, she may change this election at any time and, on a going forward basis, receive the call detail associated with her unlimited toll/LD calls. A customer may also request SBC to retrieve and provide past toll/LD detail (for at least 24 months of previous bills) in the event she wishes to see the calls that were made in a particular month. In Illinois, there is no charge for duplicate bills and therefore there would be no additional charge for requesting previous bills with toll/LD usage in

> detailed format. There is also no charge to turn the detail back on a t any time should the customer request it.

SBC Ill. Ex. 1.0 (Becker), at 5.

Regarding, the variance requirements found in Part 735.50 of the Commission's rules, Mr. Becker testified that: (1) because he is not an attorney, he would not comment on whether SBC Illinois' waiver request involved a mandatory provision of the Illinois Public Utilities Act ("PUA"); (2) customers would not be harmed, primarily because it is entirely optional; and (3) subsection 735.70(b)(1)(G) is unduly burdensome because it fails to contemplate unlimited calling for a flat monthly rate. SBC Ill. Ex. 1.0 (Becker), at 9-10.

B. The Staff's Position

The Staff provided the Commission the Verified Statement of Joan S. Howard. Ms. Howard testified that the Staff finds many of SBC Illinois' reasons for requesting the waiver to be well founded. First, the variance is available as an *option* at the request of the SBC Illinois' local customer. Second, it is the Staff's understanding that the waiver is applicable only to bills of SBC Illinois local customers who have purchased Unlimited Toll/LD Packages at a flat rate. Third, and critically important, the SBC Illinois local customer would have the *option* to request suppression of call detail for Unlimited Toll/LD Packages and at any time, without charge, retain the *option* to change their prior request and return to receiving call detail on a going forward basis. Finally, the notice that SBC Illinois intends to give their customers regarding call detail suppression appears to be sufficient. These factors, in the Staff's view, all mitigate in favor of granting SBC Illinois' requested variance. Staff Ex. 1.0 (Howard), at 4.

Ms. Howard, however, noted that the Staff had certain concerns regarding SBC Illinois' requested variance. First, in order to allow SBC Illinois' customers who purchase Unlimited Toll/LD Packages to switch from call detail suppression back to receiving call detail, and to allow customers to evaluate their telecom usage for any given month or to compare months of usage, the Staff, presumes that SBC (local or long distance) is able to, and in fact would, retain the call detail data, including usage data, for at least 24 months. *See* Staff Ex. 1.0 (Howard), at 4 *citing* SBC Illinois Ex. 1.0 (Becker), at 6. The Staff also requested that if it is wrong regarding its presumption, that SBC inform the Staff that it is laboring under a wrong presumption. *Id.* SBC Illinois, in its Response to Ms. Howard's Verified Statement ("SBCI Response"), informed the Staff and the Commission that the Staff's presumption that SBC Illinois would retain call detail, including usage detail, for at least 24 months was accurate. SBC Ill. Response, at 2.

The Staff's second concern was that SBC Illinois local customers that have an inter-exchange carrier ("IXC") other than SBC Long Distance would not be offered the same call detail suppression options as the end user customer that has SBC Illinois as its local carrier and SBC Long Distance as its IXC.[1] Staff Ex. 1.0 (Howard), at 4-5. The Staff, therefore, conditioned its favorable recommendation upon a commitment by SBC Illinois to offer call detail suppression to its end-user customers that use an IXC other

[1] Part 735 requires local exchange carriers ("LECs") that have "assumed responsibility of collection for toll calls" to provide the call detail as listed in Part 735. It is the Staff's understanding that when a LEC and a long distance (or inter-exchange carrier or "IXC") carrier enter into a billing and collection ("B&C") agreement the LEC routinely would provide B&C services to the IXC for both toll and long distance. Staff Ex. 1.0 (Howard), at 4-5.

than SBC Long Distance. *Id.*, at 5. In addition, the call detail suppression should be the same as what SBC Illinois provides to end-user customers that have SBC Illinois as its local carrier and SBC Long Distance as its inter-exchange carrier. *Id.* It is the Staff's understanding that SBC Illinois can meet this condition by notifying the IXCs with whom they have B&C agreements that SBC Illinois will be offering this option to IXCs (and their end-users) that renegotiate the applicable B&C agreement, if needed. *Id.*

In the SBC Illinois Response, on page 2, SBC Illinois responds to the Staff's second concern as follows:

> SBC Illinois is concerned that the second presumption may have inadvertently been phrased too broadly. SBC is quite willing to offer call detail suppression to its enduser customers that use an IXC other than SBC Long Distance, as long as the following circumstances exist: 1) the IXC has a billing and collection agreement with SBC Illinois; 2) the IXC offers unlimited calling plans to its customers and wants to offer those customers the option of suppressing call detail; 3) the IXC agrees to the data retention requirement at issue in Staff's third presumption; and 4) the variance granted by the Commission is phrased broadly enough to be applicable to SBC Illinois' billing of unlimited calling plans on behalf of SBC Long Distance or any other IXC. SBC Illinois assumes that these circumstances were implicit in Ms. Howard's statement.

SBC Illinois' assumption is correct. The four (4) circumstances SBC Illinois lists above are implicit in Ms. Howard's verified statement.

SBC Illinois, however, remained confused regarding "Staff's third presumption, in that it appears to require <u>both</u> SBC Illinois and the IXC to be able to retain, and to actually retain" a customer's call detail (emphasis added). SBC points out that the Staff, in its first presumption contained in Ms. Howard's verified statement, "requires either SBC Illinois <u>or</u> SBC Long Distance to be able to retain, and to actually retain, a customer's call detail data." SBC Illinois' assertion is correct. The Staff's primary

concern is that the call detail data is *accessible* upon the request of an end-user customer during the 24 month period in order to allow a customer to evaluate and their telecom usage for any given month or to compare months of usage, regardless of which carrier (SBC Illinois or the IXC) would actually retain the call detail data for 24 months. Staff Ex. 1.0 (Howard), at 5. In summary, under the circumstances described by Staff witness Ms. Howard and by SBC Illinois in its Response to Ms. Howard, the Staff has no objection to SBC Illinois' petition for variance of Part 735.70(b)(1)(G).

Finally, the Staff agrees with SBC Illinois' witness Mr. Becker, regarding the variance requirements found in Part 735.50 of the Commission's rules, in that customers would not be harmed, primarily because it is entirely optional and subsection 735.70(b)(1)(G) could appear to be unduly burdensome, under the specific facts involved in this proceeding, because it fails to contemplate unlimited calling for a flat monthly rate. SBC Ill. Ex. 1.0 (Becker), at 9-10. The Staff, further, notes that section 735.70(b)(1)(G) is not a provision of the PUA. The PUA, moreover, has no statutory mandate requiring call detail. Such a requirement is found only in section 735.70(b)(1)(G) of the Commission's Rules. Accordingly, SBC Illinois' waiver request does not involve a mandatory provision of the PUA. SBC Illinois' Petition for Variance from the requirements of Part 735.70(b)(1)(G) appears to favorably address the criteria established in the Commission's Rule 735.50 for a variance from the requirements of a Commission rule.

V. CONCLUSION

WHEREFORE, for all the reasons set forth above, the Staff of the Illinois Commerce Commission respectfully recommends that the Commission grant SBC Illinois' request for a variance from the requirements of Part 735.70(b)(1)(G).

Respectfully submitted,

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