STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Cbeyond Communications, LLP	)	
Global TelData II, LLC	)	
Nuvox Communications of Illinois, Inc.	)	
and Talk America Inc.	)	
-vs-	)	**Docket No. 05-0154**
Illinois Bell Telephone Company	)	
	)	
Verified Complaint and Petition for an Order for	)	
Emergency Relief pursuant to 220 ILCS 5/13-515(e)	)	
	)	
XO Illinois, Inc. and Allegiance Telecom of Illinois, Inc.	)	
-vs-	)	**Docket No. 05-0156**
Illinois Bell Telephone Company	)	
	)	
Complaint Pursuant to 220 ILCS 5/13-515	)	
	)	
McLeodUSA Telecommunications Services, Inc.	)	
-vs-	)	**Docket No. 05-0174**
Illinois Bell Telephone Company	)	
	)	
Verified Complaint pursuant to 220 ILCS 5/13-515	)	**(Consol.)**

SBC ILLINOIS' SUMMARY OF POSITION

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SBC ILLINOIS' SUMMARY OF POSITION

Illinois Bell Telephone Company ("SBC Illinois" or the "Company") , by its attorneys, and pursuant to the Administrative Law Judge's Order of March 29, 2005, hereby submits its written summary of position, evidence, and arguments.

I. INTRODUCTION

The Consolidated Complaints are an attempt to derail SBC Illinois' implementation of the FCC's TRO Remand Order. In that Order, the FCC eliminated switching as an unbundled network element and foreclosed unbundling of high-capacity loop and transport facilities in wire centers that meet designated criteria. The FCC made clear its new rules "do not permit competitive LECs to add new . . . UNEs in the absence of impairment" as of the effective date of the order, March 11, 2005. SBC Illinois seeks to implement this portion of the TRO Remand Order without first amending its interconnection agreements ("ICAs") with Complainants.

CLECs argue that their ICAs require amendment before the FCC's new rules can be given effect. That argument is defeated by the language of the ICAs themselves. And even if the ICAs did generally require ICA amendments before changes of law could be given effect, the

TRO Remand Order provides otherwise in the case of the new rules at issue here, and that Order would trump the contrary terms of any ICA.

CLECs also argue that SBC Illinois remains obligated to provide the requested UNEs under state law and other provisions of federal law. That claim also fails. SBC Illinois recognizes its obligation to provide network element platforms under the Commission's Order in Docket 01-0614, and does not propose to cease provisioning new UNE-P under state law until it is authorized to do so. Thus, there is no state law issue here. As to federal law other than the 1996 Act, this Commission has never recognized any right to obtain UNE-P under any such law, and it should not entertain such claims now, after the FCC has ruled that federal policy requires the elimination of UNE-P and, in some wire centers, high capacity loops and dedicated transport.

There is no dispute that the TRO Remand Order eliminates CLEC access to UNE-P under Section 251. The only real dispute is one of timing, i.e., for how long must ILECs continue to provide UNEs the FCC has ruled need no longer be provided? Three federal courts and approximately sixteen state commissions have determined that ILECs may implement the TRO Remand Order without first amending their ICAs. This Commission should do the same.

In the Amendatory Orders Granting Emergency Relief in these matters, the Commission correctly held that SBC Illinois has no obligation under Section 251 to continue provisioning new UNE-P to new customers after March 10, 2005. That ruling should be confirmed and extended to include new UNE-P for embedded base customers as well as the high capacity loops and transport elements that meet the FCC's non-impairment criteria.

II. STATUTORY AND REGULATORY FRAMEWORK

A. THE FCC'S UNBUNDLING DECISIONS

The TRO Remand Order marks the culmination of nearly a decade of litigation over the UNE-P. First put in place by the FCC in its initial unbundling rules in 1996, the UNE-P requirement was vacated in 1999 by the Supreme Court, which repudiated the approach of "blanket access" to network elements that led the FCC to create the UNE-P. On remand, however, the FCC reinstituted virtually the same rules, including the rules requiring access to the UNE-P. The FCC was again reversed, this time, by the D.C. Circuit in USTA I.

The FCC responded in August, 2003, with its Triennial Review Order ("TRO"), which found no impairment in several situations, such as switching used to serve "enterprise" customers. At the same time, however, the FCC again required unbundled access to switching, and thus the UNE-P, for mass-market customers. On appeal, the D.C. Circuit in USTA II vacated as unlawful the FCC's provisional findings of "impairment." The D.C. Circuit reached the same conclusions with respect to the FCC's rules requiring unbundled access to high-capacity loops and dedicated transport.

Soon after the USTA II mandate issued, the FCC released an Interim Order that required ILECs to continue providing switching and high-capacity loops and transport for up to six months, pursuant to their existing interconnection agreements, regardless of any rights the ILECs

might have to cease such provisioning. At the same time, the FCC warned CLECs that, in the event the FCC ultimately decided not to unbundle mass-market switching, CLECs would not be permitted to continue adding new UNE-P lines. The FCC spelled out a proposed transition plan that would allow CLECs, "[f]or the six months following . . . the effective date of the [FCC's] final unbundling rules," to continue to use UNE-P to serve their existing customers at the applicable TELRIC rate plus one dollar. As the FCC stated, however, "this [proposed] transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers at these rates."

On February 4, 2005, the FCC issued its order on remand from USTA II. The FCC ruled in the TRO Remand Order that CLECs are not impaired without access to unbundled switching and the UNE-P, and it accordingly found that "[i]ncumbent LECs have no obligation to provide competitive LECs with unbundled access to mass market local circuit switching." The accompanying FCC rule unconditionally states that "[r]equesting carriers may not obtain new local switching as an unbundled network element."

The FCC also adopted a transition plan that tracked the plan it had laid out in the Interim Order, but that gave CLECs an additional six months to convert their embedded base. The FCC granted CLECs twelve months, starting from the effective date of the order (March 11, 2005), to "submit orders to convert their UNE-P customers to alternative arrangements." The FCC reasoned that "the twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, which could include deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut overs or other conversion." For the purpose of negotiating those tasks, the FCC gave the parties twelve months "to modify their interconnection agreements, including completing any change of law processes." The FCC also ruled that incumbent LECs would be entitled to receive additional compensation, one dollar over the applicable TELRIC rate, for UNE-P lines still in service.

The FCC made clear the transition period applies only to the "embedded customer base." CLECs are not permitted to add any new UNE-P arrangements after the effective date of the TRO Remand Order. As the FCC held, the transition plan does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3).

The FCC also accelerated the effective date of its order to March 11, 2005. The FCC found good cause to render its order effective sooner that usual, reasoning that such action was necessary to avoid "disrupt[ion] to the market."

Within a week of the TRO Remand Order, SBC Illinois advised the CLECs that it would not accept new UNE-P orders after March 11, 2005. At the same time, SBC Illinois reiterated its desire to reach alternative, commercial arrangements that would provide CLECs access to a commercial substitute for UNE-P. For more than four weeks, the CLECs did nothing. Then, more than a month after the FCC released its order, the first of these three CLEC Complaints was filed.

B. THE COMMISSION ORDER INTERPRETING SECTION 13-801 OF THE ILLINOIS PUBLIC UTILITIES ACT AND SBC'S CHALLENGES TO THAT ORDER

Section 13-801 of the Illinois PUA took effect June 30, 2001. On June 11, 2002, the Commission entered an Order in Docket 01-0614 that construed Section 13-801(d)(4) to require unbundled access to certain "network elements platforms" even if one or more of the constituent elements of those platforms did not satisfy the "necessary" and "impair" standards established by federal law. SBC Illinois filed suit in federal court, alleging the Commission order was preempted by federal law. The Commission asked the court to remand the matter to permit the Commission to reconsider its interpretation of Section 13-801 in light of federal law. The Court granted the Commission's request, and the Commission opened Docket 01-0614 on remand on June 23, 2004.

With the FCC's February 4, 2005, announcement of an imminent "nationwide bar" on unbundled switching, the conflict between the ICC's prior unbundling order and federal law was about to reach a critical level. Accordingly, on February 10, 2005, SBC Illinois filed a Petition with the Commission seeking to cancel its unbundled switching tariffs effective March 11, 2005. In light of the FCC's acknowledged "need for prompt action," SBC Illinois asked the ICC to act on the Petition by February 24, 2005. The Commission, however, did not do so. Accordingly, to enforce the FCC's March 11, 2005, deadline, SBC Illinois filed a complaint and motion for preliminary injunction in federal court against enforcement of Section 13-801, the ICC's order, and the associated tariffs, all as they pertain to unbundled local switching, related network elements that are obtained in conjunction with switching, and combinations of network elements that contain switching (including UNE-P).

On March 29, 2005, the district court issued a ruling that concluded "the likelihood of success on this issue [preemption] favors SBC." The court, however, denied the motion for preliminary injunction based on a finding that the balance of harms favored the CLECs, provided the case "moves expeditiously toward a resolution on the merits." To achieve this, SBC Illinois, filed a motion for partial summary judgment on its claim as it relates to unbundled switching and combinations that include switching. The court has established a schedule for briefing the motion that concludes no later than May 26, 2005.

III. SBC ILLINOIS' IMPLEMENTATION OF THE TRO REMAND ORDER

On February 11, 2004, one week after the TRO Remand Order issued, SBC notified the CLEC community of its plan to implement the new FCC rules. The notice was in the form of a series of Accessible Letters. On March 11, 2005, SBC issued Accessible Letter CLECALL05-039 ("Loop/Transport (UNE)") which clarified its procedures for the self-certification process for Loop/Transport pursuant to the TRO Remand Order. As indicated in that Accessible Letter, once a CLEC provides a self-certification that complies with the TRO Remand Order, SBC will provision the UNE and subsequently bring any dispute regarding access to that UNE before the ICC or other appropriate authority. As McLeod acknowledged in its Complaint, the process outlined in the Accessible Letter complies with the requirements of the TRO Remand Order.

After the date of the Accessible Letters, SBC Illinois made clear to the CLECs that special considerations govern in Illinois. Specifically, SBC Illinois advised that it will accept valid orders for unbundled local switching and UNE-P until the requirements of this Commission's June 11, 2002 Order in Docket 01-0164 to provide UNE-P are enjoined, modified, stayed or vacated. SBC Illinois continues to accept CLEC orders for new customers while the state requirement to provide UNE-P remains in effect.

IV. COMPLAINTS UNDER SECTION 13-514

The Complaints allege that SBC Illinois' implementation of the TRO Remand Order constitutes a per se violation of Section 13-514 (1), (2), (4), (5), (6), (8), (10), (11) and (12) of the Illinois PUA by taking the position that: (1) the FCC's cut-off date of March 11, 2005 for new UNE-P was self-effectuating such that SBC Illinois could begin rejecting new orders on that date; and (2) the FCC's cut-off date of March 11, 2005 for new DS1/DS3/Dark Fiber Loops and Dedicated Transport at the wire centers that satisfy the FCC's thresholds was also self-effectuating such that SBC Illinois could begin rejecting new orders on that date.

The Complainants bear the burden of proving their allegations by a preponderance of the evidence. They must show that the particular transgression was unreasonable in light of the relevant circumstances. CLECs have failed to sustain their burden of proving that SBC Illinois acted unreasonably in any respect or committed any violation of Section 13-514.

V. SBC ILLINOIS' IMPLEMENTATION OF THE TRO REMAND ORDER DOES NOT VIOLATE ANY LEGAL OBLIGATION.

A. SBC ILLINOIS IS COMPLYING WITH ALL REQUIREMENTS OF THE TRO REMAND ORDER.

The TRO Remand Order does not require ILECs to enter into ICA amendments before they stop providing new UNE-P, high capacity loops and dedicated transport. On the contrary, its authorization for ILECs to cease providing these new UNEs as of March 11 is self-effectuating. In its Amendatory Orders Granting Emergency relief in these dockets, the Commission correctly concluded that "SBC is not required under Section 252 of the Federal Telecommunications Act to provide new UNE-P to customers who are not, as of March 10, 2005, part of the CLECs' customer base." That conclusion is true with respect to all new UNE-P orders, all new orders for dark fiber loops and transport, and all new orders for DS1 and DS3 loops and transport in wire centers that meet the TRO Remand Order non-impairment criteria.

The TRO Remand Order established an unconditional "nationwide bar" on unbundled access to switching and the UNE-P. The FCC likewise established that CLECs are no longer permitted to place new orders for loops and transport in circumstances where, under the FCC's decision, those facilities are not available as UNEs. For the "embedded base" of customers served by mass market switching, "[the] price for unbundled local circuit switching in combination with unbundled DS0 capacity loops and shared transport . . . shall be the higher of: (A) the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar, or (B) the rate the state public utility commission establishes, if

any, between June 16, 2004, and the effective date of the TRO Remand Order, for that combination of network elements, plus one dollar." 47 C.F.R. § 51.319(d)(2)(iii). Similarly, the price for the embedded base of high-capacity loop and transport facilities that are no longer to be unbundled will be increased by 15 percent.

Thus, SBC Illinois' announced intent to withdraw its switching and UNE-P products, and to comply with the FCC's March 11, 2005, deadline is the straightforward consequence compelled by the FCC's nationwide bar on switching and the UNE-P. The same is true of the other modifications to which the CLECs object – relating to dark fiber, high-capacity loops, dedicated transport, and transitional pricing for pre-March 11 switching arrangements; all are dictated by the FCC's rules.

CLECs' untenable position that the TRO Remand Order permits them to place orders for UNEs that were "declassified" after March 11, 2005 has been rejected by the three federal district courts and by most state commissions that have addressed the issue, including the Indiana, Ohio, New York, Florida, New Jersey, California, Texas, Kansas, Rhode Island, Maine, Massachusetts, Michigan, and Delaware Commissions. These rulings support SBC Illinois' position not just with respect to local switching and UNE-P, but also with respect to high capacity loops and transport.

CLECs' reliance on paragraph 233 of the TRO Remand Order is misplaced. Paragraph 233 requires the parties to "implement changes to their interconnection agreements consistent with our conclusions in this Order," namely, via ICA amendment for those new rules for which the Order elsewhere requires such amendments, and without such amendments for those new rules for which the Order does not elsewhere require them – including new unbundled switching and, where appropriate, loops and transport. This is precisely the result reached by the federal court decisions and the state commission orders identified above. Similarly, the CLECs' reliance on TRO Remand Order paragraphs 143, 196 and 227 ignores the fact that those paragraphs pertain only to the transition of the embedded customer base off of existing UNE arrangements, and not to the provision of new UNEs. Paragraphs 142, 195 and 227 make clear that CLECs are not permitted to add new UNE arrangements during the transition period.

Staff's reading of ¶ 233 misses this central point. Staff focuses on the statement that "we expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act." According to Staff, this means all changes must be negotiated. Staff fails to account for the very next sentence in ¶ 233, which requires changes to interconnection agreements only "consistent with our conclusions in this Order."

The decision of the Northern District of Illinois denying SBC Illinois' request for a preliminary injunction, cited by XO/Allegiance, does not advance the CLECs' cause. The decision was not a ruling on the merits, and SBC Illinois' position regarding the self-effectuating nature of the TRO Remand Order was not even squarely before the court. Rather, SBC Illinois' motion was to enjoin enforcement of the requirement in the Commission's June, 2002, Order that SBC Illinois provide UNE-P, on the grounds that such a state law requirement is preempted by federal law. On that question, the court concluded that "the likelihood of success . . . favors SBC." The court's statements regarding paragraph 233 of the TRO Remand Order merely

reflected the court's doubts as to whether immediate relief should be granted – a question the Court resolved against SBC Illinois on the ground that the balance of harms pertinent to a preliminary injunction motion weighed in favor of the CLECs.

The FCC's self-certification procedure for high capacity loops and transport does not support CLECs' position, as XO/Allegiance argue, but undermines it. If the FCC's new rules were not to be given effect until parties' amended their ICAs, there would be no reason for a self-certification procedure, because by the time the ICAs were amended, the wire centers that satisfy the FCC's non-impairment criteria would have been identified through the negotiation process.

The CLEC position that they may continue to order new UNE switching indefinitely (as well as loops and transport in circumstances where the FCC found unbundling inappropriate) is particularly misguided in light of the fact that the TRO Remand Order responded to three previous vacaturs of the agency's overly expansive unbundling rules. For nearly a decade, the FCC's rules permitted unlawful dependence on UNEs. With the TRO Remand Order, the FCC finally began to reverse course. The limiting FCC order cannot plausibly be read as simultaneously expanding the use of UNEs to serve new customers for an indefinite period.

CLECs challenge the FCC's authority to override interconnection agreements, but, ironically, ignore the fact that this Commission does not have authority to override the FCC. The CLECs' challenge represents an improper collateral attack on the TRO Remand Order. And even if the Commission could entertain the CLECs' challenge, it would properly reject it. First, the Supreme Court has held that like a court, a federal agency can undo what is wrongfully done by virtue of its order, and the FCC's immediate implementation of rules relieving ILECs of the FCC-imposed obligation to provide UNEs that do not satisfy the impairment test certainly qualifies. Second, interconnection agreements are not ordinary private contracts and are not construed as traditional contracts, but as instruments arising within the context of ongoing federal and state regulation. Accordingly, as a federal district court recently held, the FCC, in keeping with its plenary authority under the 1996 Act, may lawfully require the immediate implementation of its bar on new UNE orders. And indeed, the FCC has previously imposed unbundling and interconnection requirements effective as of a date certain, notwithstanding contrary terms in existing agreements.

The CLECs' contention that new UNE arrangements provided to existing customers are part of the "embedded base," and thus not prohibited by the FCC's rules, is contrary to the FCC's rules. The FCC ruled its transition plan "does not permit competitive LECs to add new UNE-P arrangements" – not just new UNE-P customers. McLeod's view that it can obtain new UNEs during the entire twelve-month transition period for UNE-P, high capacity loops and dedicated transport would render meaningless the FCC's restriction of the transition plan to the embedded base. Finally in this regard, the TRO Remand Order rate increases for UNE-P and loops/transport apply only to the embedded base. If CLECs were permitted to continue ordering new UNEs, as they maintain they are, the result would be an absurd anomaly: rates for new customers would be lower than for embedded base customers.

The last sentence of new FCC Rule 51.319(d)(2)(iii) flatly states that "[r]equesting carriers may not obtain new local switching as an unbundled network element." McLeod contends that sentence must be read only as a prohibition on access to ULS during the transition period for a CLEC to serve new customers. The Commission, however, is not free to simply read into the FCC's rule the phrase "to serve new customers" where the phrase does not appear. Looking to Rule 51.319(d)(2) as a whole, it is clear that the subject of subpart (iii) is the CLECs' embedded customer base. Given that, the last sentence of that subpart cannot plausibly be read as being limited to new customers. McLeod's interpretation also defies common sense. The point of the transition period is to force CLECs to transition their embedded base of UNE-P customers to alternative serving arrangements. It makes no sense to conclude that, even as CLECs are required to transition their embedded base of customers, they are permitted to order new lines to serve the same customers.

SBC Illinois' position that the TRO Remand Order prohibits all new orders for declassified UNEs during the transition period, including UNEs that may be intended to service existing customers, is supported by numerous decisions and orders from other jurisdictions, including federal court decisions in Georgia and Mississippi and state commission decisions in Maine, Indiana and California, where the state commission ruled that "the only reasonable interpretation of the prohibition of 'new service arrangements' is that this term embraces any arrangements to provide UNE-P services to any customer after March 11, 2005."

There is no basis for the allegation that the Accessible Letters manifest an unlawful intention to begin billing the TRO Remand Order's authorized transition period price increases for the embedded base of non-impaired UNEs on March 11. 2005. The TRO Remand Order makes clear the transition period rate increases are to be effective for the entire transition period, which means that a true-up to the transition prices necessarily must be made back to March 11, 2005. To ensure accurate billing and avoid the need to perform true-ups manually, SBC Illinois is appropriately billing the higher rates for the embedded base. Consistent with the TRO Remand Order, however, SBC Illinois has made clear it does not intend to require CLECs to pay the higher rates until amendments allowing for a true-up are in place. Based on their initial briefs in this matter, it appears that McLeod and XO/Allegiance have no quarrel with SBC Illinois in this respect. The Cbeyond Complainants, on the other hand, trump up a new claim that SBC Illinois is attempting to violate their interconnection agreements by unilaterally replacing current UNE-P rates with a new, non-negotiated rate of $23.50 plus usage per line per month. This claim is grossly misleading. The $23.50 rate referred to by Cbeyond does not apply to any UNEs that CLECs are entitled to purchase under the terms of their ICAs. Rather, that rate applies to SBC Illinois' Interim "UNE-P Replacement" Commercial Offering, designed for CLECs that wish to continue ordering new mass market local switch port with loop combinations while negotiating a long-term commercial arrangement. This offering is a "non-UNE" alternative arrangement for use by CLECs after the effective date of the TRO Remand Order's bar on new UNE-P orders.

B. THE ICAS DO NOT REQUIRE THE PARTIES TO AMEND THEIR ICAS BEFORE THE FCC'S NEW UNE RULES GO INTO EFFECT.

XO's and Allegiance's claims that the change of law provisions in their ICAs require amendment before the FCC's new rules go into effect are refuted by the language of those provisions, which provide that in the event of a change of law like the FCC's new rules, "the affected [contract] provision shall be immediately invalidated, modified or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either party." The Accessible Letters constituted "written requests" within the meaning of that provision.

XO relies on language in its ICA that requires the parties to "expend diligent efforts to arrive at an agreement regarding the conforming modifications to the Agreement" in the event of a change of law, but SBC Illinois has offered to enter into just such an agreement. That language plainly does not require the parties to comply with provisions of the ICA that have been affected by a change of law until they have arrived at such an amendment.

Furthermore, XO ignores the November, 2004, "Triennial Review Amendment to Interconnection Agreement" to the parties' ICA (the "TRO Amendment"). That TRO Amendment provides, subject to two exceptions that do not apply here, that "SBC Illinois shall provide . . . on an unbundled basis, the Status Quo Elements [elements for which USTA II overturned the TRO's impairment findings and that were addressed by the TRO Remand Order] until the earlier of (a) the effective date of the final unbundling rules adopted by the FCC in the [TRO Remand] proceeding . . . or (b) the date that is six months after Federal Register publication of the 'Status Quo' Order, that date being March 13, 2005." Thus, XO and SBC Illinois have already effectively amended their ICA in a way that implements the non-impairment findings of the FCC's TRO Remand Order.

McLeod's "Intervening Law" provisions also mandate that any contract provision affected by an action of the FCC shall be "immediately invalidated, modified, or stayed consistent with the action of the . . . regulatory agency upon the written request of either Party." Moreover, McLeod's UNE Appendix provides, "In the event that the FCC . . . finds . . . that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards," as the FCC has unquestionably found with respect to switching and the UNE-P combination, "the affected provision will be invalidated, modified or stayed as required to immediately effectuate the subject order upon written request." The Accessible Letters challenged by McLeod constitute just such a request.

The contract provisions on which the Cbeyond Complainants rely deal with "changes of law," but such provisions are designed to conform interconnection agreements to FCC orders, not to flout those orders. Moreover, three of the ICAs command that "[i]n the event of a conflict between the provisions of this Agreement and the [1996] Act, the provisions of the Act shall govern," and the fourth commands that "[n]otwithstanding anything to the contrary in this MFN Agreement . . . , SBC Illinois shall have no obligation to provide UNEs, combinations of UNEs, [or] commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders." It then adds that contract

provisions affected by an FCC order are to be "immediately invalidated, modified or stayed consistent with the action of the regulatory . . . body . . . upon the written request of either Party."

VI. CLECS HAVE FAILED TO SHOW A VIOLATION OF "STATE LAW" UNBUNDLING REQUIREMENTS

Contrary to CLECs' allegations, SBC Illinois has not refused to allow CLECs to order any UNEs to which they are entitled under state law. The Commission's June 11, 2002, Order in Docket 01-0614 interpreted Section 13-801(d)(4) to require SBC Illinois to provide CLECs with access to "network element platforms" without regard to the whether the FCC has unbundled all of the network elements (including switching) that comprise the platform. SBC Illinois is challenging that interpretation in other proceedings. Nonetheless, SBC Illinois informed the CLECs, in response to their statutorily required "48 hour" notice letters, that it will obey the Commission's order as long as it remains in effect. To the extent that the Accessible Letters indicated otherwise, they were superseded, in Illinois, by SBC Illinois' response to the CLECs' 48 hour notice letters. Pursuant to Section 13-515(c), a potential respondent to a complaint alleging violation of Section 13-514 must be "offered 48 hours to correct the situation." By assuring the CLECs in response to their 48 hour letters that it will not reject UNE-P orders while state law UNE-P requirements remain in effect, SBC Illinois corrected any possible violation of state law related to statements of intent in the Accessible Letters.

Moreover, SBC Illinois has honored its pledge. The FCC's March 11, 2005, deadline has come and gone, and SBC Illinois continues to accept CLEC orders for new UNE-P customers.

There is no state law impediment to implementing the provisions of the TRO Remand Order related to loops and transport. To be sure, the Commission in Docket 01-0614 construed section 13-801(d)(4) to impose an obligation to provide access to certain combinations of network elements, but 13-801(d)(4) does not address individual network elements. Rather, it addresses only the "network elements platform," defined as a combination of network elements used by a CLEC "to provide end to end telecommunications service . . . to its end users and payphone providers without the requesting [CLEC's] provision or use of any other facilities or functionalities." 220 ILCS 5/13-801(d)(4). That excludes combinations such as EELs that are used in conjunction with other facilities or functionalities, such as a CLEC switch.

The Commission's interpretation of Section 13-801(d)(4) was predicated on the fact that "Section 13-801(d)(4) makes no mention of 'unbundled network elements' but speaks only to 'network elements.'" In contrast, sections 13-801(d)(1) and (3), which govern access to UNEs on a stand-alone basis and as part of new combinations, refer to "unbundled network elements." Consistent with the 1996 Act and FCC Rule 315(a), section 13-801(d)(1) requires an ILEC to "provide unbundled network elements in a manner that allows" CLECs to combine them. Consistent with FCC Rule 315(c), section 13-801(d)(3) mandates that ILECs "combine any sequence of unbundled network elements that it ordinarily combines for itself."

Except in the case of an existing platform, the Commission has determined that under state law, access to network elements is governed by a finding of impairment. Section 720.390

of the Commission's rules, "Access to Unbundled Network Elements," provides that an ILEC must offer (i) UNEs required by FCC rules, and (ii) other UNEs the Commission determines must be unbundled "consistent with the Federal Act, the Act and decisions of the federal courts and the FCC." In adopting this rule, the Commission stated that it "has endeavored to ensure that the new Part 790 is consistent with [Public Act] 02-0022," which includes Section 13-801.

The Commission has ruled that "unbundled network elements," as that term is used in sections 13-801(d)(1) and (d)(3), are not the same as "network elements" but rather "comprise a subset of network elements." Arbitration Decision, Docket No. 03-0239, p. 41 (Aug. 26, 2003). The Commission explained that "UNEs are those network elements that the FCC or the Commission has ordered ILECs to 'unbundle' consistent with Section 251(c)(3) of TA96" – which in turn references the impairment standard of section 251(d)(2). The Commission stated that the distinction "is consistent with Section 13-801 of the Act." Id.

On April 20, 2005, the Commission issued an Order in Phase I of Docket 01-0614 on remand ("801 Remand Order"). The 801 Remand Order reinterpreted Section 13-801 in two significant respects, but nothing in the 801 Remand Order changes the conclusion that SBC Illinois has done nothing to violate state law. The UNEs that were the subject of the TRO Remand Order and SBC Illinois' Accessible Letters (mass market unbundled local switching, UNE-P, high capacity loops and transport) are the subject of Phase II of Docket 01-0614 and, as such, are not directly addressed in the 801 Remand Order. Moreover, SBC Illinois' conduct in issuing the Accessible Letters, which is the subject of the Complaints, must be judged based on the law that existed at the time that conduct took place.

Furthermore SBC Illinois did not and does not have a contractual obligation to provide any of the Complainants with "state law" UNEs that do not meet the necessary and impair standards of Section 251 of the of the 1996 Act. As Staff points out, for example, SBC Illinois' UNE obligations under its interconnection agreements with Talk America and XO/Allegiance "derive exclusively from federal sources." Staff, therefore, correctly concludes SBC Illinois would be within its "rights" to "seek[ ] immediate implementation of the TRRO as against" those carriers.

Staff, however, incorrectly concludes that SBC Illinois' unbundling obligations to McLeod "derive from both federal and state sources." Section 43.1 of the General Terms and Conditions of the McLeod agreement is identical to the Section 43.1 of the XO/Allegiance and Talk America agreements, on which Staff relies for its conclusion with respect to those agreements. And Section 20.1 of the UNE Appendix of the McLeod ICA agreement provides that if the FCC finds "that any of the UNE or UNE obligations provided for under this agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be invalidated, modified or stayed as required to immediately effectuate the subject order upon written request by either Party." Thus, SBC Illinois would be within its rights in seeking immediate implementation of the TRRO not just as against the other CLECs, but also as against McLeod.

This conclusion is not contradicted by Section 5.7.2, which permits McLeod to purchase "interconnection or wholesale services" from SBC Illinois' approved tariffs. The TRO Remand

Order's declassification of certain UNEs (including UNE-P) is self-effectuating as to tariffs as well as interconnection agreements. Moreover, Section 5.7.2 must be read in a way that makes it consistent with the provisions of the McLeod ICA discussed above. Thus, to the extent that 5.7.2 is interpreted to allow McLeod to purchase UNEs under the rates, terms and conditions set forth in SBC Illinois' tariffs, that right must be construed to apply only to network elements that SBC Illinois is required to unbundle under Section 251 and the FCC's implementing regulations.

SBC Illinois' interconnection agreements with Cbeyond, Nuvox, and Global TelData also contain provisions identifying federal law (in particular 251) – not state law – as the source of each agreement's unbundling requirements. This includes the Recitals at the beginning of the Cbeyond agreements and Sections 29.3 and 1.31(e) of the Nuvox ICA, and Sections 1.3(e) and 9.1 of the Global TelData ICA.

The Cbeyond Complainants and XO/Allegiance also point to SBC Illinois' tariffs as a basis for their alleged right to purchase UNEs that were declassified by the *TRO Remand Order*. As Staff correctly points out, however, with the exception of McLeod, no Complainant has demonstrated that its Interconnection Agreement provides it with a right to purchase UNEs out of tariff. The Commission has made it clear that CLECs are not allowed to "pick and choose" from their respective interconnection agreements and a tariff. *Order*, Docket 99-0511, pp. 30-31 (March 27, 2000); *MCIMetro Access Transmission Services v. Illinois Bell Telephone Company*, Docket 99-0379, 1999 Ill. PUC Lexis 681, § 82 (Sept. 22, 1999), (Commission rejected MCI's attempt to invoke tariff provision inconsistent with its interconnection agreement) a*ff'd MCIMetro Access Transmission Services LLC v. Illinois Commerce Commission*, No. 3-99-0961, *Order* (Ill. App. 1st Dist. March 17, 2005).

VII. SBC ILLINOIS' IMPLEMENTATION PLANS DO NOT VIOLATE THE SBC/AMERITECH MERGER ORDER

The CLECs contend that ¶ 53 of Appendix C to the SBC/Ameritech Merger Order authorizes this Commission to continue imposing UNE obligations that the FCC has rejected. That contention fails, because the obligations imposed by ¶ 53 have expired. By their terms, those obligations became "null and void" upon a "final and non-appealable Commission order in the UNE remand proceeding." That condition was met, at the very latest, when the Supreme Court declined review of USTA II. Also, the TRO was vacated by the D.C. Circuit insofar as it required continued access to the UNE-P, and the Supreme Court declined to review that decision. The decision in USTA II, therefore, is an alternative "final, non-appealable judicial decision" providing that UNE-P is "not required to be provided by SBC/Ameritech." Furthermore, ¶ 53 clearly states that unbundling is not required upon the FCC's "finding that the UNE or combination of UNEs is not required to be provided by SBC/Ameritech in the relevant geographic area" – a finding the FCC made when it imposed a "nationwide bar" on unbundled switching and the UNE-P.

The CLECs attempt to breathe life into paragraph 53 by arguing that paragraph 394 of the Merger Order – not the Merger Conditions themselves in Appendix C – controls the outcome of this question. That argument fails. The Merger Order itself expressly states that it is the Merger Conditions in Appendix C that govern SBC Illinois' obligations, not language that appears

elsewhere. Moreover, even if paragraph 394 did trump the actual Merger Conditions, the CLECs' argument would fail because the UNE remand proceeding became "final and non-appealable" following the USTA I Order, as did the "subsequent proceeding" – the TRO Remand Order, which became final and non-appealable after USTA II and the denial of certiorari to the Supreme Court.

VIII. SBC ILLINOIS' IMPLEMENTATION PLANS DO NOT VIOLATE ANY OBLIGATIONS UNDER SECTION 271

CLECs' reliance on section 271 of the 1996 Act is misplaced, for several reasons. First, elements provided under section 271 are not UNEs. Any obligation under section 271 is "independent" of "any unbundling analysis under section 251." TRO ¶ 653. As the FCC has held, and this Commission recently acknowledged, TELRIC prices do not apply to section 271 elements. Moreover, section 271 contains no independent combinations requirement. Instead, section 271 specifically calls for checklist items to be provided apart from other items or services. Enforcing the plain language of the statute, the FCC has squarely rejected CLEC attempts "to require BOCs, pursuant to section 271, to combine network elements that no longer are required to be unbundled under section 251." TRO ¶ 655 n.1989.

Second, this Commission has no authority to enforce SBC Illinois' obligations under section 271. Section 271 makes clear that the FCC, and only the FCC, has authority to enforce that provision. A state commission may not "parlay its limited role in issuing a recommendation under section 271" to impose substantive requirements under the guise of section 271 authority. Indiana Bell Tel. Co. v. Indiana Util. Reg. Comm'n, 359 F.3d 493, 497 (7th Cir. 2004). Moreover, section 271 gives state commissions no role – not even a consultative role – with respect to the ongoing obligations of the BOCs once they have received approval. In a recent arbitration decision, this Commission recognized that, while it could tell the parties to "incorporate what the FCC said about 271 UNEs into your ICA, it could not "alter[] . . . FCC rulings," nor could it "attempt[] to define the extent to which Section 271 governs the parties' conduct." XO Arbitration Decision at 66.

IX. CLEC ARGUMENTS REGARDING HARM AND LACK OF ALTERNATIVES ARE IRRELEVANT TO ANY ALLEGED LEGAL VIOLATION

CLEC claims that they will suffer harm as a result of a lack of adequate alternatives to network elements that the FCC has declassified are irrelevant. The FCC held that carriers may not obtain unbundled switching (or UNE-P) or the loop and transport facilities that meet the FCC's non-impairment criteria, and the FCC, and not state commissions, has sole authority to make impairment determinations under the 1996 Act. Accordingly, this Commission cannot properly entertain arguments that CLECs need continued access to these declassified UNEs in order to compete.

In any event, SBC Illinois' evidence demonstrates that there are, in fact, alternatives CLECs can use to provide services to customers, just as the FCC found in the TRO Remand Order. SBC Illinois witness Chapman discussed these alternatives at length.

X. SBC ILLINOIS DID NOT VIOLATE ANY PART OF SECTION 13-514.

The CLECs allege that SBC Illinois' implementation of the TRO Remand Order violates nine subsections of Section 13-514. SBC Illinois did not violate any of those subsections.

A. SECTION 13-514(1) PROHIBITS "UNREASONABLY REFUSING OR DELAYING INTERCONNECTIONS OR COLLOCATION OR PROVIDING INFERIOR CONNECTIONS TO ANOTHER TELECOMMUNICATIONS CARRIER."

SBC Illinois' implementation of the TRO Remand Order involves only new UNE-P, high capacity loops and dedicated transport circuits. It has nothing to do with "interconnection," either under the FCC's or this Commission's definition of that term, and it has nothing to do with collocation. Nor is SBC Illinois "providing inferior connections." It is, rather, implementing the FCC's determination that it need no longer provision new UNE-P or certain new high capacity loop or dedicated transport.

XO/Allegiance argue that they use loops and transport to "interconnect with SBC Illinois' network," but that is simply incorrect. Loops and transport do not connect CLECs to SBC Illinois' networks; they are parts of SBC Illinois' network that XO/Allegiance use to connect their networks to their end users. This is simply not "interconnection" within the meaning of subsection (1).

B. SECTION 13-514(2) PROHIBITS "UNREASONABLY IMPAIRING THE SPEED, QUALITY OR EFFICIENCY OF SERVICES USED BY ANOTHER TELECOMMUNICATIONS CARRIER."

The FCC's new rules have nothing to do with the speed, quality or efficiency of "services" used by CLECs. Indeed, UNEs are not "services" at all, as the Illinois Appellate Court has held. Moreover, SBC Illinois is in no way impairing (or threatening to impair) the speed, quality or efficiency of the UNEs it provides to CLECs. This Commission ruled last year that in order to prevail on a claim under Section 13-514(2), a complainant must allege and prove that "the actual facilities eventually provided . . . are of a lower speed, quality, or efficiency than that provided" by the defendant to itself or others, or that the "facilities eventually provided have otherwise adversely affected the services" that complainant seeks to provide to end users. Thus, this subsection does not apply to any difficulties CLECs may face when they use alternatives to declassified UNEs, but only to the "speed, quality or efficiency" of services actually provided to CLECs by SBC Illinois. CLECs have not alleged or shown a violation of this subsection.

C. SECTION 13-514(4) PROHIBITS "UNREASONABLY DELAYING ACCESS IN CONNECTING ANOTHER TELECOMMUNICATIONS CARRIER TO THE LOCAL EXCHANGE NETWORK WHOSE PRODUCTS OR SERVICES REQUIRES NOVEL OR SPECIALIZED REQUIREMENTS."

This provision does not apply here, This case does not involve "connecting" any CLEC to the local exchange network or any "novel or specialized access requirements." Only McLeod

maintains a claim on this point, but it nowhere explains what conduct of SBC Illinois allegedly violates subsection (4) or what "novel or specialized" requirements it requires or was denied.

D. SECTION 13-514(5) PROHIBITS "UNREASONABLY REFUSING OR DELAYING ACCESS BY ANY PERSON TO ANOTHER TELECOMMUNICATIONS CARRIER."

SBC Illinois is not "refusing or delaying" access by any person to another telecommunications carrier. SBC Illinois continues to offer services which a customer can use to access a CLEC, such as special access circuits. Also, SBC Illinois has not "unreasonably" refused access by withholding new UNE-P, high capacity loops or dedicated transport pursuant to the FCC's directive. To the contrary, SBC Illinois' actions are reasonable on their face because they implement the TRO Remand Order. As for state law obligations, SBC Illinois stated it will continue to provide new UNE-P in accordance with the requirements of the Commission's June 11, 2002 Order in Docket 01-0614 as long as those requirements remain in effect. Finally, the CLECs have offered no evidence that a particular end-user customer's access to a CLEC was refused or delayed as a result of any action taken by SBC Illinois. As the Commission has previously ruled, this failure is fatal to CLECs' Complaint.

XO/Allegiance allege they will be denied access to loops and transport (not UNE-P), but nowhere explain how that violates the prohibition against "unreasonably refusing or delaying access to by any person to another telecommunication carrier." They do not deny that non-UNE services (e.g., special access) are available, nor do they deny that SBC Illinois will provision loops and transport as UNEs under the self-certification provisions of the TRO Remand Order.

Staff agrees with SBC Illinois that there is no violation of subsection (5) but for a different reason. In Staff's view, subsection (5) is directed to activity that deters or delays a customer's ability to switch from one carrier to another. This is a sensible reading of the statute, particularly because other subsections of 13-514 adequately address actions that delay or deny a CLECs ability to obtain services from another carrier.

E. SECTION 13-514(6) PROHIBITS "UNREASONABLY ACTING OR FAILING TO ACT IN A MANNER THAT HAS A SUBSTANTIAL ADVERSE EFFECT ON THE ABILITY OF ANOTHER TELECOMMUNICATIONS CARRIER TO PROVIDE SERVICE TO ITS CUSTOMERS."

SBC Illinois did not act "unreasonably" in implementing the TRO Remand Order, and its actions did not have a "substantial adverse effect" on the CLECs' ability to provide service to their customers. Even if the Commission were to conclude, erroneously, that the TRO Remand Order is not self-effectuating as of March 11, 2005, it could hardly find that SBC Illinois acted unreasonably in reaching that conclusion in light of the fact that the vast majority of state Commissions and the three federal district courts that have addressed this issue reached the same conclusion. Staff correctly concludes that SBC Illinois' conduct was not unreasonable because it is merely attempting to enforce its rights under its ICAs and the TRO Remand Order.

The reasonableness of SBC Illinois' conduct is underscored by its pledge to continue provisioning UNE-P in accordance with the requirements of the June 11, 2002, Order in Docket

01-0614, as long as those requirements remain in effect. There was no effect (let alone a "substantial adverse effect") on any CLEC. The same is true of the self-certification process by which SBC Illinois provisions high capacity loops or dedicated transport at a "non-impairment" central office, based solely on the self-certification of a CLEC.

Furthermore, CLECs do not deny that the TRO Remand Order does away with new UNE-P, high capacity loop and dedicated transport under Section 251 of the 1996 Act. The only real question in this proceeding is timing. If ICA amendments were required, which they are not, they could and should be done quickly. For this reason, there could be no "substantial adverse effect" on a CLECs ability to provide services. At most, there could (or should) only be a period of a few weeks or so before an amendment is put in place and after that, new UNEs would no longer be available.

Finally, any consideration of "substantial adverse effect" must take into account the reasonableness of the CLECs' conduct in preparing for and adjusting to the new FCC Rules. The CLEC community has known for a long time that these UNEs were in serious jeopardy and that alternative arrangements should be found. If CLECs are unprepared for the withdrawal of these UNEs, it must be attributable in large part to their own lack of planning.

F. SECTION 13-514(8) PROHIBITS "VIOLATING THE TERMS OF OR UNREASONABLY DELAYING IMPLEMENTATION OF AN INTERCONNECTION AGREEMENT ENTERED INTO PURSUANT TO SECTION 252 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 IN A MANNER THAT UNREASONABLY DELAYS, INCREASES THE COST, OR IMPEDES THE AVAILABILITY OF TELECOMMUNICATIONS SERVICES TO CONSUMERS."

SBC Illinois has not violated the ICAs. The FCC has the authority to put an end to new UNE arrangements as of the effective date of its order, regardless of the terms of any interconnection agreement, and the FCC did so. In addition, the language of each of the seven CLECs' ICAs permits SBC Illinois to implement the FCC's new rules without invoking the change of law process.

There are three elements CLECs must prove in order to establish a violation of subsection (8): (i) violating or unreasonably delaying implementation of a section 252 ICA; (ii) in a manner that unreasonably delays, increases the cost or impedes the availability of telecommunication services; (iii) to consumers. CLECs must prove all three elements, and they have proved none of them.

There is no violation of the ICAs because, as the Commission recognized in its Amendatory Orders, relevant portions of the TRO Remand Order are self effectuating on March 11, without regard to change in law provisions of an ICA. State law cannot make it illegal to do something that federal law specifically finds is in the public interest and in furtherance of national telecommunications policy.

No CLECs even addresses the requirement that SBC Illinois' conduct must "unreasonably" delay, increase the cost or impede the availability of services. Staff touches on

this subject, but incorrectly concludes that there is no "unreasonableness" requirement in subsection (8). The plain language of the subsection reveals Staff's mistake: SBC Illinois' conduct must "unreasonably" delay, increase the cost or impede availability of services to consumers.

Finally, no CLEC demonstrates how SBC Illinois' conduct delays, increases the cost or impedes the availability of services to consumers. XO/Allegiance and the Cbeyond CLECs assert there will be consumer impact, but do not explain how or why. McLeod merely asserts it might have to stop taking orders for new service in certain locations if it loses TELRIC-priced UNEs. All CLECs argue that consumer impact as required by subsection (8) is "axiomatic," but the Commission cannot blindly assume that an increase in the price of an input a CLEC uses will necessarily result in a cost increase to consumers or in the withdrawal of service.

G. SECTION 13-514(10) PROHIBITS "UNREASONABLY FAILING TO OFFER NETWORK ELEMENTS THAT THE COMMISSION OR THE FEDERAL COMMUNICATIONS COMMISSION HAS DETERMINED MUST BE OFFERED ON AN UNBUNDLED BASIS TO ANOTHER TELECOMMUNICATIONS CARRIER IN A MANNER CONSISTENT WITH THE COMMISSION'S OR FEDERAL COMMUNICATION COMMISSION'S ORDERS OR RULES REQUIRING SUCH OFFERINGS."

SBC Illinois has not "unreasonably" failed to offer UNEs that the FCC has required. To the contrary, SBC Illinois is faithfully implementing the FCC's TRO Remand Order. Moreover, a violation of this subsection, like all other subsections of 13-514 that concern per se violations, requires "unreasonable" conduct. Here, SBC Illinois' conduct is reasonable on its face.

XO/Allegiance make no claim under this subsection. McLeod addresses the subsection in its Brief, but its Complaint makes no claim under subsection (10), so it is not entitled to any relief thereunder. As for the Cbeyond CLECs, they have established no violation of subsection (10), for three reasons: First, the Cbeyond CLECs' assumption that subsection (10) is triggered when a carrier fails to offer a UNE that is required under an ICA is incorrect. Subsection (10) applies only where a carrier "unreasonably fails" to offer to another carrier an "unbundled" network element that the FCC or the ICC has determined must be made available. Subsection (8) deals with violations of existing ICAs. Subsection (10) deals with the non-discrimination principle of offering all carriers UNEs that are required to be offered to one carrier. The Cbeyond CLECs have not alleged or proven facts sufficient to show any violation of subsection (10), so their claim must be rejected on this basis alone.

Second, SBC Illinois' actions were not unreasonable.

H. SECTION 13-514(11) PROHIBITS "VIOLATING THE OBLIGATIONS OF SECTION 13-801."

For the reasons discussed above, SBC Illinois has not violated Section 13-801 and therefore any claim under Section 13-514(11) must be denied.

I. SECTION 13-514(12) PROHIBITS "VIOLATING AN ORDER OF THE COMMISSION REGARDING MATTERS BETWEEN TELECOMMUNICATIONS CARRIERS."

The only Commission order mentioned in the Complaints is the June, 2002, Order. SBC Illinois has not violated that order.

J. KNOWING IMPEDIMENT TO COMPETITION

Several CLECs make a general allegation in their complaints that SBC Illinois has knowingly impeded the development of competition under Section 13-514, but CLECs' briefs rely solely on the allegations of per se violations of Section 13-514. To the extent any CLEC Complaint alleged a cause of action under this theory, it has been abandoned. In any event, CLECs have offered no evidence that SBC Illinois (1) "knowingly" (2) impeded the development of competition (3) within a designated telecommunications service market, as they would have to in order to establish such a claim.

K. EXTRANEOUS CBEYOND CLAIMS

The Cbeyond Complaint purports to state independent causes of action on grounds outside of section 13-514. Those extraneous Counts must be dismissed, because the Commission is without jurisdiction to consider these independent causes of action under section 13-514.

XI. THERE IS NO BASIS FOR DAMAGES OR PENALTIES.

Only the Cbeyond Complaint requests damages and penalties in its prayer for relief. XO/Allegiance and McLeod apparently realize this is not an appropriate case for damages or penalties because they do not make any such request in their prayer for relief. Even if the Commission were to find a violation of Section 13-514 (which it should not), damages would be inappropriate because no CLEC has offered a scintilla of evidence to substantiate any claim for damages.

For the same reasons, this would not be an appropriate case for penalties under Section 13-516(a)(2). Under that section, the Commission "may" impose penalties for violations of Section 13-514. Penalties are appropriate only where the conduct complained of was egregious. Moreover, the Commission is to consider mitigating factors, including those set forth in Section 13-304.

SBC Illinois' conduct in this case was reasonable because it was carefully calculated to comply with the requirements of the FCC's TRO Remand Order. If the Commission for some reason reaches a different conclusion with respect to the effect of the TRO Remand Order than the majority of state commissions and the two federal courts that have considered the issue, it must at least recognize that it is in the minority and that SBC Illinois' position is, at a minimum, not reasonable. Moreover, SBC Illinois publicly announced its plan to implement the TRO Remand Order early enough to afford CLECs ample opportunity to enter into alternative arrangements or to raise legal challenges before the appropriate regulatory bodies and courts.

SBC Illinois' reasonable implementation plan, the lack of any CLEC damages and the pre-announcement of SBC Illinois' plan all establish that this would not be an appropriate case to impose penalties under Section 13-516(a)(2).

XII. ATTORNEY'S FEES

XO/Allegiance argue that no matter what the Commission does in its final order, they are entitled to recover all of their attorneys fees on the strength of their success in persuading the Commission to issue an order under Section 13-515(e) granting emergency relief with respect to high capacity loops and transport. This argument is baseless. CLECs would be entitled to attorney's fees only if the Commission finds that they have been "subjected to a violation of Section 13-514." The Commission's grant of emergency relied to maintain the status quo made no such finding.

XO/Allegiance's suggestion that they would be entitled to recover 100% of their attorneys fees if they prevail on some, but not all, their claims, flies in the face of this Commission's ruling to the contrary in Docket 02-0365, which was sustained on appeal.

XIII. RELIEF REQUESTED BY SBC ILLINOIS

The Commission should deny all relief requested by each CLEC. The Commission has already rejected the major component of the CLECs' requested relief by ruling that federal law does not require SBC Illinois to provision UNE-P to customers who are not part of the CLEC's existing customer base as of March 10, 2005. The Commission should also find that the TRO Remand Order does not require SBC Illinois to provision new UNE-P to embedded-base customers and that, subject to the self-certification process, the TRO Remand Order does not require SBC Illinois to provision DS1/DS3/dark fiber high capacity loops and dedicated transport at those central offices that satisfy the FCC's "non-impairment" thresholds.

If, however, the Commission believes the TRO Remand Order requires SBC Illinois to amend its interconnection agreements before it stops providing new UNE-P and/or high capacity loop/transport, the Commission should take additional steps to ensure that that happens as soon as possible. Specifically, the Commission should direct the CLECs to execute an amendment to implement the requirements of the TRO Remand Order, namely, the two TRO Remand Amendments that SBC Illinois attached to Accessible Letters CLECALL 05-018 and CLECALL 05-020. If the Commission grants any relief to the CLECs in this proceeding, it should require all CLEC parties to execute these TRO Remand Amendments within seven days of the date of the order in this case.

As a final alternative, if the Commission does not deny all relief requested by the CLECs (which it should) and does not order the CLECs to execute forthwith the TRO Remand Amendments discussed above, then, at the very least, the Commission should direct each CLEC to enter into a TRO Remand Amendment with SBC Illinois no later than June 11, 2005, and should rule that if any CLEC does not do so, SBC Illinois may thereafter, as a matter of federal law, implement the new FCC Rules without amending that CLEC's ICA.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

I, Karl B. Anderson, an attorney, certify that a copy of the foregoing **SBC ILLNIOIS' SUMMARY OF POSITION** was served on the parties on the attached service list by U.S. Mail and/or electronic transmission on April 25, 2005.

_____

Karl B. Anderson

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