

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Cbeyond Communications, LLP, Global TelData II, LLC f/k/a Global TelData, Inc., Nuvox Communications of Illinois, Inc. and Talk America Inc.)	
-vs-)	
Illinois Bell Telephone Company)	
Verified Complaint and Petition for an Order for Emergency Relief pursuant to 220 ILCS 5/13-515(e).)	05-0154
)	(cons.)
XO Illinois, Inc. and Allegiance Telecom of Illinois, Inc.)	
-vs-)	
Illinois Bell Telephone Company)	05-0156
Complaint pursuant to 220 ILCS 5/13-515.)	
McLeodUSA Telecommunications Services, Inc.)	
-vs-)	
Illinois Bell Telephone Company)	05-0174
Verified Complaint pursuant to 220 ILCS 5/13-515(e).)	

**PETITION FOR REVIEW OF THE ADMINISTRATIVE
LAW JUDGE’S PROPOSED ORDER
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Now comes the Staff of the Illinois Commerce Commission ("Staff"), by its undersigned attorneys, and pursuant to Section 13-515(d)(8) of the Illinois Public Utilities Act ("PUA") and Section 766.300¹ of the Commission's Rules of Practice (83 Ill. Adm. Code 766.300) respectfully submits this Petition for Review of the Administrative Law Judge's ("ALJ's") Proposed Order issued on May 9, 2005 ("Proposed Order").

¹ Staff finds that Section 766.300 of the Commission's rules do not require "a suggested replacement statement" as opposed to Section 200.830, which does require suggested replacement language. If the ALJ, however, desires such proposed replacement language, Staff will provide the ALJ with it.

Introduction

Staff commends the ALJ for the cogently-reasoned analysis contained in the Proposed Order, which addresses a plethora of difficult issues engendered by the Federal Communications Commission's ("FCC's") Order in the TRRO.² The Proposed Order also provides an accurate and detailed summary of the positions of the parties and reaches conclusions with respect to almost all issues that are consistent with applicable requirements under the Illinois Public Utilities Act ("PUA") and the federal Telecommunications Act. Nonetheless, Staff seeks Commission review of one conclusion of law reached by the ALJ. Staff also offers the ALJ a few non-substantive, clerical-type suggestions.

Staff Exception Number 1

Staff seeks review of the ALJ's conclusion that "the complaining CLECs are prohibited from serving non-embedded customers through Section 251 ULS/UNE-P as of March 11, 2005" without any "need for pre-implementation negotiation."³ Proposed Order at 9, 12. Similarly, Staff takes exception to other instances where the Proposed Order precludes the complaining CLECs from serving new or non-embedded customers through Section 251 elements without prior implementation negotiations. See Proposed Order at 19, 22 (transport and high capacity loops, respectively). Staff maintains its position that "the TRRO is

² Order on Remand, In the Matter of Unbundled Access to Network Elements / Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, FCC No. 04-290, WC Docket No. 04-0313, CC Docket No. 01-338 (Adopted: December 15, 2004; Released: February 4, 2005) (hereafter "TRRO").

³ Staff, however, fully supports the analysis and conclusions reached in the Proposed Order regarding the "practical" issues distinguishing between "embedded" customers and "non-embedded" customers. See Proposed Order at 9-12.

best interpreted as requiring implementation by negotiation of the change of law provisions of existing interconnection agreements,” even for new ULS/UNE-P customers. Staff IB at 19; Staff RB at 6.

On the other hand, Staff has acknowledged that the “Commission is confronted with difficult issues to decide in this proceeding” and that “the requirements of the TRRO are less lucid than either side to this debate would allow.” Staff IB at 16; Staff RB at 5-6. Staff, furthermore, has also acknowledged that the Commission entered an Amendatory Order that states: “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.” See Amendatory Orders, Findings and Ordering Paragraph No. 8 (March 23, 2005).

Staff, however, remains convinced that the FCC lacks the requisite authority, through the TRRO, to unilaterally and summarily amend each interconnection agreement to incorporate the provisions of the TRRO. See *e.g.*, Proposed Order at 11, n. 21 (“Thus, the [ILEC] and [CLEC] must negotiate in good faith regarding any rates, terms and conditions necessary to implement our rules changes [footnote omitted].”), *citing* TRRO ¶233.

Clerical Matters

Staff has also identified a few non-substantive, clerical-type errors. Staff proposes the following edits to correct these seemingly minor errors. The following lists these edits, which are also highlighted in the attached redlined Proposed Order:

- In the last paragraph on page 11, in the sentence beginning with “Accordingly,” change the “no” to “nor”.
- In the first sentence of the last paragraph found on page 23, insert the word “Order” after the phrase “the FCC’s Section 271”.
- In the very next sentence, beginning on line 23 and running onto page 24, add closing quotation mark for the quote attributed to Staff, which ends “. . . and no party disputes this authority.”
- In the first full paragraph on page 24, in the second sentence that starts “Staff contends”, add the word “be” in between the words “can’ and “asserted”.
- In the last sentence of that same paragraph, in the quoted phrase attributed to Staff that reads “afforded by Section 271,” replace the word “bye” with the word “by”.
- In the fifth paragraph on page 30, in the first sentence, replace the word “nor” with the word “not” in the phrase that reads “SBC Illinois will nor reject UNE-P orders”.
- In the first paragraph on page 34, replace the comma between “embedded customers, Moreover,” with a period.
- On page 40, in the last paragraph add the word “to” to the phrase that reads “Alternatively, SBC asks the Commission impose a time limit” so that the sentence will read “Alternatively, SBC asks the Commission to impose a time limit”.

Conclusion

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

/s/ _____

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