

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In the Matter of)	
)	
XO Communications Services, Inc.)	
Petition for Arbitration of an)	Docket No. 05-0763
Amendment to an Interconnection)	
Agreement with SBC Illinois Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934,)	
as Amended)	

**REPLY BRIEF OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 761.400 of the Commission’s Rules of Practice (83 Ill. Adm. Code 761.400), respectfully submits its Reply Brief in the above-captioned matter.

I. INTRODUCTION

AT&T filed an Initial Brief in this proceeding containing five sub-sections and numerous legal citations in support of its proposal for the one issue presented to the Commission for resolution in this arbitration proceeding. XO, on the other hand, provided the Commission with a few pages of argument that contained no legal support for its position. Nothing in either of the parties’ respective Initial Briefs causes Staff to reconsider the position that it articulated in its Initial Brief.

Further, in an effort at avoiding recapitulating the arguments Staff made in its Initial Brief, Staff has not addressed in detail each and every assertion made by the parties in their respective Initial Briefs. Instead, Staff reasserts and reincorporates all of the argument contained in its Initial Brief as though fully set forth herein. Accordingly, where Staff does not respond specifically to an assertion made by another party in its Initial Brief, this should not be deemed a waiver of any argument in support of Staff's position, but rather a decision to stand on arguments that Staff has raised in its Initial Brief.

II. STAFF'S REPLY TO THE PARTIES

A. Reply to XO

XO's Initial Brief provided little in the way of argument beyond the position it initially articulated in its Petition for Arbitration. Staff, in reply to XO's Initial Brief, stands on the arguments it provided the Commission in Staff's Initial Brief. To summarize Staff's position, it is Staff's view that XO's proposed language should be rejected because XO essentially fails to recognize its obligations arising out of the *TRRO* and attempts to shift its own responsibility (to conduct a "reasonably diligent inquiry" into impairment questions prior to self-certification) to AT&T, and then seeks to make AT&T financially responsible for any mistakes made. Staff Initial Brief at 9. For these reasons, XO's proposed language is not, as XO suggests, "eminently reasonable." XO Initial Brief at 3. The Staff, accordingly, recommends that the Commission reject XO's argument and its accompanying proposed language in their entirety.

B. Reply to AT&T

AT&T filed an Initial Brief that contains five subsection headings addressing the only issue remaining for Commission resolution. As articulated in its Initial Brief, Staff generally agrees with the AT&T position in this arbitration. Specifically, Staff agrees with the AT&T position articulated in its subheading one, "XO's proposal is inconsistent with the FCC's TRRO Order." AT&T Initial Brief, at 6 - 8. Specifically, Staff also agrees with AT&T's ultimate conclusion that "XO's proposal is a solution in search of a problem." AT&T Initial Brief at 8. In fact, in Staff' view, the argument made in this section of the AT&T Initial Brief alone provides compelling reasons for the Commission to side with AT&T's position. Yet AT&T continues on with more argument organized in four more sub-sections of its Initial Brief.

Staff, however, finds some of AT&T's additional arguments to contain propositions that go beyond information relevant to the Commission for it to resolve this issue. In this regard, Staff takes no position on general AT&T themes made in sub-headings two ("XO's proposal is contrary to the Commission's interest in the fair and efficient administration of justice"), three ("XO's proposal is unduly harsh and administratively burdensome"), and four ("XO's piecemeal litigation should not be rewarded").¹ The Staff urges the

¹ Because Staff takes no position on the arguments AT&T makes in sub-sections two, three and four of its Initial Brief does not mean, however, that Staff does not agree with some specific statements in those sub-sections. For example, Staff agrees with the following proposition contained in AT&T's sub-section two that: "XO is essentially arguing that it has no duty to diligently exercise its self-certification authority, so that if it sleeps on its rights, but later decides to issue a self-certification which is sustained by the Commission, it can be made financially whole through retroactive credits and expedited conversion from wholesale service back to UNEs." AT&T Initial Brief at 8-9. Staff would also likewise agree with some of the other specific statements articulated in AT&T's subsections two, three and four but finds that for the

Commission to resolve this issue based upon the specific provisions of the TRRO, rather than the policy and equity based arguments that AT&T advances in the latter part of its Initial Brief.

Regarding AT&T's sub-section five ("AT&T Illinois' language is the most commercially reasonable proposal"), Staff shares AT&T's preference that the interconnection agreement contain "no language whatsoever" for Section 4.1.6. AT&T Initial Brief at 12. Staff, consequently, recommends that the Commission reject both parties' respective proposed language, which would leave the interconnection agreement with no Section 4.1.6. Should the Commission decline to do this, the Staff recommends that the Commission adopt the proposal advanced by Staff in its Initial Brief.

most part the general theme of these specific AT&T sub-sections go beyond what is required for the Commission to resolve the issue presented for arbitration.

III. 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,

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