

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :  
On Its Own Motion :  
vs :  
ACN Communication Services, Inc.; :  
Bell Atlantic Communications, Inc. :  
d/b/a Verizon Long Distance; :  
Cellco Partnership d/b/a Verizon :  
Wireless :  
Comcast Phone of Illinois, LLC d/b/a :  
Comcast Digital Phone; :  
Forte Communications, Inc.; : 06-0028  
IQ TELECOM, INC.; :  
MCI Communications Services, Inc.; :  
MCImetro Access Transmission :  
Services, Inc.; :  
McLeodUSA Telecommunications :  
Services, Inc.; :  
RCN Telecom Services of Illinois, :  
LLC; :  
Sage Telecom, Inc.; :  
Sprint Communications L.P. d/b/a :  
Sprint Communications Company :  
L.P.; :  
Talk America Inc.; :  
TDS Metrocom, LLC; and :  
Trinsic Communications, Inc. :  
  
Collection of information relative to :  
the tariff filings by Illinois Bell :  
Telephone Company reclassifying :  
certain services as competitive :  
:

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S  
MOTION TO JOIN ADDITIONAL PARTIES

**PUBLIC VERSION**

**\*\*\*BEGIN CONF    END CONF\*\*\* - Denotes Proprietary / Confidential Information**

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its counsel, and hereby moves, pursuant to 83 Ill. Admin. Code 200.190, for an order joining the following carriers: Broadwing Communications, LCC. (“Broadwing”); Global Teldata, Inc. and Global TelData II, LLC (“TelData I and II”) Illinois Telephone Corporation (“ITC”); Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc. (“GC I and II”); Level 3 Communications, L.L.C. (“L3”) Mpower Communications Corp. (“Mpower”); Poltel, LLC (“Poltel”); Cimco Communications, Inc. (“Cimco”) and ATX Licensing, Inc. (“ATX”) to this proceeding as respondents. In support thereof, the Staff states as follows:

1.     On January 11, 2006, the Commission entered its Order initiating this proceeding. *See, generally, Initiating Order*.

2.     The *Initiating Order* provides, in relevant part, that:

Staff has made the point that much of the information vital to Staff’s understanding of the competitive market, generally or specifically in connection with any potential investigation into the propriety of the reclassification, is in the possession of competitive carriers that AT&T Illinois cites as providers of substitute services. In the Report, Staff has constructed a list of information that it seeks from the CLECs. The Commission is satisfied that the information sought is relevant to the analysis Staff must perform on the Company’s tariff filings.

Initiating Order at 2

3.     In its pre-filed direct testimony in the companion proceeding to this matter, the Illinois Bell Telephone Company (hereafter “AT&T Illinois”) cites a

significant number of carriers other than those already joined to this proceeding as supplying basic residential access service in competition with AT&T Illinois. See AT&T Ex. 1.0, Schedules WKW-4, WKW-6.

4. Staff does not seek to join each of the additional carriers to which AT&T Illinois refers. However, Staff is of the opinion that joinder of eleven additional carriers named by AT&T Illinois, and issuance to these carriers of the “Alternative Provider Information Request” appended to the Initiating Order, is warranted, for the reasons stated below. All the carriers in question hold Certificates of Service Authority granted by the Commission.

**I. Cimco and ATX**

5. AT&T Illinois cites Cimco and ATX (the later doing business as CoreComm, according to AT&T) as providing residential local service on a measured basis. AT&T Ex. 1.0, Schedule WKW-6 at 1. The only other carriers cited by AT&T Illinois as providing service in this manner, namely RCN Telecom Services and MCI Communications Services, have, according to AT&T Illinois, “grandfathered” these services, meaning that neither company will offer the services in question to new customers. Id.

6. As such, Cimco and ATX will, according to AT&T Illinois, provide the only competitive alternative to AT&T Illinois’ measured service on a going-forward basis. This is a source of concern to the Staff, because measured service primarily appeals to lower income subscribers who make relatively few calls. If the measured service market is not effectively competitive,

reclassification of measured service as a competitive service could mean substantial increases in rates for households least able to afford such increases.

7. Accordingly, it is vital to obtain information from Cimco and ATX to determine the level of competition that actually exists for this market segment. Staff recommends that this be accomplished by joinder of Cimco and ATX to this proceeding, and by requiring these two carriers to supply the information requested in the “Alternative Provider Information Request”.

**II. Broadwing, TelData I and II, ITC, GC I and II, L3, and Mpower**

8. By seeking data from Broadwing, TelData I and II, ITC, GC I and II, L3, Mpower, and Poltel the Staff seeks to obtain a more comprehensive understanding of competition levels in the relevant geographical area than it will have based upon data available from the existing parties.

9. If Staff is able to obtain data from these carriers, it will have data from – according to AT&T Illinois’ evidence – all CLECs that serve more than \*\*\* **BEGIN CONF** xxxxxxxxxxxx **END CONF** \*\*\* customers using their own facilities or a combination of their own facilities and AT&T Illinois’ UNE loops. AT&T Ex. 1.0, Schedule WKW-9. Further, the top \*\*\* **BEGIN CONF** xxxxxxxx **END CONF** \*\*\* CLECs in number of residential customers served will be parties to this proceeding and required to provide data. AT&T Ex. 1.0, Schedule WKW-9. Clearly then, the Staff – and ultimately the Commission – will have access to the fullest information.

### **III. Joinder**

10. Joinder of parties is provided for in Section 200.190(a) of the Rules of Procedure before the Illinois Commerce Commission, which permits parties to move for “addition of necessary parties.” 83 Ill. Admin. Code §200.190(a) Further, the Illinois Code of Civil Procedure provides, in relevant part, that: “Any person may be made a [respondent]<sup>1</sup> ... whom it is necessary to make a party for the complete determination ... of any question involved therein.” 735 ILCS 5/2-405(a).

11. Cimco, ATX, Broadwing, TelData I and II, ITC, GC I and II, L3, Mpower, and Poltel are each a party necessary for the complete determination of the questions at issue in the companion docket for the reasons stated above and for the development of Staff’s understanding of the competitive market generally, in furtherance of fulfilling the responsibilities of Staff and this Commission under the Public Utilities Act. Moreover, as each is a telecommunications provider certificated by the Commission, the Commission has precisely the same authority to join Cimco, AXT, Broadwing, TelData I and II, ITC, GC I and II, L3, Mpower, and Poltel to this proceeding as it had to join the original CLECs. Specifically, as the Commission noted in its Initiating Order:

Section 5-101 of the Public Utilities Act ("Act")[220 ILCS 5/5-101], made applicable to the telecommunications carriers offering competitive telecommunications services pursuant to Section 13-101 of the Act [220 ILCS 13-101], reads in relevant part:

Every public utility shall furnish to the Commission all information required by it to carry into effect the provisions of

---

<sup>1</sup> The Code of Civil Procedure uses the word “defendant”, which is clearly not appropriate in this context, and further carries a taint which Staff seeks to avoid here.

this Act, and shall make specific answers to all questions submitted by the Commission.

Initiating Order at 2

Clearly, then, should the Commission find that ordering the named CLECs to respond to the “Alternative Provider Information Request will produce “information required ... to carry into effect the provisions of [the Public Utilities] Act”, joinder of the named CLECs is proper. Consistent with the arguments set forth above, the Staff recommends that the Commission so find.

12. The *Initiating Order* further provides that:

Staff has noted that information gathered from the CLECs may be subject to the restrictions of Section 5-108 of the Act. Section 5-108 provides:

Any officer or employee of the Commission who divulges any fact or information coming to his knowledge during the course of an inspection, examination or investigation of any account, record, memorandum, book or paper of a public utility, except in so far as he may be authorized by the Commission or by a circuit court, shall be guilty of a Class A misdemeanor.

Staff's concerns are well-taken. While the Commission makes no affirmative determination that the information produced in response to this order would be subject to the prohibition on divulging in Section 5-108, the Commission authorizes Staff to utilize any information in any investigation that the Commission may initiate into the reclassification of services by AT&T Illinois. Staff has also noted that the information is most likely to be proprietary in nature. Therefore, it is the Commission's expectation that the introduction of data produced in response to this order in any investigation will be done pursuant to the appropriate protective orders pursuant to Section 200.430 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.430).

Initiating Order at 2-3

13. Staff will maintain the confidentiality of information submitted by Cimco, ATX, Broadwing, TelData I and II, ITC, GC I and II, L3, Mpower, and Poltel on the same terms and conditions as with the other CLEC respondents.

WHEREFORE, the Staff of the Illinois Commerce Commission requests that its Motion to Join Cimco Communications, Inc.; ATX Licensing, Inc.; Broadwing Communications, LCC.; Global Teldata, Inc. and Global TelData II LLC; Illinois Telephone Corporation; Global Crossing Local Services, Inc.; Global Crossing Telemanagement, Inc.; Level 3 Communications, L.L.C.; Mpower Communications Corp.; and Poltel, LLC be granted.

Respectfully submitted,

Illinois Commerce Commission Staff

By: \_\_\_\_\_  
One of its attorneys

Matthew L. Harvey  
Stefanie R. Glover  
Brandy D.B. Brown  
Michael R. Borovik  
Illinois Commerce Commission  
Office of General Counsel  
160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
(312) 793-2877  
(312) 793-1556 (Fax)

Counsel for Staff of the  
Illinois Commerce Commission

Date: February 1, 2006